

S04: MUTUAL ILLUMINATIONS IN LAW AND LITERATURE

CONVENORS: Dott. Sidia Fiorato, Prof. Jeanne Gaakeer

Seminar 04 of the ESSE conference aimed at assessing the contribution of literature to law in the context of the critical legal trend of law and literature. The seminar was organised in collaboration with professor Daniela Carpi (University of Verona) and worked in conjunction with Seminar 03, devoted to English Studies and the Common Law and directed by Greta Olson (University of Giessen) and Ross Charnock (Université de Paris, France).

Maria Aristodemou (Birkbeck College, London) focused on the works by Pessoa and Houellebecq individuating a connection and a counterposition in their considerations on law and literature. Aristodemou reflected on God's meaning as unlimited *jouissance*, before language, beyond law and unmediated by representations. After the postmodern assertion of the death of God, enjoyment has become a question of law, an injunction and a duty masked as a right. However, the law has proved an inadequate tool with which to address the conflicts of enjoyment; the modern subject became enslaved and bound by the self-made and self-imposed laws of the symbolic order. Hence the subject's persistent disquiet (as defined by Pessoa) or hangover (as defined by Houellebecq). The unconscious insists in denying the void and looking for replacements; these replacements are fantasies, and their function in the subject's psyche is that of filling the lack in the subject him/herself as well as in the symbolic order. Therefore, Aristodemou underlines how God has become unconscious; in the emptied place the subject has put "imperfect impostors", such as law, literature, reason, humanity, love, work and sex. Pessoa sanctifies the role of literature, while Houellebecq excludes any possibility that literature may help us enjoy because he considers it as complicit in the contemporary injunction to enjoy. In Aristodemou's opinion, law's lack is projected onto literature, which is considered as the fantasy that enjoys fully and can fill the void at the heart of the symbolic order. Law's difficulties are displaced onto literature; however as the absence of the object is constitutive of the subject and neither law nor literature possess it as it is already lost, law's demand mutilates literature, and viceversa. The function of literature is that of appeasing, if not absolving, the subject's guilt or disquiet. Aristodemou underlined how the gap would be filled by the capacity to believe in a delusion, be that God, law, or literature. However, the modern subject has lost not only the capacity to believe, but further the capacity *not* to believe, and should learn to live with that loss.

Cristina Costantini (University of Bergamo, Italy) focussed on the question of THE central role of representation to reassess the ontology of the law, the representational power of literary texts in structuring law, and the way in which literary genres mediated both between Law and its origin and between legal texts and their interpretation. Starting from Schmitt's ontological concept of representation, meant as a presence of an absence, according to which the metaphysical enters the real world by producing a trespass across two distinct spheres of Being, and connecting it with Benjamin's concept of threshold as a zone of ontological coextensivity or contiguity where distinction can be neither maintained nor eliminated, Costantini elects Benjamin's threshold as the ontological field for the presentification of a ghostly absence. The latter is explained by Goodrich's formulation that legal discourse and texts are representations of a primary logos that grounds the legal community. Therefore, the concept of representation goes far beyond the techniques of depiction and the attempt to evaluate the normative code, beyond the critical attempt of literature to correct legal texts, or to provide ethical changes to legal hermeneutics. Representation implies ontological arguments which are connected to the religious concept of trans-figuration, indicating the crossing of the liminal threshold, capable of granting an ontological presence by means of artistic symbols. Costantini conjugated law and literature with political theology, in their common action of the presentification of an absence. Law through Renaissance literature is the material presence of a normative vision, it is presenced by means of the literary practice, which, in turn, fixed law in a text, to some extent compensating the lack of a textual codification of English law. In this way, even aesthetics comes to assume an ontological significance and an unavoidable role in the construction of legal traditions.

Iulián Jimenez Heffernan (University of Cordoba, Spain) focussed on *The Bride of Lammermoor* to show how Scott's recurrent legal tropes of inheritance, legacy and property rekindle symbolically the 1688 constitutional debate. The novel can be considered as a juridico-political drama, a legal case of seemingly

rightful expropriation and of counterposition between *leges scriptae* and *leges non scriptae*; its actions are set during the 1707 Union between England and Scotland, a period of political readjustments and legal transformations. Moreover, the plot is seen as a particularly dramatic outcome, at domestic level, of the new political dispensation following the 1688 Glorious Revolution. *The Bride of Lammermoor* revolves around two contracts: the first involves the expropriation by William Ashton, an astute lawyer and politician, of Edgar Ravenswood's patrimony, the last descendant of an ancient family linked to the Stuart past of Scotland. The latter is aware of the political circumstances which rendered the law subservient to political interest and which allowed the legal transaction for his dispossession; he laments the loss of a feudal Scotland ruled by manners, custom and honorable rights. However, Ravenswood is also aware of the new politico-legal context of post-Union Scotland, in particular the possibility of appealing to English House of Lords, in a sort of procedural circumventing granted by the situation of delegated or absent power after the 1707 Union. The second contract is the paper presumably signed by Ravenswood and Ashton's daughter Lucy to seal their secret engagement. This paper is only mentioned when the girl is forced to sign a second marriage contract and Ravenswood pretends to hear the girl's intentions by word of mouth, thus proclaiming his loyalty to feudal juridical value of speech acts in counterposition to written ones. However, he also considers the first signed paper as evidence of Lucy's first engagement, which he describes as a covenant.

Leif Dahlberg (KTH Royal Institute of Technology, Stockholm) focused on the witch trial which took place in Loudoun, Poitou France in 1632-34; in what is presented as a mock trial, a Jesuit priest was accused of having caused the possession of a number of nuns and was sentenced to death. The event was represented by the Swedish writer Eyvind Johnson in his novel *Dreams of Roses and Fire* (1949), by the essay by Aldous Huxley "The Devils of Loudoun" (1952) and the historical and anthropological study by Michel de Certau *Le Possession de Loudoun* (1970). In the three works, the trial is presented as essentially a political trial in which the legal system becomes instrumental for the elimination of a personal and political enemy. The references to the historical contexts in which these works were written (which span from the emergence of the nation state in the seventeenth century to its disintegration in the twentieth century) have led to their interpretation as precedents for the way of thinking and acting developed by totalitarian movements, in particular the manipulation of the legal system for political ends and the legitimization of murder of opponents and critics. Dahlberg discussed the works in connection with Hannah Arendt's analysis of totalitarian society and the concept of political evil; in particular, her concept of radical evil denotes a reality that has transformed the moral and political landscape, and moves away from Kant's original coinage of the term which denoted a consciousness of the moral law which in turn incorporates the possibility to deviate from it. By focusing on the similarities and differences of the three works, on their specific themes, spaces and value-systems, Dahlberg individuated distinct relations for a literary and legal analysis, such as law and politics, law and religion, law and psychology.

Laura Apostoli (University of Verona, Italy) focused on the link between bioethics and biolaw in Fay Weldon's novel *The Cloning of Joanna May*. The implications of cloning were explored both from the perspective of the woman protagonist, who is cloned without her knowing about it, and of the resulting clones. Apostoli reflected on how the commodification of human life at the basis of cloning shatters the psychological, ethical, and legal concept of the individual; clones' lives respond to somebody else's aims, therefore they are deprived of their rights to uniqueness and exclusiveness of genetic identity, as well as of the rights to autonomy and independence, of the possibility of self-realization and self-fulfillment and of enjoyment of legal personhood. However, Weldon seems to present the enhancing potentialities of cloning; in their quest for the reconstruction of their shattered identities, the clones manage to build a relationship of mutual learning and cooperation between themselves and with Joanna. Genetic sameness becomes a medium to integrate and fulfill personhood, in a delicate act of communion; this may symbolize the ideal attitude of society towards the boundary condition of clones, calling for new laws able to *incorporate* them within society and recognize their status of *personae*.

Jukka Tiusanen (University of Vaasa, Finland) observed how even though the prevailing mood of Fielding's novels is satiric, there is a feeling of underlying seriousness particularly in legal matters and identified parallel concerns in his legal and fictional writings. In particular the function of the law in exerting social control as expressed in his legal treatises is juxtaposed to the human impulses in specific situations expressed in his novels. The novels *Joseph Andrews* and *Amelia* present the oddities of the legal system and the difficulties of finding justice and protection from the law; the threatening aspects of the plot are resolved into a comic plot but are generated by legal difficulties. Tiusanen underlined that the novels were addressed

to a younger audience and therefore rhetorically controlled in the impact of their representation. Fielding's concern was expressed more directly in his legal treatises and consists in the threat that criminality posed for social order, as well as the denounce of an unjust administration of the law. In Fielding's view, law should save freedom and he sustained the need for legal knowledge and legal initiative in the elite population. Tiusanen underlined that what is most notable, progressive and modern about this text is the economic and social emphasis combined to a rational systematic effort to identify problems and look for remedies, thus marking the beginnings of modern criminology.

Elisabetta Cecconi (University of Firenze, Italy) focussed on the courtroom dynamics of the Bardell vs Pickwick trial in Dickens' *The Pickwick Papers*. The trial highlights the discourse manouvres adopted by lawyers to achieve their aims, in particular the misrepresentation strategy, which is instrumental in undermining the credibility and honesty of witnesses in cross-examination (and which however may prove slippery and difficult even for skilful lawyers). Cecconi underlined the clash of different cognitive schema which takes place between professionals, who rely on situational and co-textual norms related to their professional expertise, and witnesses, who rely on personal and cultural norms shaped on their ordinary experiences. The resulting effects of relational mismanagement reveal how in the legal environment the witnesses become victims of a logic of rituals which undermine common principles of social harmony, as well as of the ethical tension between relevance and truth. Dickens underlined the manipulation of interpretation in the ethical disjunction existing between "honour" and "practice" in 19th century English legal system and denounces the way in which skilful lawyers sacrificed truth-seeking for a fabrication of events which could lead to a favourable verdict thus ensuring career and profit.

Andreea Vertes (University of the West, Timișoara, Romania), focussed on specific legal issues and legal shortcomings in Shakespeare's *The Merchant of Venice*. The play revolves around the "commercial bond" between Antonio and Shylock, which is intertwined with and juxtaposed to the "friendship bond" between Antonio and Bassanio. As Vertes pointed out, a "bond" is an obligation in writing and under seal; on the forfeiture of a bond, the whole penalty was recoverable at law. However, courts of equity always granted relief from unconscionable contracts and over time courts of law came to assume a like jurisdiction; a statute was enacted, providing that a tender of principle and interest with accrued costs would operate as a full satisfaction of a bond. In Shakespeare's play, however, there is no reference made to the unconscionability of the contract and the possibility to appeal to a court of equity. As far as interpretation is concerned, Shylock insists on the literal rule of the Common Law system: in his view, justice is represented in the exact terms of the bond. However, Vertes underlined how Shylock is not seeking the rule of law but its penalties, which will serve his ends of revenge on Antonio and the justification of his practice of usury. Therefore, the commercial bond at first seems to imply a corruption of the law, as it is aimed towards a personal and destructive end of revenge. Eventually, however, the play shows the quality of ordering principle of the law, which serves higher ends. Moreover, law itself is not sufficient: it must be accompanied by good faith on the part of those who live under it.