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Understanding law and literature through Freud's compromise formation

Abstract

This article develops a theoretical framework that reconsiders the intersection between law and literature through the psychoanalytic notion of “compromise formation”. We propose that both law and literature function as arts of compromise, mediating conflicts that are not only social or institutional, but also psychic and structural. Drawing on literary theory (notably Francesco Orlando's reinterpretation of Freudian categories) and legal philosophy, the paper argues that both disciplines address ambivalence and contradiction, albeit differently: literature preserves and stages contradiction through figurality, while law resolves conflict through argumentation and decision-making. Three levels of compromise in law are outlined: foundational (the “contractual” basis of civilisation), ontological (legal object construction), and argumentative (interpretation and adjudication). We believe that using the literary model of compromise formation in legal reasoning and argumentation could offer new insights into how the law might handle deep moral and interpretive disagreements—particularly in areas like bioethics or civil rights—without necessarily suppressing contradiction. In doing so, the paper

invites a paradigm shift in how we conceive of justice, interpretation, and legitimacy within the legal order.

Keywords: law and literature; psychoanalysis; compromise formation; unconscious; jurisdiction; justice.

The intersection between law and literature: a hypothesis

The idea presented in this paper builds, to various extents, on a book we published in 2020, *A Theory of Law and Literature. Across Two Arts of Compromising*,¹ in which we compared law and literature starting from a hypothesis we still find worth discussing and that we aim to develop further in a future book project.

Quite obviously, the history of the relationship between law and literature is long and complex, but we believe that the perspective proposed here has the capacity not only to highlight a central aspect in both law and literature, but also to go beyond geographical boundaries and beyond national legal and literary traditions. In our opinion, what literature and law share is, in fact, something that affects everyone and that, by virtue of a sort of common ‘anthropological foundation,’ regards and connects all cultures. The great *a priori* on which this intersection is based is, of course, language (which is a central feature of both law and literature); yet, language should be understood as the form in which not only what we want (or we believe that we want) and are aware of (or we believe we are aware of) manifest itself, but also as the form in which a dimension “other” manifests itself (a dimension apparently unwanted and that we are unaware of). In short, we think that comparing law and literature means reflecting on the way in which they both mediate and ‘resolve’ conflicts, but we also think that conflicts are inscribed in the forms of human thought and action since the individual thinks, speaks and acts ambivalently, at the same time consciously and unconsciously. Human being – as Freud clarifies – is a divided subject characterised by a perpetual clash between contradictory psychological forces, and this discovery of psychoanalysis (it is in the deepest dimension of the human soul that conflicts and mediation occur) can help us compare law and literature and understand them as the arts of compromise. In other words, our starting point is the deeply

1 Condello A and Toracca T *A Theory of Law and Literature: Across Two Arts of Compromising* Leiden: Brill (2020).

conflictual understanding of human civilisation and the individual psyche that psychoanalysis has theorised, starting from Freud.²

Against this background, and considering the history of law and literature as a discipline, we aim to push the debate beyond the typical accounts – i.e., law *in*/law *as* literature – and we aim to suggest an unconventional take on the conjunction “and”, both connecting and dividing law *and* literature. In our theory, we aim to challenge the very intersection between law and literature, arguing that they do not just have something in common, but that they *function* analogously. Literature and law, in a nutshell, can be interpreted starting from the idea that both of them, albeit in different ways, try to resolve conflicts by performing mediation.

Moving from the idea that they are both arts of compromising, we think across law and literature, across legal theory and literary theory: they both mediate between contrasting reasons, being peculiar discourses with the properties of arts in the classical understanding of the term ‘*ars*’. They both entail, in other words, operations, techniques and mechanisms which reflect a knowledge and a practical capacity to handle specific cases and problematic situations. It is interesting to note how *ar**, the root of the term ‘art’, recalls the concept of “order” in many Indo-European languages and beyond;³ art in this broader sense is related, in other words, to a key notion of the juridical, religious and moral universe. It is related to a principle without which everything would return to chaos. Law and literature can therefore be conceived as arts in that they both have a guiding and directional function, an aspect particularly evident and intrinsic to law, and likewise powerful in literature and in figurative arts – as it is testified by Plato’s famous accusation against art in book X of the *Republic*.

Conceived as arts of compromising, law and literature are everywhere and, as abovementioned, cross both spatial and temporal boundaries. They are not only located in codified texts or in books, but in whatever form expression, of communication. As manifestations of a typically human compromise, they happen anywhere at anytime, potentially. Literature is not Dante or Cervantes

2 See Freud S *Further Remarks on the Neuro-Psychoses of Defence* – *Standard Edition*, III (1896); Freud S *A General Introduction to Psychoanalysis*, New York: G. Stanley Hall (1920); and Freud S *Civilization and its Discontents* – *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, Volume XXI (1930).

3 Benveniste É *Dictionary of Indo-European Concepts and Society*, Chicago: Chicago University Press (2016)

or Coetzee, but can be represented by any author in any tradition/time/place; likewise, law is not just the text of a regulation or the decision of a judge. Similarly and differently, they both mediate between contrasting reasons – precisely those ‘psychoanalytical’ reasons conflicting within each individual and among individuals, in human relations.

Hence, our hypothesis is the following: law and literature share an inclination towards compromise formation, a concept formulated by Freud and that, as we shall see, can be useful to compare how both literature and law mediate conflicts.

From Freud to literature: compromise formation

Compromise formation, for Freud, is the way in which the unconscious manifests itself by allowing two opposing instances both to be valid despite being in contradiction. For Freud, the unconscious manifests itself through four forms: dreams, lapsus, symptoms, jokes. These compromise formations arise from the interference between two opposing forces: one that removes and one that resists removal. The Freudian term ‘compromise’, more specifically, indicates a form assumed by a repressed wish, idea, or memory in order to gain admission to consciousness. This wish, idea or memory is distorted beyond recognition so that both the unconscious element that needs to be repressed and consciousness that needs to be protected from it are partially satisfied by the compromise. Symptoms, dreams, lapsus (parapraxis) and jokes are precisely the result of such partial satisfaction (compromise).

This idea was introduced by Freud in 1896 in his article *Further Remarks on the Neuro-Psychoses of Defence*⁴ and developed further in his book *Introductory Lectures on Psycho-Analysis*.⁵ It is important to underline that when Freud speaks of the result of such compromise, resulting from the interference of two opposing forces, he defines this result as a conciliation that nevertheless remains irreconcilable. In other words, it is a dynamic and dramatic reconciliation, since the two opposing forces (the unconscious element that wants to emerge and the consciousness that represses it) do not appease. As Freud claims:

4 See Freud (1896) at 170.

5 Freud (1916–1917), lecture XXIII.

we find a struggle between two trends, of which one is unconscious and ordinarily repressed and strives towards satisfaction – that is, wish-fulfillment – while the other, belonging probably to the conscious ego, is disapproving and repressive. The outcome of this conflict is a *compromise formation* [...] in which both trends find an incomplete expression.⁶

We use the term ‘compromise’ (which originally belongs to psychoanalysis) by referring to the Italian theorist of literature Francesco Orlando (1934–2010) – that is, as we shall see, as a “freudism without psychoanalysis”, i.e., we use the term in an unorthodox way.

In the literary critique of the second half of the 20th century, Orlando is known as the author of the ‘Organic Cycle of Freudian Studies,’ a series of books published between the 1970s and 1980s, and then republished in the 1990s.⁷ Orlando is not interested in Freud’s reading of the typical literary themes such as Oedipus or Electra that have a clear psychoanalytical question (like death drive or sexuality), but rather finds in Freud a logical-formal model by which he claims that the unconscious has a certain logic and that literature reflects this logic. It is not by chance that – after Lacan, who first had affirmed that the unconscious is structured as a language⁸ – one of the main points of reference for Orlando becomes the Chilean psychoanalyst Ignacio Matte Blanco.⁹ Matte Blanco hypothesises that the human psyche is based on two contrasting logics: one asymmetrical (what we usually refer to as “rationality”, governed by the principles of Aristotelian logic: principles of identity, non-contradiction, incompatibility); the other, symmetrical (what we usually refer to as “irrationality”, governed by the principle of generalisation and the principle of symmetry).

Such logical-formal model can be useful to understand how the law functions in relation to how literature functions, and, most importantly, to how the human psyche functions. As a matter of fact, we find it a powerful resource for imagining a society where opposing interests and values can be justly

6 Freud (1923) at 242.

7 The series comprises four titles: *Lettura freudiana della Phèdre*, 1971; *Per una teoria freudiana della letteratura*, 1973 (translated into English as *Toward a Freudian Theory of Literature: With an Analysis of Racine’s Phèdre*, 1978); *Lettura freudiana del Misanthrope – e due scritti teorici*, 1979; *Illuminismo e retorica freudiana*, 1982.

8 Lacan *J Écrits*, Paris: Seuil (1966).

9 Matte Blanco *I The Unconscious as Infinite Sets. An Essay in Bi-Logic*, New York: Routledge (1975).

balanced, 'compromised,' and, most importantly, be recognised contextually. This imaginative possibility is absolutely timely for the functioning of the rule of law in a world increasingly characterised by various tensions between local and global struggles, clashing systems of values, new and old forms of exploitation, oppression or domination. This revolutionary perspective, introduced by a psychoanalytical dynamic of compromise formation, might produce a shift of paradigm in the rationality of the modern concept of the rule of law, based on theories of the subject, of relations, and of institutions. This paradigm shift suggests the possibility of an alternative conception of the rule of law – a conception no longer based on one logic (e.g., the white middle-class male as the main model of subject) but on various logics supporting the idea that what is considered "other" (illogic or irrational), non-white, non-male etc. is and should be legitimate.

In Orlando's view, the concept of compromise is so important that one could say his theory is based on the effort to transfer it from psychoanalysis to literature. This possibility – to exclude contradiction, to allow for opposing instances, opposing reasons, and worldviews, to coexist, to be simultaneously valid while being in contradiction – is the clearest and most promising explanation to why literary texts have always been considered ambivalent.

One of the most important things underlined by Freud, crucial for the transposition of psychoanalytical categories to literature, is that compromise formation is not the *outcome* of the clash between psychic forces, but it is the semiotic *manifestation* of this outcome: it is the form in which this clash takes shape. We can observe two clashing psychic forces (one that removes, the other that resists removal), and the outcome of this clash manifests itself in a form. Freud includes under the expression 'compromise formation' all manifestations of the unconscious (i.e., dreams, lapsus, symptoms and jokes) and, for Orlando, literature is thus a compromise formation because it is itself a manifestation of the unconscious.

Literature is ambivalent for a specific reason because, in a literary text, it is possible for two opposite orders of ideas to coexist – i.e., right and wrong, an 'I' and a 'I am not', a 'you should' and a 'you should not' can be both valid. Hence, a dynamic, unresolved, unreconciled coexistence is at stake.

How does literature realise a compromise and why can literature be said to be a manifestation of the unconscious? According to Orlando, there is literature whenever a certain degree of *figurality* is present – this is why literature is not

merely identified with the 'classics' but it can be found everywhere. Within the mass of human discourses, Orlando claims, there is more literature than non-literature. Literature deals with figurality because it is through figures of speech that the logic of the unconscious is expressed and that literature becomes the site of a compromise formation. Rhetorical figures do not have an ornamental purpose, but rather, as an alteration of the relationship of transparency between signifier and signified, function as the language of the unconscious manifesting the coexistence of contradictory logics.

For Orlando, in short, literature is a recognisable and specific type of discourse that depends, first of all, on the presence of figurality understood as the key to access the logic of the unconscious – where there is too little figurality, the discourse is aesthetically irrelevant (i.e., it is very logical, and demands a rigor and objectivity unknown to literature); where there is too much figurality, the discourse risks to become incomprehensible (the logic of the unconscious is widespread). Admittedly, this hypothesis partly stems from a certain cultural season (mainly structuralism) that is now mostly out of fashion (the idea of 'literariness' and of specifically aesthetic values has been repeatedly and variously criticised).¹⁰ Nevertheless, it suggests a direction of research that still seems promising to us. For instance, the concept of compromise formation is used by Orlando to explain the constituted ambivalence of literary texts and the aesthetic pleasure that they cause, and from this perspective we argue that the comparison with law is doubly useful: on the one hand, literature provides a model for rethinking the way in which the law mediates conflicts, and, on the other hand, the role of the law becomes crucial to reflect on the ambiguous transgressive dynamics of literature¹¹.

In comparison to literature, the four languages of the unconscious mentioned above (dream, lapsus, symptom and joke) must be distinguished: all of them are signifiers, but only one—the joke—is also communicating. Like jokes, literature signifies but also communicates: there is always someone addressing someone-else, and claiming to be understood. Like the joke, literature is not an obscure language, it is not a language in which the signifier reigns (recall that this is how Lacan defines the unconscious: "the realm of the signifier"), but is rather a discourse that wants to reach an audience (and thus

10 Derrida (1967); Goodman (1968); Brioschi (1983); Fish (1980); Fusillo (2009).

11 On such difficulty of law to handle conflicts and more in general on its inability to embody justice elaborates Derrida speaking about the aporias of the law in particular. See Derrida (1992).

resonates with legal interpretation). This last point is useful because it clarifies why, for a theory of law and literature, the most important of Freud's insights is his work on the joke. Between the laughter caused by a good joke and the pleasure caused by a literary text there is a very relevant analogy, because both (laughter and the pleasure of the text) have to do with the logic of the unconscious, with the possibility of excluding contradiction, of "affirming by denying", of "being wrong by also being right", of "transgressing the law by affirming the law". Unlike ideological texts, literature always tends to recognise the reasons of the other. Thus, to quote Orlando:

Now, I would see precisely the following difference between a work of literature, even the most decidedly engaged and ideologized, and one of pure and simple ideology: that only the latter can limit itself to a rational, sharp and exclusive choice between *two intentions or two contrasting reasons or two forces* or, above all, *two meanings*; in it, it may be right and obvious that error, the enemy, etc., literally have no voice. But the characteristic of the great literary work, as of linguistic negation, according to Émile Benveniste who compares it with Freudian negation, «*est qu'elle ne peut annuler que ce qui est énoncé, qu'elle doit poser explicitement pour supprimer*». Therefore it is difficult for the literary work to fail to give the floor to the enemy, even if temporarily, tendentiously, indirectly, ambiguously; and since the discourse will nevertheless remain one, it must become in some way ambiguous as a whole. Certainly not necessarily in the sense that between the two contradictory meanings the reader will doubt what is right: but at least in the sense that in order to individuate, accept himself, choose himself as an 'I' throughout the discourse of the work, he will have to confront himself without escape with every rejected 'non- I'. And in this sense, if it is on the one hand important to remember that Racine and Molière make us listen not only to the voice of the guilty Phaedra or of the ridiculous maniacs but also of other characters - those of innocence or reason or authority - on the other hand let us not forget to understand why Pascal leaves the floor to the Jesuits for a very long time, Voltaire to the fanatics, Brecht to the capitalists.¹²

The compromise formation realised in a literary text is always between a repression and a return of the repressed, between a constituted social, political, or moral order and what is excluded, censored, denied by that order.

12 Orlando (1973) at 71 [our translation - epub; 1978]. See also Benveniste (1966) at 84.

From this perspective, as Orlando claims, literature can give voice to all that remains strangled in the world as it is. Yet, what is crucial is that repression and repressed are neutral containers. We must not conceive repression as a negative instance because it is repressive and the return of the repressed as a positive instance because it is repressed. Worryingly, by counterposing the neurosis and the idealism of Don Quixote to the carnivalesque euphoria of Sancho Panza, and thus counterposing repression, which is negative, to the joy of the carnival, i.e. the overturning of order and hierarchies, Bakhtin goes precisely in that direction.¹³ For a Freudian theory of literature, instead, repression is not unjust or evil and the return of the repressed is not just or good. They are neutral, empty and counterposed positions. Literature is transgressive, but it is also always, necessarily, conservative. It recognises the reasons of the repressor, albeit under the condition that it also recognises the reasons of the repressed.

As mentioned above, even in a very committed and ideologised literary text, the reasons of those who are criticised or those who appear as the enemy will somehow be recognised – escaping, once again, the idea that two ideas in contradiction cannot both be true at the same time, thereby giving space, once again, to the logic of the unconscious. The truth communicated by literature (unlike a philosophical or a scientific truth) is never perfectly coherent; on the contrary, it is ambivalent because it always reserves a space for what is not true, for what could have happened, for what contradicts what has been affirmed. Literature makes acceptable and speakable what is not acceptable and speakable, and it does so through a compromise that attenuates and sublimates the unacceptable and unspeakable content. If literature expressed only the repressed reasons (or those of repression), it would turn into ideology: it would oppose an order to another order, a strong logic to another strong logic. It would be a clearer discourse, perhaps more reassuring, but incapable of giving voice at the same time to plural instances and to touch the most profound truth of the human being – its constitutive antinomies, its contradictory nature, logical and illogical, to which all guilty subjects are always, partially at least, also victims.

13 Bakhtin's carnival resembles the return of the repressed theorized by Orlando but it presupposes that the repressed is characterised always positively, as the expression of vitality, joy, freedom. See Brugnolo *S Desiderio e ritorno del represso nella teoria di Francesco Orlando*, in *Between*, III (2013); Zinato E "Il riso in letteratura: fra autorità e trasgressione" in Zinato (ed) *Modi di ridere. Forme spiritose e umoristiche della narrazione*, Pisa: Pacini (2015) at 9–22.

From Freud to law: compromise formation

If, on the one hand, the connection between literature and compromise should be justified via figurality, form, and the arguments presented, then, on the other hand, we could say that law is all about compromise; as Aristotle writes in Book VIII of the *Nicomachean Ethics*, law is necessary when and where the social relations are not governed by harmony and balance. In other words, for Aristotle, law becomes necessary every time that *filia* is not enough – i.e., when human relations are dominated by conflicting values and hence require mediation. In situations governed by *filia*, law and justice are to some extent unnecessary because contrasts and conflicts do not arise or are less frequent. Therefore, synthetically, we could say that law is intrinsically related to compromise because its very existence is rooted in conflict. Law is essentially connected with compromise and it is a convention aimed at preventing conflict through a trade-off between rights and guarantees. The social contract is, indeed, a form of compromise formation between different reasons and needs.

Against such a general but crucial premise, we argue that, if we imagine more concretely how law works in terms of compromise formation, it becomes possible to distinguish more than one ground or level, more than one modality, in which law functions through compromise formation in terms similar to those discussed above (both in the case of psychoanalysis and literature).

Ground zero, or the compromise for civilisation: If we consider the essential grounding of law,¹⁴ the very essence and reason for the being of the law, we are confronted with the first level of compromise, that is to say the ‘contractual’ level. In the permanent struggle between norms and reasons, between various norms and various reasons, we experience what could be defined, in Freudian terms, as a ‘compromise for civilisation’. Here, civilisation must be understood not only in psychoanalytical terms, but also in political or institutional terms – as for instance in Hobbes, Locke or Rousseau. This compromise for civilisation grounds the law, makes it into something stable, continuous, powerful and strong.¹⁵ Hence, we could synthetically say that the normativity of law is grounded in a system of validity and legitimation defining *is*, *ought*, *right*, and *wrong*.

14 Fitzpatrick P *Modernism and the Grounds of Law*, Cambridge: Cambridge University Press (2002) at 2.

15 Derrida (1992) at 43.

Ground one, or the compromise in legal ontology: After the basic level of compromise in the legal realm, which is an essential compromise without which there would be no legal orders, we have a further level, where more compromise is revealed. This could be defined as the level of legal reality, or the level of the ontology of legal objects. Starting from Roman law, every object in the legal realm is not just a “*res*”, but is always first and foremost a *res disputata*. The definitions of legal concepts – e.g., property, autonomy, damage, responsibility, etc. – are negotiated context after context, case after case, via interpretation, argumentation, and the consequent adaptation of general models and types to particular situations and persons. Each term (‘property’, ‘autonomy’, ‘damage’, ‘responsibility’, etc.) referring to a legal concept, in other words, is translated into a thing, (a *Sache*, if we were to follow the German civil law doctrine) by starting from contrasting/opposing points of view. Hence, a ‘contract’ is a ‘contract’, or a ‘damage’ is a ‘damage’ only inasmuch as there is agreement on the correct meaning of a term, on what is denoted, and the logic behind its use.

Ground two, or the compromise in argumentation and interpretation: Whilst the abovementioned grounds are necessary for the constitution of legal orders, their ongoing functioning really depends on what we can label “ground two” – i.e., the level on which compromise is realised through argumentation and interpretation. Argumentation and interpretation are indeed mechanisms where the polarities¹⁶ of the law interact within the horizon of a *ius – dicere*, of a *dernier mot* – i.e., within the horizon of a decision. In fact, the very word ‘argument’ stands to indicate the presence of conflictual instances that must find a solution for a conflict. From this point of view, law differs from literature in that law argues, explains and clarifies divergent positions in order to justify a decision, while literature (as we have seen above) tends to preserve contradictions through the use of language and figurality.

All three of these grounds of compromise in law enact an oscillation between polarities (in other words, the reasons on one side of a conflict versus the reasons on the other side of the conflict) and can be read as compromise formations insofar as they are dialectical and goal-oriented. Their main purpose is judgment. In the legal realm, unlike in literary realm, polarities are cleared up by adjudicatory mechanisms, through the adaptation of general rules to specific

16 See Manderson D “Modernism, Polarity, and the Rule of Law” (2012) 24 *Yale Journal of Law and Humanities* 475–505.

contexts. The three grounds of the compromise that have been presented, in other words, all reflect the necessity of mediating between conflicts and the consequent search for a just balance between opposing reasons, between norms and reasons, etc. In the compromise, then, we find the dialectical tension between law and justice, law and values, and we see reflected the compromise for civilisation, the ontological compromise, and the argumentative/interpretive compromise.

How can such a movement – from Freud to law – be useful for law and its functioning? Can this perspective help make the law more just? Admittedly, the idea of compromise formation would not be particularly useful in fields of law characterised by low, or even absent, disagreement. There are many disputes (for instance, in fields like tax law) where the decision mainly regards the correct procedures, the correct steps, or the correct data or amounts of goods at stake. In those cases there can, of course, be disagreement (this is, after all, the case when they get to court), yet, in those fields the disagreement reflects divergent positions but not necessarily divergent worldviews. On the contrary, there are fields of law where decision-making procedures are more focused on the definition of a certain balance between conflicting moral values. Since morality is not made of immutable principles, but expresses attitudes which might vary from context to context, *quid iuris* when a court must decide if euthanasia is legal or not? *Quid iuris* in front of issues concerning self determination? In other words, then, who gets to decide, and translate into legal mechanisms, what is just or unjust? Is there any court or institution entitled to decide on tragic choices?¹⁷

Similar questions are particularly relevant for conflicts that entail a clear clash between conflicting values and worldviews, such as issues regarding bioethics and civil rights. We refer, for instance, to cases concerning euthanasia or reproductive justice, on the one hand, and cases concerning same-sex marriage and adoption on the other. These cases concern what have been termed “deep interpretive disagreements”¹⁸ – disagreements in which profound divergences in worldviews may cause a short circuit in the interpretation of legal provisions (for example, in the case of concepts such as ‘dignity,’ ‘personal

17 See Calabresi G & Bobbit P *Tragic Choices. The Conflicts Society Confronts in the Allocation of Tragically Scarce Resources*, New York: W W Norton & Co Inc (1978).

18 See Villa V “Deep Interpretive Disagreements and Theory of Legal Interpretation” in Capone A & Poggi F (eds) *Pragmatics and Law. Perspectives in Pragmatics, Philosophy & Psychology* Springer, Cham (2016); and Sunstein C *Legal Reasoning and Political Conflict* Oxford: Oxford University Press (2018).

autonomy,' 'self-determination,' 'life,' and alike). Under certain conditions, cases of this kind can lead to incompatible interpretations of legal sentences that contain expressions on which there is open and profound disagreement. This often happens with provisions of constitutional texts and declarations, because they concern fundamental rights, as well as general views on society, life, and relations. Similar disagreements cannot be solved once for all: they are intrinsically tragic and involve both ethical questions (what is right and what is wrong) and meta-ethical questions (how to justify the positions and settle the disputes).

It is, in particular, against similar cases that compromise plays a role analogous to that played in literature: in similar cases, in fact, entire orders of values clash and, most importantly, it is difficult, where not impossible, as claimed by legal philosopher Vittorio Villa, to decide which position is right and which one is wrong, or which value is more worthy than the others. The concept of compromise formation can shed light on the limits of the law – both in terms of how legal provisions ignore/neglect the psychic life of individuals, and how to handle crucial tensions between values such the aforementioned. If there is, and it is sacrosanct, the need *to decide* (i.e., *decidere*, 'to cut') in some cases, there might also be the need, in other cases, *not to decide* and to keep the contradiction open. In short, the limits of the law emerge not only where decisions are not made and should be made, but also where decisions are made and should not be made.

The analysis of literary compromise invites us to reflect on the limits of the law, especially on its possible distance from reality and, in particular, from the functioning of the psychic life of individuals which is precisely the site of a continuous tension between contrasting, opposing and contradictory tendencies. Literature allows us to exercise the art of compromise in forms that consider this conflictual and contradictory dimension of psychic life. What about law? How could law embody and convey this dynamic which is specific of/to human being? In other words, before tragic conflicts concerning individual freedoms (choices relating to the body, identity, sex, faith, etc.) and, more generally, before conflicts that fall within the moral sphere (which is a practical sphere having to do with choices and actions that are all equally 'just' and valuable, to which different and often opposite values are given), can the model of literary and psychoanalytical compromise formation (which is less neutral than argument or justification) become a useful juridical model? How could conflicting sides of a dispute communicate? At what level of the life of

the law could such a change happen? In drafting legal texts (so that they could include as many chances or choices as possible), or in legal decision-making (by including, for instance, steps and audits within the procedures in order to present all interests and positions at stake)?

While literature is closer to a language of the unconscious and, as such, can take advantage (often more openly than law) of a logic that admits the coexistence of opposites in a compromise formation – literature, moreover, not being oriented towards a decision – law is a rational language of the conscious dimensions of the human psyche that constitutively tends to exclude contradictions, since it is precisely aimed at preventing and resolving conflicts (if necessary, also by sacrificing interests or reasons at stake). Law mediates between reasons, by recognising the relevant values and by bringing them back to a coherent order and hierarchy, to reach a point of adjudication. Because of such necessity, the whole logic of the law is based on the opposition between what *can or cannot* be done; what *should or should not* be done. Everywhere, the logic of juridification is characterised by the need to classify, re-order to bring back, include and exclude.¹⁹

Perhaps, then, one of the main purposes of the law and literature movement is precisely to try and undermine this logic, and to underline that a certain logic or way of thinking reflects a certain model of society, and thus to provide critiques of the law with other watchwords. This, indeed, is a theme that we have tried to address in our aforementioned book, but which surely deserves further study and reflection, calling for a critical approach and interdisciplinary research.

Concluding remarks

To wrap up, we think that both law and literature mediate among various forms of conflictuality and that the compromise formation realised in literary texts evidences the limits of the law. Law, in fact, cannot claim that something is at the same time true *and* false, right *and* wrong – it is, in other words, not capable of doing what literature does by virtue of its relation with the bi-logic of the unconscious. To schematise: the idea that literature is a communicative manifestation of the language of the unconscious (as jokes in Freud's theory) leads one to consider literary texts as compromise formations between

19 Condello and Toracca (2020) at 119.

contrasting logics – i.e., between contrasting worldviews and reasons for action which never cease to be in contrast even if they coexist. From this perspective, literature allows us to exercise the art of compromise in forms that the law cannot institutionally perform. The underlying provocation of this paper, then, was to ask whether and to what extent the law could embrace such a different logic which is, however and in the end, profoundly human.

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