

Law, literature, interpretation

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This special edition features some of the papers delivered, and conversations held, at the 2024 Research Unit for Legal and Constitutional Interpretation and Theory ("RULCI") Colloquium. RULCI, since its inception in the late 1990s, has been concerned about the extent to which law and – already in its early days – constitutionalism run the risk of becoming stale, overly satisfied and complacent, resulting in a failure both to pay attention to its complicity in the creation of violence and to remain interested in exploring ways to challenge or curb it. The theme of the 2024 Colloquium, and hence of this special edition, was 'Law, literature and interpretation'.

Why law and literature?

In versions of Western legal theory/ jurisprudence the relation between law and literature has been explored over many years raising questions about the multiple and varied ways in which the relationship between law and literature could be interpreted. The papers delivered during the colloquium – and also those included in the special edition – do not explicitly recall the history of law and literature scholarship. In the same vein our aim, here, is not to provide a detailed history. Rather, we recall a few features to provide some background or context to the theme at hand.

It may be important to mention how, since the early work of James Boyd White, who is regarded as one of the founders of law and literature scholarship, the notion of the 'literary imagination' has been central to work done in the

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field.² White, for example argued that literature should be studied as part of legal study for what it has to say about law and adjudication.³ He asserted that there is a strong resemblance between the study of literature and legal interpretation. White regarded law as part and parcel of 'other forms of life and other disciplines' insisting that 'law is a language and language is inherently part of the social world'.⁴

The law and literature movement, from the early days, insisted on the value of literature for an ethical understanding of the law, arguing that it can assist to understand human subjectivity better. Law and literature are seen to be related because of their shared dependence on 'language and a way of reading, writing, and speaking that involves similar interpretive practices'.⁵

Legal hermeneutics is thus regarded as coming to the fore as a result of the law and literature movement, which of course resulted in the 'interpretive turn' that occurred in traditional scholarship in the 1980s. The 'Great Books' approach preceded the law and literature movement – it later led to the law-*in*-literature movement – and more or less claimed that certain 'great books' are useful to understand certain legal themes better. Richard Weisberg is associated with this approach. Other Western, US, scholars associated with law and literature debates are Ronald Dworkin, Stanley Fish and Owen Fiss.

Yet, critical race and feminist scholars in the context of the US – like Richard Delgado, Derrick Bell, Patricia Williams and Robin West – also employed narrative jurisprudence to debunk traditional legal scholarship. Notable are postmodern scholarship and versions of critical legal theory which, since the late eighties/nineties, challenged some of the assumptions that the law and literature movement relied on. Adam Gearey, for example, argues that law and literature scholarship 'plays down the disruptive nature of aesthetics and ignores a kind of poetry that would show the unsure foundations on which

2 White JB *The legal imagination* (1973).

3 Minda G *Postmodern legal movements. Law and Jurisprudence at Century's End* New York: New York University Press (1995) 149.

4 Gearey A *Law and aesthetics* Oxford: Hart Publishing (2001) 8; White JB *Justice as translation* Chicago: University of Chicago (1990).

5 Minda (1995) at 150.

modern law is constructed.⁶ Douzinas and Gearey argue powerfully against what they see as portrayals of law that neglect its violence, its force.⁷

Engagements with law and literature, and law and aesthetics continue, also in South Africa. Wessel le Roux notes the rise in literary engagements in early post-1994 legal writing.⁸ Le Roux also cautions against a reliance on literature as an uncritical embrace of a turn to the better. Acknowledging the growth in law and aesthetics/law and literature scholarship – in particular beyond its Western guises – we wanted to create a space for a reflection on/engagement with law and literature within the context of RULCI's vision. If law (and legal scholarship) often asserts one solution/one answer/one way of doing, thinking, understanding, explaining, then literature opens many/multiple/manifold/diverse/plural/overlapping responses in the face of the former's totalisation. Similarly, the contributions included here cannot be exhaustive, but offer a mere glimpse of the numerous possibilities disclosed by a (more local, situated) reflection on Law, Literature and Interpretation.

The contributions

Angela Condello and Tiziano Toracca build on the argument developed in their published book *A Theory of Law and Literature: Across Two Arts of Compromising* (2020) to unpack 'A Freudian Theory of Law and Literature.' Their arguments rest on the idea that what law and literature share is a way to mediate conflicts that are embedded in human thought and action, in how we speak and act, both consciously and unconsciously. Honni van Rijswijk reflects on the novels of Alexis Wright to comment critically on 'The Australian Carceral Imaginary'. She argues that Wright reconfigures the carceral figures of the child, the paedophile, and the cop. More specifically, by centring First Nations epistemologies, storytelling, and law as counter-narratives to state violence, Wright presents us with an alternative jurisprudence. Jaco Barnard-Naudé, in a piece titled 'Art and Lack: Critical Divergence in Kandinsky, Rothko and Kentridge' offers a Lacanian analysis of their visual works. He focuses on the understanding of the relationship between law and "poetry" in terms of the structural literary devices of metaphor and metonymy.

6 Gearey (2001) 2. See also Douzinas C and Nead L *Law and the image. The authority of art and the aesthetics of law* Chicago; The University of Chicago Press (1999).

7 Douzinas C and Gearey A *Critical Jurisprudence* Oxford: Hart Publishing (2005).

8 Le Roux WB 'The aesthetic turn ...'

Two pieces on copyright are also included. Richard Shay's 'Bifurcated worlds and copyright norms: a literary reflection on normative pluralism and anarchy' and Ntando Sindane's 'Authenticating the authoring hand of ancestors through African Literature: towards a Decolonial copyright.' Shay, in the vein of law and literature scholarship, argues that literature can tell us more about what living in the law, to invoke Kronman, means. Relying on Kingsley Amis's (1994) *You can't do both* and Zakes Mda's (2002) *The Madonna of Excelsior*, he analyses the place of copyright works in the lives of the characters. Sindane follows a decolonial approach to engage with copyright law in South Africa, with a special focus on the question of authorship claiming that ancestors should be recognised as authors. In developing this argument, he draws on literary works by Mphuthumi Ntabeni, *Broken River Tent*, and *The Wanderers*. The last article is by Tanveer Jeewa in which she challenges 'property law's faceless "reason" through literature' and argues that literature could force judges to pay better attention to the life stories of the people who come before them. Such a turn towards lived experiences and textured narratives, it is argued, could result in better – more attentive and ethically responsive – judgement.

Furthermore, two author meets reader(s) conversations are included. Karin van Marle and Wessel le Roux engaged Johan van der Walt on his book, titled *The Literary Exception and the Rule of Law* (2023). Van der Walt's main contention is that law and literature are two distinct modes of inquiry and, for a certain liberal version of democracy to endure, these modes should never be conflated. Van Marle and Le Roux raise questions ranging across topics such as Kelsen, hermeneutics and Bram Fischer in their engagement with Van der Walt. Tshepo Madlingozi and Jaco Barnard-Naudé unpack the complexity of reparation in their discussion of Barnard-Naudé's *Spectres of Reparation in South Africa: Re-encountering the Truth and Reconciliation Commission* (2024). They consider and situate the concepts of lack, reparation and spectres in its/our South African context. Finally, Isolde de Villiers reviews *The Routledge Handbook of Cultural Legal Studies* (2024) edited by Karen Crawley, Thomas Giddens and Timothy D Peters. De Villiers unpacks how this work opens different worlds of inquiry by expanding the traditional concepts of what counts as a sources of law. Indeed, this last comment on the *Routledge Handbook* resonates with the very gist of our theme of Law, Literature, Interpretation, itself a call to open and explore the making and unmaking of plural worlds continuously.