

LITERATURE AND THE LAW: SOME REFLECTIONS

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When Class '81 invited me to deliver a lecture on the occasion of their silver jubilee (an occasion which, happily, coincides with the ruby jubilee of my own class), I was given the clear impression that I was not at liberty to decline. It was not a question of **could I give a lecture**, but **when could I give one?**

The vitiation of consent was, however, mitigated by the freedom, graciously accorded to me, of choosing my topic. Even more felicitously, Class '81 in no uncertain terms bade me be brief, because the lecture was only the prelude to lunch, which was the main event.

"Brevity", says the Bard, "is the soul of wit." But wit perhaps will not be the justification for my brevity this morning, but the festiveness of the time. A silver jubilee should bring forth a celebration of "*fiesta, flor, y canto*," – to use the Mexican phrase (feast, flowers, and song).

Therefore, with prudence as my guide, I immediately discarded as inappropriate any and all ponderous topics in which civil law notoriously abounds, and settled for one which perhaps would be fitting for the feast, the flowers, and the song. And so, this morning, as the invitation indicates, we shall talk about law and literature.

In the minds of many, a lawyer is a person good in argument, skillful in equivocation, often gifted with the talent for making money,

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“... she gallops night by night
... O'er lawyers' fingers who straight dream on fees (as Mercutio
declares in his famous Queen Mab speech),

A lawyer, according to the common perception, is all these things, but an otherwise banal creature, in whose prosaic soul literature cannot strike a responsive chord. That is of course a stereotype and, like all stereotypes, it is false. If demonstration of its falsity be required, we need only mention some figures in Western literature, many of them of colossal stature, who were lawyers or students of law: the French novelists Balzac and Flaubert; Corneille, the master of French tragic and comic drama (he was a judge); the German poet Heinrich Heine and his countryman and contemporary, the giant of German literature, Goethe (who was a law practitioner); the well-loved and popular Scottish novelist Sir Walter Scott; the English dramatist William Congreve; the Irish dramatist Richard Sheridan; the Italian poet and playwright Carlo Goldoni, and of course that towering champion of human liberty, Voltaire - - - to name only a few.

In the local scene, two alumni of this College come immediately to mind: Stevan Javellana (Class '48), author of *Without Seeing The Dawn*, which, by any standards, is an outstanding Filipino novel, and Belinda Ty-Casper (Class '55), a prodigious novelist and short-story writer, and one of the major voices of Philippine literature, who, while pursuing her graduate degree in law at Harvard, was lured beyond recall into literature's seductive embrace.

Rizal of course is the best-known and best-loved figure in Philippine literature, but he was a medical man. However, the legal profession produced in Claro M. Recto a peer of the man of medicine.

Recto perhaps could not match the lyricism of these lines by Rizal:

*Yo respiro la brisa que acaso haya pasado
por los campos y rios de mi pueblo natal;
i acaso me devuelve lo que antes le he confiado:
los besos y suspiros de un ser idolatrado;
las dulces confidencias de un amor virginal.*

But neither could Rizal surpass the music of some of Recto's verses:

*Y mueren lentamente, al temblor de sus hojas,
mis pálidas violetas, flores de ensoñación;
en tanto mi alma enferma, entre tiernas congojas,
soñando en la dulzura de unas mejillas rojas,
agoniza en los brazos de su última ilusión.*

The kinship of law and literature is close and intimate. One of the most beautiful tributes to literature was given by a lawyer – the Roman advocate Cicero. In his oral argument in defense of his client (a Greek poet named Archias), Cicero argued for Archias' Roman citizenship, and then contended that, even if his client were not a citizen of Rome, he should be made one. Why so? Because he was a poet, and the honor of Roman citizenship should be accorded to him for his literary achievement. It was an honor he deserved because he was a man of letters, and his works, like all works of literature, refine human nature, turn it into "*illud nescio quid praeclarum ac singulare*" (that something I know not what, brilliant and unsurpassed). As for himself personally (Cicero continues), what has literature done? He then explains what literature has done for him:

Literature] provides my mind with refreshment after the din of the courts; [it] soothes my ears to rest when they are wearied by angry disputes. How could I find material, do you suppose, for the speeches I make every day on such a variety of subjects, unless I steeped my mind in literary pursuits? How could I endure the constant strains if I could not distract myself from them by this means?

"Yes," he declares proudly, "I confess I am devoted to the study of literature."

That is what he owes literature. That is what many distinguished men and women owe literature. And, he continues, even if literature did not yield such fruits, and from it pleasure alone were sought, still literature would be a most humane and liberal pursuit.

And then, this eminent lawyer pays literature one of the most eloquent homages ever recorded:

Literature is the nourishment of youth, the joy of old age, the glory of civilization; it offers us comfort and solace in adversity; at home it gives us delight; it knows no boundaries of place; it accompanies us on our journeys; it makes memorable our holidays.

In more recent times, distinguished lawyers and jurists have stressed the need for breadth of training and experience in order to make a good lawyer. Culture and the arts in general, and literature in particular, have been considered to be essential for a lawyer's development. In 1933, Dean Roscoe Pound of Harvard, himself a man of varied interests (he was a botanist of note), emphasized "a solid all round cultural training" as one of the constituents of a good legal education.

Better known, and more recent, is Justice Felix Frankfurter's letter to a twelve-year-old boy from Virginia who was thinking of going into law studies. That short letter, I think, makes more sense than many law-school prospectuses and catalogues.

No one can be a truly competent lawyer unless he is a cultivated man. If I were you, I would forget all about my technical preparation for the law. The best way to prepare for the law is to come to the study of the law as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give. No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry, seeing great paintings, in the original or in easily available reproductions, and listening to great music. Stock your mind with the deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career.

Literature is art, standing between the concreteness of sculpture and the almost pure abstraction of music. Like all the arts, literature reaches out towards the infinite; theology alone of all the human disciplines traces the same trajectory. Literature does this through its proper medium of verbal sounds. By telling stories; by lyric, narrative, or epic poetry; by tragic or comic drama; in prose or versé; literature perpetually attempts to reflect, as the water's surface mirrors the moonbeams, the fugitive image of man as he moves, portraying him sometimes in the deepest pits of degradation,

where the befouled air reeks of brimstone, and sometimes on the lofty summits, where everything is touched by eternity. It plumbs the depths of his tragedy and despair, but at times catches glimpses of that sempiternal light to which his spirit aspires.

*O somma luce che tanto ti levi
da' concetti mortali, a la mia mente
ripresta un poco di quel che parevi,
e fa la lingua mia tanto possente,
ch'una favilla sol de la tua gloria
possa lasciare a la futura gente;*

O Highest Light, raised so far above
the minds of mortals, to my memory
give back something of your epiphany,
and gift my tongue with eloquence so that I
may leave to generations yet unborn
one gleam of the glory that is Yours ...

[Paradiso, Canto 33, ll. 67-72]

Literature is art, and will be judged only by its own standards. As art, literature will not be a tool of ideology, of politics, of creed - - or else it becomes propaganda. Therefore literature is not a tool of the law. But the Muse of literature is a generous goddess, holding out to literature's votaries a cornucopia of gifts.

The lawyer who is willing to enter literature's temple and burn candles before its shrine will not leave unrewarded, for literature's gifts will be many.

I.

His language will change from the legalese of his contracts and pleadings: wooden, stiff, stilted, swarming with clichés - to something more polished, more graceful, less hackneyed: an elegant turn of phrase. Good, effective, persuasive legal writing need not be tedious. One, after all, can be a good pleader or contract-drafter without waging war on the English language.

With grace and polish come economy and precision of expression, which are the habiliments of literature: a word, a phrase, a sentence, an image can contain within itself level upon level of meaning. There are no useless words in good literature. A single memorable line can connote a delicate counterpoint of love, anguish, loss, and regret, as for example, this, from Wordsworth:

She lived unknown, and few could know
When Lucy ceased to be;
But she is in her grave, and, oh,
The difference to me!

Or this, from Sandburg:

The crows lift their caw on the wind,
And the wind changed and was lonely.

x x x

What was the name you called me? —
And why did you go so soon?

Legal prose refined, in Justice Cardozo's words, "by the transfiguring touch of art", will be clearer prose, because more precise, more nuanced, less ambiguous. Dangling participles, squinting modifiers, mixed metaphors, split infinitives, and (horrors!), the over-used subjunctive (an addiction which afflicts all manner of people in our beloved land, regardless of creed, sex, or political persuasion, from bishop to law student): these bad weeds will wither and die in the brightness of literature's daylight.

Nor are these abuses confined merely to litigant's pleadings and legal documents. Statutes do not always fare better. Nor does the Constitution.

To cite an example: Article XVI, Section 10 of the 1987 Constitution provides:

SEC. 10. The State shall provide the policy environment for the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press.

"Policy environment for the full development of Filipino capability the emergence of communication structures suitable to the needs and aspirations of the people" - - - I humbly defy anyone - constitutionalist or no - to explain what those phrases precisely mean.

Among statutory provisions, Article 84 of the Civil Code may be cited:

ART. 84. No marriage license shall be issued to a widow till after three hundred days following the death of her husband, unless in the meantime she has given birth to a child.

I have taught civil law for a good number of years, and I am still trying to figure out what else a woman could possibly give birth to. Happily, that article has been repealed by the Family Code.

But there are greater gifts still.

II.

Literature, along with the delectation that it furnishes and the experience that it shares, as we delve deeper into it, ever so subtly broadens our imagination. Every piece of fiction, every work of poetry unfailingly impels us to apply our imaginative faculties so we can place ourselves in its milieu. We thus become an invisible participant in the *mise-en-scene*. A lawyer with sharp imaginative skills is a better lawyer. By this I mean that a lawyer with an ability to grasp the different possibilities of a situation is better able to sift the true from the false, the likely from the improbable, the factual from the counterfeit, the relevant from the irrelevant. Any lawyer who has

ever interviewed a client, any judge who has had to weigh the evidence realizes this better than I.

III.

Broadening and sharpening our imagination, literature helps us understand human nature better, and therefore be better equipped to interpret human action. "I am a man," says the Roman playwright Terence, "and nothing that is human is foreign to me". Everything human is the province of the law, and the insightful understanding of the human person that literature singularly provides is a gift that will enrich every lawyer who cares to receive it. A deeper comprehension of the subtle and infinite complexity of human motivation: this comes with the pursuit of literature. Any literary work worth the name, particularly fiction and drama, both classical and contemporary, delves into the convoluted whys of human action. The stories of Guy de Maupassant, the plays of Eugene O'Neill, the novels of Dickens and Dostoyevsky, and of course, to a superlative degree Shakespeare's Hamlet — these and countless more explore the labyrinth that is the human soul.

But pulled by the contrary drives of his various motivations, man — as literature sees him — remains an essentially free moral agent, with the capacity -- for good or ill -- to make a choice. Deep within him he has the lights to guide him in his choices and certainly, the study of literature can help direct those beacon lights to point the right way. Literature is not just the image of man as he moves; it is also the image of man as he chooses, as he undergoes the terrible pain of being free. Nick Joaquin in his masterly story, *Guardia de Honor*, writes;

What makes the life of a Christian so hard is that he must choose at every step, he must choose, choose, choose, at every moment, for good and evil have such confusing faces — evil may look good, good may look evil — until even the most sincere Christian may be deceived — unless he chooses. But that is one of his greatest glories too — that he chooses, and knows he can choose.

That is why, I think, true literature must have a moral dimension. By that I do not mean some abstract theses from an ethics manual. It is something more vital, more dynamic. It is something that rises from the

spirit. The best of our literature presents man as a choosing being who is responsible for his actions. Even the supreme Greek tragedies, in which Fate seems to play such a crucial role, depict man as a moral being, answering for his decisions and bearing the consequences of his choices. Shakespeare gives us this image too.

"The fault, dear Brutus, is not in our stars, but in ourselves ..."

[Julius Caesar, Act I, Scene II]

"The gods are just, and of our pleasant vices make instruments to plague us."

[King Lear, Act V, Scene III]

A work of literature must thus be an affirmation of this moral dimension, without which, for all its possible technical virtues, it would not be tragic but merely pathetic

In the Nuremberg trials, the defense was often raised that the defendants were not guilty because they merely acted under the orders of depraved men, within the depraved legal system of the Nazi State. One of the judges demolished that claim in these words:

If the defendants had been degraded perverts, if all of the leaders of the Third Reich had been sadistic monsters and maniacs, then these events would have no more moral significance than an earthquake or any other natural catastrophe ...

The stuff of tragedy is that man is free, and, being free, he can reject his angels and travel the road to perdition, or he can act guided by the values that make him more than the sum total of his tissues and organs, those values that flow from that part of him that we cannot see and cannot touch, that aspect of him that remains undefeated and uncrushed; and though at the end of the last act the stage is littered with corpses, something still shines something that even despair cannot overwhelm. That, says Faulkner, is what the man or woman writing today must not forget to write about. The writer, Faulkner tells us, must leave

no room in his workshop for anything but the old verities and truths of the heart, the old universal truths lacking which any story is ephemeral and doomed – love and honor and pity and pride and compassion and sacrifice. Until he does so, he labors under a curse. He writes not of love but of lust, of defeats in which nobody loses anything of value, of victories without hope and, worst of all, without pity or compassion. His griefs grieve on no universal bones, leaving no scars. He writes not of the heart but of the glands.

Law shares that aspect with literature, for the law, too, must have a moral dimension. It is not just a set of traffic rules and zoning regulations. It relates to every human action, and every act that is properly human is a product of a moral choice, with the power to affirm what is good, or its opposite. One of the highest expressions of this is found at the beginning of the Institutes of Justinian.

"Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere."

"The precepts of the law are these: to live with integrity, to inflict no harm on others, to give everyone his due."

The wisdom of literature is born of our accumulated racial memory put into words by some of the noblest beings who walked this earth, men and women who are no more and yet remain truly present among us, through the words they wrote, yes, but beyond words, through the truth that they impart:

"... the communication
Of the dead is tongued with fire beyond the language of the
living."

[T.S. Eliot, Little Gidding]

IV.

And that takes me to my last point: from this understanding of human nature that literature gives finally arises a sympathy, both deep and broad. One of literature's paradoxes is that it gives both distance and involvement. On the one hand, it furnishes a perspective of seeing from

afar, not unlike the experience of looking at the panorama from above as an airplane descends, in the words of Antoine de Saint-Exupéry, "seeing the true face of the earth": observing houses, trees, rivers, vehicles, people - - so small, little specks against the largeness of the world, so picayune in their follies, so pathetic in their petty pursuits.

"Why Richard, it profits a man nothing to give his soul
for the whole world ... But for Wales ---!"

[Bolt, *A Man For All Seasons*]

The distance, the detachment, the objectivity, the integrated vision that gives balance and proportion - - - that is a gift of literature. This, I think, is one of the meanings of T.S. Eliot's celebrated remark that "poetry is an escape from emotion."

On the other hand, nothing could be more deeply feeling, more intimate, more personal than literature. It participates in the life of the individual human being, and enters his heart. It hopes and despairs with him, stumbles in the darkness of his anguish, exults in the sunlight of his triumphs. It enfleshes his griefs and his laughter. Contemplating the shortness of his days, it sees his transience reflected in the fragile beauty of this passing world.

Ah! As the heart grows older
It will come to such sights colder
By and by, nor spare a sigh
Though worlds of wanwood leafmeal lie;
And yet you will weep and know why.
Now no matter, child, the name:
Sorrow's springs are the same.
Nor mouth had, no nor mind, expressed
What heart heard of, ghost guessed:
It is the blight man was born for,
It is Margaret you mourn for.

[Hopkins, *Spring and Fall*]

And then, by some alchemy of transference, we the readers cease to be mere spectators of the fictional character; we ourselves become the protagonist.

Because of this identification, no commitment, no dedication, no cause which a lawyer can possibly espouse but finds an echo and an affirmation in literature. More than that, literature gives it the flesh-and-blood reality without which commitment can be impersonal and ruthless. For such can the law be if it is untouched by human hands. The words of Anatole France tell us how, even with the best of intentions, one can make a travesty of the law:

"The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

Perhaps the law should not be so majestic, should not dwell too long in the palaces and opulent mansions of the politically powerful, the rich, the comfortably corrupt; it should perhaps once in a while stoop, like the humbled King Lear in Shakespeare's greatest tragedy - - like Lear, stoop to enter the hovels of the poor, the ignorant, the people who know no world but that of squalor and need.

"Take physic, pomp; [says Lear]
Expose thyself to feel what wretches feel,
That thou mayest shake the superflux to them,
And show the heavens more just."

[King Lear, Act III, Scene III]

Perhaps it should enter this seamier side of a world in which for all the ostensibly equal provisions of the legal codes, as in Orwell's *Animal Farm* - - of which it is a caricature - - some are more equal than others.

Humanism is more than a census report. Social justice is more than statistics. Literature does not deal with statistics. It deals with the human being "*de carne y hueso*," of *flesh and bone*, to borrow Unamuno's memorable phrase. Literature gives compassion a face.

In the stories it tells, the situations it portrays, the forests and valleys that it depicts, in the human drama which it presents, in the joy and sorrow, the loves and hates, the conflicts of the human heart and its fathomless capacity to forgive, literature can strike a responsive chord in the lawyer's heart and quicken it to meaning and action, whatever his sphere of activity may be: the cause of women; of children; of indigenous people; the poor; every category of marginalized human beings; the often lonely

crusade for the preservation and husbanding of this planet's resources, so often fraught with risk and danger because it brings one into confrontation with the powerful, the violent, the greedy. It gives meaning to his struggle for justice, encouragement for his integrity, fortitude for his defense of the poor and the powerless, and hope for the welfare and progress of his people. It reveals to him the deepest dimension of his concern for his fellowmen. It gives him the sympathetic eyes to see, shining through every person, no matter how depraved, no matter how steeped in crime, the sacredness of a single human life.

One of literature's greatest gifts is the ability to **suffer with**, which is what **compassion** originally meant. And **suffering with**, we identify and are led to an epiphany of mercy.

The quality of mercy is not strained;
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest;
It blesseth him that gives and him that takes,
'Tis mightiest in the mightiest; it becomes
The thronèd monarch better than his crown,
His scepter shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this scept'ed sway;
It is enthronèd in the hearts of kings,
It is an attribute to God himself,
And earthly power doth then show likest God's
When mercy seasons justice . . .

[The Merchant of Venice, Act IV, Scene I]

V.

I must now make an end. And the thought with which I wish to close is this: perhaps the most recurrent image in all literature is the image of the journey, of man the wayfarer, the pilgrim. Literature, both ancient and modern, is full of tales of journeys: Jason and the Argonauts; Homer's *Odyssey*, echoed in James Joyce's *Ulysses*; Aeneas heading "*per varios casus, per tot discrimina rerum*" (through manifold ordeals through all manner of obstacles) for Latium to fulfill his destiny; Dante's *Commedia*, which is of course all about the journey; Don Quixote wandering through the countryside; Fielding's *Tom Jones*; Zhivago searching for his Lara; even

Huckleberry Finn drifting down the mighty Mississippi: the meaning is the same – the journey in pursuit of the dream.

That is the last image I should like to leave with you as I conclude these rambling reflections: the image of the lawyer and the writer as comrade-travellers.

The man of the law envisions a free society where justice and peace reign. The man of letters, with Shakespeare's Miranda, sings of a "brave new world that hath such people in't." The words are different; the idea and the dream are the same.

The lawyer and the writer, voyagers and dreamers both, are knights of the endless quest, in search of the same Grail, not less beautiful, not less uplifting just because it is so elusive; dreamers catching an occasional glimmer of that shining city that might yet be, a vision of the landscape after the storm, where the air is clean and the sun sheds its light once more; a vision of a world, harmonious yet diverse, where, like Ariel, the spirit of man is at last released to the benign elements, a vision of a world where the law is less a sword of punishment and more the crown of justice, a vision of a world where the filth of hatred and violence and greed has been washed away by the cleansing waters, and out of those waters a new life has sprung: a life where we can be truly human to one another, a life transformed and enriched, a life ennobled by justice, by compassion, by mercy, and by love.