

Literature and the Law

Ona Russell, PhD
www.onarussell.com

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SEMINAR OUTLINE

A. Introduction

1. Emily Dickinson, **quote I**

B. Theory behind Literature and the Law

1. Language
 - a. Deconstruction/Jacques Derrida
 - b. Ferdinand de Saussure
 - c. Edward H. Levi, **quote II**

D. Law in literature—a brief history

E. Literature's practical value to the legal process

1. Rhetorical rigor
 - a. Literary lexicon (hand-out)
 - b. Linguistic precision, **quote III**
 - c. Examples: Clarence Darrow, **quote IV**
2. Creative arguing
 - a. Herman Melville—*Moby Dick*, **quote V**
 - b. William Faulkner—*The Sound and the Fury*, **quote VI**
3. Reasoned empathy
 - a. Martha Nussbaum
 - b. Reader response theory
 - c. Susan Glaspell—*A Jury of Her Peers*
 - d. Pramoedya Ananta Toer—*This Earth of Mankind*, **quote VII**
 - d. Harriet Beecher Stowe—*Uncle Tom's Cabin*, **quotes VIII**
 - e. Justice Stephen Bryer, **quote IX**

F. Judge O'Brien O'Donnell/*O'Brien's Desk*, **quotes X & XI**

G. Suggested Reading (hand-out)

QUOTATIONS

- I. Tell all the Truth but tell it slant—
Success in Circuit lies
Too bright for our infirm Delight
The Truth's superb surprise
As Lightning to the Children eased
With explanation kind
The Truth must dazzle gradually
Or every man be blind—

Emily Dickinson

- II. "The first stage is the creation of the legal concept which is built up as cases are compared. The period is one in which the court fumbles for a phrase. Several phrases may be tried out; the misuse or misunderstanding of words itself may have an effect. The concept sounds like another, and the jump to the second is made. The second stage is the period when the concept is more or less fixed, although reasoning by example continues to classify items inside and outside the concept. The third stage is the breakdown of the concept, as reasoning by example has moved so far ahead as to make it clear that the suggestive influence of the word is no longer desired."

An Introduction to Legal Reasoning
Edward H. Levi

- III. Dogs Must Be Carried
Dogs Must Be Carried
Dogs Must Be *Carried*
Dogs *Must* Be Carried

- IV. Darrow – "Then, when the Bible said, for instance, 'and God called the firmament heaven. And the evening and the morning were the second day,' that does not necessarily mean twenty-four hours."
Bryan – "I do not think it necessarily does."
Darrow – "Do you think it does or does not?"
Bryan – "I know a great many thinks so."
Darrow – "What do you think?"
Bryan – "I do not think it does."
Darrow – "You think those were not literal days."
Bryan – "I do not think they were twenty-four-hour days."
Darrow – "What do you think about it?"
Bryan – "That is my opinion. I do not know that my opinion is better on that subject than those who think it does."
Darrow – "Do you think those were literal days?"
Bryan – "My impression is they were periods."

Scope's Trial Transcript

- V. "Aside from those more obvious considerations touching Moby Dick, which could not but occasionally awaken in any man's soul some alarm, there was another thought, or rather vague, nameless

horror concerning him, which at times by its intensity completely overpowered all the rest; and yet so mystical and well nigh ineffable was it, that I almost despair of putting it in a comprehensible form. It was the whiteness of the whale that above all things appalled me."

Moby Dick, Herman Melville

VI.

"Luster came away from the flower tree and we went along the fence and they stopped and I looked through the fence while Luster was hunting in the grass."

The Sound and the Fury,
William Faulkner

VII.

"An, if you were Javanese, you would be able to write in Javanese. You write in Dutch, Gus, because you no longer want to be Javanese you write for Dutch people. Why do you honor them so greatly? They drink and eat from the Javanese earth. You do not eat and drink from the Dutch earth. Why, why do you honor them so greatly?"

This Earth of Mankind,
Pramoedya Ananta Toer

VIII.

"If it were *your* Harry, mother, or your Willie that were going to be torn from you by a brutal trader, tomorrow morning—how fast could you walk? How many miles could you make in these few brief hours, with the darling at your bosom,—the little sleepy head on your shoulder,—the small, soft arms trustingly holding on to your neck?"

Uncle Tom's Cabin
Harriet Beecher Stowe

IX.

"I read something that moved me a lot not very long ago. I was reading something by Chesterton, and he was talking about one of the Brontes, I think her *Jane Eyre*. He says you go and look out at the city—I think he was looking at London—and he said, you know, you see all those houses now, even at the end of the nineteenth century, and they look all as if they're the same. And you think all those people are out there going to work and they're all the same. He says, but what Bronte tells you is they're not the same. Each one of those persons in each one of those houses and each one of those families is different, and they each have a story to tell Each of those stories involves something about human passion. Each of those stories involves a man, a woman, children, families, work, lives—and you get that sense out of the book. And so sometimes I've found literature very helpful as a way out of the tower."

Chief Justice Stephen Bryer

X.

"We are members of one great body. We cannot exist without mutual help. Circumstances may prevent us from conferring worldly gifts from the hand to the needy, but the heart possesses an inexhaustible supply of gifts more valuable. Kind words, and a helping hand, a touch of sympathy, are precious gifts which silver or gold cannot buy and, when applied frequently, are bound to make a little circle in which we move better and happier. Such influences stimulate and develop humanity. Every youth born into this life with the world against him should find one kind, sympathetic big brother, imbued with the spirit of brotherhood implies; you be that brother."

Judge O'Brien O'Donnell

XI.

"Truth and justice. Words that Sarah took for granted. Ideas she breathed in like air. But what of those ideas? Were they eternal principles, outside the bounds of human history, or man's invention and therefore subject to interpretation? In court she had heard convincing arguments for each point of view. But this was one of those questions to which she herself didn't have a definitive answer."

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A LITERARY LEXICON

"All the world's a stage"—The idea that all life is theater, and just as actors have parts to play before an audience, so do ordinary men and women. From Shakespeare's play, *As You Like It*.

"Bad seed"—An evil person whose wickedness is innate and evident from birth. From Maxwell Anderson's play of the same name.

"Catch-22"—A problematic situation for which the only solution is denied by a circumstance inherent in the problem or by a rule; an illogical, unreasonable, or senseless situation. From Joseph Heller's novel of the same name.

"The dog that didn't bark"—A nonaction or nonevent which is significant precisely because it *didn't* happen. From Sir Arthur Conan Doyle's short story, *Silver Blaze*.

"The emperor's [has no] clothes"—Something meaningless or nonsensical or wrong that is automatically and uncritically agreed with. From the fairy tale by Hans Christian Anderson.

"Faustian bargain"—A bargain made or done for present gain without regard for future cost or consequences; a pact with the Devil. From Christopher Marlowe's play, *Dr. Faustus*.

"Grok"—To understand intuitively, empathetically; to establish rapport with. From Robert A. Heinlein's novel, *Stranger in a Strange Land*.

"Herculean"—Relating to, Hercules; of extraordinary power, extent, intensity, or difficulty. From Greek and Roman mythology.

"Ignorant Armies"—Forces blindly fighting with each other with no understanding of whom they are fighting or why. Often used to describe bitter political disputes where all is conflict, contention and confusion. From Matthew Arnold's poem, *Dover Beach*.

"Jekyll and Hyde"—One having a two-sided personality, one side of which is good and the other evil. From Robert Louis Stevenson's novel, *The Strange Case of Dr. Jekyll and Mr. Hyde*.

"Kill/shoot the messenger"—To punish the bearer of bad news, even though the person has done no more than deliver the information. From Sophocles play, *Antigone*.

"Last hurrah"—A final, often valedictory effort, production, or appearance. From Edwin O'Connor's novel of the same name.

"Muckraker"—One who investigates, exposes, or disparages. From John Bunyan's allegorical narrative, *The Pilgrim's Progress*.

"Newspeak"—Obfuscatory or misleading language, especially terminology used by politicians, bureaucrats, or ideologues. From George Orwell's novel, *Nineteen Eighty-four*.

"Odyssey"—A great journey, especially a long and complicated one. A physical, emotional or spiritual quest. From Homer's epic poem, *The Odyssey*.

"Pound of flesh"—Infliction to the exact letter of the law, without mercy, of a punishment that is cruelly painful. From Shakespeare's play, *The Merchant of Venice*.

"Quixotic"—Romantically impractical, unrealistically idealistic, and often extravagantly chivalrous. From Miguel de Cervantes novel, *Don Quixote*.

"The road less traveled"—Not the easy way. From Robert Frost' poem, *The Road Not Taken*.

"Sea change"—A marked change; a transformation. From Shakespeare's play, *The Tempest*.

"There's the rub"—There lies the difficulty. From Shakespeare's play, *Hamlet*.

"The unkindest cut"—The cruelest, most personally devastating injury or insult; often one inflicted by a person who is thought to be a friend. From Shakespeare's play, *Julius Caesar*.

"Sentence first, verdict afterwards"—Arbitrary treatment at the hands of authority. From Lewis Carroll's fantasy, *Alice's Adventures in Wonderland*.

"Whip the offending Adam"—To punish someone and leave him or her virtuous; to administer a drubbing that produces a kinder, gentler attitude. From Shakespeare's play, *Henry V*.

"Xanadu"—An idyllic, exotic, or luxurious place. From Samuel Taylor Coleridge's poem, *Kubla Khan*

"Yahoo"—A boorish, crass, or stupid person. From Jonathan Swift's novel, *Gulliver's Travels*.

"Zelig"—A chameleon. From Woody Allen's story of the same name.

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SUGGESTED READING

Novels

Bleak House and *Hard Times*, Charles Dickens
The Fall, Albert Camus
The Trial, Franz Kafka
Uncle Tom's Cabin, Harriet Beecher Stowe
The Unvanquished and *The Sound and the Fury*, William Faulkner
George Washington Gomez, Americo Paredes
Invisible Man, Ralph Ellison
Libra, Don DeLillo
Their Eyes Were Watching God, Zora Neale Hurston
The Fixer, Bernard Malamud
This Earth of Mankind, Pramoedya Ananta Toer
Moby Dick, Herman Melville
The Jungle, Upton Sinclair

Short Stories

"The Purple Hat," Eudora Welty
"The Night Before Battle," Ernest Hemingway
"A Jury of Her Peers," Susan Glaspell

Poetry

The Wasteland, T.S. Eliot
Leaves of Grass, Walt Whitman

Drama

The Rose Tattoo, Tennessee Williams
The Merchant of Venice, William Shakespeare

Essay/Autobiography

Walden, Henry David Thoreau
Life of a Slave Girl, Harriet A. Jacobs

Criticism/Theory

Law's Stories, Narrative and Rhetoric in the Law, ed. Peter Brooks & Paul Gewirtz
Poetic Justice: The Literary Imagination and Public Life, Martha C. Nussbaum
Law and Literature, Richard A. Posner
Troubling Confessions, Peter Brooks
Interpreting Law and Literature, ed. Sanford Levinson and Steven Mailloux

