Literature, Rhetorical Devices, and Juridical Imagination: A Symbiotic Dynamic

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Abstract
Literature has long been held as a powerful medium by which the world can be perceived through aesthetic forms of rending. Literary devices have often been deployed as vehicles of meaning outside their original contexts and one key instance of this practice is the area of legal doctrine. Detailed analysis of legal practice illustrates the deeply ingrained aesthetic nature of the area that relies heavily on literary tropes that are frequently applied in the service of authority and reason. Imagistic language and literary devices remains a central driving force in the creation and expression of legal principle and key concepts it relies upon to effect its judgements and decisions. This text seeks to explore and illustrate the manner and means of how this relationship has developed in certain contexts dating back a number of centuries to a time when important legal concepts where first being developed and which required the imaginative use of language to ensure their coming into being was as effective as possible. Certain rhetorical devices in this context are thus explored to illustrate their nature and impact.

Keywords: literature, rhetorics, law, aesthetics, meaning, jurisprudence.

Introduction
This article seeks to explore the relationship between literature and legal rhetoric and how the former has provided a strong material basis for legal reasoning and its lexical character. Literature has long been held as a powerful medium by which the world can be perceived through aesthetic forms of rendering. American theorist John Dewey affirmed his belief that the aesthetic pertains to 'everyday experience' which affords it a strong affinity with moral codes. Dewey further asserted that there is a "continuity between the refined and intensified forms of experience that are works of art and the everyday events, doings, sufferings that are universally recognized to constitute experience."[1] Pierre Schlag notes that as an aesthetic enterprise, the law operates within the parameters of ethical constructs and political dreams which need to be articulated it is here that aesthetics has "already shaped the medium within which those projects will have to do their work."[2] Others, such as Julia Shaw, note how the practice of law and legal scholarship is firmly characterised by a variety of social practices that denotes law as a "socially significant and analytically valuable category of signification."[3]

A large range of visual codes and taxonomies augment an already well-developed body of texts and discursive practices that form a fundamental element of the institutional legal architecture bolstered by performance and tradition. Detailed analysis of legal practice illustrates the deeply ingrained aesthetic nature of the area that relies heavily on literary tropes that are frequently applied in the service of authority and reason. Quotidian links to such

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[1] John Dewey, *Art as Experience* (New York: Berkely Publishing Group, 1980), p. 3.

[2] Pierre Schlag, 'The Aesthetics of American Law,' *Harvard Law Review*, vol. 115, nos. 1047–1119 (2002), p. 1049.

[3] Julia Shaw, "Aesthetics of Law and Literary License: An Anatomy of the Legal Imagination', *Liverpool Law Review*, vol. 38 (2017), p. 84.

aesthetic forms include formal regulations relating to obscenity laws, municipal rules, intellectual property, environmental protection, framing of personal protections and issues concerning the interpretation of texts.[4] Imagistic language and literary devices remain a central driving force in the creation and expression of legal principle and key concepts it relies upon to affect its judgements and decisions, which has become so ingrained and inextricable the legal reasoning would be grievously stripped of a considerable part of its persuasive force.[5]

An Aesthetic Sensibility

Further recognition of the fundamental role played by the aesthetic in the spheres of law and justice is given by Desmond Manderson, who argues that legal discourse is 'fundamentally governed by rhetoric, metaphor, form, images, and symbols (which) can illuminate both the meaning and force of law.[6] In a text titled "Re-imagining the Humanities within Socio-Legal Studies in an Age of Disenchantment" Shaw instantiates how aesthetics provides a powerful means to create the necessary imaginative devices for legal truths, such as "equality of all before the law" supported by the promise of impartial treatment for all as embodied by the blindfolded Roman Goddess Justitia securing with her hands a set of scales and an unsheathed sword, designed to appeal to a supposedly innate sense of justice as being fair, quick and conclusive. This allegorical personification of the legal principle of justice before the law permits the formation of what otherwise be inaccessible notions of fairness and equality in the processes of making law and its adjudication when being applied is amenable to a philosophical that seeks to promote social justice and the core human need for belonging to a community of others of equal standing, which thus makes it possible to cultivate a culture of compliance.[7] Actors concerned with the wellbeing of such cultures of compliance akin to communities of cooperation are conceived as being engaged in marshalling various facets of the power of the mind which has been held to involve practices that "constitute an enterprise of the imagination, an enterprise whose central performance is the claim of meaning against the odds: the translation of the imagination into reality by the power of language."[8]

Language is thus the central element of form and impetus in creating and sustaining an imaginative state of being conducive to transducing legal and literary energy that underpins a desired state of being within a particular cultural context. Text and speech forms can be extruded from legal doctrine and regulation and these demand a finely-honed imagination that fosters acts of association and recollection.[9] Early modern examples of educated individuals possessed of considerable rhetorical and literary capacities were Elizabethan lawyers who appropriated legal authority within the context of an inventive and artistic legal mind whose practice has relied upon the deft deployment of images, figures and other forms poetic expression.[10] The rich history of this practice has been carefully traced, and displays definite roots in the sixteenth and seventeenth century English court culture, which made acute use of the 'false semblant' to empower the application of figurative language was noted as far back as 1589 in *Arte of the English Poesie* by an innominate wordsmith. Such a practice of sculpting

[4] Shaw, 'Aesthetics of Law and Literary License', p. 84.
[5] Shaw, 'Aesthetics of Law and Literary License', p. 86.
[6] Desmond Manderson, *Songs Without Music: Aesthetic Dimensions of Law and Justice* (Berkeley and Los Angeles: University of California Press, 2000), p. ix.
[7] Julia Shaw, 'Reimagining the Humanities within Socio-Legal Studies in an Age of Disenchantment', in D. Feenan (ed.), *Exploring the 'Socio' of Socio-Legal Studies* (London: Palgrave, 2013), p. 119.
[8] James Boyd White, *The Legal Imagination* (Chicago: University of Chicago Press, 1973), p. 758.
[9] Peter Goodrich, *Law in the Courts of Love: Literature and other minor jurisprudences* (Oxford: Routledge, 1996), p. 107.
[10] Robert Weisberg. 'The Law-Literature Enterprise', *Yale Journal of Law & the Humanities*, vol. 1, no. 4 (1989), pp. 9-10.

the arrangement of words for specific purposes of deceit has been linked by George Puttenham to the principle encapsulated by the classical maxim: "Qui nescit dissimulare nescit regnare" (who knows not how to dissemble, knows not how to rule) which he construes to mean that effective governance by sovereign agents depend on the regular exercise of a sophisticated level of ruse and guile, which in turns forms the basis of the authority of the law itself.[11]

Figurative language has been acknowledged as comprising a fundamental element of mechanisms that drive the discursive environment of juridical regimes. In this respect metaphor has been identified as a striking example of the origin of much of our vocabulary. Such is the nature of the English language that it is heavily characterised by the presence of 'faded metaphors' (such as 'the eye of the storm', 'headland', and 'coalface'), as well as other more legally-centred examples, which include to 'plead poverty', 'standing', 'last resort', 'swear by', 'benefit of the doubt' and indeed 'fruit of the poisonous tree.' In addition to its aesthetic function, the application of metaphors in language serves a vital epistemic function by facilitating hospitable conditions for the creation and use of knowledge of our environs and the larger world beyond it.[12] George Lakoff and Mark Johnson are well-known proponents of the power of metaphors and have noted that they critically inform our comprehension of reality.[13] This comprehension of reality is frequently dependent on how meaning is transferred and shared between different 'semantic spheres' without losing is original meaning and this further encourages constant transversal movement within and across different fields of enquiry. Under these circumstances it has been remarked that practitioners in the law are heavily indebted to the influence of metaphors and their various variations and associated symbols to construct their narratives since "meaning is constructed, and metaphor and narrative are the frameworks of its construction."[14]

An instructive instance of the power of metaphor that has been historically applied in an important legal principle concerning the right of the English monarch to own land in a private capacity exemplified in the 1571 *Reports* of Edmund Plowden. The construction concerns the perspective of examining the king as a person as separate and apart from the role of monarch so as to facilitate transfer of property between generations of successors unfettered from Crown interference. Metaphor was a powerful tool in that instance as it allowed the creation of what became known as the king's two bodies which permitted the creation of a paradox that while individual monarchs were mortal, the office of the Crown was essentially immortal. Plowden advanced the thesis that while the king's mortal vehicle and body politic are separate and distinct, the monarch could not have a private identity as the sovereign body cannot be subdivided. He asserted that:

> For the King has in him two Bodies, viz., a Body natural, and a Body politic. His Body natural (if it be considered in itself) is a Body mortal, subject to all Infirmities that come by Nature or Accident, to the Imbecility of Infancy or old Age, and to the like Defects that happen to the natural Bodies of other People.
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> But his Body politic is a Body that cannot be seen or handled, consisting of Policy and Government, and constituted for the Direction of the People, and the Management of the public weal… So [the King] has a Body natural, adorned and invested with the Estate and Dignity royal; and he has not a Body natural distinct and divided by itself

[11] G. Puttenham, *The Arte of English Poesie*, ed. E. Arber (Cambridge: Cambridge University Press, 1936), p. 197.
[12] Shaw, 'Aesthetics of Law and Literary License', p. 88.
[13] George Lakoff and Mark Johnson, *Philosophy in the Flesh: The Embodied Mind and its Challenge to Western Thought* (New York: Basic Book, 1999). p. 3.
[14] Linda Berger, 'How Embedded Knowledge Structures Affect Judicial Decision Making: An Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes', *Southern California Interdisciplinary Law Journ*al, vol. 18 (2009), pp. 262-66.

> from the Office and Dignity royal, but a Body natural and a Body politic together indivisible.[15]

Formation of Message, Construction of Meaning

Thus, constructing and understanding the shape of meaning in the manner manifested in the argument exposed by Plowden (and the like) are transmitted by metaphor which forms a fundamental element of underlying organisational structure which has been termed 'connotative order of signification'. Such is the power and utility of this greater associative realm it at once incorporates systems of meaning found in legal fictions and the birth of 'myths' necessary for the articulation of order of things within the legal culture's tenets of ideas and principles that are themselves manifestations of aesthetic ideals.[16] In this way it can been seen that power structures in the form of the law and the state exert their immense power to determine what is to be regarded as true or false, how each is authorised, how accepted meaning is determined as well as the status of those who wield the authority to determine the recognition of legitimate discourse. Once such a system is established the impossibility of enjoying recognition or definition outside of these recognised 'discursive formulations' becomes unimaginable.[17]

Plowden's use of figurate language was a sound strategy, and this system of meaning was advanced further in the late Elizabethan and early Jacobean era by the great jurist Sir Edward Coke. A central element of the power of discourse within the law and which gave its key strength in Coke's view was the concept he saw as 'artificial reason'. His philosophy can be understood within the framework of 'discursive formulation' where the nature of law itself is inextricable linked with the nature of language. Under this system, law creates conditions which must be obeyed given that such discursive constructs that comprise laws create obligations that cannot be ignored. Writing in the first volume of his famous *Institutes of Law*, Coke held that law should be seen as "perfect reason, which commands those things that are proper and necessary which prohibits contrary things."[18]

In holding such a philosophy, the specific perspective he held is borne out in the maxim: "*nihil quod est contra rationem este licitum*" ('nothing against reason is lawful'). The contours of Coke's understanding of the maxim can be seen in his remarks in the first volume of the *Institutes* where he remarks:

> Reason is the life of the law, nay the common law itself is nothing else but reason; which is to be understood of an artificial perfection of reason, gotten by long study…and not of every man's natural reason…This legal reason est summa ratio. And, therefore, if all the reason that is dispersed into many several heads were united into one, yet could he not make such a law as the law of England is; because by many successions of ages, it hath been…refined by and infinite number of grave and learned men, and by long experience grown to such a perfection for the government of this realm, as the old rule may be justly verified of it, *Nemimem opportet esse sapientiorem legibus*: no man (out of his own private reason) ought to be wiser than the law, which is the perfection of reason.[19]

While some common ground may be found between Coke and other thinkers such as Thomas Aquinas and Richard Hooker, the crux of his understanding has a different character to theirs.

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[15] Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1957), pp. 7-9.

[16] Shaw, 'Aesthetics of Law and Literary License', pp. 92-94.

[17] Julia Shaw and Hillary J. Shaw, 'Mapping the technologies of spatial (in)justice in the Anthropocene', *Information & Communications Technology Law*, vol. 25, no. 1 (2016), pp. 33-34.

[18] Allen D. Boyer (ed.), *Law, Liberty and Parliament: Selected Essays on the Writings of Sir Edward Coke* (Indianapolis: Liberty Fund, 2004), pp. 108-109.

[19] *Institutes* 1, p. 19 (97b), cited in Boyer *Law, Liberty and Parliament*, pp. 115-116.

This can be illustrated in how all three recognise that law is a product of man's intellect rather than his will, they disagree on how this is so. Aquinas held that while law is a work of reason as it is charged with directing the conduct of men, so as to preserve the 'common good', and that the means of achieve this good by reasonable judgement under the law, rather than by an arbitrary imposition of a desired outcome. Coke's understanding of the principle was different since he held that law is a work of reason and as such, the law itself must be reasonable. Its ability to withstand the ravages of time seems to him to be a good measure of its reasonableness. Law then is designed by men to serve their purposes and is inevitable characterised by their own nature, which, once clearly determined becomes independent of its maker (i.e., men) and ought to be recognised as sovereign in and of itself in Coke's view.[20]

Thus, law is dependent on the civilised construction and disposition, analysis and debate on the part of thinkers educated in the rhetorical arts. One such person was the Oxford-educated, humanist lawyer Sir John Dodderidge mused much about legal matters (he was appointed a Justice of the King's Bench in 1612) and also placed a high value on the principle of reason in law. He remarked that law:

> Is called reason; not for that every man can comprehend the same; but it is artificial reason; the reason of such, as by their wisdom, learning and long experience are skilfull in the affairs of men, and know what is fit and convenient to be held and observed by the appeasing of controversies and debates among men, still having an eye and due regard of justice and a consideration of the commonwealth wherein they live.[21]

Due consideration for the well-being of the commonwealth in this respect can be construed as relating to integrity in those judging (i.e., judges) the conduct of others before the law. A standard of behaviour that merits the description of a person exhibiting it as having integrity demands not only abstention from impropriety but also that those who judge others before the law actively pursue high ideals with great zeal. Coke believed that such a legal officer, such as a magistrate should hold in high regard the following: "three things are necessarily required: understanding, authority and will". He further explained that:

> Understanding concerneth things and persons; that is, just what is right and just to be done, what ill, and to be avoided; secondly, what persons for merit are to be rewarded, and what for offenses to be punished…Authority to protect the good, and to chastise the ill. Will prompt and read, duly, sincerely and truly to execute the law.[22]

Exercising the authority to protect what is regarded is good is as dependent on cooperation as it is on the interpretation of laws and regulations consistent with the notion of 'artificial reason' that stands at the core of what has been termed the 'legal imagination'. In treating the law as a perfected state that recognises that one ruling fits in with another demonstrates the coherency in its composition and operation, which Charles Gray has remarked involves: "Its atonement is to harmonies, and distant ones count, as they do in artistic composition."[23] Thus, it is again evident that compositional capacity inspired by a literary imagination occupies a central role in reasoning systems pertaining to formal regulative mechanisms. The function parts that comprise such mechanism are thus inextricably linked to literary imagination as Richard Posner has so insightfully observed: "Judicial opinions, like literature, belong to the branch of communication known as rhetoric, and rhetoric is style."[24]

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[20] Boyer (ed.), *Law, Liberty and Parliament*, pp. 117-120.
[21] Allen D. Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford: Stanford University Press, 2003), p. 89.
[22] Boyer, *Sir Edward Coke and the Elizabethan Age*, p. 93.
[23] Charles Gray, "Reason, Authority and Imagination: The Jurisprudence of Sir Edward Coke", in *Culture and Politics from Puritanism to the Enlightenment*, ed. Perez Zagorin (Berkeley: University of California Press, 1980), p. 34.
[24] Richard Posner, 'Law and Literature: A Relation Reargued', *Virginia Law Review*, vol. 72 (1986), p. 1376.

More recent incursions into the imagination in search of convincing arguments to secure cooperation from the community at large for an agreed code of conduct. Attempts at reaching this state of comprehension have led to the formulations of discourse such as those theorised by Joseph Raz who has defended that law requires imposes an expectation of a certain type of conduct and the reason for doing so is a protected and objectively justified one. This is because reason is considered a valid justification for a recognised authority that exercises the right to establish recognised frontiers between public and private spheres of interest that must be respected if for no other reason than avoid specified sanctions. However, cooperation is more often encouraged through the creation of incentives for compliance.[25] It stands to reason that the greater the clarity in respect of what is required, the greater the likelihood that it will be understood and perhaps the probability of compliances will so too be greater. Moreover, the expectation of relative tranquillity becomes more realisable under such conditions, a notion recognized by Elizabethan jurist Sir Edward Coke who asserted: "Certainty is the mother of quietness and repose."[26] Furthermore, the maintenance of relatively stable and tranquil cultural conditions owes much to a continuous renewal of commitment to respecting the conditions set down by law insofar as that the thesis advanced by Raz that:

> To look for an obligation to obey the law of a certain country is to look for grounds which make it desirable other things being equal, that one should always do as the law requires. These grounds need not be the same for everyone or for every occasion, but they should be of sufficient generality so that a few general sets of considerations will apply to all on all occasions.[27]

Awareness of the aforementioned 'general sets of conditions' that are universally applicable regardless of standing or circumstance need to be intelligible in form and the success of this objective relies to a large degree on public awareness of its content. However, the origin of this content can be found in the culture at large and its heritage. Accepted and acceptable forms of discourse take root within a culture and certain sectors of society. Particular agents of power are bestowed - and are recognised as such – with the power and status to make statements or affirmations (i.e., proffer utterances) that are influential as well as authoritative. The degree to which the speaker or author of such utterances wields their power is dependent on the position they occupy in the social hierarchy; this is sometimes referred to as a 'performative utterance' which is an agent, for example a judge in a court of law, acting on the recognised authority of a large group (e.g., society at large) can substitute speech with action by saying little more than the words: 'I find you guilty'. This is defined as 'illocutionary power' of discourse by Pierre Bourdieu who also notes that the true origin of this power of performative utterance can be found in the 'mystery of ministry' which is understood as being the situation whereby recognised value or virtue is bestowed on the authorised agents and who is authorised to speak and act on behalf of the group that in turn is represented by and constituted in him. Furthermore, this exercise of power through the pronouncement of words is sufficiently potent to have a significant effect on the social world.[28]

Examining the specific choice of lexical terms reveals the specific character of the language employed in the context of the power exercised by authorised agents. In this respect an illuminating study carried out by Peter Grajzl and Peter Murrell highlights the nature of semantic terms compiled from their study of a sample of works by Francis Bacon and Edward Coke. Their selected corpus consisted for four-hundred and thirty-two text documents, where each document contained an average of 3,056 words. For convenience and efficiency, Grajzl and Murrell merged many of Bacon's and Coke's work for the purposes of their study. Given

[25] Joseph Raz, *The Authority of Law* (Oxford: Oxford University Press, 2011), pp. 29, 54.
[26] Boyer, *Sir Edward Coke and the Elizabethan Age*, p. 97.
[27] Raz, *The Authority of Law*, p. 234.
[28] Pierre Bourdieu, *Language and Symbolic Power* (Cambridge University Press, 2007), pp. 72-75.

that the text, titled "Characterizing a legal-intellectual culture: Bacon, Coke, and seventeenth-century England," analyses the work of two respected historic intellectual lawyers from the seventeenth century, the authors qualify their findings by noting that it was necessary to 'convert the chaotic orthography' found in the English used in the original corpus. They also found it necessary to blend the texts into a single corpus which was then subjected to Structural Topic Model (STM) so as to yield more manageable results. The authors assert that applying a STM facilitates the work of the researcher in that it permits them to take account of document-specific variations in the estimation of topics and in turn to allow sufficient flexibility to examine whether any meaningful relationship can be found between such variables and topical prevalence.[29]

An important category applied by the authors is what they refer to as 'FREX' words which they define as: "words […] used more frequently in documents highly associated with a topic."[30] These FREX words and included with other more specific topics words that are stratified according to whether or not they appear in the top twenty mentions in the selected corpus. Following this scheme of organisation, it was found that under the topic 'Understanding law' it is unsurprising that 'Law' is used most frequently, with terms such as 'book', 'student', 'reader', 'professor', 'treatis', 'commentari' and 'inn' feature quite prominently in those highly ranked terms.[31]

Reading from Table 14 of Grajzl and Murrell's study, a more wholesome examination of the 'Understanding Law' topic reveals the prevalence of the following words (in order of frequency): 'law', 'king', 'time', 'say', 'case', 'great', 'court', justic', 'book', 'man', 'mani', 'shall', 'may', 'will', 'author', 'one', 'make', 'year', 'learn', 'ancient', 'first', 'england', 'common', 'reign', 'part', 'commonlaw', 'call', 'statut', 'observ.' FREX words include: 'prefac', 'student', 'sage', 'conqueror', 'demurr', 'reader', 'professor', 'treatis', 'commentari', 'inn', 'dom', 'justinian', 'forest', 'herein', 'institut', 'client', 'compil', 'confessor', 'reign', 'reverend', 'conquest', 'sergeant', 'greek', 'advoc', 'cite', 'edit', 'publish', 'lawyer', 'judici', 'cautious'.

Similarly, applying a filter concerning terms relating to the topic of *Jurisprudence* yielded the following result: Highest Prob(ability): 'use', 'statut', 'shall', 'law', 'feoff', 'make', 'upon', 'case', 'will', 'land', 'estat', 'seiz', 'may', 'word', 'therefor', 'act', 'take', 'yet', 'say', 'life', 'first', 'can', 'time', 'right', 'possess', 'fine', 'good', 'heir', 'tenant', 'give'. FREX terms under the same heading revealed the following: 'cesti', 'feoff', 'entail', 'covin', 'lesse', 'feme', 'lessor', 'remaind', 'satut', 'use', 'disseise', 'remit', 'proviso', 'seiz', 'leas', 'formedon', 'levi', 'fraud', 'bargain', 'convey', 'atturn', 'remitt', 'conting', 'estat', 'tenanc', 'asset', 'surrend', 'trust', 'revers', 'stranger'.

Under the *Disambiguating Law* heading the following terms were identified: Highest Prob: 'shall', 'land', 'grant', 'king', 'word', 'deed', 'pass', 'one', 'name', 'man', 'may', 'make', 'take', 'call', 'yet', 'say', 'law', 'year', 'upon', 'non', 'wit', 'can', 'signifi', 'give', 'time', 'place', 'therefor', 'rule', 'rend' and 'hold'. FREX terms under the same heading produced the following result: 'domesday', 'ambigu', 'praecip', 'deed', 'estov', 'dale', 'meadow', 'acr', 'widow', 'aver', 'quarantin', 'revoc', 'signifi', 'revok', 'pastur', 'arbitra', 'falsiti', 'terra', 'liveri', 'injust', 'papyrus', 'detractor', 'moieti', 'habendum', 'oblig', 'rei', 'promontori', 'date', 'style' and 'oblige'.

The issue of dynastic politics also occupied the minds of these learned men and thus peppered their discourse throughout their life in the service of the law. Examining the corpus

[29] Peter Grajzl and Peter Murrell, 'Characterizing a legal-intellectual culture: Bacon, Coke, and seventeenth-century England', *Cliometrica*, vol. 15 (2021), pp. 50-51.
[30] Grajzl and Murrell, 'Characterizing a legal-intellectual culture', p. 55.
[31] Grajzl and Murrell, 'Characterizing a legal-intellectual culture', p. 57.

from the perspective *Dynastic Politics* then produces the following result: Highest Prob: 'king', 'upon', 'make', 'great', 'will', 'time', 'shall', 'come', 'may', 'man', 'part', 'take', 'person', 'one', 'peopl', 'war', 'yet', 'also', 'unto', 'good', 'well', 'think', 'lord', 'much', 'give', 'princ', 'england', 'can', 'duke' and 'two.' FREX terms found under this category were: 'maximilian', 'perkin', 'ferdinando', 'treati', 'flander', 'duke', 'castill', 'charl', 'ambassador', 'rebel', 'york', 'margaret', 'ladi', 'plantagenet', 'fillip', 'britain', 'french', 'lovel', 'earl', 'bruge', 'stanley', 'ambassag', 'succour', 'sanctuari', 'napl', 'burgundi', 'duchess', 'thousand', 'clifford' and 'calai.'

While a number of other areas were documented, only a further two be referenced here, namely relating to Civil Knowledge and Human Nature. In the case of *Civil Knowledge*, the following terms were revealed: Highest Prob: 'man', 'good', 'will', 'make', 'great', 'say', 'upon', 'may', 'thing', 'time', 'one', 'can', 'much', 'natur', 'well', 'shall', 'like', 'see', 'yet', 'person', 'mind', 'take', 'mani', 'use', 'virtu', 'therefor', 'come', 'first', 'part' and 'fortun.' FREX terms under this heading were: 'envi', 'tacitus', 'caesar', 'felic', 'cicero', 'fortun', 'bewar', 'faction', 'anger', 'dissimuli', 'demosthen', 'solomon', 'sulla', 'reprehens', 'virtu', 'secreci', 'discours', 'convers', 'lover', 'precept', 'machiavelli', 'poverti', 'discontent', 'cun', 'seneca', 'perturb', 'tiberius', 'malum', 'busi' and 'proverb.'

The *Human Nature* topic filter revealed the following: Highest Prob: 'man', 'shall', 'will', 'upon', 'make', 'great', 'may', 'thing', 'one', 'come', 'say', 'think', 'also', 'work', 'take', 'give', 'imagin', 'good', 'day', 'time', 'place', 'let', 'see', 'thou', 'yet', 'like', 'god', 'mani', 'can' and 'natur.' FREX terms under this heading revealed the following: 'thi', 'ointment', 'imagin', 'witch', 'galleri', 'bensalem', 'inventor', 'thou', 'boat', 'belief', 'bead', 'magic', 'pillar', 'travel', 'jew', 'miracl', 'wart', 'earthquak', 'front', 'room', 'plagu', 'perfum', 'herald', 'sick', 'delug', 'scroll', 'hebrew', 'dream', 'blue' and 'remnant.'

The above referenced examples of lexical terms used by both Bacon and Coke are illustrative of the kinds of issues that interested both men, regardless of whether they came to similar conclusions. Another conclusion that can be reached from the examination of the above cited lexicon is the deep historical foundations that it is particularly given that so much of the terminology remains in use today. Bacon and Coke frequently used similar terminology in certain matters only to reach alternative conclusions to the other. Indeed, further analysis of the nature and evolution of Bacon's ideas demonstrates that his work provided a very substantial contribution to the conceptual understanding of common law reasoning and thereafter the contours of general scientific methodology. For his part, Coke was initially preoccupied with the intricacies of the common law but later redirected his focus toward conceptualising the expansive characteristics of legal philosophy.[32]

Evolution of the Lexicon

What one can detect from a reading of this material is that terminology evolves over time, but there are clear roots for very many of the terms that remain in use today. Ideas evolve and migrate through time and imagination and through this process exert a broad influence on reality, thus the study of law and literature necessarily encompasses the methodologies known the cultural studies. Three broad principles can be applied in this respect: legal issues can sometimes be the topic of choice in literary works. From this perspective of literary studies, the underlying philosophy is that literature is amenable to being read in conjunction with its contextual circumstances and this reveals a series of values and insights that can aid understanding the nature of law itself.[33]

[32] Grajzl and Murrell, 'Characterizing a legal-intellectual culture', p. 82.

[33] Jaakk Husa, 'Comparative law, literature and imagination: Transplanting law into works of fiction.' *Maastrict Journal of European and Comparative Law*, vol. 28, no. 3 (2021) p. 375.

The second principle is that have been certain situations in which literature has itself have the authority and force of law. Within the prism of this second principle the underlying premise is that the 'law that is, was, or could, and the various products of our literary imagination.' This means that literature is again recognised as a powerful imaginative domain in which creativity and possibility come to exert a defining role in the interpretation of reality.

Exhibiting many similarities to the first two, the third principle holds that law and the legal texts that constitutes the jurisprudential sphere that sustains it can be read and study as literature. Under this approach faith is placed in how all literature, with no exception made for legal literature, is analysed to discover an appropriate methodology and form of reading and understanding of selected texts.[34]

Bringing together a series of approaches and creating productive conjunctions between the constellation of concepts found in different disciplines is thus recognised as being a highly productive way of finding new solutions. Consequently, applying the strengths of literary devices in the context of comparative law involves the bringing together of contexts and laws by treating them as cultural products that recognised that many facets of their being including mapping the contexts of their production, legislators and legal officers in courts of law as the creators of law, those how observe them as well as the political situations and the dynamics of power that give sustenance to the sophisticated interknitted framework of juridical expertise that span across time, geography and political boundaries.[35]

Malleable Conjunctions, porous boundaries

One of the key driving factors behind this approach to literature in legal contexts is that transporting one set of ideas into another setting, which may be termed 'legal transplants', foregrounds the idea that imaginative fiction depends on the idea 'a state of mind ignorant of the limits of the real and therefore highly creative' is a powerful approach that is more likely to produce results. While it must be acknowledged that there is a strong assumption that our understanding of the term reality denotes the nature of things as they currently appear stands in contrast to the imaginative perspective which is defined by a search for the form of things as they could be. This opens up greater imaginative horizons while simultaneously offering implicit acknowledgement of the pragmatic necessity for literature to operate within a normative context.[36] Moreover, the study of imaginative literature and the practice of it makes it possible to interrogate and debate law in a way that would otherwise be considered unfeasible within an empirically driven, purely legal realm. Accepting the credibility of and placing our faith in the famous saying '*ubi societas, ibi ius*' – where there is society, there is law, this implies that the imaginative constructs and alternative states of being created by the literary craftsmen inevitable exhibit certain traits known as forming part of legal edifices.

Society at large is a complex fabric and the form it takes is heavily dependent on the values of the culture in which it is said to be accommodated. These values reflect the social values present within the given society and this in turn is given its character by law as well as music, art, philosophy, literature, cinematic activities and televisual industries. It is difficult to fail to acknowledge the important role played by the law in structure cultural activities through agencies and structures of legal cultures such as copyright laws, censorship, contractual conditions as well as other provisions.[37] As Barbara Villez has remarked:

> Literature, using legal information in novels or short stories, participates in the construction of a citizen's legal culture. Literary creations achieve this by depicting

[34] Husa, 'Comparative law, literature and imagination', p. 375.
[35] Husa, 'Comparative law, literature and imagination', p. 377.
[36] Husa, 'Comparative law, literature and imagination', p. 383.
[37] Barbara Villez, 'Law and Literature: A Conjunction Revisited', *Law and Humanities*, vol. 5, no. 1 (2011), pp. 209-210.

> problems and resolutions, trails and outcomes, conflicts and judicial dilemmas. Readers find in such novels information about courtroom set-up, the roles of members of the legal professions, procedural steps and the types of cases brought to different courts. They may also become familiar with such notions as contractual obligations, freedom of expression or duress.[38]

Readers of such literature can become more enlightened as to the true circumstances of their society and the contours of their own minds. The reading of such materials can also go beyond merely informing the reader since it can act as a catalyst in cultivating more favourable conditions for the achievement of change of attitudes and the cultural conditions in which people live in a manner that is considerably more potent and prompter than the implications of formal legislative regulations. A well-known literary work that has had such a strong effect is Harper Lee's *To Kill a Mockingbird* (1960), where the protagonist, a lawyer called Atticus Finch, attained near-cult status in American legal culture and the popular culture beyond that context. Lee's work of fiction played a significant part in empowering the American psyche in understanding and sympathising with people falsely accused of committing crimes as a result of their race. Such was the effect of this work that its effects on breaking down barriers were far more effective than anti-segregation legislation throughout the 1950s and 1960s. Some accounts even suggest that the book was more influential than even the consequences of the jurisprudence created in the wake of the Supreme Court's decision in the *Brown v Board of Education of Topeka* (1954), which was strongly resisted in the southern states of the United States. This instance is a striking example of the nature of the potency possible when effective collaboration takes place between literature and the law. In that situation literature asserted an ability to change society in a way the law was unable to achieve; that of rallying public support for policies that favoured dismantling segregation. While formal legitimacy is reserved to legal authorities to affirm and reform policies, it is often the case that only literature can present conditions under which the public is prepared to consider new possibilities about life.[39]

A fictional text is frequently conceived to present scenarios which convince readers to suspend certain beliefs and consider others since people take advantage of the comfort afforded by the distance the fiction provides by creating an imaginary shield beyond which they can safely consider new ideas. Gradually progressing through the situations and circumstances presented in a text, readers are given time to adjust and process different philosophies. Formal legal judgements and laws do not afford any meaningful flexibility and cannot rely on the devices that empower the imagination in the same way that fiction can. Public awareness of the details of the outcome and function of legal machinery is affected through the media and is relatively limited in size and duration and may not be truly representative of the decisions reached in the detail of court judgements. Literary devices and fictional accounts of imagined situations frequently present opportunities to ameliorate the deficit between public perception of legal machinery and the ability to entertain content that contains strategies of self-persuasion, thus artistic creation can broaden the mind and provide conditions whereby issues can be examined without being forced to choose one opinion other another. As the process of reading progresses, it becomes possible to stimulate awareness and provoke self-reflection in the minds of readers and in turn, bring previously 'remote' issues closer to the lives of people who would otherwise never imagine being able to understand or sympathise with others in those distinct situations that readers themselves would never have experienced in their own personal lives.[40]

What could arguably be referred to as most strident examples of the collaboration between literature and the law is the context of the composition of and reasoning behind judicial

[38] Villez, 'Law and Literature: A Conjunction Revisited', p. 210.
[39] Villez, 'Law and Literature: A Conjunction Revisited', p. 211.
[40] Villez, 'Law and Literature: A Conjunction Revisited', pp. 211-212.

decisions. Judges have long recognised the need to make use of careful language in the writing of legal decisions. A former Associate Justice of the U. S. Supreme Court, Justice Benjamin Cardozo strongly supported strategies that made use of literary styles to support the composition of reasoning in legal judgement which he believed should be characterised by clarity, which would sustain a situation whereby literature would put law in a position to become 'an artful object of culture'. Common law systems are more flexible in their approach and tend to be less rigid than Civil Law contexts in that the former decision-making process affords sufficient freedom for judges to make use of literary devices. In this way literature can aid the work of the legal practitioner in that it can empower the expression of human feelings such as indignation, despair and other opinions that caution against excess and abuse. One instructive example of this practice in the British legal system concerns the dissenting remarks of judge Lord Atkin in the case *Liversidge v Anderson* who made use of the manipulation of language found in the works fiction of Lewis Carroll to illustrate the principle he wished to highlight. The case was concerned with determining the meaning of the terminology used in a statute providing for emergency powers, on which he opined:

> I know of only one authority, which might justify the suggested method of construction. 'When I used a word', Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean, neither more nor less.' The question is', said Alice, 'whether you can make words mean so many different things.' 'The question is, said Humpty Dumpty, 'which is to be the master, that's all.' After all this long discussion, the question is whether the words 'If a man has' can mean 'If a man thinks he has.' I have an opinion that they cannot and the case should be decided accordingly.

This approach demonstrates the acknowledged potency of literature when it is carefully applied in a reasoned and refined manner and, indeed, the fact that law and literature can work closely with one another in a highly effective manner.[41] Taken as a whole, the different facets of reasoning explored above reveal a working logic that embodies the role fulfilled by this joint enterprise of literature and law that has been eloquently identified by Guyora Binder and Robert Weisberg who have remarked that this kind of scholarship "would help us do the work – at once political and aesthetic – of choosing what kind of culture we hope to have and what kind of identities we hope to foster."[42]

Acquiring an 'identity' within the context of what may be designated as disciples of the hybrid approach of marrying law and literature, requires an acute awareness of our cultural history as well as of the necessity for a dynamic approach to interpreting such matters. Michael Pantazakos cautions against negating or compartmentalising any one set of interpretations and views attempts to do so as being counterproductive. He notes that:

> Our Western mentality is all too eager to see only the "clever" Odysseus and the "holy" Nicholas and not the complete human beings eminently capable of and perfectly willing to act (even violently) where words alone prove inadequate and lives are imperilled. Indeed, not to see these figures thus is, in legal terms, a very poor use of precedent, or in literary terms, a faulty hermeneutic. And the West's failure in this regard seems thorough and complete. Like Hamlet, who is entirely incapable of applying either the concrete examples of Laertes and Fortinbras or the fictional case of Pyrrhus to solve his own dilemma, we have consistently failed to "read" from the bloody travails of history any lesson for our own trouble circumstance. Again, like Hamlet, who in mindless mocking discerned in the portent of a cloud, now a camel, now a weasel, now a whale, our own thoughtless (perhaps, better, overly thought-*full*) variability has kept

[41] Villez, 'Law and Literature: A Conjunction Revisited', pp. 213-214.

[42] Guyora Binder and Robert Weisberg, *Literary Criticism of Law* (Princeton: Princeton University Press, 2000), p. 539.

> us deliberately occupied with quotidian minutiae while tragically oblivious to the signs of the times.[43]

His criticism extends further and portends toward an enduring need to embrace a broader approach which is sometimes neglected in how we idealise certain figures:

> No wonder we look so easily to Hamlet as the ideal lawyer, for his neurotic opposition of thought and action is patently our own. What else can explain our small-minded typology? After all, why is Hamlet more a lawyer to our sense than, say, Achilles? Achilles, the most fearsome warrior of Greece, whose devastating wrath "put pains thousandfold upon Achaians" and "hurled in their multitudes to the House of Hades strong souls of heroes," he, a lawyer? Why should this strike us as not merely comical but absurd? How readily we accept the "brilliant," "godlike" Achilles "of the swift feet" as a Hero of Battle and yet so easily forget that he spends the greater portion of the Trojan War in idle contemplation, that the entire first book of *The Iliad* presents him as contending not in armour but in well-crafted words alone, that, most important, he was seen to be and actually was both "a speaker of words and a doer of deeds." As with Odysseus and Nicholas of Myra, Achilles offers an example of an individual in whose person word and deed were subsumed hypostatically, without confusion, without division. But we do not "read" him as such, not because we cannot, but because our Western traditions have not *taught* us to understand him thus. And this inherited didactic failure necessitates Law and Literature, for the Movement teaches us in essence nothing more than what Nietzche called "the art of drawing inferences" and the schools (the law schools, more than others, I should think) have no more important task than to teach rigorous thinking, cautious judgment, and consistent inference.[44]

Pantazako's criticism is a form of call to arms and offers a holistic way forward in seeking meaningful implementation of hybrid approaches to such wide-ranging disciplines that entail literature and the law. His belief in 'consistent inference' would seem a well-founded principle given that culture itself is an enormous amalgam of a staggering array of facets, dynamics and elements which offers rich pickings for the discerning observer. Resorting to analysing classical literature, another example of interdisciplinarity which forms part of inferential reading, is a strategy also employed by Michael Havelock who analysed Homer's work in his *The Greek Concept of Justice: From Its Shadow in Homer to Its Substance in Plato* (1978). Havelock asserts that Homer's poems "report and recommend an oral morality innocent of conceptual content, pragmatic, procedural, and flexible."[45] However, Mary Jane Schenck[46] interprets Havelock's remarks as meaning that Homer's epic does not explicitly offer a definition of justice, but it does provide a clear instance of the psychology of a feud, which provides a canvass on which one can begin to paint a picture of the process of seeking justice in a society. The question then becomes how justice can come to be defined and under what circumstances an accepted definition can be found, this, it is asserted, requires restorative justice that seeks out truth. Havelock defends that this involves "something exchanged between two parties, or added to both, in the course of a settlement; or, alternatively, as symbolizing the process of exchange itself."[47] This interpretation has led Schenck to conclude that unaccompanied dialectical reasoning is insufficient to reach a meaningful understanding of what justice is. It can be found, it is suggested, through a pragmatic process involving through unfolding action

[43] Michael Pantazakos, 'The Form of Ambiguity: Law, Literature and the Meaning of Meaning', *Cardozo Studies in Law and Literature*, vol. 10, no. 2 (1998), pp. 204-205.
[44] Pantazakos, 'The Form of Ambiguity: Law, Literature and the Meaning of Meaning', pp. 205-206.
[45] Michael Havelock, *The Greek Concept of Justice: From Its Shadow in Homer to its Substance in Plato* (Cambridge, MA: Harvard University Press, 1978), pp. 55-56.
[46] Mary Jane Schenck, 'Reading Law as Literature, Reading Literature as Law: A Pragmatist's Approach', *Journal of Medieval and Humanistic Studies*, vol. 25 (2013), pp. 10-11.
[47] Havelock, *The Greek Concept of Justice*, pp. 132-33.

and character development within the framework of what is recognised as imaginative literature.[48]

Understanding justice may require offering one's own understanding and being receptive to other's views on what it means to them. In this way there is a symbolic exchange and this permits the flow of ideas that makes the notion of justice possible. As one thinker has noted that absolute agreement is not required, rather a commitment to a concept of loyalty: one may not agree with the rulings of authorities (e.g., judges, literary critics) this commitment to loyalty means it is possible to accept the legitimacy of the decision proffered. Essentially this means that compliance does not necessarily require approval, but merely loyalty to the right of the institution to make its ruling.[49] Within the boundaries of literary creations, it is feasible to rely upon what is known as collective misrecognition which is a essential element in the nature of aesthetic experience which has been described by Samuel Coleridge Taylor as "the willing suspension of disbelief" which in turn "constitutes poetic faith."[50] Having thus recognised the means and will to create disbelief as a means of imagining alternative scenarios and the conditions in which they could conceivably be brought about, readers enjoy the fruits of having faith in the means and in turn, in the allure of the well-crafted work of fiction.[51]

As H. L.A. Hart noted so presciently in his *The Concept of Law* (where he explicitly acknowledges the wide array of interpretations of the notion of justice):

> The general principle latent in these diverse applications of the idea of justice is that individuals are entitled to respect of each other to a certain relative position of equality or inequality. This is something to be respected in the vicissitudes of social life when burdens or benefits fall to be distributed; it is also something to be restored when it is disturbed. Hence justice is traditionally thought of as maintaining or restoring balance or proportion, and its leading precept is often formulated as 'Treat like cases alike'; though we need to add to the latter 'and treat different cases differently.'[52]

Conclusion

Forming an appreciation of the awareness of the circumstances under which individuals become more aware of their own circumstances and thus question their state of being leads the focus back toward fictional narratives that serve a very important purpose of staging these issues in the mind of those people. Social life remains a source of continuous interest for writers of fiction and inevitably draw upon some instances of real-life experience and imaginative solutions to dilemmas that come to be identified as requiring remedy.

Literature can be seen as providing not only the occasion but the means by which to interrogate the circumstance under which people live their lives, quite frequently through imaginary portrayals in works of fiction. However, fictional accounts provide ample opportunities to build awareness and empower critics to set about building new conditions for both body and mind. The symbiotic relationship that has evolved in many forms and contents between literature and the law has proven to be highly productive both from an imaginative perspective and from the standpoint of the sound formulation of jurisprudence in common law jurisdictions.

It would be foolhardy to ignore the rich tradition that evolved in both the literary sphere and the legal world since it has been shown that both can work together very effectively for mutually beneficial ends. Since sound reasoning requires acute awareness of both

[48] Schenck, 'Reading Law as Literature, Reading Literature as Law: A Pragmatist's Approach', p. 11.
[49] Jon Kertzer, 'Literature and Law: Consensus and the Art of Disagreement', *University of Toronto Quarterly*, vol. 85, no. 2 (2016), p. 3.
[50] Samuel Taylor Coleridge, *Biographical Literaria* (London: Dent, 1965), p. 169.
[51] Kertzer, 'Literature and Law: Consensus and the Art of Disagreement', p. 4.
[52] Herbert L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1994), p. 159.

circumstances and cognition, reaching a point where it can be rightly claimed that literature has achieved a just aim and the law has been administered soundly and can be referred to as justice would seem as admirable as it is desirable. The challenge that remains is to convince sceptics to explore the art of the possible to make the real tangible.