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Literature and the Law: A Historic Review

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Review Article

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Abstract: This article considers the rise in popularity of interdisciplinary courses that explore the rich and illuminating relationships between Literature and Law, both as subjects of academic study, and for their relevance to the wider world. The history of the two disciplines in England and America is briefly traced, to gain some insight into their complex interconnectedness; from the era of classical Greece, until the twenty-first century. Consideration of the distinction developed in the *Oresteia* of Aeschylus, between revenge, on the one hand, and lawful justice, on the other, is followed by discussions of the interrelationship between law and literature in the philosophies of Plato and Aristotle respectively. In the era of Republican Rome, the seminal figure of Cicero, as legislator and rhetorician, is highlighted for his influence on European concepts of law and the legal profession, and the impact of his style on Renaissance humanism. William Shakespeare's interest in legal themes and the nature of justice, is then briefly addressed. The American Founding Fathers' passion for both literature and legal matters, is regarded as having had a profound effect on the framing of the American Constitution and the Declaration of Independence, both in style and in content. Finally, there is a brief overview of recent interdisciplinary initiatives in Departments of Law and English Literature, in Britain and the United States. The ongoing and complex connections between Literature and Law continue to offer a fruitful field, for a study whose implications have only just begun to be explored.

Keywords: Literature, law, legal profession, Cicero, humanist tradition, *Oresteia*, Shakespeare, Founding Fathers, law in fiction, interdisciplinarity.

INTRODUCTION

Justice, ethical values, and how individuals relate to one another and to the state, constitute the basic defining questions that both law and literature seek to address. The law seeks to define, codify and monitor the areas of individual freedoms and their practice, governing their interactions within a given society. Literature, meanwhile, aims to represent, study and illuminate these interactions, in a bid to understand individuals both as the creators of the law, and as its subjects.

Plato's *Republic*, written in the mid-fourth century BC, and one of the founding texts of Western civilization, sought to examine and highlight the relationship between law and literature. In this early work, outlining the idea of a utopian state, literary creativity in fact gets short shrift. Plato could see no more in the figure of the poet, or the creative writer generally, than a threat to the stability and cohesion of the state: 'The imitative poet', he says, 'implants an evil constitution' in the human soul. The poet 'indulges the irrational nature which has no discernment of greater and less'. The poet is merely 'a manufacturer of

images', and 'far removed from the truth' [1]. Arguably, however, Plato's own philosophical dialogues, following in the path of his mentor Socrates, founder of a school of Greek philosophy, may themselves be viewed as literary works in their own right.

Plato's mentor found himself accused of high treason, dissidence, and inciting young Greeks to question authority and the power of the state. Plato's account of Socrates' self-defence in court, before his condemnation and execution by law in 399 BC, has become one of the earliest instances of an individual asserting his rights over and above those of the state [2]. It is at once a legal document, and a classic literary masterpiece, that deploys the art of rhetoric to build up

¹ 'Republic,' Book 10. In *Discourses of Plato*, transl. and ed. Benjamin Jowett. Oxford: Oxford University Press, 1894, 320-21.

² Events recounted in Plato, 'Apology of Socrates.' Translated by John Burnet, in his edition of *Plato's Euthyphro, Apology of Socrates, and Crito*. Oxford: Clarendon Press, 1924, 150-51.

a convincing and powerful argument, for which the readership acts and pronounces its own judgment as a jury.

Classical Greek tragedy at its best, in the works of Aeschylus, Sophocles and Euripides, attempts to adjudicate on, and resolve conflicts in, a complex polytheistic world, where divine laws often conflict with one another, and with the ethical imperatives perceived by human beings. In the *Oresteia* trilogy of Aeschylus, for example, where true justice is the theme, Orestes avenges the murder of his father Agamemnon by taking the law into his own hands and killing Clytemnestra, his mother. Orestes finds himself trapped between the – to the ancient Greeks – sacred imperative to avenge the murder of close kin, and the punishment that inexorably threatened anyone who committed the terrible crime of matricide [3].

This divine/human conflict is ultimately resolved in the third play of the *Oresteia* trilogy, *The Eumenides*, first performed in 458 BC. In the dramatized setting of a court, the goddess Athena, patron of the city of Athens, presides as judge. The contrast between revenge and justice is clarified, in the transition and transformation from personal vendetta to the civilized, organized process of subjection to the rule of law. In Aeschylus' allegory of the development of social order, the literary and the legal combine in the establishment of a viable judicial system for Athenian society.

Orestes begs Athena to save him from the persecutions of the Erinyes, or avenging Furies, who constantly torment him for the killing of his mother. Athena delivers him, not by simply granting his request, but by putting him before a jury of Athenian citizens. The jury bring in a hung verdict; and Athena delivers the final ruling, in which Orestes is acquitted. To pacify the rage of the Furies, Athena offers them a home and a cult in Athens, where they will become guardians of good order in the state. She changes their name, from Erinyes, to Eumenides (Kindly Ones). Crude revenge is subjected to the rule of law, and rendered subject to principles of justice.

The *Oresteia* trilogy as a whole – and *The Eumenides*, in particular – continue to be of interest to the professions of law and literature, both as a powerful poetic evocation of guilt and moral conflict, and as a historical representation of the evolution of a system of justice in ancient Athens. The development of Athenian ideas of justice was to have a lasting influence in Western society, through Greek cultural influences on

³ Aeschylus, *The Oresteia: Agamemnon, The Libation Bearers, The Eumenides*. Translated and edited by Robert Fagles. New York: Viking Penguin, 1975.

the Roman world. Over a period of over one thousand years, classical jurisprudence developed into the legal systems of ancient Rome, and of Byzantium.

The Twelve Tables of Republican Rome, traditionally said to have been codified between 451 and 450 BC, of which only fragments survive, are best understood as a series of legal records of existing customary Roman law [4]. They seem to have dealt mainly with issues of private law and civil procedure – with such matters as the right of marriage between patricians and plebeians; the right of plebeians to serve as priests; and with measures to restrict private dealings in relation to public lands. They also, most importantly for the majority of citizens, made the verdicts of plebeian assemblies binding on citizens of all social classes.

The Tables, it is important to note, did not enact any legal reforms, as such. A citizen could still be enslaved in order to settle a debt. Civil law, in many areas, continued to be subject to over-ruling by religious dictates. The real importance of the Twelve Tables to the free-born Roman citizen, was that public recording of the law made principles that before had been known and understood only by an elite few, transparent to all, including to plebeians.

Another important contribution of Roman law for later generations, was the *Corpus Juris Civilis*, decreed by the Byzantine Emperor Justinian in 529 AD, late in the history of the Roman Empire. (By then the Empire had divided into Western and Eastern jurisdictions.) The *Corpus Juris Civilis* remained in effect in the Eastern Empire as late as the fifteenth century. It also had its influence in the West, being introduced into Italy in 554, and from there extended to much of the rest of Western Europe in the twelfth century. (Later the Justinianic code would also be adopted in much of Eastern Europe) [5].

Besides the development of clearly formulated codes of law, Roman traditions were instrumental in creating a sophisticated legal culture, of professional jurists, lawyers and legislators. This achievement – the founding of a distinct legal profession – is often regarded as Rome's most significant contribution to Western civilization.

⁴ From 451 to 450 are the dates at which the Twelve Tables are traditionally said to have been finally codified and placed in the public domain. See 'Law of the Twelve Tables', *Encyclopaedia Britannica*, <https://www.britannica.com/topic/Law-of-the-Twelve-Tables>. Accessed June 2018.

⁵ For more on Justinian and his achievements as a legislator, see G.P. Baker, *Justinian: The Last Roman Emperor*. New York: Cooper Square Press, 2002.

The figure of the Roman Marcus Tullius Cicero (106-43 BC) – lawyer, accomplished orator, and politician – would be crucial for fourteenth-century Europe, in contributing to the initiation of the Renaissance. He is a figure significant both as a role model for the courtroom lawyer, and for his literary style [6]. Cicero, who argued for the existence of a clearly formulated body of law as the only secure foundation for a just and rational society, was admired down the centuries for his eloquent courtroom speeches, and his political orations; and also for philosophical meditations: ‘On Old Age’, ‘On Moral Duties’, ‘On Friendship’. His elegant and graceful personal letters would, in the Renaissance era, become a literary model – a point to be revisited later in this study of literature in relation to law [7].

While most European nations developed a codified body of written law, Britain established a divergent tradition, that of English Common Law – evolving legal principles incrementally by reference to past precedent. All the same, many principles of Roman law, as well as Latin terminology, persisted in English courts, and were later transmitted to societies that fell under British rule [8].

A key figure in establishing and interpreting eleventh-century law in Britain, notably in civil cases involving land ownership, was Archbishop Lanfranc, a key adviser to William the Conqueror on all matters relating to legal interpretation. It was Lanfranc who was largely responsible for introducing elements of Roman law into England, and who laid the foundations of the system of common law that underpins both English and American law to this day. Lanfranc also, in 1076, formulated the ruling that separated ecclesiastical courts from secular ones [9].

Principles of the rule of law deriving from Roman republican ideals persisted in theoretical and idealized forms during the Middle Ages – as indeed

they had done in the centuries of tyranny under the Caesars, and through all the centuries of slavery in the ancient world. But the era of feudalism – quite as rigid in its hierarchies as the social orders that preceded it, with widespread and violent religious intolerance – would hardly prove conducive to a more egalitarian system of individual rights before the law.

The three branches of the English medieval court system, as it developed from the eleventh century onward, were all of them to varying degrees characterized by arbitrary and often cruel rulings. These branches were: the royal court, presided over by the monarch, who enjoyed absolute power, and controlled matters of state, including relations with the nobles, acquisition and disposal of land and other real estate, and dealings with other state rulers; the Manor Courts, where the local landowner or Lord of the Manor, sat in judgment on those living within the manorial boundaries; church courts, administered by the clergy, dealing with the rights and duties of members of the church hierarchy, including priests and members of religious orders. All these systems operated with oppressive power over those on the lowest rungs of society. The church courts not only attempted to police the religious and sexual actions of the laity, but – to a degree unprecedented in earlier times – was empowered to investigate and punish theological ‘thought crimes’. Such crimes included witchcraft, heresy, and blasphemy (many of which, over time, became punishable by death).

Violence against perceived religious deviance reached its height in the Spain of Ferdinand of Aragon and Isabella of Castile, when in 1478 the joint monarchs founded the notorious Spanish Inquisition – a body that initially persecuted Muslims and Jews who ‘failed’ to convert to Roman Catholicism; but which later expanded its concerns to search out ‘heresy’ of all kinds [10]. Over three centuries, the Inquisition prosecuted 100,000 cases, and carried out over 30,000 executions.

A process of questioning and criticism of the corrupt absolutism of the Catholic Church would, however, eventually bring about a new reformist spirit in Europe. It drew strength from attempts to understand the scriptures and the origins of Christianity, without dependence on the authority of priests, or other members of the Church hierarchy. This Reformation movement would also gain impetus from a new openness and spirit of enquiry inspired by the Italian Renaissance. Beginning in the fourteenth century,

⁶ For Cicero’s political orations as a stylistic model, as much as the philosophical essays, see Harold C. Gotoff, *Cicero’s Caesarian Speeches: A Stylistic Commentary*. Chapel Hill: University of N. Carolina Press, 1993.

⁷ Mack, Peter. *A History of Renaissance Rhetoric, 1380–1620*. Oxford-Warburg Studies. Oxford: Oxford University Press, 2011.

⁸ Edward D. Re, ‘The Roman Contribution to the Common Law’, *Fordham Law Review* 29.3, 1961:447-494.

⁹ Allan J. Macdonald’s biography, *Lanfranc: A Study of His Life, Work and Writings* (New York: Oxford University Press, 1926), although written in the mid-1920s, remains a useful source for understanding of Lanfranc’s contributions to the development of the legal system in England after the Norman Conquest.

¹⁰ Other persecutions and massacres were carried out in Palestine, of Muslims and Eastern Christians during the Crusades; and against the Christian Gnostic sect of the Cathars in Southern France, in the twelfth and thirteenth centuries.

Renaissance humanism was informed by the study of Greek philosophy, by Greek and Roman classical art and architecture – and by Roman literary texts, including those of orators like Cicero. In Italy, the poet Petrarch (1304-1374) personally discovered a lost collection of Cicero's letters. (While Cicero had been studied and revered as an orator and a philosopher, throughout the Middle Ages, his letters had been lain undiscovered for centuries.) The letters inspired Petrarch to his own efforts to imitate their graceful style; and a new literary movement was born [11].

In sixteenth-century England, humanists like the brilliant Continental scholar Erasmus, the educator Roger Ascham, tutor and adviser to successive Tudor monarchs; and John Colet (1467-1519), who was instrumental in bringing Erasmus to England, all contributed to the flowering of a new literary culture. Colet, in particular, was active in promoting the revival of classical learning; with a concentration on the teaching of Latin, for which the works of Cicero provided a foundation both literary and legal.

Another pivotal figure in this English literary renaissance was Sir Thomas More – a lawyer, a judge and later Lord Chancellor – advocate of humanism, and friend of Erasmus. More was also, ironically, a devoutly conservative Catholic, who went to the scaffold for refusing to give his legal approval to King Henry VIII's divorce of his queen, or to the King's break with the Church of Rome. Today he is perhaps best known, however, as one of the leading men of letters of his time, and as the author of that innovative literary work, *Utopia* [12].

In his idealised fictional commonwealth or 'utopia' (no place), More gives us a searching critique of the England of his day. In particular, he deplors the ongoing seizure of common land for pasturing of sheep, which is driving whole communities into destitution; and the gross, and growing, inequalities between rich and poor generally. He suggests radical innovations – a welfare state, with free hospitals; a world where priests are allowed to marry and get divorced. There is pluralism and toleration for all faiths (paradoxical and ironic, in that More in his role as a judge persecuted

heretics, and had them handed over to be burned at the stake).

One key element in educating a new class of young men to serve the English Tudor state, was the establishment of grammar schools. Here students learned Latin grammar, rhetoric, and elements of legal debate. They studied Roman poets, Ovid and Virgil, and performed plays written for them in Latin. They learned to develop and argue a case, and to analyze and critique the arguments of others. This basic education would stand them in good stead when they became lawyers, magistrates, bailiffs, or other state functionaries. It would also prove invaluable to the young creative writers who in adult life found their métier as dramatists – to Marlowe, Shakespeare, Middleton, Jonson, Marston, Webster.

No graduate of the grammar school system was likely to have escaped exposure to the works of Cicero. Cicero's rolling, ornate prose continued to inform and influence both legal language, and the style of Renaissance essayists and thinkers in general, with widespread imitation, in particular, of his use of the extended sentence, or 'period'. Typically, the Ciceronian period, modelled on Latin syntax, consisted of a series of dependent clauses, prefaced by 'When ...' / 'Whoever ...' / 'That ...' – often with repetition of the opening word of each sentence – leading on down to a clinching final main clause. It was a stylistic tool that would prove useful, and be widely practised, by lawyers, politicians, and literary figures alike. The Ciceronian period would be brought to a high degree of accomplishment in the prose of John Milton, in the mid-seventeenth century [13]. It would also, as we shall see, resonate two centuries later, in the style of Thomas Jefferson and the Declaration of Independence.

Not only Ciceronian rhetorical style, but a love of the drama acquired in schooldays, seems to have followed many grammar school graduates into their later training for the law. Plays were often performed at the Inns of Court in London, where young trainee barristers were completing their education, and learning their profession from the experienced senior barristers who also lodged there. Literary figures who at some point in their careers lived at the Inns of Court in the sixteenth and early seventeenth centuries, included the

¹¹ Petrarch's enthusiasm for the letters even led him to write his own epistles to the long-deceased Cicero, with whom he felt such kinship. See Frank Abbott, 'Petrarch's Letters to Cicero,' *Sewanee Review*, 5.3, July 1897. Published by Johns Hopkins University Press <http://www.jstor.org/stable/27527941> Accessed June 08, 2018.

¹² Thomas More, *Utopia*. Ed. George M. Logan; translated from the Latin by Robert M. Adams. Cambridge, UK: Cambridge University Press, 2016.

¹³ John Milton (1608-1674). As a civil servant, Milton became the voice of the English Commonwealth after 1649. As Oliver Cromwell's Latin Secretary, he handled the government's international correspondence and defended Cromwell's administration against polemical attacks from abroad. Probably best known for his monumental epic poem, *Paradise Lost* (1667), Milton deserves to be better known also for *Areopagitica* (1644), his defence of freedom of speech.

poet John Donne, and the playwrights Francis Beaumont and John Marston. The lawyers evidently enjoyed the theatre as respite from the rigours of legal study and practice, and performances of plays at the Inns of Court were common. Shakespeare's *The Comedy of Errors* and *Twelfth Night* were performed there, as well as many works by lesser-known playwrights. And dramatists returned the compliment, by engaging with legal issues in their dramatic works. Shakespeare, in particular, exhibits an interest in, and engages in discussion of, legal proceedings, and reflects a knowledge of the technical language of the law as practiced in his day.

In Shakespeare's tragedies, thematic questions of justice, of crime and punishment, and of the power relations that may determine legal outcomes, often take centre stage. *Hamlet*, which focuses upon the crime of the murder of Hamlet's father, explores issues of usurpation of a throne, and the legality of marriage to a brother's widow. These questions would have been present to the minds of any theatre-going audience, in the Tudor period. There were the shaky legal claims by which Queen Elizabeth I's grandfather Henry Tudor had established his right to found the Tudor dynasty. Moreover, Elizabeth's father Henry VIII had argued that he felt obliged to divorce Catherine of Aragon, his first wife, because she had previously been married to Henry's deceased brother, Arthur. That, the King contended, made him effectively, in both conscience and law, an adulterer. It is a question that resonates again in Shakespeare's play.

The role of usurper of a throne appears many times in Shakespeare's dramatic works. In his history plays, *Henry IV* and *Henry V*, we find both Henry IV, and later his son, wrestling with their consciences for having deposed the previous ruler, Richard II. Through all the history plays runs the implicit question: Is it might alone that makes for the right to govern? Is the sanction of law to be invoked only as an afterthought? In the tragedy of *Macbeth*, we find no such ambiguities, however. Macbeth's murderous career, that begins with his treacherous killing of Duncan and leads him on to terrorize his subjects in a futile attempt to secure his position on the throne, is depicted as founded in criminality from the start.

The play also raises questions of interpretation at a textual level, in the words of the Weird Sisters who prophesy to Macbeth. The latter is unwise enough to take their words at their literal level – so that when they promise him that no 'man born of woman' will ever be able to defeat him, he trusts the duplicitous prediction. Only later does he understand that his nemesis, Macduff, is indeed a man 'not born of woman' – having been born by Caesarian section, and from his mother's

womb 'untimely ripped' [14]. As in litigation, where a courtroom verdict may turn on the interpretation of ambiguous language, the protagonist's fate is decided by his choice to read the words to suit his own purposes.

Similar ambiguities arise in *The Merchant of Venice*, in a dramatic situation relating directly to the interpretation of a verbal contract, with Portia's courtroom interpretation of Shylock's notorious 'bond'. Shylock's contract stipulates that he must have a pound of Antonio's flesh in settlement of Antonio's financial debt. Portia points out that the taking of 'blood' is not mentioned in the contract. Shylock may take only flesh from Antonio's body – no blood – or else he will be guilty of murder. At this point, Shylock gives up in defeat.

The nature of evidence is an underlying theme in the tragedy of *Othello*, where the tragic protagonist, maddened by jealousy, resorts to murder in the mistaken conviction that his wife has been unfaithful to him with another man. Othello's error stems from his belief in a flimsy piece of planted evidence – a handkerchief stolen from his wife Desdemona on the instructions of Iago, the manipulative villain of the play, in order to make it appear that Desdemona has given the handkerchief away to a lover. If (one might like to imagine), all those involved could have been brought as witnesses before a court of law and questioned, the truth might have emerged, and tragedy averted. Life, however, is often not resolved so neatly. Great literature, dealing as it does in errors, ironies and might-have-beens, exists to probe this painful reality.

Another late Shakespearean tragedy, that of *King Lear*, is replete with ambiguities on a legal and political level. In this work, we often find morality and legality pitted against one another. The government of Lear's wicked and ruthless daughters, Goneril and Regan, and their husbands, is, in law, the state power established in the land by Lear's own legitimate decree – his last action before voluntarily renouncing his throne, in hopes of enjoying a peaceful old age. Lear's daughter, the noble and virtuous Cordelia, and her allies, the Dukes of Gloucester and Kent, may have the moral right on their side, when they struggle to overthrow Goneril and Regan. In law, however, they are traitors – rebels against the legitimately established state. (Cordelia even brings an invading foreign army onto the soil of Britain, mobilized by her husband, the King of France.) The insurgency ends in defeat, and the summary execution of Cordelia – after which Lear himself dies of grief. It is left to the lawful rulers to bring about their own downfall, as they destroy one another by their bad faith and treachery.

¹⁴ *Macbeth*, 5. 7.

This play examines questions of law and power on other levels, too. Are all citizens equal before the law? 'Robes and furred gowns hide all. Plate sin with gold; / And the strong lance of justice hurtless breaks. / Arm it in rags; a pigmy's straw does pierce it' [15]. A poor person charged with a crime does not receive the indulgent treatment often afforded to the wealthy defendant with a bribe in his hand. Moreover, those who punish others according to the law are often secretly guilty of the desires for which they inflict punishment – the officer, for instance, who whips a prostitute, while himself secretly lusting after her body [16].

This theme of strict law enforcement in a context of hypocrisy and corruption, is one Shakespeare will visit again in that strange and compelling play, *Measure for Measure*. Angelo, the interim ruler of a state where he seeks to enforce a harsh law that imposes the death penalty for extra-marital sex, finds himself sexually aroused by a young woman, a virgin, who is about to enter a religious order. He tries to compel her to have sex with him, as the price of reprieving her brother, condemned to death for sleeping with a woman to whom he is betrothed. 'Judge not, that you be not judged', seems to be one underlying sub-text of the play. Justice and the rule of law must be tempered with mercy.

It is no accident that one of the most noteworthy editions of Shakespeare's works, with readings of the Quartos and Folios, with critical notes, and editorial discussion of textual choices and decisions of previous editors, was compiled by a lawyer: the American Horace Howard Furness (1833-1912). Furness was both a member of the Philadelphia Bar, and a member of the Philadelphia Shakespeare Society. A dedicated scholar and editor, he devoted over forty years to producing the best edition of Shakespeare's work to date. His great *Variorum* project, carried on from the early 1860s, was completed by Furness' son after the father's death.

The *Variorum Shakespeare* was warmly praised by a reviewer in the prestigious British *Blackwood's Magazine*. 'America has the honour of having produced the very best and most complete edition, so far as it has gone, of our great national poet,' the reviewer wrote; noting both 'the patience and accuracy of the textual scholar', and 'a rare delicacy of literary appreciation and breadth of judgment', in the editor's notes [17]. Furness was working within a tradition that, from the earliest times of English colonial

settlement in American, had revered the Bard. No English-speaking eighteenth-century American home was without its copies of two books – the Bible, and Shakespeare. Where the legal profession in the young country was concerned, one might also add, collections of the writings of Roman jurists and orators.

Those who drafted the Declaration of Independence, and framed the Constitution of the United States as the fundamental document of American law and government, were, it goes without saying, drawn very largely from the ranks of the legal profession. Of the 56 signatories to the Declaration of Independence, 25 were practicing lawyers. So were 32 of the 55 who framed the US Constitution. But many of the Founding Fathers were equally steeped in both the works of Shakespeare, and in classical Latin literature. John Adams wrote essays on Shakespeare, and knew many passages from his plays by heart [18]. Jefferson, too, was fond of quoting him, believing that the Bard could be read for moral 'improvement' as well as for pleasure [19]. Adams and Jefferson even travelled to England on a pilgrimage to Shakespeare's birthplace of Stratford-on-Avon.

Both Jefferson and Adams had also received a classical education. John Adams had, like another pivotal influence on the framing of the Constitution, James Wilson, been much influenced by Cicero's political ideas [20]. Jefferson, too, based much of his thinking on ideas drawn from Cicero. He names the great Roman philosopher explicitly as an influence on his conception of 'public right' of a people to reject a government that they deem unfit, and appoint a new one; specifically in relation to the Declaration of Independence from England that was largely Jefferson's work, and that launched the American Revolution. Behind it, one might argue, stands the spirit of Marcus Tullius Cicero [21].

¹⁸ A point discussed in John P. Diggins, *Diary and Autobiography of John Adams*. New York: Holt, 2003, 71.

¹⁹ [Shakespeare] 'may be read with pleasure and improvement.' Jefferson, letter to Burwell, March 14, 1818; reprod. in Paul L. Ford (ed.), *The Writings of Thomas Jefferson, 1743-1826*. New York: Putnam, 1986, 10.104-6.

²⁰ See Meyer Reinhold, *The Classick Pages*. University Park, PA: American Philological Association of Pennsylvania State University, 1975, 54. Also Carl J. Richard, *The Founders of the Classics*. Cambridge, MA: Harvard University Press, 1994, 232, 175 ff.

²¹ Jefferson names Cicero as a key influence on his conception of 'public right', in a letter to Henry Lee of May 8, 1825. Reproduced in *The Political Thought of American Statesmen*, ed. Morton Frish and Richard Stevens. Itasca, Illinois: Peacock Press, 1973, 12.

¹⁵ *King Lear*, 4.6.

¹⁶ *Lear*, 4.6.

¹⁷ Quoted in 'Horace Howard Furness,' *Dictionary of Literary Biography* (Thomson Gale, 2005-06).

The Declaration of Independence is Ciceronian in its confident assertion of abstract truths – ‘We hold these truths to be self-evident’; ‘the right to life, liberty and the pursuit of happiness’. But also in Jefferson’s resounding Ciceronian drum rolls of dependent clauses: ‘that all men are created equal’; ‘that they are endowed by their Creator’; ‘that among these are ...’

Only after five thumping, affirmative ‘that’s’, do we come at last to the clinching main clause: ‘it is the Right of the People ... to institute new Government.’ Here, surely, if anywhere, Cicero lives again [22].

It is hardly surprising that the Declaration of Independence, with the Federalist Papers and other founding documents of the new Republic, continue to be studied not only by lawyers and historians, but by students of English; or that they are included in anthologies of American Literature, alongside fiction, poetry and plays [23].

The accomplished writers and critics who wrote America’s founding documents were the Enlightenment inheritors of a humanist tradition that reached back to the Renaissance and the Reformation; a tradition with its roots in the era of Shakespeare – a time of radical new ideas about human possibilities, and of a new vitality of the English language. Behind that tradition, stands the Graeco-Roman classical tradition, and the Ciceronian conception of the centrality to civilization of the rule of law.

In recent years, exploration of the interdisciplinary connections between various disciplines of the humanities has become a common

feature of academic discourse at American universities. Studies in American and English literature increasingly draw upon ideas in philosophy, depth psychology and linguistics, as well as history and sociology, with a growing emphasis on literary theory in English departments. A contextualized cultural approach has enabled the examination of social issues and power relations in relation to textuality. It is an approach ideally suited to exploration of the relations between Literature, and the Law.

The links between novelists, dramatists, poets, as sources of inspiration, and the teaching of law as embodied in textuality; along with the preoccupations of much literature with issues of law, has given rise to a coherent, lively and growing interdisciplinary movement. A seminal work in the evolution of this movement, is James Boyd White’s *The Legal Imagination* (1973). White’s work, while resembling a legal case book, juxtaposes literary texts with legal cases in ways that work in both directions, to illuminate readings of both legal documents and literary works [24]. Those in other academic Departments of Law who have since adopted White’s approach – for instance, Robert Weisburg of Yale, or Gary Watt, of the University of Warwick in the United Kingdom [25], have similarly brought into their consideration of legal issues, literary works that highlight points of law – conflict, arguments, and power structures – in ways that offer trainee lawyers insights into the nature and philosophy of their own discipline. Authors for whom legal issues are a preoccupation – Aeschylus, Dostoevsky, Dickens, Kafka – are found to offer fertile educational material for students of the law [26].

²² According to Walter Nicgorski, in his essay on ‘Cicero and the Natural Law’: Cicero’s influence on the founders of the US Constitution ‘was substantial... Thomas Jefferson explicitly names Cicero as one of a handful of major figures who contributed to a tradition “of public right” that informed his draft of the Declaration of Independence and shaped American understandings of “the common sense” basis for the right of revolution.’ John Adams and James Wilson, likewise, invoked Cicero, for his teaching on ‘the principles of nature and eternal reason’. *Walter Nicgorski, ‘Cicero and the Natural Law’, University of Notre Dame*. Copyright 2018: The Witherspoon Institute, 2018. <http://www.nlnrac.org/classical/cicero> Accessed June 2018.

²³ The Declaration of Independence, for example, and Federalist Papers 1 and 10, by Alexander Hamilton and James Madison respectively, are to be found in the eighth edition of the *Norton Anthology of American Literature*. (Eds. Robert S. Levine, Nina Baym, et al. New York: Norton, 2018).

²⁴ James Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*. New York: Little, Brown, 1973.

²⁵ See Weisburg’s seminal article, ‘The Law-Literature Enterprise’, in *Yale Journal of Law and the Humanities*, 1.1, 1989. http://digitalcommons.law.yale.edu/yjll/vol1/iss_1/4 Accessed June 2018. Professor Gary Watt is a leading proponent of interdisciplinary work in Law and Humanities at the University of Warwick.

²⁶ Dostoevsky, for his fascination with issues of guilt, confession, moral responsibility and atonement – notably in *Crime and Punishment* (1866). Kafka, whose novels *The Trial* and *The Castle* were posthumously published in the 1920s, takes the reader of these works into a surreal and disturbing world of seemingly arbitrary bureaucratic dictates, where the protagonist feels obscurely accused, yet is never openly confronted with the charges against him. In almost all his works, Charles Dickens, who in early life worked as a journalist in Parliament and the law courts, shows himself both thoroughly conversant with, and often highly critical of, nineteenth-century English law.

CONCLUSION

The new interdisciplinary approach has evolved into a movement adopted in courses offered at a number of law schools, and opened up space for dozens of periodicals and hundreds of useful articles [²⁷]. Along with the literary critical insight that style cannot be separated from substance law, in relation to literary study, appears as a rich field of enquiry. Legal documents can be seen as textual archives, not only of legal principles and precedents, with practical implications for those interpellated by them; but as verbal constructs that, when brought into dialogue with literary texts, are capable of enhancing the scope and interpretive skills of future lawyers. If the fascination of intertextual engagement did not in itself make a most compelling case for the study of Law in relation to Literature, the quest for justice, and the multiple terms in which this quest may be explored, should offer sufficient reasons for the promotion and continuation of this most fertile and promising interdisciplinary approach to both fields.

²⁷ Among the better-known journals: *Cardozo Studies in Law and Literature* (published by the Cardozo School of Law); *Law, Culture and the Humanities*, edited by Austin Sarat of Amherst College, and now published by the Sage Press; *Yale Journal of Law and the Humanities*; and *Law and Humanities*, published by the University of Warwick in the UK. The last-mentioned periodical was launched in 2007, at a major conference on 'Shakespeare and the Law', organized by the University's Law School.