

## Introduction: Roman Law and Latin Literature

Ioannis Ziogas and Erica Bexley

What has law got to do with literature or literature with law? Law, it would seem, claims dispositive powers and aspires to intervene in the world around it by regulating behaviour, framing constitutions, establishing rules and punishing transgression, while literature constructs fictional worlds through which it explores – without any definitive goal – the permutations of what may broadly be called the ‘human condition’. This distinction is more apparent than real, however. Closer inspection reveals that law and literature have a lot in common: both are grounded in language (oral or written), which invites interpretation and dispute; both engage in acts of persuasion; both vacillate between being reflections and projections of the world around them. Literature, like law, aspires to intervene in people’s actual lived experience from the micro level of affecting its audiences to the macro level of dictating normative behaviour and instigating cultural change. Shelley’s claim that ‘poets are the unacknowledged legislators of the world’ (1994: 660) celebrates precisely this ability of literature to interrogate and propose ways – or in Shelley’s words, *laws* (1994: 637) – of social conduct.

From the other side, law, like literature, is deeply invested in the creation of alternative worlds. Far from being concerned with unimaginative practicalities, law pursues the dream of a utopian society, whether as a future projection of cultural ideals or a wish to return to a prelapsarian state of absolute justice. Law and literature are deeply and inevitably entangled with the origins of morality, even though, if not especially when, they are trying to break free from sociomoral conventions and feature as self-regulated discourses. Nor is law more hermeneutically stable than literature, despite its ostensible striving to suppress ambiguities and separate right from wrong. Against literature’s shades of grey, law might be

expected to stand out in black and white, but the reality is much murkier. Laws are redefined continually, their every enactment an act of interpretation. Like any other text, they accrue meaning over time, and context affects their content. One need look no further than the debate between originalist and textualist interpreters of the U.S. constitution for a clear view of the hermeneutic struggles embedded in the legal profession.

Law and literature have a special interrelationship. This is not simply a case of comparing apples with oranges on the basis that both are round. Derrida's *Before the Law* (2018: 46) argues that law and literature share a particular 'narrative' quality, not just in the sense of their arising from and telling stories, but also in their aspiring to universalizing force, largely cut off from historical referents. Derrida contends that law and literature have a common origin in the form of mythological narrative (he cites Freud's analysis of Oedipus), which is 'without an author or end, but...inevitable and unforgettable' (2018: 46). Both are stories predicated on an originary judgment, both contain the seeds of moral regulation, both appeal to a reality beyond mere fact.

At a simpler level, we may just say that law exhibits literary qualities and literature legal ones. The former of these two assertions is the mainstay of the Law and Humanities movement, which arose from study of the literary – chiefly, rhetorical and narrative – features of legal texts, and the reading of literature to augment law's ethical component.<sup>1</sup> 'Law *as* literature' and 'law *in* literature' were the discipline's foundational concepts, the former represented by scholars as diverse as James Boyd White (1973), Stanley Fish (1989) and Peter Goodrich (1990), while the latter has been championed by Richard Weisberg (1984) and Ian Ward (1999), among many others. The two approaches have a lot in common and frequently overlap, as for instance in Aristodemou (2000). Both categories of analysis are represented in our volume, too. On the side of 'Law *in* literature', McGinn ('The Sea

---

<sup>1</sup> Ward (1995) 3-27; Fortier (2019) 3-11.

Common to All’) discusses the possible presence in Plautus’ *Rudens* of the legal concept *res communes omnium*; Bexley (‘Saturnalian *Lex*’) investigates Claudius’ role as judge in the *Apocolocyntosis*, and Alekou (‘Law in Disguise’) traces Ovid’s ambivalent use of legal language in *Metamorphoses* 6.1-145. For ‘Law as literature’, Dugan (‘Beachcombing at the Centumviral Court’) examines the rhetorical and metaphorical qualities of Crassus’ legal reasoning, and Wibier (‘Marcus Antistius Labeo and the Idea of Legal Literature’) investigates how one of Rome’s most famous jurists combined legal with literary learning. In keeping with the core principles of the Law and Humanities movement, all of these papers show legal and literary concepts shading into each other, so that law resembles literature and vice versa. The two disciplines, the two endeavours, combine in fruitful marriage.

Until recently, however, law has been the dominant partner in this marriage, with literature playing an ancillary role as a repository of rhetorical techniques and/or a supplement to legal knowledge. Work by Fortier (2019) attempts to shift the balance more towards literature, and the edited collection by Dolin (2018) places the two fields on a more even par. As Fortier (2019: 13-15) acknowledges, the ‘and’ in ‘law *and* literature’ conveys a lot: does it designate a harmonious relationship, or a conflict? Does it establish balance, identification, or a hierarchy? A major aim of our present volume is to continue this growing emphasis on the *literary* side of the law and literature debate by showing how literature anticipates, imitates, supplants, or complements law’s role in constituting rules and norms. To paraphrase Northrop Frye (1970: 70-7), literature is the basis of the social imagination that produces law and guarantees its respect. A more recent claim by Reichmann (2009: 5) also encapsulates our volume’s central concerns: ‘the texts of law and literature jointly contribute to...a normative universe.’ To the aforementioned categories of ‘law as literature’, ‘law *in* literature’, and ‘law *and* literature’, we add: ‘literature as law’.

At this point it is worth pausing to consider how law and literature are defined, where their boundaries lie – not easy questions for a Roman context. An obvious answer is that law comprises codified statutes and offers a basis for adjudication, but the line between legal concepts and social norms is not always clear cut. The technical language of Roman law disperses into discourse. To what extent is law synonymous with sovereign power, or behavioural precepts, or certain forms of reasoning (e.g. from precedent)? As Lowrie’s contribution (‘The Force of Literature’) demonstrates, Rome’s unwritten ‘constitution’ often acquired legal force despite its lack of codification. A similar if not greater range of definition confronts the category of ‘literature’, especially in an ancient Roman context where ‘fiction’ was sometimes an inadequate classificatory principle (Lowrie 2009a: 67; 2016: 75; in this volume). Latin epic was inextricably related to history and contemporary politics. Elegy, lyric, and epigram frequently addressed contemporaries and conveyed lived experience (Lowrie 2016: 75). The Romans defined literary production broadly, as *litterae* (‘letters’), and included in this category a wide range of written work from courtroom speeches to historiography and technical treatises; the very discipline of ‘Latin literature’ reflects this diversity. So, rather than close off any avenues of potentially fruitful analysis, this volume does not police the boundaries of law and literature too strictly; doing so would risk silencing too much of the dialogue between law and literature that we wish to promote. Although a lot of the literature covered in this volume is, by modern definition, ‘fictional’ (*comoedia palliata*, epic, satire) and although we sometimes refer to it as such, we stress that it does not inhabit an enclosed sphere, cut off from the everyday social realities with which the law is deeply engaged. Literature has as much bearing on the actual world as law does on imaginary ones.

Hence, arguments for a special interrelationship between law and literature are all the more pertinent in the context of ancient Rome, where the two pursuits often overlapped, their

production arising from roughly the same group of upper-class individuals, schooled in rhetoric and ‘letters’ (*litterae*). Notably, the Romans were fully aware of literature’s importance in fleshing out concepts of legality. As Clifford Ando (2015a) demonstrates, interaction between fiction and social reality was crucial to the functioning of Roman law. Legal fiction extended Roman law beyond the original scope of any individual source of law. Since imaginary stories, plots, archetypes, and stock characters make what is particular universal, fictional narratives became the foundation of Roman legal discourse rather than its reflection.

The genre of Roman declamation, for instance, highlights the importance of fictional laws and trials not only for training young Romans for a career in the courtroom, but also for educating them about the controversial origins of taboos and morality. The plots and stock characters of declamations strongly evoke those of Roman comedy and tragedy (see Gunderson 2016; cf. Langlands 2006: 250-1). The laws quoted in the declamations are imaginary, yet many of them clearly evoke early laws, praetorian edicts or Greek laws (see Lowrie 2016: 76; Bonner 1949: 83-132). Declamatory plots and laws are fictional, yet they feel real; they are outlandish, yet familiar; they are at once culturally specific and universal. In the end, it is the *idea* of law that matters and not its specific directives. And that is why we need to take law and literature in Roman declamations seriously (cf. Gunderson 2003).

A division between law as factual and literature as fictional clearly cannot be sustained. Although critics of the law and literature movement, such as Richard Posner (2009) aver that legal scenarios presented in literature have little bearing on actual legal practice, or on legal history, fictional narratives are in fact major sources of legal consciousness. Kafka’s *The Trial* may not increase our understanding of Austro-Hungarian criminal procedure, as Posner (2009: 143) maintains, but it substantially increases our *concept or impression* of law’s depersonalizing effect in modern, bureaucratic societies. Like

Roman declamation, the importance of the narrative's legal material lies in its articulation of an *idea* rather than a specific rule set.

Literature is also capable of producing legal consequences outside the text itself, for example, in cases of libel or censorship. The situation is even more striking in ancient Rome, where interaction between the two spheres was not so strictly delineated. Catullus' poetry, for instance, not only addresses several of his contemporaries (e.g. the poet Licinius Calvus or Cicero), but is also presented as powerful speech that can injure its targets.<sup>2</sup> The poet's iambic attacks on Caesar are a case in point: Catullus 57 did not simply refer to an extra-textual reality, but hurt its addressee. Suetonius (*Julius Caesar* 73) tells us that Caesar considered this poem about Mamurra 'an indelible mark on his body' (*sibi...perpetua stigmata*). The word *stigma* is significant here because its primary meaning is a mark of infamy tattooed with a hot needle on runaway slaves or criminals. Thus, for Caesar, Catullus' *stylus* has the force of law since the poet can punish his targets with the hot needle of his poetry; his writing is not just analogous to but practically indistinguishable from the slave's tattoo. Iambic verses have the power to degrade the most powerful man and brand him with the scars of infamy forever.

Additionally, Latin literature often aspired to create a socio-political reality in ways that parallel the scope and aims of Roman laws. Ovid, for instance, in his *Art of Love* assumes the voice of an authoritative legislator, in order to lay down the laws that regulate love affairs (see Ziogas 2021). He is thus creating or reflecting a social reality in contrast and parallel to Augustus' moral legislation. We should never underestimate Ovid's ambitions. He writes poetry in order to create a world and by creating a world he simultaneously legitimates it. Literature, like law, is both inspired by and inspires reality.

---

<sup>2</sup> On injurious speech, see Butler (1997) 43-70. On the law as speech that can injure, see Cover (1986).

To the extent that law and literature are bound up with textuality, they are scripts that are fixed. They can be copied and imitated, though all acts of reproduction encourage instead of compromising an obsession with the original. Textual stability goes hand in hand with interpretative instability. The meaning of written laws and literary texts depends on context, media, method, readership, and performance.<sup>3</sup> Legal and literary texts are hotly disputed. By being repeatedly interpreted and reinterpreted, they are repeatedly renegotiated, revised, and reaffirmed.

A neat example of this confluence is the Latin word *iudex*, which describes both a judge and a literary critic. A defining characteristic of both law and literature is that both discourses have their ‘guardians’ or ‘gatekeepers’ (critics, experts, authors, lawyers) who can pass laws and judgment only by referring to a pre-established and thus more powerful set of rules and conventions (cf. Derrida 2018: 67-8). In sum, law and literature require an *auctor*, a word which in Latin describes both the author of a literary text and the proposer of a law. When Roman authors describe themselves as *auctores*, they claim that the nature of their work is simultaneously literary and juridical. They are creators, owners, and guarantors of literature that has the force of law or law that has the force of literature.<sup>4</sup> At the same time, both law and literature constantly question, revisit, and revise established norms. They are simultaneously fixed and living texts: they operate within prescribed boundaries and frameworks which they constantly push and redefine.<sup>5</sup>

As Kieran Dolin points out, law and literature are adjoining fields, divided by a boundary fence that keeps breaking down, despite regular maintenance (Dolin 2007: 8). In his fine introduction, Dolin (2007: 1-16) discusses how the American Supreme Court’s

---

<sup>3</sup> Lowrie (2009a), Part IV ‘Reading and the Law’ is important.

<sup>4</sup> In Roman law, *auctor* describes a guarantor who approves the transference of property.

<sup>5</sup> See Dolin (2007) 6-9 for a fine discussion of the importance of boundaries in law and literature. Law attempts to create, police, and occasionally transgress social, spatial, and temporal boundaries; see Sarat et al. (1998) 3-4. Literature, like law, depends on internal and external boundaries for its identity and its everyday functioning. Yet these boundaries are made to be transgressed.

decision of the case of *Plaut v. Spendthrift Farm Inc* (1995) revolved around interpreting Robert Frost's poem 'Mending Wall'. Justice Antonin Scalia cites Frost's poem in order to support his formulation of the law: 'separation of powers, a distinctively American political doctrine, profits from the advice authored by a distinctively American poet: good fences make good neighbors' (240). Scalia assumes that his readers will recognize his allusion to Frost's poem. He also assumes that this literary allusion has the power to legitimize the judgments of the Supreme Court. As Dolin (2007: 2) puts it, 'Political theory, history and literature combine to authorise and authenticate this law, and locate it in a larger narrative.'

But another member of the Court, Justice Stephen Breyer, questioned the understanding of the poem, noting: 'One might consider as well that poet's caution, for he not only notes that "Something there is that doesn't love a wall," but also writes, "Before I built a wall I'd ask to know / What I was walling in or walling out"' (359). Thus, Breyer points out that it is a mistake to assume that Frost endorses the line from his poem. Scalia neglected the context of the poem and simplified the thorny issue of authorial intention. Breyer's juridical critique is literary criticism. Interestingly, Dolin (2007: 3-4) argues that Scalia and Breyer uncannily re-enact the roles of the two farmers from Frost's poem. We can push his argument further: not only did the interpretation of a poem become inextricably entangled with the judgments of the Supreme Court, but the dramatization of its two opposing views is now reflected in the debate between Scalia and Breyer. The Justices are created in the image of Frost's poetry.

If intertwining legal and poetic judgments is rare in our times, it was far more common in the Roman world. We tend to think of legal discourse as specialized and autonomous, but specialization does not imply seclusion (cf. Dolin 2007: 10). The Roman jurists were indeed the group of experts which played a crucial role in the emergence of the field of law as a science. Our modern concept of law is more or less their invention (see



Schiavone 2012). But the independence of legal discourse did not result in its cultural isolation. As Jill Harries (2006: 12) puts it: ‘The present separation of legal discourse from the rest...is not reflected in the intellectual approach taken by the Roman elite.’ Roman authors were educated in law and saw themselves as champions of justice. Roman orators and jurists were versed in literature and used their literary knowledge in their forensic speeches and reasonings. The Augustan jurist M. Antistius Labeo, for instance, founded a school of law that emphasized the study of liberal arts. Grammar, dialectics, literary criticism, and etymological analyses were keys to interpreting the law in Labeo’s school. The jurists taught literature and linguistics in their schools and debated the meaning of poetry far more often than the Justices of the Supreme Court.

A telling example comes from the jurist Gaius, who, in his treatise on the Twelve Tables, quotes Homer (*Odyssey* 4.230) to support his definition of *uenena* (‘drugs’). The passage comes from the *Digest* (50.16.236), in a section where jurists resemble lexicographers (*Digest* 50.16 *De uerborum significatione* ‘On the meaning of words’). Gaius starts by saying that those who use the word *uenenum* should clarify whether it is ‘a good or a bad drug’ (50.16.236 *Qui “uenenum” dicit, adicere debet, utrum malum an bonum*) and goes on to argue that the semantic range of *uenenum* corresponds to the Greek word φάρμακον, which describes both a noxious poison and a medicinal remedy. Gaius concludes with quoting and translating *Odyssey* 4.230 (φάρμακα, πολλὰ μὲν ἐσθλὰ μεμιγμένα πολλὰ δὲ λυγρὰ ‘drugs, many that are healing when mixed and many that are harmful’). Homer is described as the greatest Greek poet (*summus apud eos poetarum*) who is here invoked to advise the Romans (*admonet nos*); literature lends itself to legal application.

Concomitantly, Gaius’ interrogation of semantics resembles a literary pursuit as much as a juridical one. Homer was often summoned as a witness in legal disputes and his poetry was treated in the same way as law and legal documents (see Koning 2010: 76). This practice

was not restricted to the Greek world, but extended to the reasonings of Roman jurists. Paul (*Ad edictum* 33; *Digest* 18.1.1), for instance, discusses whether a true sale can be made without using coins.<sup>6</sup> Does giving a toga and receiving a tunic instead count as sale? According to Paul, Sabinus and Cassius argue that this is a veritable sale, while Nerva and Proculus are of the opinion that this is an exchange, not a purchase. Sabinus used Homer as a witness (*Homero teste utitur*), quoting *Iliad* 7.472-5, where Homer says that the Achaeans bought wine with copper, iron, hides, cattle, and slaves. But Paul challenges Sabinus' reading of the Homeric passage. In his view, what Homer describes is barter, not a purchase. Paul quotes another passage from the *Iliad* to support his interpretation (6.234-5), the famous line in which Glaukos makes an exchange of armour with Diomedes, giving gold for bronze. After criticizing Sabinus for misinterpreting Homer, Paul adds that he could have chosen a better passage in support of his *sententia*, namely the Homeric formula *πρίατο κτεάτεσσιν ἐοίστην* ('he purchased with his possessions' *Odyssey* 1.430, 14.115, 14.452, 15.483). Paul implies that his knowledge of Homer is superior to that of Sabinus, who failed to make his *sententia* convincing due to his poor command of Homeric epic.

Ultimately, Paul implies that Homer's testimony is inconclusive. Yet he takes pains to show that he is an excellent critic of Homeric poetry. Homer's authority is not simply dismissed as irrelevant. His cultural significance is beyond dispute as well as his relevance to juristic debate. This is quite striking; we would expect that Homer's poetry would be barely pertinent to Roman law. An archaic Greek epic tradition that at times reflects the world of archaic Greece and at other times the bygone world of the Mycenaean civilization it celebrates is taken into account in the works of the Roman jurists. Homer's authority exceeds national, cultural, and temporal boundaries. More importantly, his authority exceeds the

---

<sup>6</sup> See Wibier (2020) who argues convincingly that quoting Homer in the context of economic exchanges was widely practiced in the juristic tradition.

boundaries of literature and influences the way in which the Romans understand their legal terms and concepts.<sup>7</sup>

While Roman jurists debated the meaning of Homeric poetry in their reasonings, forensic orators summoned poets as witnesses to support their cases. Quintilian (*Inst.* 1.8.11-12) notes that great orators, such as Cicero and Asinius, often quoted lines from older poets, such as Ennius, Accius, Pacuvius, Lucilius, Terence, and Caecilius, in order to support their cases and please the jurors. He concludes as follows: *Quibus accedit non mediocris utilitas, cum sententiis eorum uelut quibusdam testimoniis quae proposuere confirmant.* ‘There is considerable practical advantage in this also, because orators adduce the sentiments of the poets as a kind of evidence to support their own positions’ (see Ziogas 2021: 167). Poetry is thus quoted as legal evidence.

One of the most prominent and well-known cases of a Roman orator quoting poetry in his defence speech is Cicero’s *Pro Caelio*, which we now consider as a case study for the interactions between law and literature. In this speech, Cicero casts all the main parties involved in the trial as stock characters from Roman comedy.<sup>8</sup> Caelius is a young man (*adulescens*) whose transgressive behaviour must be condoned; Clodia is a courtesan (*meretrix*) whose mercenary tricks must be resisted; the prosecutors resemble the stern old fathers from Roman comedy. By contrast, Cicero casts himself as the lenient father. He plays his role with flair as he enriches his speech with quotations from Roman comedy:

leni uero et **clementi patre** cuius modi ille est:

fores ecfregit, restituentur; discidit

uestem, resarcietur,

---

<sup>7</sup> See also Wibier (in this volume) on poetry in juristic debate.

<sup>8</sup> On the importance of Roman comedy in the *Pro Caelio*, see Geffcken (1973); Leigh (2004a). Also Goldberg (2005) 87-97, who discusses the role of comedy, tragedy, and other dramatic genres in Cicero. On comedy in Cicero: Karakasis (2014) and Polt (2021) 45-69. Batstone (2009) 218-19 argues that Cicero reconstructs a question of fact as a question of representation and, in so doing, reconstructs a legal case as a comic drama. Hanses (2020) 130-55 examines comedy, tragedy, and mime in the *Pro Caelio*.

Caeli causa est expeditissima.

But if I take a mild and **indulgent father** like this one, who would say:

‘He has broken a door, it will be repaired; he has torn a dress, it will be mended up,’

Caelius’ case is quite without difficulty. (Loeb translation modified)

(Cicero, *Pro Caelio* 38)

By quoting Terence’s *Adelphoe* (120-1), Cicero plays the role of the indulgent father Micio. What is more, Cicero follows the dramatic conventions of Roman comedy as an authoritative precedent that will guarantee Caelius’ acquittal. As Matthew Leigh (2004a: 301) argues, Cicero aims to make the jury study the case as if they were watching a comedy, and to appeal to their deep understanding of the rules of the genre. In Roman comedy, young men’s transgressive and illegal behaviour is not punished. They are typically pardoned at the end without facing the consequences of their irresponsible and often criminal actions.<sup>9</sup> Lenient fathers and young men in love promote the comic spirit, while strict moralists and litigious old men are blocking characters which are either humiliated and expelled from the comic stage or transformed and integrated into Roman comedy’s code of conduct. In other words, legalism and litigation undermine the justice of comedy, which results from the suspension, not the enforcement of the law.

In order to de-legitimize the prosecution, therefore, Cicero relies on the nature of Roman comedy. It is, further, significant to the case that such comic performances were staged during festivals or holidays that were defined by a temporary suspension of legal action. In fact, Caelius’ case takes place during the *ludi Megalenses*, a major festival that

---

<sup>9</sup> Leigh (2004a) argues that comedy sets limits and establishes fundamental generic controls to unruly behaviour. This is indeed what the genre does, but note that comedy often pardons serious crimes, such as the rape of a freeborn citizen. Comedy’s power to understate the consequences of criminal acts may be greater, and more problematic and controversial, than what Leigh suggests. It is precisely this understatement of serious crimes that serves Cicero well in the *Pro Caelio*.

included comic performances. That a trial was held during this time is exceptional. The prosecution brought charges against Caelius under the *lex de vi*, which outlawed any act of violence against the *res publica*, and convened cases even during festivals (see Dyck 2013: 7). The accusation is extremely serious and, had he been convicted, Caelius would have most likely faced the death penalty, a closure quite unlike any ending from Roman comedy. But Cicero uses this opportunity to stage his own version of a comedy in his defence speech, thereby undermining the severity of the prosecution's accusations. The trial is far from a joke, but Cicero makes a joke out of it.

Geffcken argues that comedy in the *Pro Caelio* dismisses the accusations by diminishing their importance. In rhetoric, this is known as *minutio* or μείωσις and Cicero was a master of this trope. Similarly, comedy often made serious crimes such as theft and rape look less severe; even if their gravity was not questioned, comedy found a way to resolve these delicts without punishing the guilty. In this regard, Roman comedy is the dramatization of *clementia*, a distinctly juridical virtue that refers to the judge's power to suspend the law in the name of justice. That is why Terence's Micio, whom Cicero summons to court as the archetype of the *clemens pater*, is the embodiment of comic justice.<sup>10</sup> And that is why Cicero appeals to comic law. Comedy in the *Pro Caelio* is not just about making the accusations look small, but also about making comic law the sovereign adjudicator.

Cicero's forensic strategy is ingenious. His first task is to trivialize the accusations, to argue that this is not a case that threatens the existence of the republic, but a dramatic plot of a pious son caught in a greedy courtesan's trap. If the severity of the accusations is undermined, the trial is over. It is the *ludi Megalenses* and it is time for comic performances, not courtroom proceedings. Cicero makes this point by giving a comic performance that not only entertains the jurors, but also establishes comedy, with its conventional plots and stock

---

<sup>10</sup> Cf. Terence, *Adelphoe* 42-3 *ego hanc clementem uitam...secutu' sum*.

characters, as the legal code under which Caelius' case must be tried.<sup>11</sup> And comic law prevailed during the *Megalensia*. No matter how irrelevant to the actual charges Cicero's histrionics seem, Caelius was acquitted in line with the conventional happy ending of a Roman comedy. The rebuttal of the accusations simultaneously restores the festive spirit of the *Megalensia*. The prosecutors are blocking characters from Plautus or Terence; they are litigious killjoys trapped in Cicero's comedy. They have simply no chance of winning their case.

Cicero virtually transforms the jurors into spectators of a comic show. But it should be noted that the reason why he draws on comedy so effortlessly is because there is significant overlap between Roman comedy and forensic rhetoric. Matthew Leigh (2004a: 315-16, 326-32) argues that comedy and rhetoric devise the same strategies of forgiveness when confronted with the problem of a wayward youth.<sup>12</sup> The members of the jury, like the spectators of a comedy, become complicit in the advocate's successful bid to talk the young Caelius out of a sticky situation (see Geffcken 1973: 7). The forensic orator thus becomes a comic playwright and performer. Cicero resembles not only the lenient father from Roman comedy, but also a cunning slave from Plautus, who creates a comic plot that guarantees that the young lover will have his way without suffering from the consequences of his actions.

Another, related case study of the interactions between law and literature is Terence, who achieves the inverse of Cicero's course in the *Pro Caelio* by transforming the spectators of his comedy into jurors in the prologue to the *Adelphoe* (*4 uos eritis iudices*). As we mentioned above, *iudex* means both judge and literary critic and Terence refers to both here. The prologue defends Terence's work against accusations of plagiarism, and in order to judge

---

<sup>11</sup> According to Hanses (2020) 145-6, Cicero highlights that Caelius' life follows the pattern of the *adulescens* from Roman comedy, which foresees that the young man will eventually move on from his comedic lifestyle. Hanses rightly adds, 'if the jurors accept this superimposition of a comedic structure onto Caelius's life...they also have to accept that according to the rules of Roman comedy, the defendant has to be acquitted.'

<sup>12</sup> On Roman comedy and oratory, see also Sharrock (2009) 83-93.

the case of plagiarism, a *iudex* needs to be versed in both law and literature, even more so in this case because the verdict of the jury will rely on examining issues of translation and intertextuality, areas more readily associated with literary criticism than legal judgment. The comedy that is about to be performed is introduced as evidence and the spectators need to examine it, in order to decide whether the poet is guilty or not guilty. The prologue concludes by asking the audience to give the play a fair hearing and encourage the author to continue his work (24-5). Far from being passive recipients, the audience, like a jury, has the power to condemn Terence as a playwright, if they find him guilty, or promote his career, if they approve of his comedy. This is not a joke: Terence's livelihood depends on the reception of his plays. Watching a comedy suddenly becomes the equivalent of evaluating evidence in a trial; more than 'an equivalent', it *becomes* a trial. The playwright (Terence) turns the theatre into a courtroom, just as the advocate (Cicero) turned the courtroom into a theatre.

So, the prologue to the *Adelphoe* functions like a defence speech, demonstrating that the *Pro Caelio*'s dynamic interplay between Roman law and the conventions of Roman comedy features already in Terence. The *Eunuchus*' prologue fulfils a similar function as a defence speech against accusations of plagiarism.<sup>13</sup> An old playwright (Terence condemns him to anonymity, but we know that it is Luscius Lanuvinus) got access to a preview performance in front of the aediles, the state officials in charge of public games. The old playwright interrupted the performance by shouting that Terence was a thief (i.e. a plagiarist), not a playwright, but that he would fail to deceive (*Eunuchus* 21-4). The prologue is a response to this accusation: a counterattack on the old playwright and a defence of Terence's work. Not unlike a forensic orator, Terence begins his prologue with a *captatio benevolentiae*, aiming to flatter the audience and make them share his perspective (cf.

---

<sup>13</sup> On plagiarism in Latin literature, see McGill (2012), especially Chapter 4, which deals with Terence, and Goldschmidt (in this volume).

Sharrock 2009: 87-8; McGill 2012: 119-20). Cicero employs this rhetorical technique at the beginning of the *Pro Caelio*; in fact, both the *Eunuchus* and the *Pro Caelio* begin with the same words (*si quis*).

In his counterattack, Terence accuses the old playwright of making bad Latin plays out of good Greek models: Luscius' translations were faithful, but his poetry poor. He then accuses him of ruining Menander's original play by not following proper legal procedure:

atque in Thesauro scripsit causam dicere  
 prius unde petitur aurum qua re sit suom  
 quam illic qui petit unde is sit thesaurus sibi  
 aut unde in patrium monumentum peruenerit.

and in his *Treasure* he represented the defendant as putting his case for the possession of the gold before the plaintiff explained how the treasure belonged to him and how it came to be in his father's tomb. (Loeb translation modified)

(Terence, *Eunuchus* 10-13)

In a court of law, the plaintiff usually speaks before the defendant. In his comedy, Luscius ignores this rule. Critics note a striking inconsistency in Terence's accusations: Luscius cannot both translate closely and make changes to the plot of the play he is translating (see, e.g., Barsby 1999: 84). However, as Alison Sharrock (2009: 91) points out, this inconsistency only increases the resemblance of Terence's prologue to a court case, in which *argumentatio* involves subtle sleights of hand and precise logic is less important than effective rhetoric. What is more, even though Terence presents his prologue as a defence speech in response to an accusation (6 *responsum*), the audience and readers of the *Eunuchus* do not have a chance to listen to Luscius' speech. We can merely view the accusations of the prosecution through



the defence's distorting lens (20-5). In other words, the *Eunuchus* ostentatiously reproduces the fault of which it accuses Luscius. The plaintiff is deprived of his right to speak in the comic courtroom.

The main point is that the comic plot reflects and is reflected in the story of the production of Terence's play; Roman reality and comic fiction blend together. Terence's criticism may look rather pedantic and trivial, but is significant. The prologue highlights the importance of legal conflict in comedy, arguing that the well-designed plot of a play should correspond to proper procedure in a trial. A comic playwright cannot afford to be ignorant of the rituals of law and Luscius' failure to follow judicial procedure in his play seriously undermines the charges he brought against Terence. The plot of comedy should correspond to the plot of a trial and anticipate its outcome. There are transgressions and accusations, and at the end there is a verdict that aims to resolve conflict and restore justice.

While the typical prologue of New Comedy gives an outline of the play's plot, Terence's prologues outline the story of their performance. But one of the striking effects of Terence's prologues is that they still give the impression that they present the outline of a comic plot.<sup>14</sup> Terence and Luscius Lanuvinus correspond to stock characters from Roman comedy: the young man and the grumpy old man. As Sharrock (2009: 89) puts it, a conflict between a young man and an old man, which the young man must win, is a programmatic image for the content of comedy. More specifically, the accusation of theft (*furtum*) resonates with comic plots in which young men, usually with the help of cunning slaves, steal money, often from stern fathers, in order to obtain the object of their desires. Since the word *furtum* may also describe extramarital affairs, it further resonates with the passions of the youth that feature prominently and are prominently condoned in Roman comedy.

---

<sup>14</sup> Sharrock (2009) 87-92 is important. See also Gunderson (2015a) 55-79. They both focus on Plautus, though Terence deserves more attention.

Luscius, by contrast, is cast as a blocking character. He is the stern old man, who will not allow our young playwright to succeed and fulfil his desires. He loudly accuses the young poet of attempting to deceive (23-4 *exclamat furem non poetam fabulam/ dedisse, et nil dedisse uerborum tamen*. ‘He shouted that the play was the work of a thief, not a playwright, but that the attempt to deceive had not worked.’ Loeb translation). To deceive (*uerbum dare*) is one of the most distinctive characteristics of Roman comedy. But the point is that the audience takes the sides of those who deceive, not of those who are deceived. In other words, Luscius’ accusations are not going to find any supporters in the context of a comic performance. The wordplay between *fabulam dedisse* (‘to give a performance of a play’) and *dedisse uerborum* (‘to deceive’) may suggest that Luscius may actually not be such a bad poet. The performance of a *fabula* (the fictitious story of a play) creates a semblance of reality that is essentially deceptive: *fabulam dedisse* is synonymous to *uerba dedisse*. What is more, dramatic deception is associated with truth and wisdom. The Sophist Gorgias famously remarks on dramatic performances that ‘he who deceives is more honest than he who does not deceive, and he who is deceived is wiser than he who is not deceived’ (Plutarch, *Moralia* 348c). Deception is crucial for establishing the rule of comedy. The successful playwright, like the successful comic hero, is a powerful illusionist, an archetypal trickster.<sup>15</sup> By attacking Terence’s ability to deceive, Luscius threatens Terence’s existence as a comic playwright.

As a blocking character, the old playwright literally blocks the performance of comedy by interrupting it with his incriminations. He introduces a litigiousness that is the enemy of comic justice. In order for the comic performance to resume, this grumpy old man needs to be expelled from the comic stage. This is precisely what the prologue to the *Eunuchus* does. Terence casts Luscius as a blocking character that undermines the comic

---

<sup>15</sup> On the importance of deception in Roman comedy, see Sharrock (1996).

spirit, and presents himself as the comic hero who always wins in the end. By weaving together the background story of the play's performance with stock plots and characters from comedy, Terence aims to guarantee the support of the audience/jury.

Luscius also functions as a foil for the members of the audience. His loud interruption of the play's preview shows that audience members of Roman comedy were not restricted to polite passivity. Luscius' shouting (23 *exclamat furem*) contrasts with the prologue's plea to the audience to watch the performance quietly (44 *date operam, cum silentio animum attendite* 'pay attention and listen carefully in silence'). Ironically, by interrupting Terence's play, Luscius enters the comic universe since he is readily stereotyped as a blocking character. By contrast, the prologue's *captatio benevolentiae* aims to win over the spectators and make them actively support and encourage our poet's work. One way or another, spectators, like jurors, have the power to reward or punish.

In his response to Luscius' accusation, Terence argues that if he committed plagiarism, he did so inadvertently, and this admission, too, has legal ramifications. Terence maintains that his alleged transgression was the outcome of poor practice, not malicious intent; his inexperience should be taken into account. In a trial, the issue of intention (*animus* or *mens*) would be crucial for determining the severity of the crime. Further, Terence declares that if he did indeed commit a theft, this was due to ignorance:

si id est peccatum, peccatum **imprudenti**ast  
poetae, non quo furtum facere studuerit.

If that was an offence, the offence was due to the **inadvertence** of the playwright; he had no intention of committing plagiarism. (Loeb translation)

(Terence, *Eunuchus* 27-8)

The key word in this passage is *imprudentia*. In its non-technical sense, it means ‘lack of knowledge’ or ‘absence of intention’ (see OLD s.v. *imprudentia*), but in its technical sense it means ‘want of knowledge of law’ (see Berger 1953, s.v. *imprudentia*). In its legalistic sense, lack of knowledge of the law would not be an excuse, unless the person concerned was very young or very inexperienced (see *Digest* 22.6). The jurist Paul states, ‘in inflicting penalties, the **age** and **inexperience** of the guilty party must always be taken into account’ (*Digest* 50.17.108 *fere in omnibus poenalibus iudiciis et aetati et imprudentiae succurritur*). Of course, the sources of the *Digest* are much later than Terence, but it is still quite striking that Terence’s argument here is in line with juristic reasoning. Whether or not Terence was familiar with a version of this legal principle is most likely an unanswerable question, but the main point for our purposes is that the tenets of Roman law seem in this instance to coincide with the ‘laws’ of Roman comedy: the young should be forgiven due to their inexperience. The conventions of this particular literary form find a parallel in the legal rules designed to regulate social conduct.

Terence’s reasoning in the *Eunuchus*’ prologue also remains faithful to the spirit of Roman comedy, where law’s suspension rather than its enforcement defines the plays’ plots and performative context. Just as official legal business is held in abeyance for the duration of the festival, so the comic plot always avoids taking matters to court. Its arbitration scenes typically occur between family members and their primary aim is forgiveness; clemency, not punishment, is the heart of comic justice. So, when Terence asks for forgiveness at the end of his prologue, he is in effect asking for the rule of comedy to be reaffirmed:

**qua re aequomst** uos cognoscere atque **ignoscere**

quae ueteres factitarunt si faciunt noui.

**In this case, it is only fair** that you should examine the facts and **pardon** the new playwrights if they do what the old have always done.

(Terence, *Eunuchus* 42-3)

Terence stages a trial to signal comedy's power to suspend the law. A plea to pardon (*ignoscere*) the young at the end of the prologue corresponds to the typical happy ending of a comedy (see, e.g., Terence, *Heauton Timorumenos* 1045-67; Plautus, *Mostellaria* 1154-9). This forgiveness, which is always granted, is presented as fair and just (*aequomst*) in a performative context that evokes a trial setting that features an advocate, a defendant, a prosecutor, and a judge. Terence's *qua re* actually implies the technical meaning of *res* as 'a legal case' or 'a matter at issue in a court of law' (*OLD s.v.* 11). The comic courtroom is in session and we can rest assured that it will rule in favour of the young playwright.

Cicero transforms the courtroom into a theatre, while Terence transforms the theatre into a courtroom. In our view, this is not just a case of one discourse borrowing from another. Does comedy appropriate forensic rhetoric? Does Cicero steal the plots and characters of Roman comedy? Does legal discourse borrow from literature or is it the other way around? The answer is that we are dealing with a chicken and egg situation. Law and literature derive from the same matrix and in the case of drama and courtroom rhetoric, from the same performative matrix, in which actual social roles are interwoven with their theatrical counterparts. The strict father or the wayward youth are stock characters that embody an imaginary *persona*, yet, more often than not, these stock characters are also defined by their relationship to the law: the Roman father is the embodiment of sovereignty, while the young man struggles to free himself from his legally dependent status. The stock characters of the *matrona* ('married woman'), the *uirgo* ('marriageable woman'), and the *meretrix* ('courtesan') are likewise impossible to conceive of without reference to their legal status.

But their legal status is also impossible to conceive of without examining the key role of social performance in fleshing out legal *personae*. Literary and legal persons reflect each other; they are originals that are created and reproduced by a narrativity and a performativity that define both juridical and literary discourse.

We can also see in the parallel examples of Cicero and Terence how literature sometimes assumes law's role in settling disputes and regulating moral conduct. Cicero structures his *Pro Caelio* according to the stock characters and rules of Roman comedy not just to entertain jurors who are missing out on the *ludi Megalenses*, nor just to diminish the apparent severity of the prosecution's case, but to produce an actual real-world result in the form of Caelius' acquittal. Comic tropes are not ancillary here; they are fundamental to the jurors' assumptions about the case. True, literature may not have quite the dispositive power as law, but in an example such as the *Pro Caelio* it is hard to say where the distinction lies. Similarly, the prologue to Terence's *Eunuchus* employs a clever combination of *palliata* motifs and legal language to persuade the audience of a particular outcome, namely their favourable reception of the play. Of course, this is not a real trial or a real acquittal, but it is undeniable that the legal and literary confluence in Terence's prologue is aimed at extra-textual results, whether in the form of clearing his name, promoting his play, or – as may have been the case – winning a dramatic competition. His audience of *iudices* certainly appear to have been persuaded and to have taken a positive view of the work: the *Eunuchus* was awarded 8,000 sesterces and allowed an encore performance on the very same day (Suet. *Vit. Ter.* II). Law is not ancillary here, just as Roman comedy is not ancillary in Cicero's *Pro Caelio*, since, by framing his play with this charge of plagiarism, Terence draws his audience's attention to the everyday world lying beyond the fictive one they are about to enter. Imaginative fiction is rendered indistinguishable from the circumstances of its

composition, and from the playwright's intent for his production to succeed. For Cicero and Terence, law and literature operate side by side, with powerful results.

\*\*\*

This book is the first edited volume to challenge the disciplinary boundaries between law and literature in Roman Studies. While experts in Roman law and history often discuss law in Latin literature (e.g. Badian 1985; Treggiari 1991) and experts in Latin literature study Roman law (e.g. Kenney 1969; Gebhardt 2009), each group of scholars uses the other group's work as a means to an end. For Romanists and Roman historians, literature is a source of information about the realities of Roman law. In fact, it is sometimes regarded as a necessary evil, given that, although literary texts may include indispensable information about Roman law, historical accuracy is not their primary concern. Literary scholars, on the other hand, tend to treat law's appearance in literature as a literary effect – a trope, a metaphor, or even a consequence of Roman writers' schooling in rhetoric. This book aims to challenge these approaches by inviting scholars of Roman law and Latin literature to consider more meaningful and productive points of contact between legal and literary discourse.

To this end, the book engages with the interdisciplinary field of 'Law and Literature', which, although well-established, is relatively new in Classics. Within this interdisciplinary context, we aim to show how indispensable the Roman world is for Legal Humanities. While excellent studies explore law and literature as force fields of mutual contestation (e.g. Aristodemou 2000; Sarat 2008; Dolin 2007; 2018), they tend also to be broad and eclectic, moving rapidly from discussion of Sophocles' *Antigone* to Shakespeare's *The Merchant of Venice*. The Roman Republic and Empire have been mostly overlooked, despite their being periods of massive tectonic shift in the legal and literary landscape. The discipline of Classics

has a lot to contribute to this lively debate about legal and literary interactions, but to date, the topic remains underexplored.

As Klaus Stierstorfer (2018) argues in a recent chapter, this connection between law and the humanities is not a recent invention, but goes back to classical antiquity. It features prominently both in Hesiod, whose poetry revolves around an overlap between poetic and juridical discourse, and in Hebrew cultural history, where the closely allied corpora of *halachah* and *haggada* could be translated as ‘law’ and ‘literature’ respectively. In regard to ancient material, it may be more accurate to characterise the study of law and literature as a *revival* of legal humanism. This book aims to contribute to that revival.

Despite such intriguing interactions between law and literature in the ancient world, appreciation of this field in Classics has been limited. It is indicative that in the recent *Oxford Handbook of Roman Law and Society*, there is only one chapter on Roman Law and Latin Literature (Lowrie 2016). The field of law and literature often acknowledges the importance of the ancient Greek world, but rarely invites classicists to contribute to the debate. It is even rarer to find scholarship on Roman law and Latin literature. In a recent volume on *Law and Literature*, there is only one chapter on ‘Law and Literature in the Ancient World’ (Ziogas 2018), which mostly covers Classical Athens. While recent work by Lowrie (2009a; 2016) and Gunderson (2015a: 85-107) suggests a paradigm shift, such theoretically nuanced approaches still represent a very small portion of classical scholarship. Experts in Roman law rarely engage in constructive dialogue with specialists in Latin literature and vice versa.

This volume aims to bridge that divide and the conference from which it originates showed that the project is timely.<sup>16</sup> The lively dialogue during the production of this volume between experts in Roman law and Latin literature demonstrated that there is a real desire to

---

<sup>16</sup> The volume originates in an international conference on ‘[Roman Law and Latin Literature](#)’ (Durham, 2-4 September 2019).



bring these two worlds together. On the one hand, scholarship on Latin literature is increasingly focusing on the historical, social, and political backgrounds that shape the production of literary works, in contrast with the older trend of studying literature as a closed universe unrelated to historical realities. On the other hand, scholarship on Roman law has recently been emphasizing the fact that legal discourse was not culturally isolated (e.g., Harries 2006, Wibier forthcoming). In other words, literary scholars are eager to examine the importance of law in literature or the juridical nature of Latin literature, while Romanists are ready to embrace the interactions between literary and legal discourse. This volume capitalizes on the right moment to open a fruitful dialogue between scholars of Latin literature and Roman law and thus aims to make a major and much overdue contribution to this interdisciplinary field.

The chapters in the volume are arranged thematically in four parts that cover a broad chronological range — from Naevius and the Twelve Tables (Goldschmidt) to comparisons between US and Roman law on equality and proportionality (Pandey). Part I, ‘Literature as Law’ opens with Lowrie’s chapter (‘The Force of Literature’), which argues that stories in Republican Rome assumed a force approximate to law’s binding power without its dispositive capacity. Next, Bexley’s chapter (‘Saturnalian *Lex*: Seneca’s *Apocolocyntosis*’) examines how Seneca’s satire claims the quasi-legal power to judge and punish Claudius. Finally, Biggs (‘*Iustitium* in Lucan’s *Bellum Ciuile*’) studies the importance of the ‘suspension of the legal’ (*iustitium*) at key textual moments in Lucan’s epic, arguing that its occurrence generates a literary as well as juridical zone of indistinction.

Part II, ‘Literature and the Legal Tradition’, opens with Gaertner (‘Terence’s *Phormio* and the legal discourse and legal profession at Rome’), who shows how Terence mocks the authority of legal experts and uses this humour as a defiant act of social correction. Themes of legal exegesis provide links to Dugan (‘Beachcombing at the Centumviral Court: Littoral

Meaning in the *Causa Curiana*'), who argues that the *Causa Curiana* marks a convergence of legal and literary discourses, effectively becoming an allegory for how readers of all texts generate meaning. Legal expertise is also the focus of the last paper in this section: Wibier ('Marcus Antistius Labeo and the Idea of Legal Literature') examines the work and *nachleben* of this prominent jurist as a case study for the connections between legal and literary learning.

Part III focuses on 'Literature and Property Law'. It begins with Goldschmidt ('Poetry, Prosecution, and the Author Function'), who investigates Foucault's 'author function', which presupposes modern copyright law, against the background of the Roman Republic. For Goldschmidt, dialogues between literature and law contributed to the emergence of an 'author function' in this period. Next, McGinn ('The Sea Common to All in Plautus, *Rudens*: Social Norms and Legal Rules') suggests that the scene between Trachalio and Gripus in the *Rudens* anticipates the Roman legal category of *res communes omnium*, thereby exploiting a concept of public property that owes as much to social norms as to legal strictures. Following on from McGinn, Oksanish ('Intellectual 'Property': Ownership, Possession, and Judgment among Civic *Artes*') takes Roman law's distinction between title and possession, and its mechanisms for property transfer, as points of departure to show how these principles undergird arguments over disciplinarity and civic influence in Cicero and Vitruvius. Rounding out Part III, Gunderson ('Seneca's Debt: Property, Self-Possession, and the Economy of Philosophical Exchange in the *Epistulae Morales*') shows how Seneca challenges the law's supreme position as a master discourse. The literary work of the *Letters* teaches the reader how to transition away from everyday legalisms and towards higher concepts.

In Part IV, 'Literature and Justice', Alekou ('Law in Disguise in the *Metamorphoses*: The Ambiguous *Ecphraseis* of Minerva and Arachne') focuses on the weaving competition in

Ovid's *Metamorphoses* 6, arguing that it evokes a trial setting in which the tapestries embody the literary re-enactment of a quasi-legal spectacle, and the episode overall becomes a critique of legal injustice. The volume's final paper (Pandey 'What the Roman Constitution Means to Me: Staging Encounters between US and Roman Law on Equality and Proportionality') is inspired by the first chapter in this volume, in which Lowrie explores a broad definition of Rome's unwritten constitution. Pandey offers a comparative analysis of Roman and American law and discourse regarding enfranchisement and advancement across race and gender, with a focus on statutes and stories that assign some groups lesser value than others. Pandey asks whether law accretes prior uses and interpretations, as reception theorists argue for literature, and discusses how laws that embed histories of oppression can still be tools for social justice.

The scope and themes of the volume revolve around the quintessentially normative nature of Latin literature vis-à-vis the literary character of Roman law. We examine the interactions between legal texts (e.g. laws, edicts, statutes, courtroom speeches, *responsa* of jurists) and literary works (e.g. comedy, epic, satire, letters). The chapters engage with legal and literary theory, the philosophy of law, and the history of Roman law and literature. Thematic connections include law and authoritative power (Biggs, Oksanish, Gunderson, Goldschmidt; Alekou); storytelling between law and literature (Lowrie, Dugan, Pandey); constructions of sovereignty (Biggs, Bexley; Gunderson); law in comedy (Gaertner, McGinn, Pandey); the jurists between law and literature (McGinn, Wibier, Dugan, Gaertner); legal and literary forms of interpretation (Dugan, Oksanish, Pandey) and the potentially literary origins of Roman legal concepts (Lowrie, Goldschmidt, McGinn).

Stories, plots, and myths that are crystallized in literary media not only have the force of law, but also influence laws and statutes. In the absence of a codified Roman constitution, storytelling, especially narratives of exemplarity, played an active role in shaping concepts of

legality (Lowrie). Literature comes before the law both in the sense that it anticipates the law and in the fact that it is subjected to the law. It is literature's position as simultaneously inside and outside the juridical order that endows it with sovereign authority.

Latin literature often advertises its distance from the litigious world of the *forum*. From Plautus' comedies and Ovid's love poetry to Lucan's *Bellum Civile* and Seneca's *Apocolocyntosis*, the suspension of the juridical order is a prerequisite for the production of dramatic, poetic, and satiric performances. Literature thrives in a 'state of exception' (Agamben 2005a), in order to establish its alternative, often utopian, jurisdiction. Drawing on Giorgio Agamben, two papers in the volume (Bexley; Biggs) examine the ways in which authors pronounce a legal standstill and thus appropriate the power of the sovereign legislator. For Gaertner, the humour of Roman comedy can be interpreted along Freudian lines as a defiant act of independence or sovereignty. Similarly, Gunderson argues that Seneca presents philosophical self-emancipation as a sovereign suspension of the institutions of human law.

Literature's claim to sovereign legislative powers often goes hand in hand with its attempt to give voice to marginalized groups and subvert gender dynamics. It is not a coincidence that courtesans, slaves, and other legally disabled groups are given legal rights in Latin literature. Our volume focuses on Latin literature's attempt to legally empower the outcasts (Alekou; Pandey). This move is more often than not related to debating and revising property laws (slaves), rights of citizenship (foreigners, women, slaves), and rights of marriage (foreigners, courtesans). Literature, like law, applies precedent in order to expand the horizons of legality and thus create a more just and inclusive society. From that perspective, literature is not unlike law—the projection of an imagined future upon reality (cf. Cover 1986: 1064).