

LAW AND LITERATURE – A MEANINGFUL CONNECTION

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Legătura dintre justiție și literatura (imaginativă) este una surprinzătoare. Tema prezentului articol este de a rezuma unele dintre trăsăturile de bază ale mișcării, care se numește „Justiție și Literatură” și de a sugera câteva puncte de plecare cu care este asociată. Aceste puncte de plecare includ, de exemplu, concepția lingvistică a justiției, naratologia în justiție sau relațiile dintre drept și cultură. Articolul oferă o prezentare generală a abordărilor clasice care leagă justiția și literatura și menționează motivele acestei legături: de ex. cultivarea justiției și a avocaților, îmbunătățirea deciziilor judiciare sau îmbunătățirea interpretării juridice. Unele dintre concluziile care rezultă din îmbinarea justiției și literaturii pot fi utilizate în practică și depășesc nivelul unei „simple” teorii. Articolul va fi tratat ca o introducere în mișcarea „Justiția și Literatura”, prezentarea ideilor pe care se bazează această mișcare și care oferă posibilitatea dezvoltării sale ulterioare.

Keywords: *Law and Literature; interpretation; legal philosophy; legal language; legal culture; narrative; sociology of law*

French sociologist Pierre Bourdieu claimed that law, which he considered to be strictly rational, is actually nothing but an act of social magic that actually works.[1] Magic means magic words, words that go along with magic. Law is mostly expressed in words. The most common task in law is playing with words. Modern European state governed by the rule of law, too, is based on written law. It is therefore absolutely crucial that a lawyer be able to understand and comprehend a text, connect it with reality and, in some cases, transform it into action. That he be able to really work with a text. Basic contents of law are transmitted through a text. The path leading from words, or said social magic, to narration, is actually very short. Indeed, law is not merely a text, but is also connected with reality. When German philosopher and essayist, Walter Benjamin, reflected in 1936 on the decline of narration, in which no one was interested anymore and which had been losing its epic dimension,[2] he entirely neglected law. He thus left unnoticed an area which had been very closely interlinked with narration – description of history and of desired and wanted actions.

Law can be found on the point of intersection among several planes. From among these planes (or dimensions), the normative one plays a vital role. The law belongs to the sphere of norms – rules of human behavior. Another marked dimension, which ultimately forms the design of law, is the dimension of ethics. Legal rules include moral contents, values or ideas which society considers correct. Law would make no sense without values. However, law is also affected by aesthetics. Emotions must necessarily influence law. Reasoning is an inherent part of legal argument. Law represents a force that also has a symbolic dimension and its ultimate character should be formed accordingly. The present text focuses on the aesthetic dimension. Indeed, this dimension implies a link between law and literature. It shall be therefore examined how law can relate to literature and *vice versa*. How literature can be of help in lawyer's work. How knowledge derived from fiction can be employed in law. Naturally, we will not claim that law cannot exist without literature, but we shall rather try to show how literature can help, or at least cultivate, law. This ability of literature is pointed out by Jeanne Gaakeer, who claims that the original mission of the *Law and Literature* movement was quite simple: to achieve intellectual and aesthetic goals, to improve the ability to interpret and to see things from someone else's perspective.[12] None of the above is an inherent part of law. Nonetheless, these aspects can help law attain a closer link with the culture [12] in which law is embodied.

Possible manifestations of literature in law

The backdrop against which shall be the connection between law and literature approach lies in the assumption that law can be perceived as a type of language.[5] Swiss linguist Ferdinand de Saussure understood law as a social product linked with the ability to speak. He considered it a set of social conventions adopted by society to actually implement this ability.[6] At the same time, language can be conceived as a conventional system of signs that expresses certain ideas.[7] Law, too, can be understood as a conventional system that expresses values and ideas, as well as the ensuing rules of proper behavior. To this end, it uses a specific set of elements – rules – which have certain fixed mutual connections. American expert in constitutional law, Robert Cover, assumed that law was actually a language. In his concept, a norm is a sign used – depending on how addressees deal with it – to communicate attitudes towards ourselves and towards others.[8] By breaching (or setting) a certain norm, an individual makes a statement about himself and his relation to society. Together with further context, he can thus manifest his contempt for society or, on the other hand, conviction that its values are correct, etc. It was already stated that law can be conceived as a language. Therefore its interpretation should be mentioned. Law as a social

phenomenon is hidden in words and must be ‘reconstructed’ from them. It is important how legal norms are written, how the addressees understand them and what is hidden behind these words. All that is law. It is a linguistic phenomenon that reflects links of power as well as cultural contents. Law is characterized by battles for influence.[9] Various actors try to obtain monopoly over the definition of individual notions and these battles have the nature of battles over language and interpretation.

An important role in the process of interpretation is played by the reader. Italian semiotician Umberto Eco believes that a text can have no meaning without a reader as the latter contributes towards its meaning. A text is never complete without its relevant addressee. Pierre Bourdieu uses the term competent reader in this connection.[5] Although both Bourdieu and Eco speak about art or the aesthetic aspect of a text, there is no reason to believe that law would be any different. Here, too, a certain text must be prepared for someone who will be able to understand it, for a reader who has sufficient qualified information that is necessary for understanding it. The reader acts in a context whose rules and values he must share with others. The decisive role is played by the reader’s actual or desired community, the community that forms the basis for legitimacy of legal concepts. Law finds its expression in public space and its existence is conditional on its acceptance by the public, or at least by the professional public. By his own interpretation which is connected with his environment, the reader thus construes the legal text and gives it its meaning. It is the reader’s intervention which enables the implementation of a normative text in real situations.

Legal interpretation and literature

Consequently, it comes as no surprise that law can be interpreted as any other text. However, account must be taken of the context of power in which law exists, and also of the fact that a legal text is expected to be implemented. It is not a text intended for intimate reading. Law is a special system of signs that is reflected in the lives of specific people. In spite of its abstract form, it is an instrument that interferes with the functioning of the society. It does so in a special way that requires persuasion – it is necessary to persuade the addressees of the correctness of the legal regulation and legal procedures. Jack M. Balkin and Sanford Levinson consider that this forms the basis for the close interconnection between law and music. In music, as well as in drama, and law, crucial role is played by performance.[1] Law is an object that is presented to the public. The audience becomes a relevant element in the process of interpretation. When law is interpreted, it is necessary to transform the words by which a legal norm is expressed to functioning social relationships. It is imperative to transform it to a rule of behavior and let this rule actually influence human behavior. Law is a culture

of arguing and interpreting,[13] this is why

law can only be understood in view of the culture in which it is implemented and through which it obtains its meaning. This is not only about the given text, but also about its meaning that emerges in relation to culture. Consequently, law can be perceived as the art of rhetoric, consisting in the ability to convey specific meanings of a certain text.

Law as narrative

Along with the art of composition, which can be sufficiently mastered by reading literature, Cardozo also pointed out the ability to narrate. In forming his decision, a judge must create a certain image of reality. It is clear that this image cannot be sufficiently comprehensible if both important and unimportant elements are assigned the same position. A judge must be able to choose. It is not his task to provide or obtain an absolutely accurate image of reality. He must focus on elements important for his decision. Literature shows a judge how to paint a comprehensive picture composed of material elements. A picture that will not be a perfect copy of reality, or even hyper realistic, but that will capture substantial elements of the given case, without omitting or adding any. Although Cardozo focuses primarily on the wording of court decisions, it can be stated that narration is part of many fields of law. Let us now deal with narration. Language—rather cultivated and literary language—can help establish a certain order that follows in a linear way from a certain starting point.[9] It has its origin. The ability to narrate, to create a chain forming an order and linked to a certain original state, is desirable in legal argument. Allison Tait and Luke Norris[18] mention stories that are told in courtrooms, pertain to past events and serve to clarify facts. These stories provide a comprehensive picture of those parts of the history of events that have a legal bearing.[18] When describing facts of the case, it is thus necessary to compose pieces of evidence to form a story.[18] This procedure corresponds to what Neil MacCormick described as ‘narrative coherence’[15] Although MacCormick tends to aim at analytical examination of court decisions, his concept that a description of facts must correspond to what is usual or what is backed up by experience is actually very close to narrative examination of law.

Conclusion

Literature can increase the ability to perceive a text and thus, in turn, improve interpretation and composition of legal texts. Topics, such as the role of the reader, or audience in general, actualism, originalism and narrative procedures, are only some of the procedures that are analyzed in detail by literary critics and also find their image in law. Literature can also provide protection against over interpretation. Robert F. Blomquist claims that over interpretation is caused by the high number of tests established by courts to dissect each individual notion used in a legal regulation and attach to it a

meaning that is considerably distant from usual and normal interpretation.[4] The basic meaning of a certain notion is often lost under the layers and loads of tests, settled interpretations and notional constructions. Umberto Eco speaks about texts becoming sacred when describing the issue of over interpretation. A text becomes so important, known or widespread that everyone provides its interpretation and everyone wants to be interesting in some way. If the obsessive desire for originality is added, then every text becomes accompanied by numerous interpretations. It becomes overshadowed by the search for individual details, examination of every single word – both in and without context – and a search for individual theories (including bizarre ones) that would explain all its conceivable and inconceivable aspects. Interpretation thus veers towards a technical endeavor, which is not always desirable.

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