

Justus-Liebig-University Gießen

Department of English

HS Law and Literature



Summer Term 2012

**“Is this lawgical? I am not so
(litera)sure.”**

**Reading Journal for the 2012 Master’s
Class ‘Law and Literature’**

Date: October 15, 2012

Table of Contents

1	Introduction	1
	1.1 Preliminary questions	1
	1.2 Proceedings.....	2
2	Posner, Richard A. (2002 [1988]). <i>Law and Literature</i>	3
	2.1 Central Themes	3
	2.2 Agreement.....	4
	2.3 Questions and Disagreement	4
3	Nussbaum, Martha C. (1995). “The Literary Imagination”.....	5
	3.1 Central Themes	5
	3.2 Agreement.....	5
	3.3 Questions and Disagreement	6
4	Nussbaum, Martha C. (1995). “Fancy”	6
	4.1 Central Themes	6
	4.2 Agreement.....	7
	4.3 Questions and Disagreement	7
5	Weisberg, Richard H. (2011). “Law and Literature as Survivor”	8
	5.1 Central Themes	8
	5.2 Agreement.....	8
	5.3 Questions and Disagreement	9
6	Stern, Simon (2011). “Literary Evidence and Legal Aesthetics”	10
	6.1 Central Themes	10
	6.2 Agreement.....	11
	6.3 Questions and Disagreement	11
7	Douzinas,C./Warington,R./McVeigh, S. (1991). “Suspended Sentences”.....	12
	7.1 Contradictions	12
8	Aristomedou, Maria (2000). “In the Beginning...”	13
	8.1 Central Themes	13
	8.2 Agreement.....	13
	8.3 Questions and Disagreement	14
9	Künzel, Christine (2007). “Aus einem Bette aufgestanden”	14
	9.1 Central Themes	14
	9.2 Agreement.....	15
	9.3 Questions and Disagreement	15

10	Olson, Greta (2012 [2010]). “De-Americanizing Law and Literature Narratives”	16
10.1	Central Themes	16
10.2	Agreement.....	17
10.3	Questions and Disagreement	17
11	Conclusion.....	19
12	Works Cited.....	20

List of Figures

Figure 1:	Nietzschean variations in Weisberg (2011).....	9
-----------	--	---

1 Introduction

For in the end, laws are just words on a page – words that are sometimes malleable, opaque, as dependent on context and trust as they are in a story or poem or a promise to someone, words whose meanings are subject to erosion, sometimes collapsing in the blink of an eye.

Barack Obama¹

Barack Obama can truly be called an expert in legal matters: not only is he the president of one of the most fundamental subjects in legal discourse – a union of States – , but he also holds a degree in law, as do many of the authors that we are going to encounter in the 2012 class on Law and Literature. I want to agree with Barack Obama on the indeterminacy of language, but I know (and it is safe to assume that he does too) that if people in the legal profession really devoted their time to solely linguistic analysis, not a single dispute would ever reach a satisfying end.

Spontaneously, I would expect a scholar in the Law and Literature movement to focus on the same premises as Barack Obama in the characterization of law above. Yet I expect there to be many more issues of interest and I wish to collect them in the present reading journal.

1.1 Preliminary questions

I am curious to find out if the scholars that work on both legal and literary discourse and the texts they produce can actually be said to belong to a ‘movement’. Is it possible to identify branches with a comparable philosophy? Are there coherent schools within the academic field of Law and Literature? Or are the stances and opinions too varied to be subsumed under any categorizations?

Another question that I have may seem somehow naïve: is this class going to help me gain a tentative understanding of different legal systems and acquire at least a basic legal vocabulary? Of course I cannot master the continent that law students devote their entire studies to conquering in one class. However, is this something I really aim for? After all, I want to grasp the theoretical underpinnings of the relationship between law and literature, and not to learn how to behave in a court room.

¹ Obama 2006: 92.

Finally, I am also interested in the connection between law and literature from a more historical point of view. Who would consider it a question of legality if books like Charlotte Roche's *Feuchtgebiete* (2008) (which I have not read, but you cannot help it, some friend is going to call you and scream "Whoa, have you read this?" and embark on a rather unpleasant synopsis of particular passages...) are published and sold? However, there were and are cases in which written texts were/are banned and censored, for different reasons, and I am interested in how this has changed over time.

1.2 Proceedings

I have kept a reading journal before in which I allowed myself the luxury of being as spontaneous as I wanted: inspired by the texts we read in the seminar I kept the journal for, I read other articles and books, watched documentaries and finally compiled the aspects that seemed particularly memorable to me from all these sources in the reading journal. This time, I intend to be more systematic in my approach to the texts.

Each journal entry will be dedicated to one text in particular. I have chosen a set of position that I want to take towards each author and their articles or chapters. The first position can be called didactic: if students who wanted to take a seminar on Law and Literature asked me to introduce them to the selection of texts we read, what would I tell them about each specific text? Which points would I stress, which central themes would I direct their attention to? These points and themes are going to be collected in "Central Themes". I certainly do not think that I could summarize the texts' entire, multifaceted content, but I am looking for general ideas that lay the foundation for the lines of argumentation in the texts.

As a second step, I will try to identify suggestions in each text that I find compelling and convincing. Where do I agree, which ideas and motives can I follow? Conversely, I will surely also find passages for which I do not have enough background knowledge in either literary or legal studies, or that remain incomprehensible and unconvincing to me for other reasons. I will collect those as well in "Questions and Disagreement" and try to be as specific as possible about my problems and reservations.

Hopefully, by the end of the semester, the questions that I still have concerning Law and Literature will have been addressed or even answered.

2 Posner, Richard A. (2002 [1988]). *Law and Literature*

Richard Posner perceives the Law and Literature movement to be founded on the wish to marry two disciplines that are completely different in form and function: “Law is a system of social control as well as a body of texts and its operations are illuminated by the social sciences and judged by ethical criteria. Literature is an art, and the best methods for interpreting and evaluating it are aesthetic” (Posner 2002 [1988]: 7).

2.1 Central Themes

First of all, Posner offers a practical example of how literary texts like E.M. Foster’s *Howards End* (1911) can be analyzed by searching traces of legal reasoning in the characters’ behaviour. His analysis of scenes between Margaret and Henry Willcox offers an indirect answer to the question how literary studies may profit from concerning themselves with law, and not always the other way round (Posner 2002 [1988]: 1f). Posner proceeds to summarizing the history of the Law and Literature movement, which sparked my interest, since it is hinted that the separation of the fields in the U.S. American contexts may not have remained unquestioned for a long time due solely to the incompatibility of the sciences, but also due to the mechanisms of university traditions, where the organization into departments also creates the separation of scientific research (Posner 2002 [1988]: 4).

Although I found it a little discouraging to start with a text so adamant about the limitations of the Law and Literature movement, I still consider Richard Posner’s introductory chapter to be an excellent text to start with because he offers a panorama of different angles from which the relationship between law and literature can be examined: first of all, he introduces the possibility of analyzing literary texts that concern themselves with the law, legal proceedings and legal philosophy. Since I am more curious about the principles of Law *and* Literature than about those of Law *in* Literature, this is probably the least intriguing possibility. The most interesting approach for me, on the other hand, is the focus he presents in the second part of his book: this approach rests on viewing both law and literature as textual and linguistic phenomena and examines the hermeneutic techniques that underlie legal as well as literary studies (Posner 2002 [1988]: 5f).

2.2 Agreement

In the introductory chapter, Posner already hints that he cannot range himself among the scholars who advocate the study of literary texts in the legal classroom as a means to widen the legal students' moral and ethical horizons and to sensitize them to the lives influenced by their interpretation of legal texts (Posner 2002 [1988]: 6).

I strongly agree with this position, because I think it risky to suggest that *all* literary texts in general can serve as examples of 'good' or 'universal' morality. Furthermore, if only *some* texts in literature possess the capacity to open their readers' eyes to lives they have not experienced themselves, who is to decide which texts are morally worthy and which are not?

2.3 Questions and Disagreement

Concerning the potential of the Law and Literature movement to influence legal practices, Posner makes a surprising statement: he ascribes a "measure of *universality*" (Posner 2002 [1988]: 7; italics in original) to popular works of literature, meaning that their very popularity with readers in different personal, societal, and temporal contexts marks their distance to the "burning issues that confront American law today" (Posner 2002 [1988]: 7), which means that they speak about human life *in general* and therefore cannot be consulted as guideposts for *particular* modern legal procedures.

I am not sure I understand his position. Firstly, when it comes to addressing general concerns, I do not perceive much of a difference between literary texts that succeed in engaging readers from distinct societies or different times and legal principles that have been applied in many different societies. I do not mean to suggest that the depiction of adulterous women in literature and the legal procedures of divorce have not changed and therefore remain understandable to many people. I mean to say that the depiction of marriage in literature and the codification of marriage in law, as an example, both indicate the human need to protect their relationships, which means that law and literature are equally concerned with common, universal themes of human life. Secondly, Posner suggests that it is difficult to find popular contemporary literary texts that address modern issues, and that most great works of literature suffer from a "temporal mismatch" (Posner 2002 [1988]: 321). How can he possibly say that? There are innumerable popular writers like Jonathan Safran Foer or T.C. Boyle etc. who address modern legal issues as diverse as the 9/11 attacks or illegal immigration etc.

3 Nussbaum, Martha C. (1995). "The Literary Imagination"

Martha Nussbaum appears as an enthusiast for precisely the branch of the Law and Literature movement that Richard Posner is so vehemently critical about. She argues that literature should be taught in legal departments as an emotional counterweight to narrow doctrines of law and that literary texts should be "essential parts of an education for public rationality" (Nussbaum 1995: 2).

3.1 Central Themes

In the introductory chapter, Nussbaum progresses systematically through a series of questions that I asked myself at the beginning of the semester and am very glad to find in her text: Why literature? Why novels? Which novels? In this progression, Nussbaum offers a general taxonomy of different types of writings, different literary genres, and different novels.

As to the choice of literature (opposed to other forms of art) as a means to educate public servants about the lived experience resulting from the legal code they develop and enforce, Nussbaum contends that literature makes the inner realm of human lives available. While biographical or historiographic writing for instance is often limited to the facts of what occurred at a particular point in time, literary texts add emotional depth to these facts (Nussbaum 1995: 5). For me as a student of literature, this is an interesting taxonomy to establish, since she claims that one characteristic of literary texts in comparison to other writings is the power to engage the readers' emotions.

In her preference for the novel against other literary genres, she clearly focuses on the realist novel, since in her opinion it stands as the only genre that offers the opportunity to carefully depict human concerns known to the readers in concrete situations that are unfamiliar to them (Nussbaum 1995: 7). Finally, her answer to the third question reveals the limitations of the educative power of the literary imagination: she clearly states that if a novel is too offensive to the readers' moral beliefs, they will reject the alternative vision in the text on moral grounds.

3.2 Agreement

The (in my eyes) most powerful paragraph of the introductory chapter is one that I completely agree with (even after having worked on Richard Posner's rather critical and pessimistic text last week): "novel-reading will not give us the whole story about social justice, but it can be a bridge both to a vision of justice and to the social enactment of

that vision" (Nussbaum 1995: 12). I agree with the idea that novels (and other media) provide an opportunity to introduce visions of improvements into the public sphere that might not yet bear much resemblance to the actual social reality, but that might one day, since their readers become aware of the possibility of thinking about them.

3.3 Questions and Disagreement

Nussbaum states that by advocating the introduction of literary texts into the legal classroom, she also takes part in a larger conflict between literature and more scientific and rational ways of reacting to the world. She claims that literature is often accused of being a) unscientific b) overly emotional and therefore irrational and c) too particular to address the universal issues of justice and morality dealt with in law (Nussbaum 1995: 4). I wonder who, in her opinion, brings forward these claims about emotions and rationality in general, and literature in particular; the supposed opposition between emotions and rationality has long been weakened by neurophysiologic and neuropsychological research, which reveals that emotions and rational thought are deeply intertwined and inseparable. And the third claim she often sees made against literature strikes me as particularly interesting since it stands in direct opposition to what Richard Posner perceives to be the greatest limitation of the usefulness of literature for the law: while he describes it as too universal and timeless in its concerns to assist much in the regulation of contemporary legal issues (Posner 2002 [1988]: 7), Nussbaum thinks that critics of literature view literary texts as too particular or even idiosyncratic to address legal matters (Nussbaum 1995: 4). Which kinds of literature or critics may they be thinking of?

4 Nussbaum, Martha C. (1995). "Fancy"

In the present reflective writing project, Martha Nussbaum's chapters "The Literary Imagination" and "Fancy" from *Poetic Justice* (1995) will be addressed individually in separate entries, a choice warranted by their informational variety and density.

4.1 Central Themes

The chapter entitled "Fancy" is particularly useful because Nussbaum gives a careful and detailed account of the specific problems she believes can be remedied by novel-reading. In other texts on law and literature, including the initial texts of the semester (just individual chapters... but still), it is suggested that people in the legal profession

can benefit from experiencing the possible consequences of their influence through the literary imagination. Yet, few of the texts are really specific about why legal practitioners should need such reminders, i.e. what it is that they are doing wrong.

Nussbaum criticizes contemporary rational-choice theory according to which human beings navigate through the world trying to gain the most for themselves in every situation and assess every interaction in terms of costs and benefits (Nussbaum 1995: 16). While Nussbaum concedes that certain principles of such theories have descriptive value in many areas of human interaction, she warns that this conception of the human being has come to be too dominant in today's society (Nussbaum 1995: 18).

4.2 Agreement

Nussbaum is particularly displeased with the kind of language that helps to proliferate the view of the human being according to rational-choice theory without making it understood that it is not necessarily a faithful analysis of people's feelings and attitudes, but merely a model, a mental aid to anticipate certain types of behaviour (Nussbaum 1995: 18). That is why she appreciates Dickens' *Hard Times* (1854) so much: it combines Gradgrind's aggressive use of language with other, more joyful, metaphorical, sensuous passages in the circus (Nussbaum 1995: 40). Here, I completely agree with Martha Nussbaum: the novel, I think more than other literary genres, offers space for different discourses: descriptions, direct and indirect speech, poems, songs, nowadays even pictures, e-mails, etc. The novel is the playground where they can all be combined and compared. In law, there is only room for a certain kind of accepted language use in verdicts, opinions and other legal documents, and I can imagine how lawyers might be tempted to think that, at least in the professional sphere, this was the only way to use language effectively. However, reading novels allows people to experience different discourses in one and the same text, as in Dickens' *Hard Times* (1854).

4.3 Questions and Disagreement

While I cannot actually say that I disagree, I certainly would have needed more information to follow Martha Nussbaum's line of argumentation in the paragraph where she addresses how rational-choice theory is applied in contemporary policy-making. She claims that "it is a conception that even now dominates much of our public life" (Nussbaum 1995: 18) and that "public policy-makers turn to these norms to find a principled, orderly way of making decision" (Nussbaum 1995: 18). I just wish that she

had added some examples. Who exactly is guided by these norms? Lawyers? Law-makers? Which kinds of laws or legal decisions is she referring to? Maybe she could illustrate this in more detail.

5 Weisberg, Richard H. (2011). "Law and Literature as Survivor"

In his text, Richard Weisberg addresses the textual, linguistic foundations of both law and literature. "Law and literature scholars insisted that the best insights into how to read and interpret the world emerged from stories" (Weisberg 2011: 49).

5.1 Central Themes

The text starts with a detailed recapitulation of why scholars in the humanities (I presume that he means mostly literary scholars, linguists, philosophers?) took a very different stance towards the indeterminacy of language and the interpretation of texts, be they literary or legal, than lawyers after the genocide during World War II: while the humanists did no longer believe that any text should be given a definite (totalitarian) meaning or that just social systems could be established by rules encoded in language, lawyers had not lost these beliefs and tried to find not only law, but justice in language (Weisberg 2011: 43f). As a student of the humanities, I am really thankful to be reminded of the lawyers' perseverance, because the omnipresence of Derrida, Foucault, Haraway and all their illustrious friends at university can be incredibly scary at times.

According to Weisberg, the literary scholars involved in the early activities of the Law and Literature movement tried to breach the gulf by insisting that how people decipher and interpret stories mirrors how they decipher and interpret legal texts and ethical issues (Weisberg 2011: 49).

5.2 Agreement

Weisberg insists that it is not only lawyers who should study novels about the law, but also laypersons. He sees the literary representation of the workings within the legal system as a more accessible possibility of comprehension for people outside the legal profession than the study of actual legal code (Weisberg 2011: 52). I think this is particularly true in the German context: narratives and stories about how the law is applied will serve the layman better than the actual legal text since a highly specialized language is used in German legal documents.

5.3 Questions and Disagreement

It may be that I completely and entirely misinterpret this passage of Weisberg's text, but it leaves me really puzzled. Weisberg provides an overview over the "four Nietzschean variations on the hermeneutics of law" (Weisberg 2011:52f):

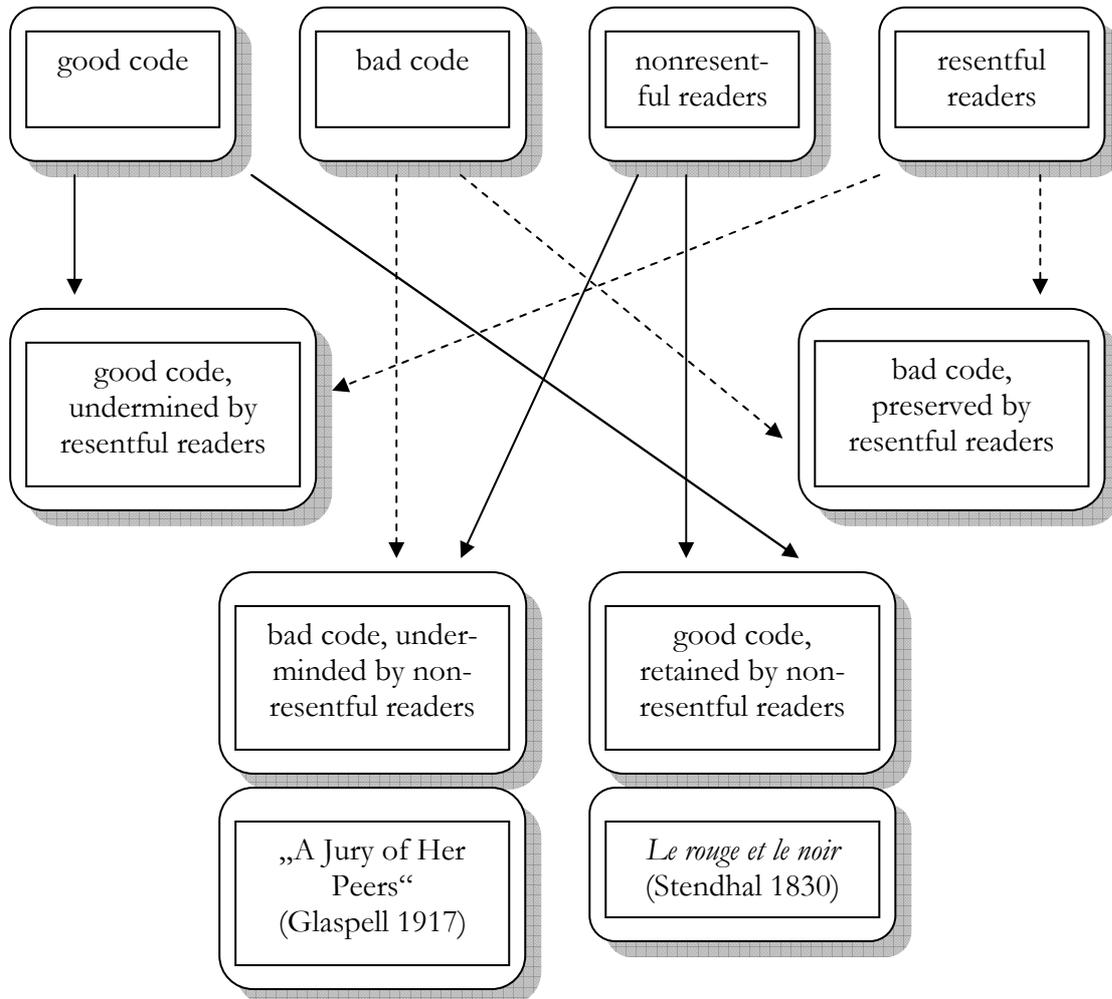


Figure 1: Nietzschean variations in Weisberg (2011)

For the most desirable option, the good code retained by nonresentful readers, he provides a literary example, the character of Julien Sorel, a young cleric, in Stendhal's *Le rouge et le noir* (1830). Julien shoots his former mistress, Madame de Renal, but then turns himself in to the police and explicitly asks for the death penalty as just condemnation for his crime. Weisberg goes so far as to say that "Julien interprets [the] code correctly" (Weisberg 2011: 52) and that the legal text in question, the Napoleonic code, is a "sound code" (Weisberg 2011: 53). Similarly, Weisberg suggests that Glaspell's "A Jury of Her Peers" (1917) can serve as an accurate example of "the intentional undermining by just

individuals of resentful codes" (Weisberg 2011: 53). First of all, I am completely puzzled by the fact that Weisberg applies the terms "just" and "appropriate" as if they were universal values that all mankind could ultimately agree upon. Then, I am not really convinced by the actual examples he provides: Julien asks for death because he himself has supposedly killed someone, and that is meant to be a sound model for justice and social order? Mrs. Wright's friends uncover that her husband oppressed her and therefore hide the evidence that might lead the authorities to condemn her for the murder of her husband, and this is supposed to demonstrate how justice is established in spite of a flawed code? I certainly cannot give a coherent and fully developed definition of justice, but to be so categorical about just and unjust morals and punishment seems too risky to me.

6 Stern, Simon (2011). "Literary Evidence and Legal Aesthetics"

Simon Stern's article sheds light on how the Law and Literature movement positions itself in the realm of different university departments and their respective philosophies. It is also refreshing to see that he actually offers advice on how to improve the cooperation, because in my opinion, scholars in the humanities often do not dare to appear the least bit 'prescriptive': "a course in law and literature cannot and should not present itself as an opportunity to master a new field in one semester" (Stern 2011: 250).

6.1 Central Themes

The content of the initial pages of Stern's article recalls two themes that have already appeared in the preceding texts: he describes how literary students view legal documents as yet another textual manifestation of the societal structure people live in, while legal scholars hope to fine-tune their students perceptiveness towards the personal, individual fates behind the positions of judges, accused, and victim etc. (Stern 2011: 244f).

What seems particularly intriguing to me is that Stern points out explicitly why this approach needs to be modified and where it reaches its limits: he warns that legal scholars neglect to address the means by which moral stances are encoded in a text and speak about the ethical implications of the characters' behaviour as if the textual encoding was straightforward and unequivocal (Stern 2011: 347). Similarly, Stern criticizes that literary scholars concentrate so vehemently on the textuality of law that

they forget the actual application of the texts, where the written word is only one component of a complex process (Stern 2011: 349).

6.2 Agreement

I agree on a particular passage of Simon Stern's text because I had the opportunity to witness a course that exactly exemplified his suggestion: "During their first year, law students learn that some of the most important questions have nothing to do with the language of the text" (Stern 2011: 349). When still a B.A. student, I took a course in International Law, where we covered every imaginable issue from 'Who owns the moon?' over 'Is the Vatican actually a State?' to 'Who has the right to punish crimes against humanity?'. During the discussions in class, I felt the constant wish to work closer with the texts, treaties in our case, and to carefully ponder the meaning of the terms that were employed there. The professor made me understand that, especially in International Law, other considerations receive just as much, if not more attention than the written text. Whenever the relationships between entire nations and their respective governments are concerned, every legal decision affects their diplomatic cooperation, so the written word aids in building cases and in organizing international relations, but is often taken as a foundation, and not as the only guiding principle, of the legal practice on the international level.

6.3 Questions and Disagreement

In some of the other texts, I could identify passages that made me protest, that I could not believe, or that I even could not entirely follow. For this text, this is really not the case at all. Furthermore, the article gave me an idea how I personally could approach the law as a literary student: of course I am aware of the fact that I am not going to be able to recite legal paragraphs by heart or understand how exactly treaties are ratified, but Stern focuses on the *methods of legal thinking*. Especially after reading Weisberg earlier in the semester, I perceived a stark difference between literary theories that can be very abstract and difficult to apply, and legal theories that are developed mostly for application. Stern provides an example in saying that chain novels in general can be read from a legal perspective, as a series of judgments that establish precedents or are gradually modified (Stern 2011: 251). Maybe I would feel more comfortable with this sort of theoretical approach towards literary texts than with e.g. highly abstract postmodernist theories.

7 Douzinas,C./Warington,R./McVeigh, S. (1991). “Suspended Sentences”

Ha, speaking of which... how scared a student can become when confronted with postmodernist theoretical writing at its finest... The other texts we read seemed to have been written with a clear purpose in mind: Posner tried to demonstrate how futile the attempts of literary scholars are to affect the procedures of the law, Nussbaum on the other hand argued that the literary imagination is one of the few corrective forces that can help the law achieve its purpose, namely protecting people. Weisberg presented both legal and literary texts as tests and touchstones for the legal sensibilities of their interpreters, while Stern promoted a focus on the habits of thinking behind each discipline rather than just their textual foundations.

Towards this text, I have to choose a different approach than the one detailed in the introduction in order to disentangle some of the strands of thought that are woven together in several narratives within one single chapter. I choose to focus on how law on the one hand and literature on the other are characterized in the letters signed with “Ronnie, Costas, and Shaun” (Douzinas, Warington, McVeigh 1991: 243) because I think I can be specific about the aspects that confuse me in their line of argumentation: some paragraphs on the characteristics of legal and literary texts seem to contradict each other directly.

7.1 Contradictions

When arguing that Melville’s *Billy Budd, Sailor* (1924) can be read as an allegory for different types of reading and interpreting, the three authors content that “like literature, legal discourse is constituted through signs and symbols. But a characteristic of fiction is its narrative function, its storytelling [...] emplotment, the operation through which events [...] are put into a story” (Douzinas, Warington, McVeigh 1991: 240). If I interpret the conjunction “but” in this passage correctly, the authors establish a difference between literature, where emplotment is an essential feature, and law, where this is not necessarily the case, since events are connected by ‘what really happened’ and not arranged into a plot afterwards.

In another part of the letters, however, they explain that postmodernist fiction can indeed be identified by its violations of the function of storytelling (Douzinas, Warington, McVeigh 1991: 240). This means that the function of storytelling cannot be

used to categorize texts into fictitious and legal, since even literary texts do not always fulfill the function. Later in the text, the three writers return to the argument. Concerning types of emplotment in legal discourse, they say that “the evidence opens up possibilities of emplotment but does not impose any one particular plot [...] *Legal emplotment is as much an act of poetic imagination and semantic innovation as any work of fiction*” (Douzinas, Warington, McVeigh 1991: 242; italics in original). So, first it seems as if they were to argue that the rationale behind literary texts was to invent a plot, while the plot in legal discourse is already given. Then, however, they concede that legal discourse relies on flexible emplotment just as fiction does. As a reader, one has to be as alert as possible to even realize the argumentative turns they perform in the text.

8 Aristomedou, Maria (2000). “In the Beginning...”

After the postmodernist fireworks of the preceding text, this chapter was more accessible to me, even if I could not entirely follow some claims that Maria Aristomedou presents in the chapter.

8.1 Central Themes

First of all, Maria Aristomedou makes a deeply psychological claim that I find very compelling: she traces the wish to educate and inform people through story-telling and reading back to a basic human need: the need for emplotment, the need to impose temporal and structural coherence on the way human beings perceive the world (Aristomedou 2000: 2). I am fascinated by the fact that she seems to be asking: why Law and Literature, and not rather Life and Literature, or The Human Mind and Literature?

For Aristomedou, the discussions at the very heart of the Law and Literature movement focus not merely on whether law and legal discourse are more exact and truthful than literature and literary discourse, but on how exactly human beings establish hierarchies between the meaningful and the negligible, the important and the superfluous, and last, but not least, the male and the female.

8.2 Agreement

In Aristomedou’s text, I am glad to find a paragraph that can help to employ literature’s moral potential carefully and with caution. She insists that “[L]iterature participates in a culture’s existing order of things and, like law, helps to create, and sustain the dominant picture of society” (Aristomedou 2000: 6). While I agree with Martha Nussbaum, whose

text we read earlier in the semester, in that literature can allow people to envision better worlds than their own, I also could not agree more with Aristomedou: the very act of imagining is influenced by and imbedded in the society that it takes place in. Not even literature is completely unbounded and carefree.

8.3 Questions and Disagreement

I could not fully determine whether Aristomedou really seconds Hélène Cixous' view on female writing, but she first quotes the latter in her introductory chapter in order to suggest that the seemingly constant opposition between law and literature, as between emotion and rationality, resembles the opposition between male and female. Aristomedou perceives a parallel development between the progress women made in their struggle against male dominance, and the way in which poetic language can disrupt the logic of legal discourse (Aristomedou 2000: 23).

I can see that the perception of literature's disruptive potential as a 'female' quality can make sense from a historical perspective, since current (Western) societies have emerged from centuries of male dominance through kings, fathers, husbands etc. But is the association still relevant today? To say that literature can disrupt the law because it is so very different (so very female) is just to reinforce the opposition, even if the hierarchy is weakened. Why call the disruptive power 'female', and not 'multi-gendered', if one has to insist on that sort of vocabulary?

9 Künzel, Christine (2007). "Aus einem Bette aufgestanden"

Law and literature have not always been opponents, but rather spouses! This is the new insight that I could gain from reading Christine Künzel's text.

9.1 Central Themes

An important figure of German popular culture and within the argumentative line in Christine Künzel's article is Jacob Grimm (1785-1863). In his times, it was an accepted notion that law and literature were similar and mutually dependent (Künzel 2007: 117). However, Künzel draws the readers' attention to the fact that a particular way of speaking about law and literature developed based on their seemingly natural connection: they used to be conceptualized, especially in Grimm's texts, as husband and wife, and, consequently in former times, as master and dependant (Künzel 2007: 118).

As for the relationship between law and literature today, Künzel claims that, though the metaphors of married life are not longer so abundantly employed, the dichotomy persists in other ways: the literary texts chosen for analysis in legal classrooms are mostly written by men (Künzel 2007: 124), as are the majority of articles published in the debate between law and literature (Künzel 2007: 122). According to Künzel, the gendering of Law and Literature not only structures the way they are spoken of, but also the way they are organized in universities and court rooms.

9.2 Agreement

At the end of her article, Künzel quotes Peter Goodrich, who contents that "a mode has to be found to accommodate both aspects: the aesthetic and literary qualities of the law and the capacity of literature to generate something like norms and judgments"² (Goodrich cited in Künzel 2007: 131).

I agree with Goodrich, Christine Künzel and, I am sure, with most scholars within the Law and Literature community: law and literature have too much in common, be it their textual foundations or their positions as manifestations of culture, to be treated as two entirely distinct disciplines. Aspects and principles of the one can always be identified in the other, and both fields could profit, concerning theory as well as practice, from perceiving themselves as less monolithic and independent.

9.3 Questions and Disagreement

As already indicated, Christine Künzel reports that most publications in the field of Law and Literature have been written by male lawyers, or male scholars with a legal education (Künzel 2007: 123). While she does not expressly call this problematic or unjust in her text, it appears to me that she would welcome a more equal ratio of authors in this field.

I am wondering how this information can be useful for the reader. It seems to me as if she were claiming that one homogeneous group of authors was preferred and favoured to the detriment of another homogeneous group. Do we really need this opposition in our present society? It may be the case that the majority of authors in Law and Literature happen to be men, but what does that tell us? All of them may have their own version of masculinity, so they are probably still a very heterogeneous group.

² "Es muss ein Modus gefunden werden, der beiden Seiten gerecht werden kann: den ästhetisch-literarischen Qualitäten des Rechts und der Fähigkeit der Literatur, so etwas wie Gesetz(mäßigkeiten) und Urteile hervorzubringen" (Künzel 2007, my own translation in the text)

Furthermore, the fact that there seems to be a lower number of publications by women than by men in the field of Law and Literature may not be the result of an actual rejection of the ‘women’s femininity’. It could be that the persons interested in publishing in the field happen to be mostly male, and that the possibility to reject a female author does not present itself all that often because there are not that many female persons interested in the subject matter. I am not sure I see the causal relationship Christine Künzel seems to be establishing here.

10 Olson, Greta (2012 [2010]). “De-Americanizing Law and Literature Narratives”

I find several of the questions I grappled with at the beginning of the semester directly addressed in Greta Olson’s article, since she not only sheds light on the more comprehensive structures within the Law and Literature movement, but also explains different legal cultures (common, civil, etc.) that I have been quite ignorant about (I must admit, even about the German system).

10.1 Central Themes

The article offers a detailed comparison between three national contexts. While the author clearly states her intention not to oversimplify the variety of scholarly work in each national field, she still discerns general tendencies and generalities.

Both literary and legal scholars in the Law and Literature movement in the United States are particularly interested in how literature can illustrate issues of justice and morality that might find an overly formalistic and abstract codification in legal texts. Of all literary genres, realist novels are seen as especially eloquent when it comes to showing how the application of legal code actually influences people’s existences (Olson 2012 [2010]: 19). The American scholars’ preference for the narratives in realist novels may stem from the way trials are held in the U.S.: different parties present competing narratives and a jury has to decide which one seems more convincing to them (Olson 2012 [2010]: 20)

The British, or better English equivalent of the Law and Literature branch in the United States, works with different premises, since the English find themselves torn between their own disinclination to produce large bodies of written binding codifications of their legal system and the European efforts to align the different

national legal systems. The English movement in general is more attuned to deconstructive philosophy than to a predominantly literary scholarship. They want to draw attention to the fact that the law cannot be as rational and orderly as is sometimes suggested, but that it can be attacked on the same grounds as many prevailing paradigms have been attacked through deconstructive philosophy (Olson 2012 [2010]: 28). In accordance with this attitude, scholars in the English branch prefer poetry over prose. I guess one could say that narrative coherence is generally less prominent in poetry, where allusions, metaphors and omissions abound.

In the German legal system, the written text of the law occupies yet another position: with their intention to codify German law in the most rational and abstract manner possible, German legal practitioners have created the *BGB* as a text almost incomprehensible to people outside the legal profession. However, it is exactly this aim of establishing clarity through language that makes the German legal system vulnerable to deconstructive critics (Olson 2012 [2010]: 32). Concerning literary texts, many German scholars share a fascination with the dramatic genre, especially paradigmatic texts that show legal plots on stage (Olson 2012 [2010]: 33).

10.2 Agreement

The author not only offers a characterization of three national contexts of the Law and Literature movement, she also points out which directions the scholarship is currently taking. One approach struck me as particularly exciting and interesting: employing a much more inclusive strategy and working on a much wider field of interconnections, scholars have extended their horizon and are now pursuing studies called “Law, Literature, and the Humanities” or “Law and Semiotics” (Olson 2012 [2010]: 38). In my excitement for this approach, I clearly follow the American tradition that focuses on the power of the literary imagination to depict the experience behind formal codes. Since the employment of this experience can take many different forms, be it in novels, TV Shows, blogs or vlogs, etc., I see it as a great progression to move beyond the written text and analyze different sorts of creative and imaginative content.

10.3 Questions and Disagreement

When characterizing the English critical legal studies, the author cites Costas Douzinas, who has discerned three phases in the development of the English field: after a critical approach based on the textual foundations of law, there followed a phase that was more

oriented towards the ethical implications of legal text. Finally, in the third phase described by Douzinas, law is perceived as a corpus of empty signifiers (Douzinas in Olson 2012 [2010]: 24f).

While I agree to a certain extent that legal rules are by no means universal and 'natural' codes of conduct, I certainly admire the ethical focus more than the overly deconstructive focus: if the logic behind the reference of a signifier is applied with absolute rigor, it may well be that no ultimate meaning and no definite point of origin can be identified behind any legal rule or behind any signifier. Yet even a slightly unstable collection of rules based on ephemeral signifiers can obviously serve as the basis for the societal structures people live in. Scholars following the 'ethical turn', as I understand it in connection with English critical legal studies, ask how society can take practical advantage of the flexibility of legal signifiers, rather than focusing on the fact that a perfect, stable legal code is a utopia. This 'ethical' focus is the focus I prefer.

11 Conclusion

SAM: The law says you can't do what they did, it's as simple as that.

KAFFEE: It's not as simple as that. We're defense counsel. We position the truth. What did they teach you?

SAM: To tell the truth, not position it.

KAFFEE: They taught you wrong.³

In Aaron Sorkin's gripping play *A few good men* (1990), lawyers Daniel Kaffee and Sam Weinberg are hired to defend two young marines who are accused of murder and might spend the rest of their life in jail. In the dialogue, Kaffee phrases an opinion that many scholars within the Law and Literature movement would share: the opposition between 'truthful law' and 'fanciful literature' can hardly be sustained: as textual, ritualized phenomena, law and literature offer stories that human beings need to navigate their world. Different witnesses may describe one and the same event in different terms and the truth lies in the eye of the beholder. Or does it?

At the beginning of the Law and Literature class 2012, I wondered whether the class would help me acquire some sort of basic legal vocabulary and fundamental knowledge of different legal systems. This was indeed the case, but the more important insights for me are of a more theoretical nature: I learnt that there are indeed different branches of the Law and Literature movement, be it the American school that hopes to bring more justice into the legal classroom, or be it the English branch with its deconstructive suspicion of any codified text. While neither of the different schools can deny that both law and literature share considerable common ground, the usefulness of each field for the other is interpreted in many different ways.

For a deeper understanding of the issues of censorship of literary texts that I professed an interest for at the beginning of the semester, I will need to resort to other courses, but the 2012 class has definitely sparked my curiosity.

I am still skeptical of the idea that reading literary text can help people become more sympathetic and fair towards others. Yet I think people can really profit from examining which kind of basic mechanisms determine their interpretations of the world, no matter whether they encounter it in a legal document, in a play or in their everyday lives.

³ Sorkin 1990: Act II.

12 Works Cited

- Aristodemou, Maria (2000). *Law & Literature: Journeys from Her to Eternity*. Oxford: OUP.
- Douzinas, Costas, Rennie Warington, and Shaun McVeigh (1991). *Postmodern Jurisprudence*. London: Routledge.
- Künzel, Christine (2007). “‘Aus einem Bette aufgestanden.’ Anmerkungen zum ‘Verhältnis’ zwischen Recht und Literatur.” *Figures of Law. Studies in the Interference of Law and Literature*. Ed. Gert Hofman, Tübingen and Basel: A. Francke Verlag. 115-132.
- Nussbaum, Martha (1995). *Love’s Knowledge*. Boston: Beacon Press.
- Obama, Barack (2008). *The audacity of hope. Thoughts on reclaiming the American Dream*. New York: Vintage Books.
- Olson, Greta (2012). “De-Americanizing Law and Literature: Opening up the Story” (*Law and Literature* 2010; Reprinted with an expanded ending, in *Dialogues on Justice: European Perspectives on Law and Humanities*, Law and Literature Series. Eds. Thomas Elholm and Helle Porsdam. Berlin and New York: De Gruyter, 2012.
- Posner, Richard (1998 [1988]). *Law and Literature: A Misunderstood Relation*. Revised and Enlarged Ed. Cambridge, MA: Harvard Univ. Press.
- Sorkin, Aaron (1990). *A few good men*. New York: Samuel French, Inc.
- Stern, Simon (2011). “Literary Evidence and Legal Aesthetics.” *Teaching Law and Literature*. Eds. Austin Sarat, Cathrine O. Frank, and Matthew Anderson. New York: The Modern Language Association of America. 244–252.
- Weisberg, Richard H. (2011). “Law and Literature as Survivor.” *Teaching Law and Literature*. Eds. Austin Sarat, Cathrine O. Frank, and Matthew Anderson. New York: Modern Language Association. 40-60.

Erklärung zum Urheberrecht

Hiermit versichere ich, dass diese Hausarbeit von mir persönlich verfasst ist und dass ich keinerlei fremde Hilfe in Anspruch genommen habe. Ebenso versichere ich, dass diese Arbeit oder Teile daraus weder von mir selbst noch von anderen als Leistungsnachweis andernorts eingereicht wurden. Wörtliche oder sinngemäße Übernahmen aus anderen Schriften und Veröffentlichungen in gedruckter oder elektronischer Form sind gekennzeichnet. Sämtliche Sekundärliteratur und sonstige Quellen sind nachgewiesen und in der Bibliographie aufgeführt. Das Gleiche gilt für graphische Darstellungen und Bilder sowie für alle Internet-Quellen.

Giessen,.....

.....

(Unterschrift)