

ROSTAM J. NEUWIRTH, *LAW IN THE TIME OF OXYMORA: A SYNAESTHESIA OF LANGUAGE, LOGIC AND LAW* (ROUTLEDGE 2018)

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## I. INTRODUCTION

Have you ever wondered whether an oxymoron might change human evolution and, ultimately, fate? Until I read Rostam J. Neuwirth's new book, I, for one, had not. In *Law in the Time of Oxymora*, Neuwirth invites the reader into an abundant and curious amalgam of thoughts and theorisations. Drawing on linguistic, religious, and legal sources, as well as philosophy, (neuro)science and fiction, the book explores the impact of increasing oxymora in art, science and law upon human senses and the mind. Neuwirth proposes that dualistic logic, even if universal and inherent to humans, may be losing its validity.<sup>1</sup> Instead, the author argues, we ought to shift toward oxymoronic thinking and a holistic 'theory of everything'.<sup>2</sup> The book boisterously postulates that, in our rapidly changing world, by enabling paradoxical problem-solving skills and cognitive coherence, such a theory can aid the establishment of 'a global legal framework adequate for the challenges in the governance of global affairs'.<sup>3</sup>

Neuwirth's book is a colourful addition to the growing body of literature on questions of "law and ..." and "law in ...".<sup>4</sup> Most importantly, the book delves into the importance of language as a means of communication and thought, including within the realm of law. In this sense, its pronounced contribution

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<sup>1</sup> Rostam J Neuwirth, *Law in the Time of Oxymora: A Synaesthesia of Language, Logic and Law* (Routledge 2018) 184.

<sup>2</sup> Ibid 227–228.

<sup>3</sup> Ibid 243.

<sup>4</sup> For instance, see William Twining, *Law in Context: Enlarging a Discipline* (Clarendon Press 1997); Upendra Baxi, Christopher McCrudden and Abdul Paliwala (eds), *Law's Ethical, Global and Theoretical Contexts* (Cambridge University Press 2015); Peer C Zumbansen, 'Transnational Law as Socio-Legal Theory: The Challenges for "Law in Context" in a Divided World' (Social Science Research Network 2019) SSRN Scholarly Paper ID 3505560.

is to an old and 'current legal issue', i.e. legal knowledge on the relationship between law and language.<sup>5</sup> For its rhythm, flow and themes, it brings to mind vibrant explorations of law from a literary perspective.<sup>6</sup>

Its ambition is, however, where the book falters. While Neuwirth proposes to discard the dualist methodology and logic of the law, the book's main limitation is the lack of suggestions as to how, practically, one would do so. Moreover, the proposed grand theory of everything comes across as a lofty ideal – suitable for food for thought but, perhaps, not yet ripe for serious scientific exploration. I willingly admit, however, that *Law in the Time of Oxymora* provoked me to grapple with the paradoxes and dichotomies apparent in my own thinking and writing. Herein, I suggest, lies the value of Neuwirth's work. While the book sometimes seems far removed from law as lawyers usually understand it, its theory pushes one to reconsider the language and concepts one commonly – and, perhaps, too casually – employs, including when discussing law and events mediated through law. I will return to the compelling quandaries the book offers (section III), following a summary of Neuwirth's main argumentation.

## II. SUMMARY

In simple terms, Neuwirth hypothesises that, in our increasingly fast-paced and changing world, 'essentially oxymoronic concepts' are on the rise and may be able to help us overcome binary thinking. At once, these concepts both correspond with the current need for new language to describe our changing world and may change the very condition of humanity.<sup>7</sup> The author provokes, '[e]ventually, we need to ask if oxymora and paradoxes will, after affecting first our language, then our thinking, and possibly our perception, at some point also alter our biological appearance, our organs and eventually our

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<sup>5</sup> See also Michael Freeman and Fiona Smith (eds), *Law and Language: Current Legal Issues Volume 15* (Oxford University Press 2013); Andrei Marmor, *The Language of Law* (Oxford University Press 2014); Brian Bix, *Law, Language, and Legal Determinacy* (Oxford University Press 1995).

<sup>6</sup> A favourite of mine, for example, is Colin Dayan, *The Law Is a White Dog* (Princeton University Press 2011).

<sup>7</sup> Neuwirth (n 1) 114.

fate?<sup>8</sup> Classical logic, which perpetuates binary contradictions, may, according to the author, become replaced by a 'synaesthesia of senses'.<sup>9</sup> Such a synaesthesia could allow for global justice by laying the groundwork for global cognitive coherence and a common language. To demonstrate this elaborate claim, Neuwirth takes multiple steps.

First, the author defines "essentially oxymoronic concepts" as consisting of oxymora, enantiosis and paradoxes. As a point of departure, Neuwirth frames these concepts as the logical successor for their harbinger, the "essentially contested concept". By combining seemingly contradictory fields, qualities and sensations, essentially oxymoronic concepts can undermine the competitive and dichotomous thinking present in the essentially contested concepts. From the very outset of the book, Neuwirth advances the conception of law as discourse, thus entangled with language and logic.<sup>10</sup> Indeed, he writes, 'the idea underlying this book' is 'the role of concepts and language in law as a means of organizing life and governing societies'.<sup>11</sup> It is for this reason, it seems, that law is often equated with language within the book; insofar as oxymoronic concepts may prompt new ways of thinking and perceiving, they can subsequently allow for fresh attempts at solving individual as well as collective and even global contradictions and challenges. Law is presented as one language for exercising this new mode of perception and thought. As such, law, as a (not-yet-) global language of governance, has important promise, if only it can adapt to our increasingly changing world.<sup>12</sup>

As a second step, covering copious examples of his essentially oxymoronic concepts in art and science (chapter 4) and in law (chapter 5), Neuwirth seeks to demonstrate an increase in their use. As the author points out, art, science and law are all contested concepts, which provides fruitful ground for oxymora.<sup>13</sup> That law, in particular, is strongly based upon dualistic logic gives rise to some discontentment - the author asks whether such law can '[transcend] problems caused by a non-dualistic or fuzzier category of

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<sup>8</sup> Ibid 143.

<sup>9</sup> Ibid 244.

<sup>10</sup> Ibid 2.

<sup>11</sup> Ibid 3.

<sup>12</sup> Ibid 23.

<sup>13</sup> Ibid 25, 60.

problems', meaning, apparently, the fuzzy, non-dualist character of problems arising in lived, human reality. The dualism of the law, which mandates a choice between justice and injustice, and between guilt and innocence, is not an adequate language for describing all situations. For this reason, oxymoronic contradictions arise in the human mind. These contradictions are reflected in the language of the law, spanning from 'forced consent' to 'wilful negligence', and from 'intellectual property' to 'the free market'.<sup>14</sup>

Lastly, Neuwirth situates the proposed increase in essentially oxymoronic concepts into his broader hypothesis and the latter half of the book is dedicated to what seems like Neuwirth's own theory of "everything". These chapters situate essentially oxymoronic concepts into a framework of old and new science, philosophy and logic. In essence, the chapters narrate how languages change, and how that change can potentially be linked to the evolution of human thinking, perception and cognition. Penultimately, Neuwirth contends that, as language may fundamentally shift human nature, 'the principal challenge [in the time of oxymora] is to find out how law can both deal with change and produce the desired changes by using language'.<sup>15</sup>

While the author refrains from providing a definite answer to this challenge, the conclusions indicate that essentially oxymoronic concepts may prove crucible. Their importance is due to their capacity to enhance human's ability to accept contradictions and to generate a new 'organ of cognition' (something Neuwirth offers as a future possibility, i.e. an organ which integrates many of our seemingly separate senses).<sup>16</sup> Through the aforementioned capacities, essentially oxymoronic concepts could 'stimulate intuitive thinking', which 'will increase global connectivity in the brain'.<sup>17</sup> In resemblance to Cammiss' proposition that storytelling, as a proxy for human experience, can offer 'space for voices that have traditionally been excluded from legal discourse',<sup>18</sup> Neuwirth propounds a view of a legal language that is

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<sup>14</sup> Ibid 69–71, 79, 91.

<sup>15</sup> Ibid 115.

<sup>16</sup> Ibid 4.

<sup>17</sup> Ibid 250.

<sup>18</sup> Steven Cammiss, 'Stories in Law: Providing Space for "Oppositionists"?' in Michael Freeman and Fiona Smith (eds), *Law and Language: Current Legal Issues Volume 15* (Oxford University Press 2013) 221.

more holistic and intuitive, and does not abide by the dominant Western dualism. A language that more accurately reflects the human mind at an intrapersonal level could, then, allow for increased coherence and understanding among individuals locally as well as globally, including through the language of the law.

### III. DIALOGUE

*Law in the Time of Oxymora* grapples with questions old and new, and ties together a variety of fields and sciences (whether it does so oxymoronicly, holistically or otherwise remains for the reader to determine). The book raises salient questions about the law as language, and its potential impact on our minds in the short and long runs. If you are looking for clear answers and positive law, this is not the book for you. Yet for anyone seeking to engage in a philosophically-tinted exploration of (law's) language, meaning, logic and future, this book may offer provocative insights and arguments.

*Law in the time of Oxymora* treads between highly stimulating and threadbare argumentation. There are two aspects, in particular, that I would like to raise as examples of this tension. The first regards the relationship between oxymora and dualistic logic. *Law in the Time of Oxymora* relies on the suspicion that oxymora transcend binary thinking.<sup>19</sup> Such a claim has as its predisposition a unidirectional view of language as the source of evolving meaning and logic. The author asserts that, based on this influence, oxymoronic concepts may give rise to consensus and universal meaning.<sup>20</sup> In sum, since words change faster than language as a whole, and language changes faster than logic, oxymora might influence how we think, feel, reason, speak and perceive.<sup>21</sup>

If, however, change in language corresponds to changes in the real world, thus reflecting a change in our perception, are the resulting parses still oxymoronic? Neuwirth often posits as paradoxical the combination of two formalistically or conventionally separate fields – *culture industry* appears to be a favourite of his. What Neuwirth's book does not delve into, however, is

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<sup>19</sup> Neuwirth (n 1) 3, 138.

<sup>20</sup> Ibid 11, 51.

<sup>21</sup> Ibid 124.

whether two previously unrelated concepts brought together by human perception or science constitute an oxymoron or paradox when describing perceived reality. When our interdisciplinary reality, not individual poetic phrases, challenges strict (human-made) classifications and disciplinary boundaries, is the linguistic reflection paradoxical?

On a similar note, the medical doctor and poet William Carlos Williams wrote: 'meanings have been lost through laziness or changes in the form of existence which have let words empty'.<sup>22</sup> In other words, words, phrases and language may change at a pace different than that of our experience of reality, whereby language simply does not coincide with our cognition. Even the author seems to admit to this; he writes that, despite differing languages, cognitive processes 'seem to be universal'.<sup>23</sup> In this sense, change in language may also lag behind change in 'form of existence'.<sup>24</sup>

I tend to contemplate, maybe even more so since reading this book, that oxymoronic thinking is itself inherently dualist. At the very least, the description of something as paradoxical requires that the person doing the describing simultaneously continues to perceive a conflict. Is the thing itself oxymoronic at all if the combined terms or fields are not perceived as separate or contradictory? Neuwirth himself acknowledges that conflicts and contradictions exist not in reality but in the human mind.<sup>25</sup> This subtly differs from, for instance, James' view that reality, experience, is just as much outside as it is inside the mind – where it is often counted twice over, without us even noticing the difference between reality and the percepts we impose upon it.<sup>26</sup> What I am proposing is that if a contradiction is not experienced as such, it ceases to exist. Thus, the percept of oxymoron or paradox fades away. To me, this is the case with, *inter alia*, culture industry, whereby the combination of these words serves as an accurate description of an experience of reality, not as a contradiction that is actually present, of which I have merely become conscious. When Neuwirth frames it as such, I can recognize why culture

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<sup>22</sup> William Carlos Williams, *Spring and All* (New Directions Publishing 2011) 20.

<sup>23</sup> Neuwirth (n 1) 244–245.

<sup>24</sup> Williams (n 22) 20.

<sup>25</sup> Neuwirth (n 1) 183–184, 208–209.

<sup>26</sup> William James, 'Does "Consciousness" Exist?' (1904) 1 *The Journal of Philosophy, Psychology and Scientific Methods* 477, 483.

industry could be seen as a paradox, and find the duality behind that quality. Still, the concept does not appear to me as such in and of itself. Rather, oxymoronic thinking results in counting the experience twice (or thrice) over, whereby:

As 'subjective' we say that the experience represents; as 'objective' it is represented. What represents and what is represented is here numerically the same; but we must remember that no dualism of being represented and representing resides in the experience per se. In its pure state, or when isolated, there is no self-splitting of it into consciousness and what the consciousness is 'of.' Its subjectivity and objectivity are functional attributes solely, realized only when the experience is 'taken,' i.e., talked-of, twice...<sup>27</sup>

In this sense, oxymoronic thinking would not be, as the author posits, 'holistic and dynamic',<sup>28</sup> but an inconstant coupling of reality-experienced and a dualist perception that sees contradiction. Instead, only by losing the percept of dualism, which allows one to identify an oxymoron or paradox, could one experience holistically.

This brings us to the second, deeper quandary. Namely, considering that we have not yet postulated a determinative account of, among infinite others, the relationship between language, experience and the human mind, and free will *versus* fate,<sup>29</sup> it seems reasonable to question human ability, at this stage, to form a theory of *everything*.<sup>30</sup> A synaesthesia of senses provides little relief; while Neuwirth proposes it could combine and integrate separate senses, which would aid us humans in navigating complexity,<sup>31</sup> neuro science suggests that that is exactly what our brains already do.<sup>32</sup> Supposedly, 'a profound truth

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<sup>27</sup> Ibid 485.

<sup>28</sup> Neuwirth (n 1) 253.

<sup>29</sup> Cf. ongoing debates between determinists and compatibilists, for example Sam Harris, *Free Will* (Simon and Schuster 2012); Daniel C Dennett, 'Reflections on Sam Harris' "Free Will"' (2017) 8 *Rivista internazionale di Filosofia e Psicologia* 214; Derk Pereboom, 'Response to Dennett on Free Will Skepticism' (2017) 8 *Rivista internazionale di Filosofia e Psicologia* 259.

<sup>30</sup> Neuwirth (n 1) 227–228.

<sup>31</sup> Ibid 179.

<sup>32</sup> Robert M Sapolsky, *Behave: The Biology of Humans at Our Best and Worst* (Random House 2017) 40.

surfaces' from 'the paradox of free will and fate'.<sup>33</sup> Neuwirth does not, however, present either the truth or the paradox, or engage with the lively debate about brains, free will and fate. This is problematic insofar as law, as we conceive it, relies on copious legal fictions about the human and her rationality and freedom.<sup>34</sup> The less convenient truth may simply be that there is no known truth about the matter yet. Along these lines, while the author criticises the prioritisation of analysis over synthesis,<sup>35</sup> it may just be too early to synthesise, as we have so far, in most fields, insufficiently analysed.

#### IV. CONCLUSION

Neuwirth's book, *Law in the Time of Oxymora*, suggests that by embracing essentially oxymoronic concepts, we may be able to adopt a new non-binary way of thinking about our ever-changing world and human experiences. The language of these concepts would, the author precipitates, change how we think about and apply the law. Replacing dichotomous logic with fuzzy logic would allow for coherence and synaesthesia on the individual and collective levels, eliciting the possibility for a true global language (and law).

*Law in the Time of Oxymora* offers a new vocabulary for discussing legal concepts and logic. While the book may not entirely have succeeded at challenging the limits of current legal reasoning and method, it proffers fresh angles through which to examine the language lawyers use to describe the human experience. By highlighting the friction between humans' perceived reality and the dualist logic underlying law, Neuwirth makes a case for paying closer attention to when, how, what and why we express though paradoxes and oxymora. It seems that either-or options do not serve their intended purpose in a world of many shades. This triggers deep questions about truth,

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<sup>33</sup> Neuwirth (n 1) 258.

<sup>34</sup> For example, Ngaire Naffine, 'The Legal Structure of Self-Ownership: Or the Self-Possessed Man and the Woman Possessed' (1998) 25 *Journal of Law and Society* 193; Alessandro Capone, 'The Role of Pragmatics in (Re)Constructing the Rational Law-Maker' in Alessandro Capone and Francesca Poggi (eds), *Pragmatics and Law: Philosophical Perspectives* (Springer International Publishing 2016); Paul G Nestor, 'In Defense of Free Will: Neuroscience and Criminal Responsibility' (2019) 65 *International Journal of Law and Psychiatry* 101344.

<sup>35</sup> Neuwirth (n 1) 255.

justice and the purpose of law. Many of these questions remain unanswered and, likely, unanswerable for now, but *Law in the Time of Oxymora* compels one to seek further (inter-disciplinary) deliberation and (fuzzy) thought.