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Bridging Disciplines: Finding a Common Language in Law and Literature

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Abstract

This paper highlights the importance of a methodological approach in “law and literature” research, noting that many analyses, especially those by students and young scholars, lack an introduction to their methodology. It emphasizes the need for a common language between legal and literary scholars to bridge their interdisciplinary gap. The paper provides a concise guideline on how to approach “law in literature” topics from a methodological perspective, stressing the importance of literary theory and context-specific interpretation. It suggests practical steps to define legal terms and clarify legal contexts, ensuring comprehensibility for both disciplines. The goal is to enhance mutual understanding and improve the quality of interdisciplinary analyses.

Key words: common language; interdisciplinarity; methodology; legal theory; literary theory

Introduction

When conducting research in the “law and literature”-field, especially when reviewing essays and analyses on literature that addresses legal themes written by students or young scholars, it is notable that very few of them include an introduction to their methodology. In recent years in particular, short analyses about the connection between legal phenomena in certain literary works from antiquity to the present day have appeared with increasing frequency. Such analyses are often (by no means always!) approached from either only a literary or only a legal perspective without explaining the goal by doing so. However, it is particularly important in this interdisciplinary field of “law and literature” to deal intensively with the methodology of this field. This article aims to provide a concise and straightforward guideline, especially useful as a first aid kit for students and scholars new to the area, on how to approach “law in literature” topics from a methodological perspective. Some main approaches can in a similar way be applied to different interdisciplinary literary analyses. However, this paper aims to emphasize the particularities of interdisciplinarity between the disciplines of law and literature.

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1. The Necessity of a Common Language

“Law in literature” is clearly a highly interdisciplinary field of research. Although this brings with it the “border crossing” as an “attraction and gain in knowledge of “law and literature””¹, it also presents challenges, namely “finding a common language for literary scholars and legal scholars.”² *Gadamer* expressed a similar, but more general thought when he put forward the thesis that “hermeneutic conversation, like real conversation, must work out a common language and that this working out of a common language is not, as in conversation, the preparation of a tool for the purposes of understanding, but coincides with the realization of understanding and communication itself”.³ For this reason, it is necessary to base analyses in this field on such a common language as a methodological element.

In “law in literature”, the chosen methodology for understanding texts is usually literary-theoretical interpretation.⁴ Literature and law are not so dissimilar; both use words to convey a fact. The aim can be different – so it can be for law (at least it should be, even if one may often get a different impression, especially in the context of harmonization efforts at EU level) to be as clear and simple as possible, generally understandable use of words – while literary creators can also pursue precisely the opposite goal for the purpose of artistic debate.⁵ In any case, literary theory is generally suitable for analyzing works that contain legal themes. In concrete terms, however, a specific literature-and-law-context-oriented literary theory must be applied in the sense of *Gadamer*, which, with the aim of finding a common language, proceeds in a strongly explanatory but at the same time also intention-oriented manner. This is because literary texts that talk about law can pursue many different intentions: “It is not uncommon for legal issues to be used merely as bait for the reader in order to get him excited about a story that is really about problems that lie behind the legal case.”⁶ However, “reading [...] can also increase the objectivity of judgment through literary familiarization with changes of perspective – e.g. the perspective of the perpetrator or the victim. In this way, engaging with literature can generate pre-understandings, which are known to be indispensable as starting points for legal hermeneutics.”⁷ It is therefore highly relevant for this type of text to always consider the intention of the text in question when analyzing it, as far as this is practically possible. In addition, a literary text, let alone literary analyses, can only be understood if one also understands what it is about. The explanatory element is therefore also of great importance. It must be based on the level of knowledge of the average reader, but at the same time only explain as much as is necessary to understand

¹ Heinz Müller-Dietz, *Grenzüberschreitungen. Beiträge zur Beziehung zwischen Literatur und Recht*, Baden-Baden 1990; Eric Hilgendorf, Jan C. Joerden, *Handbuch Rechtsphilosophie*, Stuttgart 2021, p. 317.

² Doris Pichler, “Law and literature: Some reflections upon the nature of its interdisciplinarity”, in *Recht und Literatur im Zwischenraum/Law and Literature In-Between. Aktuelle inter- und transdisziplinäre Zugänge/Contemporary Inter- and Transdisciplinary Approaches*, ed. Christian Hiebaum, Susanne Knaller, Doris Pichler (Bielefeld: transcript Verlag, 2015), p. 15-36, p. 15 ff.; *Handbuch Rechtsphilosophie*, S. 317.

³ Hans-Georg Gadamer, *Wahrheit und Methode Grundzüge einer philosophischen Hermeneutik*, Tübingen 2010, p. 391 f.

⁴ Guyora Binder, Robert Weisberg, in *Literary Criticisms of Law*, Princeton 2000, IX, 5 f.

⁵ Similarly to this Benjamin Cardozo, “Law and Literature”, in *Yale Review* 14 (1925), p. 699 ff.

⁶ Richard A. Posner, *Law and Literature*, Cambridge 2009, S. 40; cf. also: *Handbuch Rechtsphilosophie*, S. 321.

⁷ Susanne Beck, Jan-Christoph Marschelke, in *Handbuch Rechtsphilosophie*, ed. Eric Hilgendorf, Jan C. Joerden (Stuttgart: J.B. Metzler, 2021), p. 322.

the argument being put forward. This is an attempt to find the common language just described. Nevertheless, awareness of this problem must be kept in mind and a constant attempt must be made in this work to develop a common language. Referring to *White, Minda* formulated: “For law and literature scholars, the necessity of speaking in the language of law or literature requires that they translate the Other’s language into our own language.”⁸

2. How to find a common language

Now having raised awareness for the importance of finding a common language between both disciplines, the question arises how to implement a law-and-literature methodology into an analysis.

The following checklist is a good starting point for every “law in literature”-research project when it comes to methodology:

- (1.) Basis of the methodology: Literary theory
- (2.) Always considering the specific (also legal) intention when analyzing
- (3.) Clarification of legal and literary basics and terms (average reader’s level of knowledge)
- (4.) Only as much explanation as necessary
- (5.) Relationship to applicable law (Which legal system?)

(1.) Basis of the methodology: Literary theory

The basis of every research project in this field is literary theory. Literary theory “can be understood as the set of concepts and intellectual assumptions on which rests the work of explaining or interpreting literary texts.”⁹ Both, law and literature, consist of words. In order to understand these words and to deal with them, a basic comprehension of text is necessary. This can be reached by applying literary theory to the words in question, namely the novel, short story, poem or whatever the subject of research is.

As “literary theory refers to any principles derived from internal analysis of literary texts or from knowledge external to the text that can be applied in multiple interpretive situations”¹⁰, it logically serves as a basis for analyses in the field of “law in literature”. With its different approaches, literary theory allows for a wide range of interpretations of the text. However, this approach is a first step and needs to be adjusted further to advance towards finding a common language between law and literature.

(2.) Always considering the specific (also legal) intention when analyzing

Every text can be interpreted differently depending on the context in which it is read.

The main theories about the author’s intention (actual intentionalism, hypothetical intentionalism and the value-maximizing theory) have a common goal “which is to un-

⁸ Gary Minda, “Law and Literature at Century’s End”, in *Cardozo Studies in Law and Literature*, Autumn – Winter 9 2 (1997), p. 245-258, p. 253.

⁹ Vince Brewton, “Literary Theory”, in <http://www.iep.utm.edu/literary/#H1>, last accessed on 16.07.2024.

¹⁰ Vince Brewton, “Literary Theory”, in <http://www.iep.utm.edu/literary/#H1>, last accessed on 16.07.2024.

derstand and appreciate the work as a piece of literature, usually in a complete rather than a partial fashion.”¹¹

Understanding the text’s intention allows for a more complete and nuanced image. A biography about a refugee girl (e.g. *The Girl Who Smiled Beads* by Clemantine Wamariya) requires a completely different literary approach compared to a short story criticizing existing laws (e.g. short stories by Ferdinand von Schirach) or a dystopian novel set in a dictatorship facing censorship or worse consequences (e.g. *My* by Evgenij Ivanovič Zamjatin). Therefore, it is crucial to first elaborate on the specific context and then the (hypothetical) intention of each work.

In literature dealing with legal aspects, context can vary significantly. This variability extends to the literary devices employed in such works. For instance, some novels include fictional court judgments, legal proceedings, or witness interrogations.

In her novel *Adler und Engel*, Juli Zeh implemented a legal opinion in criminal law. Her novel *Spieltrieb* is written from a judge’s perspective and starts with her legal statement. Furthermore, it includes witness interrogations and trials. Vladimir Nabokov’s famous novel *Lolita* is a fictional memoir, written by the main character in prison, which addresses the audience as his jury. In Bernhard Schlink’s novel *Der Vorleser*, a trial is described in detail.

Understanding these devices and the reason for the chosen forms is essential for approaching the text from a multidisciplinary perspective, rather than being confined to one discipline. How would the novel change if Schlink decided not to describe the trial in detail but just summarized it? The use of legal devices is almost always driven by intention, whether in the context of narration, statements about specific legal systems, or the enforcement of law.

Similarly, the background of the author and the specific text significantly influence the possible intention behind the work. A novel authored by a judge (e.g. Juli Zeh) or an advocate (e.g. Ferdinand von Schirach) usually brings a different perspective and depth of insight compared to a poem written by a student with no legal background. Although not necessarily the case, “poet-lawyers” have different insights into the law, suggesting a stronger connection to reality compared to a layperson who, unless their text is based on deep research (if this is the case, the authors usually note it in the preface or afterword and thank institutions and individuals who assisted them with their research), more frequently uses these elements e.g. for entertainment purposes, to illustrate the complexity of the legal maze or to provide a dramatic portrayal of legal concepts.¹² Therefore, considering both the textual background and the author’s background is crucial for interpreting the intention of the text accurately.

(3.) Clarification of legal and literary basics and terms (average reader’s level of knowledge)

As previously mentioned, most law-and-literature analyses are written from either a legal or a literary perspective. The reason therefore is that most authors of these papers are either legal or literary scholars or students. This is why it is a big challenge to make one’s

¹¹ Stephen Davies, Authors’ Intentions, “Literary Interpretation, and Literary Value”, in *The British Journal of Aesthetics*, Volume 46, Issue 3, July 2006, Pages 223–247, <https://doi.org/10.1093/aesthj/ayl001>, p. 224.

¹² Cf. e.g. Frank Bräutigam, “Einschätzung: Wie real ist die Darstellung im Tatort?“, in: *SWR3*, <https://www.swr3.de/tatort-und-polizeiruf/einschuetzung-wie-real-ist-die-darstellung-im-tatort-100.html>, last accessed on 17.07.2024.

thoughts and ideas clear to both disciplines. The main basis to do so is to define everything what could be unclear for a scholar from a different discipline. This is an approach that underpins most interdisciplinary analyses in other fields as well.¹³

Especially in the field of law and literature, a lot of legal terms appear. The first step is to define them – not in a legal way but in a way that every average person that has not so far dug deeper in the legal world, can understand the matter. This means: Frequently (mis)used terms such as “murder” or “property” need to be defined, as do obviously difficult legal concepts.

Furthermore, it is crucial not only to define specific terms but also to clarify the legal context. This involves explaining concepts such as international law when analyzing texts referencing the UN (e.g. *Schutzzone* by Nora Bossong), identifying the role and origins of human rights when interpreting a novel criticizing human rights abuses in a refugee camp (e.g. *The Girl Who Smiled Beads* by Clemantine Warmariya), and elucidating the applicable legal framework in early 20th-century Algeria when discussing works like *L'Étranger* by Albert Camus.

Simultaneously, it is essential to provide clear definitions of literary terms in analyses within the field of law and literature. Introductions to these analyses should be more gradual and detailed compared to purely literary analyses in non-interdisciplinary fields. It is equally important to thoroughly explain the approach and literary methodology, as well as to elucidate rhetorical devices and stylistic figures that may not be widely familiar. Emphasizing literary backgrounds, patterns, knowledge derived from other works, and significant life events of authors should also be prioritized and not assumed as known. This approach turns the crime thriller *L'Étranger* into a psychologically and legally underpinned historical critique that places the concept of justice alongside that of the absurd at its center. Juli Zeh's *Spieltrieb* is no longer just a high school novel; it is an experiment designed to uncover gaps in the German legal system. And Clemantine Warmariya's biography *The Girl Who Smiled Beads* can be also read as a statement about the status of human rights in refugee camps.

(4.) Only as much explanation as necessary

This methodology carries the risk of overshadowing the analysis itself. The aim is for it to support the analysis, not dominate it. Thus, the guiding principle should be: providing only as much explanation as necessary to ensure that both literary and legal scholars can understand the analysis. By maintaining this balance, the interdisciplinary approach can effectively enrich interpretations without compromising clarity or depth.

(5.) Relationship to applicable law (Which legal system?)

As a lecturer in the field of law and literature in both the legal faculty and the faculty of philology, I can confirm that students from either background often choose topics like “How would a German court today decide K's legal case?” or “Does Meursault's trial conform to the Algerian law of the time?” for their final essays. This demonstrates a strong interest among many (young) scholars in exploring whether the dramatic narratives about the law depicted in literature could also occur in real life. Even if such ques-

¹³ Cf. Andrzej Hejmej, “Music in Literature. Perspectives of Interdisciplinary Comparative Literature”, in *Polish Studies Transdisciplinary Perspectives* (ed. Christoph Zajas, Jarosław Fażan), Vol. 8, Peter Lang Edition, 2014.

tions are occasionally ridiculed, they can provide valuable insights into the author's intentions. It is, therefore, crucial to clarify whether the legal scenarios in a novel, short story, or poem would be applicable in real life. This helps to delineate the fictional world from reality, in line with Vladimir Nabokov's perspective: "We should always remember that the work of art is invariably the creation of a new world, so that the first thing we should do is to study that new world as closely as possible, approaching it as something brand new, having no obvious connection with the worlds we already know."¹⁴

Subsequently, this allows for explaining the differences between the fictional and real-life legal systems. Perhaps the author is creating a "better" world with different laws, or showing the potential consequences of our legal system, or criticizing it. A good example for this is Juli Zeh's dystopic novel *Corpus Delicti*, in which she creates a health dictatorship. Although this dictatorship does not exist in our world, it can be understood as critique on several developments, e.g. data-collecting health devices, the Chinese social credit system or different health insurance rates based on health habits.

In analyzing such works, it is essential to recognize how and why authors use or invent legal frameworks. They may do this e.g. to comment on societal or legal issues, or simply to entertain the reader.

This approach not only enriches our understanding of the literature but also provides a reflective mirror on contemporary legal and social practices. By examining these parallels and divergences, scholars can uncover deeper meanings and critiques embedded within the text.

These five steps make it possible to find a common language that connects literary and legal scholars – and also simply interested readers without a background in humanities.

3. Where to include this common language

After explaining some of the crucial elements required for a law-and-literature analysis, the question arises: how exactly should this approach be implemented? In my view, there are different possibilities, each with its own advantages and disadvantages. The best approach largely depends on the form of the analysis, its length, and the specific text being analyzed.

One possibility is to explain the methodology at the beginning of the analysis as a separate chapter. In many respects, this approach is effective. However, when it comes to defining certain legal terms, it might be easier for the reader to receive the explanation when the term first appears. The other possibility is to forgo an explicit introduction of the methodology and simply apply it throughout the analysis. This approach seems useful when the law-and-literature method is just one of many approaches in the analysis or when the legal content is not predominant in the text being analyzed.

In general, it is beneficial to clarify from the outset that an interdisciplinary analysis must be approached differently and not solely from one perspective. The methodology can then be outlined, along with some key legal phenomena relevant to the analyzed text. The same goes for the literary and historical background of the work. Here, too,

¹⁴ Vladimir Nabokov, "Good readers and good writers", in https://moodyap.pbworks.com/f/nbkv.GoodReaders_Writers.pdf last accessed on 17.06.2024.

the rule applies: provide only as much explanation as necessary. If needed, the relationship to the applicable law can be discussed at this point, or if it is obvious, it can simply be stated. Otherwise, this aspect can be addressed later in a separate chapter or as part of another chapter.

To sum up, it is up to the scholar to decide where and how to implement the common legal-literary language in the analysis. Every text has different needs, and every scholar has a unique approach to addressing this important tool. The common language must be “spoken” in these types of analyses. Whether it is simply “spoken” like a real language that readers understand, or whether it is explained and taught beforehand, depends on many factors. There is no right or wrong way to do this.

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