Poetic Justice: Law and Literature in the Classroom

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Since the dawn of mythmaking and storytelling, the search for justice has been a major literary theme. What is Antigone to do when her religious laws require her to bury her brother, but state laws prohibit his burial because he is a traitor? (Sophocles, Antigone, 441 BCE). How is Orestes to obey the law of blood vengeance that requires him to murder his mother because she murdered his father? (Euripides, Orestes, 408 BCE). What is the first human jury in history to do with Orestes after finding him guilty of obeying the law of blood vengeance and killing his mother? (Aeschylus, Orestia, 458 BCE). How should Angelo enforce a law that imposes the death penalty for premarital sex? (Shakespeare, Measure for Measure, 1604). Does the letter of the law require the upstanding and honorable Captain Fairfax “Starry” Vere to hang the “handsome” sailor, Billy Budd, for unintentionally killing a superior officer aboard ship in a time of war? (Herman Melville, Billy Budd, Sailor: An Inside Narrative, 1924).

Linking Law and Literature

The link between law and literature is ancient and organic. Taking sides in the early quarrel between philosophy and poetry, Plato (427–347 BCE) banned poets from his idealized Republic because they “feed the waters of passion” and allow it to “rule.” Centuries later the English poet Percy Bysshe Shelley (1792–1822) joined the quarrel on the side of the poets making a grand brag: poets are the unacknowledged legislators of the world. The joining of law and literature in the classroom as a field of study and a method of teaching is more recent, however, dating from 1973 with the publication of James Boyd White’s book The Legal Imagination (The University of Chicago Press, 1973). This development was built upon the 1908 observation of John H. Wigmore that many literary texts treat legal themes (law in literature). When used in the classroom, “law and literature” describes both a multidisciplinary course of study and a method of teaching. As a field of study, law in literature examines justice and legal themes through the creative imagination of poets, playwrights, mythmakers, novelists and storytellers. Stories by Shakespeare, Dickens, Melville, Camus, Kafka, Sophocles, Euripides and Aeschylus are examples of law in literature.

Law as literature considers the rhetoric, expository prose, gnomic sayings, epigrammatic texts and the literary architecture of legal treatises, justice systems and court decisions. Plato, for example, regarded law as literature when he wrote that a society’s finest literary work was its law book. The works of de Tocqueville (“No country administers its criminal law with more kindness than the United States”), Cicero (“...the safety of the people shall be the highest law”), Montaigne (“The knot that binds me by the laws of courtesy binds me more than that of civil constraint...”) and Seneca (“Shame may restrain what law does not prohibit”) provide examples of law as literature.

As a method of instruction, law and literature emulates the command of Horace: “teach through delight.” The method values story, anecdote and creative imagination to make what Dante calls “beautiful lies,” or dramatic works of fiction that have a special power to illustrate and inculcate, to show and tell and teach the truth. Such “beautiful lies” can be the handmaiden and the illustrator of didactic texts that explain the law through example, argument and reasoned narrative.

The study of literature also demands active learning. The student hearing or reading a lecture comprised of declaration and explanation is a passive learner, the beneficiary of received wisdom. By contrast, the student hearing or reading a classic literary work is an active participant, a witness to the story, a sojourner who has discovered the lesson rather than merely receiving it.

Judges and Judging

The Hebrew Bible is an excellent example of Plato’s declaration that a society’s finest literary work should be its law book—and the Hebrew Bible illustrates both law in literature as well as law as literature. Consider the story of Solomon, perhaps literature’s greatest judge.

What did Judge Solomon have to guide him? A good, well-drafted legal code with annotated commentary? Commandments engraved in stone? No. Solomon had only his good judgment and
wise discretion to shape his decisions. When the Creator offered to reward him by granting him his heart’s desire, Solomon wished for a discerning eye that would enable him to distinguish right from wrong! The story of “Solomon’s Wish” would support an entire lesson on (1) a justice system built on wise discretion rather than a detailed legal code and (2) the discerning insight sometimes needed to differentiate between good and evil. But the Solomon system doesn’t always work, as Alice discovered in Wonderland when the Queen of Hearts used her untethered discretion to decide cases before she heard the evidence. Is the lesson from Wonderland that law should be administered by the book to protect against the tyranny of arbitrary judgments? Or should law be flexible?

That is the central question of William Shakespeare’s tour de force Measure for Measure (1604). Perhaps the best introduction to Shakespeare’s overall view of the law, Measure for Measure tells the story of Judge Angelo who is presented with the challenge of administering a law that imposes the death penalty for the offense of premarital sex. The play explores themes of corrupt judges, equity, law by the book, and the role of mercy in a justice system.

Mercy is also one of the many legal themes raised by the short story of Cain and Abel—the Judeo-Christian tradition’s first known murder case. Beginning with the potential problem raised by the fact that the chief judge has been accepting gifts from both the accused and the victim (and has actually said he dislikes the gifts offered by the accused, Cain), The Book of Genesis reports that the presiding judge intertwines justice and mercy for the greater good of civilization by actually protecting Cain from the death penalty. Cain is banished from Eden and loses his profession as a farmer (because the earth won’t yield to his efforts) as a result of his crime (which seems to be a crime against nature rather than the ordinance of a lawyer). Because he fears that he will be killed for his offense, he is placed under the protective aegis of the Creator and thereafter goes forth ‘East of Eden’ to found cities and father children who will become the founders of civilization. The story of Cain and Abel illustrates how justice animated with mercy actually enriches the world-at-large and the civilization that embraces it.

The pros and cons of law by the letter versus law animated by mercy and equity is the well-known legal theme of Shakespeare’s The Merchant of Venice (1598). It is by no means the only legal theme. Shylock seeks to enforce a mortgage that awards him a pound of the debtor’s flesh in the event of default. Shylock declines a plea on behalf of the debtor made by Portia, one of literature’s first woman lawyers, to enforce the mortgage with mercy and equity. Shylock insists on compliance with the letter of the law only to be disappointed when Portia, disguised as a man so she can plead in court, points out that the written text relied upon by Shylock does not allow him to take any blood while claiming the debtor’s flesh. To do so would violate another ordinance and require Shylock’s execution. In addition to themes of mercy and strict construction, The Merchant of Venice illustrates how carefully drawn language is often ruled by the law of unintended consequences.

Literature also illustrates the truth that sometimes justice is done without the necessity of a law or judging. From the poor souls in Dante’s Inferno (Canto V), the reader learns that the crime and the punishment are sometimes the very same thing. An example is provided by the illicit lovers Paolo and Francesca. Discovered in flagrante delicto and murdered by an aggrieved spouse, the lovers are punished in the Inferno by being locked in each other’s embrace for eternity. The embrace was the crime; the embrace is the punishment—an elegant example of the poetic justice known as contrapasso.

From various literary sources we learn the lesson enunciated so succinctly in Piers Plowman (14th c.): “neede hath no law.” This dictum may be the key
to one of the most perplexing justice stories in literature, Melville’s masterwork *Billy Budd, Sailor*. *Billy Budd* is a complete treatise on the possible sources of law and the administration of justice—even though many readers feel that the summary execution of Billy Budd in accordance with the letter of the law is a miscarriage of justice. After a hasty drumhead court martial convened, choreographed and directed by the high-minded, respectable perfectionist The Honorable Captain Fairfax “Starry” Vere, Billy is hanged.

Throughout the court-martial proceeding, Vere acts as prosecutor, witness, counsel for the defendant, counsel for the members of the court, superior officer of the ship, and commander of the men (there are no women in the story) charged with rendering a decision. Members of the court make arguments for various alternative legal systems based on reason, compassion, the intent of the accused, the laws of God, the principles of morality, the civil law applicable to non-combatants, fairness, patience and Erasmus’s injunction to all who yield the bloody knife of justice: “make haste slowly.”

Nonetheless, all of the legal theories are brushed aside by Captain Vere. He does so not because they are intrinsically flawed, but because they don’t apply aboard ship in time of war, and do not meet the overriding test of necessity and convenience. It is necessary to execute Billy Budd to ensure safety on the ship and prevent mutiny during the fog of war in which great ships must sometimes run over innocent sailors to reach their destination (to borrow a metaphor from Captain Vere).

Rather than an example of legal formalism or law by the book as set forth in the cited Mutiny Act, Captain Vere seems driven by the law enunciated in *Piers Plowman*: “neede hath no law.” Or, as Cicero (52 BCE) said: “In times of war, the law falls silent; and the safety of the people is the highest law.”

**Teaching Law and Literature**

Law and literature entered the classroom prominently in 1973 with the publication of Boyd White’s book *The Legal Imagination*. The founding thesis of the book is that law is art, not science, and that literature is a preparation for the study of law and not a method of teaching it. Since then, law and literature has expanded considerably as an interdisciplinary field of study suitable for students of all ages, particularly those interested in the theme of “what’s fair”—the relationship between law and justice.

Lenora Ledwon, a distinguished professor at St. Thomas University School of Law, has edited and collected a number of excerpts and stories for inclusion in an excellent anthology titled *Law and Literature: Text and Theory* (New York: Garland Publishing Company, 1996). The book includes critical texts that analyze the connections between literature and law, essays and creative works of fiction regarding law, justice and ethics, poetry and stories regarding crime and punishment, law and language and legal issues associated with race, class, gender and sexuality.


In the preface, Judge Posner expresses the hope that his book will facilitate “a promising field of interdisciplinary teaching,” and that interest in the field will expand beyond a legal and literary constituency.

In my introductory class to law and literature at the Brandeis School of Law of the University of Louisville, I always assured students that the imposing mass of stories described in the syllabus should not intimidate them since every story was about the same thing: what is justice? While the study of law requires rigorous academic preparation, the study of justice begins earlier, with little preparation beyond personal experience in the schoolyard where every student learns
to ask the big question: what is fair? In addition to personal experience animated with self-interest, the students’ inquiry into the nature of justice is provided by fairy tales that present a reassuring template in which every good deed is rewarded and every injustice redressed both literally and poetically. What goes around comes around. The usefulness of imaginative stories to teach lessons in justice continues beyond elementary school and makes the inquiry into the nature of fairness accessible to students of all ages and within a wide range of intellectual gifts.

The use of stories to teach students about justice proceeds according to a universal law and a corollary: i.e., we are called and equipped to pursue the study of justice by our humanity, not by our memory. Justice is not algebra. As a teacher, I learned first-hand the truth of Seneca’s maxim: “we learn by teaching.” Using literature to teach law allows the process of learning by teaching to occur on both sides of the podium. Connecting law and literature in the classroom empowers students to participate equally and collectively in tackling abstract questions through very concrete scenarios. In the law and literature class, everyone is in turn a teacher and a student. In the process of fulfilling both roles, the students receive thought-provoking insights that will remain with them throughout their lives and enable them to add value to the commonweal.

A surprising lesson I learned from using literature to teach law may be stated as an elaboration of Seneca’s dictum, to learn by teaching. In my law and literature class, I learned to teach by listening! That is, I learned to teach by allowing students to speak, to find their voice, to assume the role of a credentialed professor, empowered to teach justice in their own words as illustrated by classic literary stories. In addition to a passing grade, my students earned citizenship in a wider world.