

Law and Literature

María José Falcón y Tella

Professor of Philosophy of Law

Faculty of Law

Universidad Complutense de Madrid

Spain

Those of us that have had the privilege of knowing and working with Professor Falcón feel indebted to her for having always opened up the path – and our minds – to new fields of research. On this occasion, the author of “Law and Literature” enters a more humanist and artistic terrain of the legal landscape, as she herself states in her introduction.

She structures her study around four proposals, not all of them necessarily innovative, though they are well explained, founded and organized, based on the classification set out in the law and literature movement: the “law of literature”; “law as literature”; “literature in law”; and, finally, “law in literature”.

We adhere to the opening words of the tenured professor of the Université Saint-Louis (Brussels), François Ost, who provides the prologue to this book and is one of the most renowned voices in this field: “The work before us appears at the ideal time”. Among the fundamental characteristics that we may appreciate in “Law and Literature” is the opportunity it offers, since systematic studies on this matter are scarce.

Not least among the contributions of the present volume is its didactical character, in spite of the breadth of the object of study and its depth. As the author herself notes, this work is conceived to provide undergraduate university law students with a text that is both effective (and therefore greatly useful) and accessible in order to guarantee that students may approach the study of legal-literary relationships with success. Yet this in no way implies that the tenured professor of philosophy of law has disregarded a single element in the pursuit of the necessary rigour that is inherent to the academic condition, the character of in-depth research that has characterized this author’s extensive body of work.

In the introduction, professor Falcón y Tella retraces her academic career, from theory of law to legal, moral and political philosophy, explaining the investigation at hand with obvious reasons: the need to study these currents between law and literature from the perspective of Spanish legal culture, since most of the references to the aforementioned line of investigation are found in the United States.

The exposition begins in the second chapter, from a normative perspective focused on the “law of literature”. Issues from transversal disciplines of positive law are addressed. The chapter covers matters of private law (author’s rights and intellectual property), criminal law (censorship, pornography, libel, sedition, xenophobia) and constitutional law (freedom of expression), collecting the legislation related with literary activity.

The following chapter is devoted to the hermeneutic standpoint, to “law as literature”, analysing legal texts and judgments on the basis of methods of interpreting narrative and rhetoric; that is, considering the legal discourse within the prism of its “equivalence” to the condition of a literary text. This approach shares many aspects with disciplines such as legal semiotics or theory of legal reasoning.

Subsequently, the author makes a brief reference to “literature in law”, to making use of literary resources with a clearly didactical aim; as professor Falcón states: “law and poetry are neither as close to nor as far from each other as may be believed”.

However, the weight of the book at hand lies in its final chapter, devoted to “law in literature”, addressing the critical approach to law from the literary world. It analyses forty-six classic works of global literature, ranging from Classical Antiquity to the modern day, in which we find such central themes to our legal systems as law, justice, power, blame, punishment, responsibility and vengeance. These are works that cover genres from poetry and storytelling, but among which the novel clearly stands out.

The works of Homer, Sophocles, Cervantes, Defoe, Dumas, Shakespeare, Dickens, Dostoyevsky and Melville, for example, occupy a large part of the list of works that are analysed. Nonetheless, professor Falcón also considers works of undoubtedly lower literary value yet offering content that is closely related with legal matters, such as the novels of John Grisham.

The usefulness of approaching the legal world from a literary perspective essentially lies in developing a different viewpoint, which allows us to consider concepts and ideas not on the basis of positive law (through its codes and guides), but rather by critically reflecting upon and interpreting society, its institutions and the role that legal agents, particularly judges, have traditionally played within it. In short, “law in literature” analyses the use of legal concepts and institutions in literary texts.

In this regard, without providing an exhaustive list, we can find major issues including: the conflict between law and justice in “Billy Budd” by Herman Melville; the collision of man with justice in “The Trial” by Franz Kafka; contractual compliance and interpretation in “The Merchant of Venice” by William Shakespeare; the death penalty and ethics in “The Stranger” by Albert Camus; and vengeance, in Alejandro Dumas’ “The Count of Monte Cristo”.

The great merit of professor Falcón y Tella resides in the pains she has taken in choosing each one of the works analysed from the point of view of its potential for understanding the complex world of legal and political relations that arise in society. Her endeavours will not fall upon deaf ears, since anyone coming across this text will find a guide that is essential to their development in practical classes during the undergraduate law course. We may be sure that in future, the book we are reviewing will become, in short, an essential tool for any academic seeking to bring the law to their students by way of a modern, entertaining and effective methodology.

Lastly, we must also draw attention to the work undertaken in compiling the bibliography – we might note, almost exhaustive – by the author, which will assist any person who is curious regarding the matter in question in broadening their knowledge and studies.

We may affirm that studies of “law and literature” will prove an effective tool in humanising the practice of law, since the situations that are presented in these literary works permit us to understand and empathise with the circumstances, whether personal or socio-political, that their characters face. We may see their legal problems from a broader perspective, helping us to better understand the reasons behind actions. Similarly, it will also contribute to developing the awareness of judicial actors and to improving their rhetorical skills, as in the cases of Oliver Wendell Holmes and Learned Hand in their day.

In sum, we have before us a magnificent work that offers the opportunity to approach – or return to – the great all-time world literature classics. The body of work by María José Falcón y Tella offers, for all the above reasons and together with great didactical value and enormous utility for legal students and professionals, a high scientific level resulting from the author’s research and wide experience in the legal sphere. She has presented us with a work that constitutes required reading and reflection for all who dedicate ourselves to the study of law. We trust that future jurists will live up to their title of “learned” and will engage in reading such extraordinary texts.

Nuria Cuadrado Gamarra

Professor of legal, moral and political philosophy, Universidad Complutense de Madrid.