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Literature and Law: Framework for Legal Analysis of Literary Texts

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Abstract: The interdisciplinary disposition of literature has in many ways unlocked its gates to other disciplines very recently. But we are still following, in most cases, the traditional model of teaching literature in our classrooms without regard to the fact that the pursuit of higher studies abroad fare better if our background is well-founded with interdisciplinarity. Moreover, it is a fault of our own that we have not yet tried to look at the texts from the legal point of view where a great amount of canonical and non-canonical texts deal with judicial and extra judicial proceedings. In addition to that, literary texts often inspire 'legal transplants', a form of borrowing of legal systems or concepts from foreign source, to deal with changing nature of the society and culture. It is not surprising that law and literature are complementary fields of study. It has now become imperative that we employ legal theories in the analysis of literary texts the way we have been doing with philosophy, psychology, political science, theology, history and sociology. It is the demand of the age that we build a pedagogical structure so that students can analyse literary texts from a legal perspective and pick up knowledge about day-to-day practical legal issues for personal and professional purposes. This paper aims to formulate a basic framework for legal analysis of literary texts. This framework then may be used in the classrooms to teach literary texts through legal point of view to make the study of literature more inclusive and pragmatic with regard to present academic inclination towards interdisciplinarity.

Keywords: *Interdisciplinarity, Law, Literature, Legal Analysis, Legal Transplant*

Introduction: The engraving on the shield of Achilles puts forward a few questions related to justice in the heroic age: Can a murder be resolved through the payment of money by the guilty party? Is the concept of justice conceived by the people of different ages differs according to the demand of the age or public opinion? Did the elders who were paid to judge the situation as 'experts' have any legal qualification to deliver their judgment, or was it the beginning of a judicial system that is now functional in the United States and many other countries? The answers to these questions might clarify the relation between literature and law.

Justice is tantamount to law. But the concept of justice is not writ in stone. It varies according to age, place, community and culture. To an ordinary person justice means due punishment for the committed crime. Most of the philosophers emphasize on morality while defining justice. Most popular concept of justice is the idea of getting what one deserves. However, the determination of the concept of justice needs temporal and spatial consideration as well. *Weregild* or blood money might be a legal practice in Mycenaean Greece, or Homer might have injected social and legal practices of his age in the poems, but both instances say something about judicial system of those societies. Aristotle divided justice into three categories: distributive justice, communicative justice and corrective justice. Each type has its distinguishing features. For example, distributive justice concerns itself with merit, equality and equity; communicative justice is all about contracts and agreements, and corrective justice has a group of 'r' words within its doma in revenge, retribution, restitution, reparation. Justice in a court of law does not only concern with the meted out result between two parties in presence of the judges, lawyers and spectators. "To the judge, justice is a concept that really equates to an application of the rules to achieve an outcome" [1]. The lawyers try their best to implement their versions of justice on behalf of their clients. It is the presence of the spectators that renders special significance to the whole proceeding. The spectators ensure that justice is done to the society,

> …the main character was the people, whose real and immediate presence was required for the performance…Because they must be made to be afraid; but also they must be the witness, the guarantors, of the punishment, and because they must to a certain extent take part in. The right to be witnesses was one that they possessed and claimed. [2]

The court, as an organ of law, like an intermediary as the court "…receives you when you come and dismisses you when you go" [3], administers the whole process. It is the duty of law that justice, as defined by the legislative body or public opinion, is maintained.

Culturally speaking, "law is one of the signifying practices that constitute culture and vice versa" [4], although the connection might seem somehow far-fetched. Raymond Williams defines culture as "a description of a particular way of life, which expresses certain meanings and values not only in art and learning but also in institutions and ordinary behaviour. The analysis of culture,

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from such definition is the clarification of the meanings and values implicit and explicit in a particular way of life, a particular culture" [5]. So from this definition culture may be regarded as one of ways we make the meaning of the world we inhabit. On the other hand, law reflects social values and norms. It is a system that guides a society through rules and regulations so that the society can function in a proper manner according to the need of its inhabitants, as Paul Kahn puts it, the "rule of law is a social practice; it is way of being in the world" [6]. In that way, law is a social phenomenon. For example, when we talk about justice in a Latin community honor killing seems a justifiable act. Again, many countries have abolished capital punishment altogether because of popular public opinion and temperament of the citizens of those countries. That does not make the countries that still practice honour killing barbaric or less civilized. It only proves that the difference of the sense of justice is not only temporal, but spatial as well. It is outright erroneous to employ the concept of justice of one society to another, although they might have topographical affinity. It is particularly true for Africa where diverse communities reside side by side each having a concept of justice of their own. Law is, like sociology and anthropology, just another way of interpreting a society or culture through its rules and regulations.

Similarly literature is another way of decoding society and culture. Of all the ways through which literature can limn a society, law is undoubtedly more concrete than other constituents, because law is one of the foundations upon which a society rests on. For example, Dickens' novels are the analysis of post industrial revolution England full of new laws and reforms, making space for harsh and constructive criticisms. Although modern criticism of literary texts demands to deem the author dead, it is still undeniable that *Bleak House* is a result of his job as a court reporter for the Court of Chancery. Dickens' professional engagement has enabled him to be as realistic as one can be in his depiction of the Chancery system which knows no wisdom but in Precedent, is very rich in such Precedents" [7] and the kind of justice it upheld in Victorian England. Or, it can be safely assumed that Kafka's novel *The Trial* is the result of his working in the Workers' Accident Insurance Institute for the Kingdom of Bohemia. Kafka was downbeat about the absurd and autocratic nature of the legal procedures of Austro-Hungarian Empire. Justice has a different aura in Kafka's novel, rather than ensuring justice done to the society, Kafka's courts seem to put value on the complexities of the procedures and the system itself. It demonstrates that justice, which looks "much more like the Goddess of the Hunt" [3], is repressive state apparatus which has total control on individual private lives. The idea of justice in *The Scarlet Letter* is, in some way, similar to Kafka in nature. The idealization of the system is predominant in Hawthorne's novel. The execution of justice here is retributively corrective. In *The Scarlet Letter*, public opinion is not the reason of the formulation of the rigid system that they follow; rather they are driven by biblical spirit of the law that discards human emotion and folly, and the spectators are

> …a people amongst whom religion and law were almost identical, and in whose character both were so thoroughly interfused, that the mildest and severest acts of public discipline were alike made venerable and awful. Meagre, indeed and cold, was the sympathy that a transgressor might look for, from such bystanders at the scaffold. [8]

On the other hand, Marquez's *Chronicle of a Death Foretold* justifies human emotion. It seems to defend 'honour-killing'. But this particular socio-cultural practice is not only a Latin peculiarity. Countries across the globe still allow and approbate this practice. The French Penal Code of 1810 has a great influence on sanctioning 'honour-killing' in different countries. Article 324 states that "in the case of adultery, provide for by article 336, murder committed upon the wife as well as upon her accomplice, at the moment when the husband shall have caught them in the fact, in the house where the husband and wife dwell, is excusable" [9] and they will be sentenced to1 to 5 years of imprisonment for the committed crime. This particular code has influenced and commenced a wide array of literature that tends to romanticize adultery, crime of passion, homicides and suicides, for example, Flaubert's *Madame Bovary* and Tolstoy's *Anna Karenina*. This code inspired many such laws in the countries which were French colonies. This spatial-temporal adaptation of legal issues is called Legal Transplant.

This legal transplant is the intersection that brings law and literature together. Legal transplant is "[a] moving of a rule or a system of from one country to another, of from one people to another" [10]. According to Watson this transplant also includes "institutions, legal concepts and structures that are borrowed, not the spirit of the legal system" [10]. Legal transplants make provisions for the unison of law and legal cultures. It is in the field of comparative law that influences legal professionals' enthusiasm to go beyond their boundary and learn foreign laws in their particular contexts and employ them if necessity arises. For example, The French Penal Code of 1810 or more commonly known as the Code of Napoleon is accepted as a legal framework in many Latin American countries because it addresses both these factors and socio-cultural aspects of those societies. This legal issue can be a cornerstone in formulating a framework in the analysis of literary texts from legal point of view.

Theoretical Framework: To formulate a framework for interpretations of literary texts requires a system. It is at the same time an easy and difficult task. It is easy in the sense that since law itself is a system that is formulated through meticulous observations and inputs from various legal experts. It is difficult because poststructuralism claims that organised or structured systems are hardly viable mediums for analysis of literary texts. Despite poststructuralist demand, the purpose of every discipline is to make meaning of the world around us through different points of view. Only through this holistic approach can we actually apprehend the elephant we know as the society. This paper is just a humble endeavor to bring two ways of interpreting the society together and make use of law to interpret the society through the analysis of literary texts. But to achieve that goal we first need a framework sound enough to hold its ground for some time before a better and clearer theoretical framework comes into being.

Different theories focus on different aspects in any literary texts. Every theory tries to look at a literary text from distinctive point of view peculiar to its intellectual history, philosophical inquiry, and purposes it aims to achieve/serve. The field of theory has

come a long way since Formalism where the structure of a text had the foremost significance to Travel Theory which is a response to recent travelogue writings. It is not that legal analysis of any literary text has not been done until now. Criticism is abundant with regard to specific texts and authors. But a generalized theoretical framework is still lacking which would facilitate the analysis of any literary text through legal lenses. My aim here is to propose a very basic foundation upon which this type of analysis can be formulated. I propose three basic approaches for legal analysis of literary texts: appraisal of the legal system in a given context, investigation of the characters directly and indirectly associated with the legal profession, and analysis of courtroom or trial scenes by locating those to contemporary social and legal practices.

Appraisal of the Legal System: The first proposition I want to make is that, the legal practices and law in general can be a point of study while reading a text. For example, one way of reading *The Iliad* can be through its legal concepts, proceedings, practices, structures and institutions that constituted the contemporary legal system. It is never inconsequential to study the legal system of the Heroic society to fathom the temperament of the age and appreciate the true meaning of "the rage of Achilles" [11]. When we apply Aristotle's definition of special or particular justice in analysing "the rage of Achilles" it is evident that Achilles has every right to withdraw from the war because of his wounded ego, because this particular type of justice accredits this retort with regard to honour and wealth. In this particular instance, the distributive justice is intensified to corrective justice in the rectificatory form. Interestingly, Briseis was hardly the issue of conflict between Agamemnon and Achilles. It is the different concept of 'worth' they hold that makes the point. Being the supreme commander of the Greek army, Agamemnon deemed himself to be the most honourable and the worthiest of all. It is his general understanding that anything he fancies must go to him first. But Achilles has different notion about worth. Since his "arms bear the brunt of raw, savage fighting" [11] he feels that he is worthier than Agamemnon. Aristotle in his *Ninomachean Ethics* has explained their argument thus, "All agree that the just in distribution must accord with some sort of worth, but what they call the worth is not the same" [12]. Similarly, the most evident reason of the Greek invasion of Troy might be retrieving Helen, but that is not the only one; propitiating their wounded honour was one of the major reasons of this onslaught. Although we deem the Trojans guilty of disrespecting the host, the description of the slaughter indisputably invoke sympathy for the wrongdoers of justice and honour of the Heroic Age. We, as readers of modern age, cannot possibly justify the atrocity committed by the Greeks despite knowing the fact that in that era honour was synonymous to justice. It proves that the concept of justice is always subjective to societal demands, not the other way around. Literature offers a frontier where social customs and legal systems of any age and readers' subjective concept of justice contend like two parties in a court of law.

To apprehend Dickens to the full the study of the judicial system of the Victorian England is necessary. His novel *Bleak House* is a criticism of the Court of Chancery during the Victorian era. Richard Posner has accused Dickens of producing no effect in the formation of Chancery system other than delineating its abusive practices, "Though acutely aware of the large amount of evil in the world, and not in the least quietistic or resigned, Dickens had no suggestions for" [13], it is not fallacious to surmise that the novel contributed to some extent in the introduction of the Judicature Act of 1873 and 1875 where the Court of Chancery, the Court of King's Bench, the Court of Common Pleas, the High Court of Admiralty, the Court of Divorce and Matrimonial Causes, the Court of the Exchequer, the Court of Probate were merged together into the Supreme Court of Judicature. It was further segregated into two courts: High Court of Justice and Court of Appeal, thus introducing a new legal system in England and later in its colonies. Furthermore, as the Napoleonic Code of 1810 has influenced similar laws in the former French colonies, so do Victorian laws in the former British colonies like ours, like The Code of Criminal Procedure 1898, The Indian Penal Code 1860, The Civil Procedure Code 1908, The Police Act 1861, The Easements Act1882 etc. On the other hand, this also facilitates the study of postcolonial reading of the laws in determining that we still bear the marks of colonialism on our backs with regard to existing sentencing guidelines in our country and recent growing criticism against it.

In case of *Chronicle of a Death Foretold*, social justice, the marriage code, is pitted against the state law, and it is "perennially hopeless" [7] to see the state law becoming subservient to the community law. It is inconceivable to modern western readers to see the inactive presence of the police while Santiago Nasar is being "carved up like a pig" [14] and participation of the whole village in the murder through non-participation, silently sanctioning the murder. Hannah Arendt in her book *Responsibility and Judgment* criticizes this "Nonparticipation … [that] has always been open to reproach of irresponsibility, of shirking one's duties toward the world we share with one another and the community we belong to" [15]. Looking at this incident from the legal point of view, by sanctioning the murder the villagers become the accomplices of the homicide committed in front of them. In his book *Principles of the Sociology of Law*, Eugen Ehrlich explains this practice,

> But the basic social institutions, the various legal associations, especially marriage, the family, the clan, the commune, the guild, the relations of dominion and of possession, inheritance, and legal transactions, have come into being either altogether or to a great extent independently of the state. The center of gravity of legal development therefore from time immemorial has not lain in the activity of the state but in society itself, and must be sought there at the present time. This may be said not only of the legal institutions but also of the norms for decision. From time immemorial the great mass of norms for decision has been abstracted from the social institutions by science and by the administration of justice, or has been freely invented by them; and legislation by the state, too, can generally find them only by following the social institutions and imitating scientific or judicial methods. [16]

Thus, the community as a whole has been absolved of the crime that might have rendered serious repercussions in a different socio-cultural context. Again, in reference to Aristotle's division of justice, this community in the Colombian village practices Aristotle's version of corrective justice that has a different notion of correction than the western societies where 'correctional facilities' or 'reform centres' function differently. This chronicle of Marquez tells of a different justice system that seems exotic

to western readers. Literature, like anthropology and sociology, makes a provision for analysis of the contemporary justice system. It is imperative that the readers be aware of both the state law and the social practice, and the study of the anomaly may render different outlook on the story if it is read through legal lenses. On the other hand, in the pillory scene of *The Scarlet Letter* social norm and state law meet very enthusiastically. It proffers a Foucauldian undertone where the community as a whole, like Marquez's Colombian village, approbates such public spectacle of shame of Hester Prynne,

> But many of these non-corporal penalties were accompanied by additional penalties that involved a degree of torture…torture forms part of a ritual. It is an element in the liturgy of punishment and meets two demands. It must mark the victim: it is intended, either by the scar it leaves on the body, or by the spectacle that accompanies it, to brand the victim with infamy. [2]

In the novel, Hester Prynne is subjected to Aristotelian corrective justice. Society punishes Hester Prynne for the wrong she does to its norms and values. Her public trial becomes a juridico-political event and the society as a sovereign exacts its revenge upon her body and soul. Thus, "the vengeance of the people was called upon to become an unobtrusive part of the sovereign" [2]. So, we need to study the legal practices of the Puritan society that existed in Boston to comprehend the transgression committed by the protagonist and the response she receives from the community there. In a different spatial-temporal context the execution of justice might have been different, may that be more severe or minor.

This is where the beauty of literature lies; it is its specialty to both generalise and individualise different aspects of life and completely leave it to reader for interpretation. Legal analysis of such texts provides a scope for reappraisal of legal systems that existed and still exist in different spatial-temporal contexts and gauges the literary works on their basis. Sometimes they present the actual juridical condition of the society and sometimes they diverge to achieve a specific enterprise. For example, Kafka's unfinished novel *The Trial* seems preposterous, but it does exactly what Dickens' *Bleak House* did a few decades back. While Dickens was methodical and realistic in his criticism of the contemporary legal system, Kafka uses allegory and fable to illustrate the absurdities and complexities of the legal system he belonged to. Joseph K. was everyman in whose lack of knowledge of the legal system makes him its victim. Foucault might have picked it up from Kafka and illustrated it in his book *Discipline and Punish: The Birth of the Prison*, "…the entire criminal procedure, right up to the sentence, remained secret: that is to say, opaque, not only to the public but also to the accused himself. It took place without him, or at least without his having any knowledge either of the charges or of the evidence" [2]. This predicament of Joseph K. attracted myriad of interpretations from the scholars of both literary and legal fields, and the majority of them attempted to decipher how much of it is an allegory of universal justice system and how much of it is directed to contemporary judicial system of Austro-Hungarian empire.

Investigation of Characters: Next, we could look at the characters of a text through legal point of view. For example, the character of Mr. Tulkinghorn in *The Bleak House* depicts the picture of a very cunning attorney who keeps his client under his thumb. Dickens' criticism on the contemporary law and the role and attitude of the lawyers do not flatly stereotype them. They are neither wholly individuals nor the victims of the system they belong to; rather they are the by-products of both in a very vigorous way,

> The lawyers have twisted it into such a state of bedevilment that the original merits of the case have long disappeared from the face of the earth. It's about a will and the trusts under a will — or it was once. It's about nothing but costs now. [7]

Dickens' portrayal of Mr. Tulkinghorn, in contrast to common stereotyping, humanises the lawyers. Dickens' lawyers do not remain mere stock characters any more. They become individuals with emotion who have capacity to become antagonists. Mr. Tulkinghorn is simultaneously a polished lawyer, a cold-blooded criminal, a psychotic stalker and a malevolent villain. He effortlessly stands out among the swarms of other lawyers who either are greedy and obnoxious or champions of justice. He is quintessential example of the age he represents, since Dickens has projected all the negative qualities of legal system in this dynamic character who above all is a very efficient in his profession. Eugene F. Quirk comments that, "One of Dickens' most consistently undervalued achievements in *Bleak House* is the rich complexity in the characterization of the lawyer Tulkinghorn" [17]. This character portrays the power of the lawyers over the clients because the clients are overly dependent on them. This has been minutely illustrated by Kafka in his unfinished novel *The Trial* where one of the reasons of the demise of the protagonist Joseph K. is due to his desire to be free from the clutch of his lawyer, Herr Huld. Herrr Huld demonstrates before the protagonist the power he can exercise over his client through another character, Block the Tradesman.

> So the lawyer's methods, to which K., fortunately, had not been long enough exposed, resulted in this: that the client finally forgot the entire world, desiring only to trudge along this mistaken path to the end of his trial. He was no longer a client, he was the lawyer's dog. If the lawyer had ordered him to crawl under the bed, as into a kennel, and bark, he would have done so gladly. [3]

While Dickens' criticism was directed towards the Chancery system of Victorian England, Kafka was disillusioned with the legal system of old and dying monarchy. However, we find the opposite in Shakespeare's *The Merchant of Venice*. Portia's legal acumen is the reason of Antonio's acquittal in the court. Portia's 'go and get' attitude is kind of imaginary transplant on Shakespeare's part as Juliet Dusinberre points out that "in Elizabethan and Jacobean times, freedom of conscience for women was still a new concept" [18]. Shakespeare was trying to portray a new identity for women after the spirit of the queen that they collectively upheld, otherwise Elizabethan women were not in any position either socially or legally to pose for a lawyer and engage in argument with her male counterpart.

Analysis of Court-room Scenes: The third and last proposition is to look at the court-room scenes in reference to contemporary laws. Shylock took Antonio to the court on ground of breach of contract. This particular English law was based on a Latin expression that demonstrates *caveat emptor* (let the buyer beware). It does not matter how cunningly Portia manages the situation no provision in the English Law would acquit Antonio of the charges brought by Shylock. Even Antonio is very well aware of his predicament. He discusses the matter with Solanio when Solanio suggests that the Duke might exonerate him from the bond,

> The Duke cannot deny the course of law:
> For commodity that strangers have
> With us in Venice, if it be denied,
> Will much impeach the justice of his state;
> Since that the trade and profit of the city
> Consisteth of all nations [19].

The court-room scene is just an attempt to humanize the legal procedure so that it can satisfy the ego of the majority of that contemporary society by making them believe that justice is done appropriately.

This aspect of analysis and the questions posited at the beginning of this paper are better understood with regard to *The Iliad: Book XVIII*. The ekphrastic feature of the shield of Achilles instantiates a popular legal system in its infancy. The carving poses two issues the concept of monetary reparation for wrongdoing and the presence of elderly intermediary who arbitrates between the two parties. The determination of the origin of *weregild* or blood money is disputable but the concept is hardly credited to Mycenaean Greeks. Still, Homer's depiction of such a scene offers opportunity to probe the matter further and accredit the Mycenaeans or Homer for the initiation of such a system. Although there is no evidence in the poem itself of such practice, it can be speculated that Homer might have transplanted the practice of his age in the poem. This theory deserves some merit because the concept is believed by the historians to be originated from the Romans, and Romans were very efficient borrowers of Greek culture. In contrast to this aspect of the carving, presence of elders or so called 'judges' was the valid proof of the genesis of a judicial system that would later be very popular in more than fifty countries across the globe after approximately five thousand years. The poem itself endorses their qualifications as judges through the character Nestor who tries to mediate between Agamemnon and Achilles:

> Listen to Nestor. You are both younger than I,
> And in my time I struck up with better men than you,
> Even you, but never once did they make light of me.
> I've never seen such men, I will never again…
> …They were the strongest mortals ever bred on earth,
> The strongest, and they fought against the strongest too,
> …And I was in their ranks…they enlisted me themselves
> …they took to heart my counsels, marked my words [11].

This juridical practice was later transplanted partially or in totality in various socio-cultural contexts till now. At present, jurors are selected through the process of *voir dire* where the neutrality of the jurors is determined. There are numerous popular court-room scenes fashioned after this particular system in the pop culture. For example, a Hollywood movie *12 Angry Men* is a critique of the jury system where it is maintained that the decision that each juror can be quite subjective [20]. The jurors might project their values while reaching a decision about a case which is inconsistent to justice done to society. Another example I want to lay out is the popular Bollywood movie *Rustom* which is based on a true story and similar in nature to the previously mentioned movie. What makes this Bollywood movie significant is that the jury system was abolished in India when the obvious shortcomings of the system were realized since the jury was greatly influenced by the media trial outside the court. According to a review article by Parul Agarwal [21] only one juror was objective enough to go against the flow, and for obvious reasons his name was kept secret for quite a time. So, a thorough study of the jury system would offer a clearer understanding of the movies and other literary texts and pave the way to connect these two fields in a methodical way so that they can both complement each other congenially.

Conclusion: The courtroom scenes in *The Merchant of Venice*, *12 Angry Men* and *Rustom*, the depiction on the Shield of Achilles, the Jarndyce vs Jarndyce case in *Bleak House*, the trial against Joseph K. in *The Trial*, the pillory scene in *The Scarlet Letter*- are all legal transplants. Each text depicts the legal system of its generation either literally or figuratively. These depictions are kind of transplants of respective legal systems in a completely different discipline. These transplants then become the "moving of a rule or system from one [field] to another, of from one [culture] to another [10] ". Nonetheless, this transplant is the nexus where law and literature meet. This article has been a very humble endeavour to make a connection between these two diverse fields and initiate a framework that can explain literature through legal lenses and broaden the scope of literature in this era of interdisciplinarity. This framework will hopefully pave the way to accommodate legal analysis in literature classrooms and allow the students to look at literary texts from a legal point of view. This understanding of legal matters will expectantly help the students dealing with them in real-life scenarios. Furthermore, this embryonic framework can be the bedrock for upcoming researchers who would want to develop this interdisciplinary field in the future.

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