**Entangled Stories of Law and Literature:**

**A Hungarian-Romanian Conversation**

**Online**

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**12 March 2021**

Organized by

Alexandra Mercescu (West University of Timisoara, Faculty of Law)

and

Balázs Fekete (ELTE Faculty of Law and Centre for Social Sciences, Budapest)

This workshop is dedicated to the promotion of regional law and literature initiatives. Since law and literature has grown into a more and more popular field of study in international legal scholarship, the time has come to discuss whether this type of investigations can have any relevance for our regional legal thinking. As the Central and Eastern European jurisprudence is dominated by a positivistic approach focusing decisively on the technical study of legal provisions, law and literature may help us gain a new perspective, one able to offer a better and more empathic understanding of various legal phenomena that have a serious impact on the regional, legal and other, development. Thus, the prospective aim of this workshop is to start such an academic cooperation that may pave the way for the publication of an edited volume in the future with a major publishing house.

**Panel 1: Law, Fiction and the Border**

**10.00-11.30**

**Flaminia Stârc-Meclejan (Lecturer / West University of Timisoara, Faculty of Law)**

***Breaking the Waves of Šehić’s Una vs. the Irreversible***

A hypnotist strides on to the stage 'in a turban with chilled-out, hissing little snakes'. On the count of five, you will be in *Europa*. I say: one ..... two ..... three ..... four ..... five ...... Be there. There quiet flows the *Una*, the long river which draws the natural border between Bosnia and Croatia. The river, whose name was perhaps originally meaning *the One* or *the wave*, is the unstoppable force to which the burdened narrator has abandoned himself. As if a drive towards the *Una* had come from the collective unconscious realm: transcend the traumatic war experience in your consciousness. Memories, thoughts, reflections are pulled to the surface and dissolved, in the hypnotic journey on which the protagonist has embarked, and like a drunken boat guided by the fakir, is going down to the depth of the self. 'cause the *Una* is unthinkable in civilian time and space, it is an intimate dimension, as impossible as it is powerful. Just like the wave that's breaking on the rocks and spreads, any narrative that attempts to describe the war area disintegrates. Streams of consciousness freely 'emerge', as seasons change, interweaving you*s* and I*s*, individual lives and the collective us, fragmented narrations of the past, dreams and infinite possibilities of the future, and the present. There, at the interzone, quiet flows the *Una* of the self, with its submerged treasure shining in the dark where the author has dived to salvage it, *Europa*. Following the course of Šehić’s river *Una* in *'la patrie de la mémoire'*, as Denis de Rougemont describes *Europa*, this paper will attempt to shed a light on the complex dynamics of a culture of remembering, the hope to heal the wounds of war & law.

**András Molnár (Senior Lecturer in Law / University of Szeged, Faculty of Law)**

***Representations of Law in Speculative Fiction***

This lecture discusses the place of speculative fiction in law and literature studies. The basic question is: Can speculative fiction, a genre that admittedly diverges from our familiar reality, have anything to say about law, a markedly practical, „down-to-earth” social practice? I offer an affirmative answer, which I hope to buttress with specific pieces of speculative literature.

**Simona Catrinel Avarvarei, Nicoleta Rodica Dominte (Lecturers / “Al. I. Cuza” University, Faculty of Law, Iasi)**

***On Fandom, Copyright Law and Fictional Characters with Sherlock Holmes and Holden Caulfield***

„Fandom is never a neutral 'expression' or a singular 'referent'; its status and its performance shift across cultural sites” and literary property paradigms as well as legal horizons, one may add. Generally associated with the forge of the Internet-borne popular culture which (re)interprets popular stories and characters, while constantly redefining its philosophy of the 'play of substitutes', fan-fiction has long stood in the shadow of the great narrative of the world and has projected itself, often enough, 'against official culture'. This paper approaches the still sensitive issue of copyright protection of fictional characters, whose point-counterpoint story starts from England's 1710 Statute of Anne which did not prohibit creative reworkings of famous characters and reaches today's legal literature, both from the United States and the British Isles; mention has to be made that literary heroes, though protected as intimate actors of the artistic texture, are deprived of a firmly stipulated 'right' of their own. Operating with legal and literary arguments, it is our most sincere intention to reflect on whether or not fictional characters are „independent creations apart from the literary or pictorial works depicting them.”

**Panel 2: Legal Culture by Way of Literature**

**12.00-13.30**

**Márton Matyasovszky-Németh (PhD candidate, ELTE Faculty of Law, Budapest)**

***The benefits of ethnography in the field of law and literature***

In my presentation, I would like to point out that sociographic literature can be a great help in understanding the legal culture of the last century. In the last decades, Tamás Nagy, one of the founders of the Hungarian law and literature movement, has attempted to develop a special sociographic method which could be used in the field of law and literature. He tried to introduce the features of the socialist legal culture by examining the sociographic literature of the seventies. The works, mainly based on Péter Hajnóczy's work, illustrated the differences between the official and the majoritarian legal culture. Nagy realized that the clearest way of presenting the attributes of legal culture can be through source material that focuses on the individual as well as small communities. By using a bottom-up approach methodology, legal culture could be understood from the perspectives of the non-professional citizens.

In my opinion, elaborating on the legal culture through ethnography and literature could inspire further research. The Central European sociographic literary tradition may at the same time replace the missing detailed ethnographic sources on the specific legal culture of the region.

**Violeta Stratan (Lecturer / West University of Timisoara, Faculty of Law)**

***Exile as a way back home***

*"Ich bin müde"* seems to be the only sentence in German language familiar to Bubi, the narrator from Dubravka Ugrešić’s *Museum of Unconditional Surrender*, and the only one she is willing to learn in her early exile days in Berlin. Learning more would mean opening up, and she wants to "stay closed" for a while. Tired, dislocated, a "weary human specimen", a "pebble casted by chance on to a different, safer shore", the exile lives in a "dream" whose signs she needs to decipher in order to understand the sense of life, to "find base" in her past so that she can have a future, far away from home. A home she recreates through ... photographs, diaries, smells, tastes, objects... in a word, through memories. Tanja Lucić, another fictional *alter ego* of the same exiled Croatian writer, takes a similar path in order to find her way home. The main character in *The Ministry of Pain* is a university professor temporarily hired to teach, at the University of Amsterdam, the literature of a country no longer existing (the country she was born in, Yugoslavia) from which her (former conational) students had fled or been expelled. Facing "a world that seemed terrifyingly large and hostile", traumatized by her recent past and discomforted by looking into an unknown future, Tanja proposes her students a class project in the form of a game supposedly able to provide them with "a territory that belonged equally" to all of them, a kind of convalescence from the war trauma through "literature, movies, pop music, jokes, television, newspapers, consumer goods, languages, people". For they all want "to come to", "recover from a shock", "regain consciousness", "come back to life", "come back to oneself," by searching for the road home. Our paper aims at finding what home means to Dubravka Ugrešić, how recreating it and rebuilding one’s own identity helps to comfort the exile, in an attempt to discover an inventory of tools ready to use when, after a war or for various other reasons, "home" is no longer "home".

**Balázs Fekete (Associate Professor / ELTE Faculty of Law, Budapest)**

***On the Legal Culture of the “Puszta”. Socio-Legal Issues in the Mirror of the Art of Gyula Illyés***

The prior World War II period seems to be an era marked by the triumph of modern positive law in Hungary. However, the sociographies written during the Interwar Period – boosted the by the idea of discovering the world of countryside with the help of literature under the aegis of Hungarian popular movement – suggest quite a different conclusion. This presentation will be dedicated to an outstanding piece of this intellectual orientation: the famous sociographical book of Gyula Illyés, the *People of puszta* (translated by Emil Giurgiuca *Poporul pustelor*). In sum, the presentation will argue that on the basis of a law and literature study of Illyés’ work such patterns of legal pluralism, living law, matriarchy, and legal rites can be very effectively revealed that would definitely remain invisible for the conventional legal research.

**Alexandra Mercescu (Lecturer / West University of Timisoara, Faculty of Law; Researcher / CLEST – Centre for Legal Education and Social Studies, Wroclaw University; Nomos – Centre for the International Study on Law, Culture and Power, Jagiellonian University)**

***Synecdoche, Comparison (of Laws)***

My paper seeks to explain some of the major epistemological concerns in comparative legal studies through figures of style: metaphor, comparison, synecdoche and antithesis. While this explanation is metaphorical itself, I claim that it has significant interpretative power and moreover invites comparative legal scholars to detach themselves from their typical ‘scientist’ attitude towards the object of their study. References shall be made to such literary works as *The Snows of Yesteryear* (Gregor von Rezzori) and *An Odyssey: A Father, a Son, and an Epic* (Daniel Mendelsohn).

**Panel 3: A Literary Eye on Justice**

**15.00-16.30**

**Cosmin Cercel (Associate Professor / University of Nottingham, Faculty of Law)**

***A Dark Nomos: Narratives of Law and Authority in Interwar Romania***

***to be added***

**Katinka Tóth (PhD candidate, ELTE Faculty of Law, Budapest)**

***Poetic justice in Kohlhaas-paraphrases***

In my presentation I will examine the idea of ‘poetic justice’ as reflected in Kohlhaas-paraphrases of the modern Hungarian and German literature, in order to discuss this complex concept I will apply the peculiar approach and methods of the law and literature movement. The presentation will analyse the definition of ‘poetic justice’ and its relevance in law and literature research.

**Nicoleta Rodica Dominte, Simona Catrinel Avarvarei (Lecturers / “Al. I. Cuza” University, Faculty of Law, Iasi)**

***An author's spark of creation versus American legal piracy at the dusk of the XIX century and the dawn of the XX century***

Should the rule of law influence the course of literature? Should it influence a literary career? We would like to map the influence of literary modernism on copyright in our attempt to envisage the significance of the Berne Convention for the protection of literary and artistic works, as an essential thesis against legal piracy on the USA territory, through the eyes of Ezra Pound and James Joyce. Literary property through registration or literary freedom of circulation was the fundamental premise of copyright at the dawn of the twentieth century. The millestones of this article are the act of creation itself and the plague of legal piracy as the two main slopes in our effort to carve literary and juridical arguments thought to reveal the modernistic nuances of copyright. Writers’ opinions became juridical arguments in their struggle against American legal piracy.

**Nóra Pethő (PhD candidate, ELTE Faculty of Humanities, Budapest)**

***Judicial narrative, rhetoric, interpretation, and equivocation – some aspects of law and language in Shakespeare***

Both law and language were of particular concern for early modern English culture and thought, which is reflected inter alia in contemporary literature, popular print culture, and education. The public debates of the 16th and early 17th century, such as those concerning royal inheritance, overseas plantations, or religious and political controversies, all contributed to the population’s involvement in political argument and interpretational issues. Moreover, the high number of litigious cases, the growing importance of the legal profession, and, most prominently, lay people’s participation in the administration of justice, as a particular trait of the English legal system, increased general legal awareness, and contributed to the forming of a legal popular culture.

Early modern English drama, rooted in Ancient Greek and Latin dramatic traditions, may be termed “evidentiary”, as it uses judicially derived narratio for the purposes of dramatic mimesis, i.e. it permits competing interpretations of the same circumstances (Hutson, 2007). That approach necessitates the careful assessment of motives and probabilities by the audience as ‘jury’ and assigns great importance to persuasion and forensic rhetoric on the stage.

However, not only disputed facts, events and characters had to be interpreted by the contemporary audience: the language of Shakespeare’s dramas involve word plays, ambiguities, questions concerning interpretation, even judicial interpretation. It is one of the recurring themes of Shakespearean drama how language may be used, misused, or abused. For example, the issue of equivocation, i.e. the deliberately ambiguous use of language is related to legal interpretation in general. Also, it alludes to the famous political trial of the 1606 Gunpowder Plot, in the course of which the Catholic conspirators used equivocation to avoid self-accusation and breach of oath when subjected to interrogation.

I suggest illustrating the above matters of law and language with examples from Hamlet, King Lear, Measure for Measure, and Macbeth.