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Encounters with Books from Other Disciplines

Caritas: Neighbourly Love & the Early Modern Self

By Katie Barclay, Oxford: Oxford University Press, 2021. 240 pp. ISBN: 9780198868132 £65.00 (hardback)

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In her latest monograph, *Caritas*, leading historian of emotions Katie Barclay explores the ‘emotional ethic’ after which the book takes its name. As Barclay describes it, *caritas* was a form of grace – God’s working in the Christian – ‘designed to promote a particular type of community relation in early modern Europe’ (p. 3). Operating at the level of the individual and the collective, *caritas* simultaneously helped inculcate specific conceptions of selfhood and relationality and encourage a corresponding set of normative expectations and behaviours. Though *caritas* has been described as an ‘other-worldly love’ which made the mundane appear as a ‘temporal shadow’ (Goodrich, 1996 p. 31), Barclay is interested in *caritas*’ earthly side. She is concerned with what goes on in the shadows.

In keeping with this focus, Barclay examines how *caritas* was felt, embodied, and enacted both inside and outside the home by ordinary eighteenth century Scots. As an ethic of social relations, *caritas* might manifest in the reassuring touch of a parent (p. 37) or the act of sharing one’s bed with a guest (p. 153). As an embodied emotion, it might be experienced as ‘the tingling of the nerves and the tightening of the sinews’ (p. 13) or be read as a signifier of maturity, as with the capacity for romantic love that was presumed to accompany sexual desire (p. 78). These examples show that *caritas*, like grace more generally, involved the performance of “pleasurable exchange” (Mac Carthy, 2020 p. 24) and that this might occur both when prescriptive norms were followed and when they were challenged. One quite moving example of the latter is the relationships that sprung up – partly through pragmatism but also through affection – between itinerant and outcast individuals. ‘These were not shallow ties’, Barclay tells us, ‘but they refused the co-dependency and subordination of the patriarchal household for autonomous selves’ (p. 170). As this quotation signals, the book is also committed to charting some of the ways that pursuing the divine/profane ethic of *caritas* often naturalised unequal distributions of power.

One point about *Caritas* that is likely to be of immediate interest to legal scholars is that many of the book’s arguments are founded on legal records. When setting out her sources, Barclay explains that the papers attached to civil, criminal, and church court proceedings are ‘strewn’ with ‘[t]he language of love – amity, friendship, charity, affection’ (p. 1). For scholars working at the intersections of law and the humanities, or within any of the critical legal traditions, this will not be altogether surprising. Despite claims to autonomy, impartiality, and objectivity, law borrows from, props up, and sometimes clashes with cognate normative and ethical regimes. Furthermore, legal cases are rooted in human stories and represent attempts by needy, feeling creatures to be heard and acknowledged (for some reflections on how artistic methods might help make these dimensions of law visible see Cowan, Kennedy and Munro, 2020).

Insofar as social historians and legal researchers of certain stripes both home in on these dimensions of law they might therefore have overlapping goals. Yet law has distinctive aims and characteristics vis-à-vis other normative and ethical regimes and understanding what law ‘does’ with other ethical phenomena often requires a firm grasp of legal concepts, theories, and practices. With this in mind, *Caritas* and other works in its vein suggest that collaborations between social historians, including those with expertise in the history of emotions, and legal historians (or legal scholars more generally) who are alive to the ‘human-ness’ of law are likely to prove extremely fruitful. Bringing different but complementary knowledge bases to bear on legal materials and

asking related but separable questions of these sources seems a promising way to garner the fullest array of insights they can offer (Simmonds and Reiter, forthcoming).

What might these insights look like? The possibilities largely remain to be explored but we might usefully imagine them lying at different points along three spectrums running from: legally to socially oriented; past to present or future oriented; and descriptive to evaluative. Then at the more legally oriented end of the spectrum we might expect the insights to cluster around three (of potentially more) ways that law and emotional and other ethical regimes tend to be interrelated, i.e., law reflecting the other ethical regime; law shaping the other ethical regime; and law relying on the other ethical regime during its processes, such as adjudication.

Comparing the operation of law and other ethical regimes might also reveal holistic interplay between the two. For example, where strong social norms exist legal intervention might appear superfluous; conversely, where the community relations on which social norms depend have eroded or dissipated legal intervention might seem like the only, rather than perhaps the last, resort (on the relationship between social and legal censure, see Threet, 2018). There may also be extra-legal norms that actively discourage litigiousness, as *Caritas* illustrates. As Barclay explains, the teachings of the Scottish established church cautioned against ‘unnecessary lawsuits’ (p. 22) and her research shows that the desire for smooth community relations meant that neighbours would sometimes turn a blind eye to misconduct. Practising love of the ‘right’ kind under this ethical regime therefore meant that abuse could occasionally be carried out with impunity (pp. 28-9). On top of this, the risk of personal implication in the wrongdoing meant that those who disavowed their knowledge were sometimes, perhaps unconsciously, acting in their own interests (p. 143). Notwithstanding important changes over time, legal scholars and activists, particularly those engaging in abolitionist and anti-carceral feminist work, continue to deliberate the costs and benefits of deploying the state to effect desired change. *Caritas* reminds us that these problems are not altogether new and demonstrates, by example, the breadth and depth of the considerations that ought to feature in these debates.

The possibility that prevailing emotional ethics might militate against state intervention does not only arise at the interpersonal level; it exists at the structural level too. With reference to *caritas*, by Barclay’s account it appears that this ethic was first regarded as a stringent duty and then, later, more like a disposition-sensitive proclivity – one that was rooted in human nature but whose strength varied from person to person (pp. 38-39, 176). Though Barclay does not make the argument in her work, it seems plausible that informal but robust expectations of charity and hospitality could fill a niche that might otherwise be occupied by state-run and state-funded alternatives. But when these informal practices depend on the caprices of individual temperament, as per later understandings of *caritas*, the potential for inequality is clear. One might point to the inadequacy of relying on the ‘generosity’ of the ‘benevolent’ ultra-wealthy as a solution to widespread deprivation as an example of how these difficulties play out in our own time (Jones, 2018).

Remaining at the macro level, two further issues on which *Caritas* invites reflection are, first, who and what is included within our political and ethical imaginaries and, second, what sort of relations between members of these collectives are normalised. Taking the latter point first, Barclay contrasts *caritas* with more atomistic and competitive models of human relations in a way that speaks to contemporary scholarship on vulnerability and the relational self (e.g. Herring, 2019). She also considers the ways *caritas* contributed to fostering relationships of trust and comity, an inquiry which resonates with ongoing efforts to understand and critique the role trust plays in law and public life (e.g. Barradas de Freitas and Lo Iacono, 2021). In terms of who and what is folded into these relational networks, a key question in the early modern age was how far love for humankind should extend beyond one’s ‘own’ nation (p. 7). While this question unfortunately remains pertinent (El-Enany, 2020), new questions about how far our conceptions of ethical love, and the responsibilities these entail, should extend to non-human beings and entities now arise. With greater cultural awareness of the phenomenology of non-human life,

including the nature and extent of sentience, communication, and perhaps even affect (e.g. Powers, 2019; Ehrlich and Reed, 2020), it becomes harder to justify the boundaries that have traditionally been drawn between humans and non-human ‘others’. Since legal discourse and practice tends to rely on boundaries of this kind, thinking more expansively about who falls within spheres of legal protection and respect has implications for environmental and related areas of law.

Within the realm of human interaction, *Caritas* inspires (re)consideration of both romantic and familial relationships. Chapters two and three of the book are peppered with examples that show how law works with its own culturally-informed but distinctive notions of romantic love and sexual intimacy. In the early modern context, honourable courtship – that is, courtship aiming towards marriage – was the dominant prototype, underpinned by a fundamentally hetero-patriarchal ideal of marriage. Of course, in the twenty-first century this prototype has limited appeal or traction but simply noting this point is not enough; it is vital to think carefully about its ramifications. One problem that emerges is that the regulatory impulse which animates much contemporary writing about sex is stymied when it is disconnected from any substantive conception of what intimacy looks like. Without this vision, efforts to flesh out otherwise nebulous concepts, such as consent and autonomy, which are supposed to structure the law relating to sex and intimacy, run aground. It is obvious that in modern pluralist societies no single vision of intimacy will be uncontentious but acknowledging this reality does not make the problem disappear. The challenge is therefore to embrace the unavoidably political nature of attempts to regulate intimacy (Cohen, 2002; Srinivasan, 2021) while trying to formulate substantive proposals that can give them shape. These proposals might leave some space for convention (Tilton and Jenkins Ichikawa, 2021; Kennedy, 2021) or be more radical, such as arguments in favour of abandoning traditional notions of kinship altogether (Lewis, 2019).

By way of a final comment on the relevance of *Caritas* to those trying to understand law, its power, and its capacity to change, it is worth contemplating some of Barclay’s reflections on examples of what she considers to be ‘the legacy of the loving community’ (p. 177). She writes:

If these examples have their own contexts and explanations today, nonetheless they are suggestive that many of the concerns and anxieties of the present are underpinned by long, and often forgotten, histories. Taught as embodied experience, these histories sometimes survive without the cultural knowledge that gives them meaning and relevance – not all educations are found in books.

This quotation nicely describes the layers of meaning that attach to emotional ethics and the cultural and institutional artefacts, like laws, that they inform and with which they interact. It also encapsulates the way that we in the present seldom inherit these ethics with a complete understanding of what we are handling. Trying to make sense of our contemporary intuitions and desires, including those we try to encode and enforce through law, is therefore often a question of interrogating their roots and trying to piece together how we might work with them in light of our own distinct but related concerns. Where these concerns demand radical change, we should not underestimate the challenge; as Barclay reminds us, ‘[o]ffering resistance to such embodied knowledge can be more challenging than that offered to other systems of knowledge or discourse, as it requires a retraining of body and mind’ (p. 13). Yet if overturning such norms, whose power extends right down in the viscera, is especially tricky it is often only by *feeling* their injustice that we are moved to action in the first place (Temple, 2017). By taking account of the complex role that emotions play in efforts to realize social and ethical change, *Caritas* gives us both a better understanding of the undertaking and a richer set of resources with which to attempt it.

References

Barradas de Freitas R and Lo Iacono S (eds) (2021) *Trust Matters: Cross-Disciplinary Essays*. London: Bloomsbury.

Cohen J L (2002) *Regulating Intimacy: A New Legal Paradigm*. Princeton, New Jersey: Princeton University Press.

Cowan S, Kennedy C and Munro V E (2020) Seeing Things Differently: Art, Law and Justice in the Scottish Feminist Judgments Project. *Feminists @ Law*
<https://doi.org/10.22024/UniKent/03/fal.925>

[Ehrlich P and Reed J \(2020\) *My Octopus Teacher*. Netflix.](#)

El-Enany N (2020) *(B)ordering Britain: Law, Race and Empire*. Manchester: Manchester University Press.

Goodrich P (1996) *Law in the Courts of Love: Literature and Other Minor Jurisprudences*. London: Routledge.

Herring J (2019) *Law and the Relational Self*. Cambridge: Cambridge University Press.

Jones O (2018) We Don't Want Billionaires' Charity. We Want Them to Pay Their Taxes. *The Guardian*

Kennedy C (2021) Criminalising Deceptive Sex: Sex, Identity and Recognition. *Legal Studies* 41, 91.

Lewis S (2019) *Full Surrogacy Now: Feminism Against Family*. London; New York: Verso.

MacCarthy I (2020) *The Grace of the Italian Renaissance*. Princeton, New Jersey: Princeton University Press.

Powers R (2019) *The Overstory*. London: Vintage.

Simmonds A and Reiter E H (forthcoming) A Legal History of Emotions. In Barclay K and Stearns P N (eds) *The Routledge History of Emotions in the Modern World*. London; New York: Routledge.

Srinivasan A (2021) *The Right to Sex*. London: Bloomsbury.

Temple, K (2017) Heart of Agitation: Mary Wollstonecraft, Emotion, and Legal Subjectivity. *The Eighteenth Century* 58, 371.

Threet D (2018) Mill's Social Pressure Puzzle. *Social Theory and Practice* 44, 589.

Tilton E C R and Jenkins Ichikawa J (2021) Not What I Agreed To: Content and Consent. *Ethics* 132, 127.