

Editors' Introduction: Justice, Rights, Literature

JOXERRAMON BENGOETXEA*

IKER NABASKUES*

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Abstract

The articles gathered in this issue are the result of papers presented at the workshop held at the Oñati International Institute for the Sociology of Law on 20-21 May 2013 on Perspectives of Justice in Literature: **Perspectives from Justice and Fundamental Rights in Literature: an Approach from Legal Culture in a European context**. Literature and literary fiction can act as a thread that helps different disciplines to communicate with each other and can thus help go beyond the strictly legal field opening up to questions of justice and rights. These papers deal with issues of justice - mainly Fundamental Rights, but also procedural aspects of justice and its administration, philosophical perspectives of justice - and of legal culture - local, European, Universal - as reflected through and by literature.

Key words

Law and Literature; Justice; Philosophy; Fundamental Rights; Legal Culture

Resumen

Los artículos que conforman este número son el resultado de las ponencias presentadas en el workshop celebrado en el Instituto Internacional de Sociología Jurídica de Oñati el 20 y 21 mayo de 2013 sobre las perspectivas de la justicia en la literatura: **Perspectivas desde la Justicia y los Derechos Fundamentales en la Literatura: un Enfoque de Cultura Jurídica en el Contexto Europeo**. La

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* Ph.D. in Law, University of Edinburgh; Profesor titular of Jurisprudence, University of the Basque Country (UPV/EHU). Director of EHUgune. Coordinator for the UPV/EHU of the Oñati International Master in Sociology of Law and the Ph D Program in Sociology of Law. Member of the Academic Board of the Renato Treves International Ph D in Law and Society. UPV / EHU. Zuzenbide Fakultatea; Manuel de Lardizabal, 2; E-20018 Donostia-San Sebastián. joxerramon.bengoetxea@ehu.es

* PhD in Philosophy of Law in the Department of Administrative, Constitutional and Philosophy of Law of the Faculty of Law in San Sebastian. He worked in Social Services of Public Administration for a decade. Since 2010 he specialized in the iusphilosophical approach of Literature and Cinema. In 2012 he obtained his PhD with the thesis "Robert Louis Stevenson: ethics, narrative and justice". Nowadays he is teaching at Universidad del País Vasco-Euskal Herriko Unibertsitatea. Universidad del País Vasco-Euskal Herriko Unibertsitatea. Facultad Derecho. Despacho 302. Paseo Manuel Lardizabal s/n. 20018 Donostia-San Sebastián (Gipuzkoa) Spain. iker.navascues@ehu.es



literatura y la ficción literaria pueden ser un hilo que favorece que diferentes disciplinas se comuniquen entre sí y pueden de esta forma ayudar a ir más allá del campo jurídico estricto, planteando cuestiones sobre justicia y derechos. Estos artículos tratan sobre aspectos de la justicia (principalmente derechos fundamentales, pero también sobre procedimiento judicial y administración de la justicia, perspectivas filosóficas de la justicia) y de cultura jurídica (local, europea, universal), de la forma en la que se han reflejado en la literatura.

Palabras clave

Derecho y literatura; justicia; filosofía; derechos fundamentales; cultura jurídica

Literature and literary fiction can act as a thread that helps different disciplines to communicate with each other and can thus help go beyond the strictly legal field opening up to questions of justice and rights. The articles gathered in this volume of OSLS are the result of papers presented at the workshop held at the Oñati International Institute for the Sociology of Law on 20-21 May 2013 on Perspectives of Justice in Literature: **Perspectives from Justice and Fundamental Rights in Literature: an Approach from Legal Culture in a European context**. This over-ambitious title was meant as a way of suggesting themes for participants to explore when choosing a work that could be representative of a legal culture or of a claim of rights, or of a vision of justice. The initial aim to focus on national legal cultures of Europe was extended to a larger European feel in the American continent through authors that had an enormous European feel and influence of the classics like Steinbeck or Borges, or even García Marquez. The workshop program dealt with issues of justice - mainly Fundamental Rights, but also procedural aspects of justice and its administration, philosophical perspectives of justice - and of legal culture - local, European, Universal - as reflected through and by literature.

For this purpose, the focus was on specific books - novels, plays - to carry out comparative discussions. The design of the workshop and the choice of works did not take any particular stance on the type of approach or school to follow within the Law & Literature field, even less so to create a new trend or current. Each participant had their preferences, and that was the starting point, but the workshop dealt with several dimensions or axis - territorial, legal cultural, thematic, historical and disciplinary or stylistic - and each of these dimensions raised interesting issues.

Not all the papers presented at the workshop are finally published here and it is a pity to have lost *Antigone*, *The Divine Comedy*, *Ensign Stål*, *The Vicar of Vejlby*, *Much Ado About Nothing*, *The Execution of Justice* or *The Trial* in the published volume, but at least there are some plays and some novels from different historical periods and representative of different national or transnational legal cultures, and some that raise universal themes. The reader will judge whether the remaining papers included in this volume give a sufficient feel of the relevance of this way of approaching literature and integrating it into the study and comparison of legal cultures. We might be pretentious, as well as naive, in thinking that this approach can be interesting for the study of literature as well.

The combination of classic and modern works has worked particularly well. It is interesting to see how classical themes prop up throughout and how genres evolve, and yet the literary genres share interesting representation techniques. Also, there is a dialogue throughout history in that classical works are addressed from our modern perspectives. The readings may not only vary from epoch to epoch, but also from person to person. As Heike Jung says in his contribution, "Any piece of literature is liable to be interpreted differently in the course of history". Of course, the text itself will fix a frame. Also its "trademark" in the literary discourse will remain unchanged. Still, the relevance of the piece as well as its reading may shift over time, due to the interaction with the changing social architecture of the world and the changing perspectives of its readers who will, accordingly, be caught in a different cultural web. Though this effect will be more obvious in the field of drama where the *mise-en-scène* will tend to oscillate between historical authenticity and modern adaptations, it applies to any type of literature. As a matter of fact, the longevity of a piece depends on a certain "adaptability" which inhibits that it will fall into desuetude."

At any rate the works tell stories - narratives of the novels, situations and plots of the plays - and these normally profit from a certain openness that transcends cultural barriers and which allows for a personal interaction with the reader, and for a sympathy between reader and writer or rather reader and characters. How much common ground should there be to allow for a fruitful conversation and meeting of distant historical, linguistic, cultural horizons is an open question, but this

communication is enhanced when the piece generates a shared set of associations with characters, strong feelings concerning injustice. Narratives and situations can be taken to the extreme in literature in order to provoke such reactions, like when miscarriages of justice occur following events and actions that are relatively minor or petty or simply false accusations as in *Les Plaideurs*, *Michael Kohlhaas* or *Crainquebille*. In the words of France: "la justice est la sanction des injustices établies". And the point is also made through absurd situations like those of *The Trial*.

Just as the historical periods are important, the question of the European dimension has also been a concern of the workshop. Greta Olson and Jeanne Gaakeer (s.d.) see several possible forms of Law-and-Literature scholarship that has a particularly European focus:

1. work that concentrates on European literary texts (law-in-literature) by focusing on the legal culture out of which they arose and into which they were locally received, rather than treating primary works as, in the first case, 'world' literature that conveys universal ethical and legal themes.
2. work that makes conscious reference to its greater reliance on European philosophers and theorists such as Žižek, Goodrich, Ricoeur, Levinas, Derrida, Latour, and Blanchot rather than to leading lights in American Law-and-Literature scholarship (White, Weisberg, Nussbaum).
3. work that focuses on making particularities of a given legal culture explicit or on describing Europe's uneasy transition from various individual civil and common law legal cultures to a parallel common European one.

This volume would fit in lines 1 and 3, not so much in line 2. It is worth considering whether Law & Literature approaches can contribute in any way to European legal-cultural studies. Should we be concerned about these questions at all? The workshop started from the classics - like Sophocles' *Antigone*, the end of the Medieval period with Dante's *Divine Comedy*, or the Renaissance with Shakespeare's *Much Ado About Nothing* - where the European and the universal were confused, and then moved on to the birth of the "national" literary cultures reflected in the darkish Spanish Baroque period with Calderon's *Doctor of his Own Honor* and the lighter French Classical period with Racine's *Plaideurs*, and also the more local, but very telling works representative of German legal culture with *Michael Kohlhaas*, or Nordic legal culture with *Ensign Stål* and *The Vicar of Veljby*, or the post-Union Scottish legal culture with Walter Scott's *Heart of Midlothian*. These works reveal the birth of the European national (legal) cultures, and the preoccupation with injustice, miscarriages of justice, corruption, unfairness, abuse of power, excessive penal rigidity. Even a later work, Anatole France's *Crainquebille*, could also fit in this national legal and political cultural line, with the theme of structural "judicial injustice" and the stigma of a criminal conviction. As Debrel says in her paper: "it is the very essence of penal justice to crush those it is meant to deal with". Compared with the obvious injustices calling for revolt, as depicted in American novels *The Grapes of Wrath* or *100 Years Solitude*, both related to monoculture, and to the abuses of monopolistic landowners exploiting migrants, these European pieces are much more troubling in their structural absurdity.

The question whether there is a European paradigm, or an American paradigm in approaching Law and Literature - line 2 of research work - was not really addressed in the workshop and does not reflect in the published volume, but the transition into a European legal culture from national cultures was, indirectly, approached by way of themes rather than spaces or territories. The focus remains Western, but works like Kafka's *The Trial*, Dürrenmatt's *The Execution of Justice*, even Orwell's *1984*, display a concern with modernity, with the rise of bureaucratic and technocratic power so well introduced by Max Weber, with the complexity of personality and identity, the influence of psychoanalysis, the subconscious and

experimentation, the ethical issues of life and death, the confusion of criminal and victim, the slippery relation between justice and morality, the guilty burden of social and moral responsibility and *mens rea*. Stevenson's *Dr Jekyll and Mr Hyde*, Dürrenmatt's *The Execution of Justice*, and Borges' *Emma Zunz* fit into these universal questions. Saramago's *Death with Interruptions* raises further issues about euthanasia and the limits of physical and clinical death, or the artificial extension of life made possible by scientific "progress". *Dr Jekyll* also twists life into *Mr Hyde*, experimenting with death, and inverts the limits of conscience by twisting identity.

These are not exclusively European, but rather Western themes. And yet, they are European preoccupations. The impact of the Holocaust and the excesses of nationalism will give rise to a new wave of European literature concerns later on, but these developments are not reflected in this volume. What we find are relatively small, individual cases of injustice that seemingly pass for social bad luck. Interestingly, Steinbeck's *The Grapes of Wrath* and García Marquez' *Hundred Years of Solitude*, the truly American novels, give us a slightly different feel and focus, immigration, injustice, belief in the basic Human Nature, revolt against injustice.

When looking at issues like Law, Justice, Legal Systems, Rules and Procedures, Trial and Process, legal experiences, opinions about the law, Politics and justice, or issues like feminism, race, war, police oppression, crime, poverty, inequality, empowerment, gaining consciousness, bipolarity, we ask ourselves if there are trends that follow legal cultures and geographies or whether historical focuses might be more relevant in identifying certain issues. Not only the genres change but also the themes and the expectations on literature. We have tried to sort out works from different historical periods to test this idea. As could be expected, our conclusions are not straight-forward. The theme of mixed victim-offender approached is modern. It can be detected in *Crainquebille*, almost paraphrasing the Dreyfus case, but also in *Dr Jekyll and Mr Hyde*, in the *Execution of Justice* and in *Emma Zunz*. Specific tracts against and denunciations of injustice in the legal and judicial system is a common theme throughout the historical periods, from *Michael Kohlhaas* to *Crainquebille*. With more recent works like *Emma Zunz* or *The Execution of Justice* this becomes much more subtle and confused, things are not so clear any longer. With *The Trial*, it is procedural complexity and absurdity that prevails.

As stated above, the workshop did not presuppose any particular view about the relation of Law and Literature (Law *in* Literature or Law *as* Literature) but the instrumental and functionalist view seems hard to avoid. Still there was sufficient consensus in the workshop to consider that simply using detective novels in order to learn criminal procedural law was not an interesting endeavour. Romantic views about literature and how it can enlighten into complicated legal questions especially on guilt were also discarded as naive and misrepresentations of the value of literature in raising paradoxes and pointing to subtlety where the law imposes simplicity. The piece brought from Kierkegaard and the tribulations of *Emma Zunz* are sufficient warning. All approaches to Law and Literature were welcome, with no dominant paradigm in mind; only the choice of one work rather than one author, and the questions made about justice, rights and law as reflected in that work. We can test them and see what we make of them, and this volume is the result. We believe they help in the quest for knowledge and understanding, leading to new questions, and this is shared through the different periods and cultures represented in this volume.

Nor do we deny the relevance to the individual of the literature analysis method. Critical approaches to post-modernist perspectives come from authors like Harold Bloom who underlines the link between literature and the construction of the self. From this framework, the building of character is the road to moral learning and knowledge and literature can be character-building. This is clearly reflected in

works from *Antigone* to *The Grapes of Wrath*. As a result, perspectives of justice cannot be dissociated from individual feelings and reasoning, and this seems to be a universal conclusion. Our focus is therefore to look at the genre, style, language, narrative, aesthetic experience, plot in the chosen work.

Language and translation is another important element in comparing European literary pieces. Although the language of the workshop was English, many of the works analysed in the workshop and in this volume were originally written in a language other than English. Translatability has always been a matter of theoretical discussion, although, in practice, issues and difficulties of understanding are endemic to literary interpretation, also in the vernacular between dialects, as *The Heart of Midlothian* illustrates, giving interesting insights into a different legal culture in the same language, English. Dialect and slang as reported in dialogues also open up new windows into social and cultural plurality normally not reflected in legal discourses, as can be seen in *The Grapes of Wrath*. Translation sometimes helps highlight these issues. For instance, the word *honra* in Calderon's *Doctor of his own Honor* is really difficult to translate, even to grasp. Whereas Spanish readers might pass over those difficulties thanks to an intuitive understanding, it is precisely when confronted with the translation of the term that writer and reader realise it might unveil a whole new concept, not just a term translated as 'honor'. This volume has chosen to keep some linguistic diversity by publishing in Spanish the paper on *100 Years Solitude* and in French the presentation of law and justice in Kierkegaard, by Tamm who had presented a paper on *The Vicar of Vejby* in the workshop. Language and lexicography as power is an issue that comes out very clearly in *1984* as well, with Newspeak, a premonition of all the spinning and propaganda techniques to come. Law is very much normativity through words and literature can sometimes make us aware of the manipulative use of words in law and politics.

We are aware that both workshop and this volume are only an approximation to the vast field of law and literature. One of the perspectives that has been left out for is that of gender, but we hope other authors will take this line of enquiry further and explore many more issues.

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