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# TEACHING AND UNDERSTANDING LAW VIA THE INSTRUMENTALITY OF LITERATURE: PROSPECTS AND CHALLENGES



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## Abstract

This paper focuses on the interdisciplinary connection between law and literature. Some opinions are that there is a link between law and literature; some opinions are to the contrary. The former are of the opinion that law should be plugged into a large cultural or philosophical or social science context to give it value and meaning; while the latter contend that law in isolation is a source of value and meaning. It is the objective of this paper to demonstrate that law and literature are inter-related, and that the latter can enhance the understanding and the teaching of the former. Thus, this work stresses one or the other of two complementary perspectives: law in literature-understanding enduring issues as they are explained in great literary texts; and law as literature-understanding legal text by reference to methods of literary interpretation, analysis, and critique. It compares and contrasts the analytical tools each disciplines employs when interpreting a particular text, whether a constitution a statue, a judicial precedent, or a work of literature. Using the device of literature in the teaching of law, arguably, has far reaching positive implications with regards to future teaching methods, scholarships, and interpretation of legal texts. Challenges that abound are also discussed. Literature mirrors the society, and so, it provides peculiar understanding into human conditions through text with the legal framework that regulates those human experiences in reality that gives a democratic judiciary a new and dynamic approach to reaching the aims of providing a just and moral society.

## 1. Introduction

The idea that there is an intersection between law and literature dates back to ancient time. The Greek philosopher Plato recognized a relationship between law and literature more than two thousand

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years ago, writing a society's law book should, in right and reason, prove, when we open it, far the best and finest work of its whole literature.

The United States of America borrowed a leaf from the ancient Greeks, for Plato's works were read along with other classical works of literature as part of the general education of most professionals during the eighteenth and nineteenth centuries. Law and literature is now a developing field of comparative learning. In this discourse, the subject matter will be dealt with on three fronts; language, crime and punishment, and methodology.

## 2. Definition of Terms

**2.1 Law:** Law, here, simply means the aggregate of legislations, judicial precedents, and accepted legal principles, the body of authoritative grounds of judicial and administrative action; especially, the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them.

**2.2 Teaching:** This is the process of imparting knowledge to people or persons, e.g, students by lessons; give instructions to; guide by precept or example.

**2.3 Literature:** Literature in the context of this paper includes written works which deal with themes of permanent and universal interest, characterized by creativeness and grace of expression, as poetry, fiction, essay, etc.

## 3. Language

The subject of law and literature has been a recognized field of study in universities and law schools of western world since the 1970s. Since its inception it has been, and still continues to be, to some extent, a controversial union of disciplines. Almost everyone involved in the -discussion - lawyers, students, literary critics, and ordinary readers - agree that there is a relationship between the fields of literature and the law or jurisprudence. The exact nature of the relationship and the degree to which the two areas can or should influence one another continues to be a much debated issue.

This writer contends just as many critics and legal minds, that both literature and the law are based on language. Since creation, human have employed the device of language as the vehicle of human thought. Language expresses, depending on the efficiency and skill

of the user, the feelings, thoughts, emotions, insights, disposition of mankind. That this is so is not surprising. The bard of Avon, William Shakespeare, did say that there is no art to find the mind's construction on the face.<sup>3</sup>

Both law and literature depend on narrative - on the idea of telling a story for either fictional or legal purposes. Again, argumentation and internal logic are crucial to both a good piece of fiction and well presented law case. Literary writers often employ the use of language to treat or deal with, centrally or peripherally, legal issues, and so potentially enrich the cultural context of the law. Law in literature was at play in the analogy employed by Lord Atkin in the case of *Donoghue v. Stevenson*. The learned law Lord, in order to get a working definition for who is a neighbour, fell upon the bible - a form of literature. His Lordship found the parable<sup>4</sup> of the Good Samaritan, as told by Jesus, in answered to the question put to Jesus by a lawyer. Thus, in the tort of negligence, His Lordship conceived that, a neighbour is any person who is so closely and directly affected by the act or omission that the actor should reasonably think of them when engaging in the act or omission in question. Thus, the neighbour principle is the doctrine that one must take reasonable care to avoid acts or omissions that one can reasonably foresee will be likely to injure one's neighbour.

Commenting on the relationship, in terms of analogy, between the interpretation of literature and legal reasoning, a source argues:

Laws are necessarily the product of language in the sense that they are expressed in words. A law may be expressed in broad general terms or particularized so as to cover minute details. The terms used may be clear or may be ambiguous. Laws are intended to achieve certain results. In other words they may be intended to affect a certain type of individual or a particular activity. As a tool for the expression of such intention words are necessarily limited to generally accepted meaning at the time they are used, yet they may have a particular technical meaning in a given context or may be assigned a special meaning by way of definition in a particular situation. The interpretation of law or legal reasoning is thus concerned with words and their meaning in a given context and with the intention that was intended to be expressed by the legislature or by a court in relation to a particular law. Legal reasoning is therefore similar to the interpretation of literature and analogies may be drawn between the two exercises.<sup>5</sup>

<sup>3</sup> William Shakespeare's *Macbeth*, New Swan Shakespeare, Longman, Act one, Scene IV, p. 27.

<sup>4</sup> For the parable of the Good Samaritan, see the Bible, Luke, Chapter 10, verses 25-27.

<sup>5</sup> University of London External Examination, 1991-1995 Examination Questions suggested solutions (1996).

The above excerpt is as clear as it is true. But how is literature to it? The same source submitted:

In interpreting literature, particularly literature which originates in a particular place and/or time, it may be necessary to consider the meaning of a particular word or phrase in its original context. There are many words the meaning of which have changed with time and many which have gone obsolete. Therefore, a critic or an editor may supply explanations of particular words or phrases. Literature originating in a different country requires still more careful interpretation, for example translations of Tolstoy's *War and Peace* may contain annotations explaining what was meant by a particular phrase or reference in Russia at the time the book was written. Legal reasoning may become involved in such investigative procedures when, as sometimes happens, case law from another jurisdiction is being considered from a comparative point of view.<sup>6</sup>

Given the above excerpts, it is clear, therefore that, a relationship exists between interpretation of literature and legal reasoning. The question may be asked, is it useful to draw analogies between the two fields, in reasoning? Certainly it is arguable that it is useful to do so. The subject matter of legal reasoning and the interpretation of literature is the same, namely words and their meaning in particular context.

#### 4. Crime and Punishment

Law is inevitable in human society. The chief role of the law is to prescribe conducts that are lawful - this is the primary purpose of the law as institution of human endeavor. The law criminalizes conduct, and prescribes punishment as well. The law legislates on various aspects of human conducts, so also is literature. For a very long time now, law professors have woven works of literature - novel, memoirs, short stories, essays - into classes and seminars to tell the stories of law. There are certain legal spaces, particularly as it relates to crime and punishment, where it is very hard to get information about what is taking place. To get around this it becomes imperative, that, recourse must be had to the narratives to understand how the legal system functions in the society, this is because the law is a social science - it operates within the social milieu, not outside of it and literature does, equally.

Literature vividly brings crimes and various theories under-laying its cause, to the fore. In this light, literary narrative technique can be employed to enliven the teaching of the law.

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<sup>6</sup>*Ibid.*



In Nigeria, literary text such as Femi Osofisan work, "*Once upon for Robbers*" readily comes to mind. In it, the playwright, against the background of the military government decree that armed robber should be executed, puts into focus, of what is really a crime, and who are the real criminals. He thus puts the crime of armed robbery within the context of the Nigerian society, where, in his view, the real criminals are those who use their positions to benefit themselves through corruption and greed. Thus, the consummate playwright interfaced law and literature in the treatment of the theme of armed robbery. Beyond this, Osofisan harped on the concept of punishment. In the work, he examined through the prism of African folkloric drama, the idea of capital punishment for armed robber as decreed by law. Through the use of a rare technique, he involved the audience of the play in passing judgement on the four robbers. The audience is to decide by vote whether the robbers should be killed or not.

Similar, in another clime, Harper Lee's novel, *To kill a Mockingbird*, published in 1960, brought law and literature into the same fold. Among other themes, the novel discusses the concept of race relations in Southern part of the United States of America. The theme of racial injustice appears predominantly in this work. Allusions to legal issues in '*To Kill a Mockingbird*', particularly in scenes outside of the courtroom has drawn the attention from legal scholars. In fact, Atticus Finch, a fictional character of Harper Lee's *To Kill a Mockingbird* has been considered as a model of integrity for the legal profession.

"One of the most significant impacts of *To Kill a Mockingbird* has had is Atticus Finch's model of integrity for the legal profession. As scholar Alice Petry explains, "Atticus has become something of a folk hero in legal circles and is treated as almost as if he were an actual person".

## 5. Methodology

Here, methodology simply means the procedure, technique, methods of teaching law.

An academic can employ the tool of literature to enhance the teachability of law. There are instances where gaps abound in the law. And literature can come in handy. Hear this:

"A prior culture's norms are the blanks that literature can fill. "We have an intuition that women in the 19<sup>th</sup> century were harmed by extra-marital affairs. Well, how do we know that? There aren't a whole lot of cases on the books. Most of the facts get handled out of court privately and don't become law cases. To the extent that there are cases on the books about sex, whether it be consequence or rape, the cases don't tell you very much because judges won't write about it. It's

indecent. It's dirty. It's unmentionable, so we don't know a whole lot about it. We certainly don't have the young woman's perspective. She is completely lost as a character, so sometimes the best way is to turn to fiction.<sup>7</sup>

The above excerpt can be fuller appreciated when one considers that both law and literature involve narrative. Storytelling, whether vide drama or prose, brings out vividly any theme of human existence. Shakespeare's *Merchant of Venice* readily comes to mind when interpretation of words in contractual agreements and statutes are discussed in a law class. Here, Shylock, the ruthless creditor was made to understand that 'a pound of flesh' meant only that, and nothing more - no blood. This is a very strict interpretation of the clause in the contract between Shylock and Anthony. The lesson therein is that it brings out how lawyers view words. Still on Shakespeare, in a contract class, for instance, one can fall back on *Hamlet*. When talking about the effect of mental illness on the validity of contracts, the class reads Hamlet's "what a piece of work is man" speech and asks if he is depressed enough to get out of contracts he made at the time. Indeed, literature makes law easily understood, and thus makes law easily taught:

'It's easy to teach these seminars once you find the right materials, because almost any work of literature that has any depth at all just raises a number of themes that intersect at a variety of different points with law.'<sup>8</sup>

That is it.

## 6. Challenges

The teaching of law on the module of literature, no doubt, got prospects, challenges too abound. Much criticism has been hauled at the notion that literature could make the understanding of law better. One of the arrow heads of this antagonism is Richard Posner. One notable challenge is that law is different from literature. Literary writers infused law into their writings, but still, the difference between the two fields stands out. Literature is fiction, though there could be non-fiction. The legal setting of cases before courts of law is somewhat different from the social background or setting against which the literary writers write from. Perhaps, this is what informed Posner to quip, that literary writings, though containing law, do not interest lawyers.

<sup>7</sup> Denise Forster, using literature to make better lawyers, University of Virginia School of Law, p. 1.  
<sup>8</sup> *Ibid.*, p.3.

Again, in interpretation of statutes, the application of literary texts arguably is not appropriate. Statutes are couched in rigid and formalized legal language. Juxtaposedly, literary writing, say prose for instance, even poetry; employ style that is distinctly literary. Consequently, the one differ from the other, and thus, in interpretation, arguably, no assistance is rendered.

Law is largely logic; not so much so with literature, for instance poetry.

## 7. Conclusion

This paper has explored the discussion that literature aids the teachability of law: as well as challenges. Literature is a mirror of a society, ditto law. And so, both intercept. It thus appears that Sir Walter Scott was right after all when he quipped: 'A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of those; he may venture to call himself an architect'.<sup>9</sup>

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<sup>9</sup> Walter Scott, *Guy Mannering*.