

Law in historical fiction: a research-based approach to legal history and legal philosophy

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Abstract

This paper presents teaching experiences in a course offered to bachelor students at a faculty of law in the Netherlands. It aims to enable educators to replicate or utilise (parts of) the experiences in other environments. The paper explores the various characteristics of the course: its niche within the Law and Literature-movement; it being research-based (for students as well as tutors), rather than content- (or canon) based; its structure and objectives; and its role in terms of legal education with an academic context. In that last regard, the paper connects to legal history, thought, and philosophy.

Keywords: Law and Literature; legal education; research-based learning; experimentation in teaching

Introduction

Law plays a fundamental role in society. Law, likewise, plays an important role in fictional scenarios. The literary genre of historical fiction, for example, many times outreaches to law as part of its narrative or expository framework. This paper embraces the claim that literature occupies a place of pre-eminence in the intellectual life of the law.¹ It does so by addressing historical fiction as a tool for legal education. Historical fiction is a flexible and malleable pedagogical tool. It can be useful when trying to achieve the flexibility that law so often lacks, providing an infinite universe of possible solutions, since the various fictional creations can be considered laboratories to study and

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¹ John D. Ayer, *The Very Idea of 'Law and Literature'*, 85 MICH. L. REV. 895, 896 (1987).

understand legal systems.² Indeed, historical fiction can offer insights into legal systems or the practice of law.³ Those insights can help in the process of turning potential lawyers into jurists. Jurists do not limit their studies to the current law as it is, removed of its scientific and social context. Jurists, on the contrary, seek amongst other qualities the origins and the reception of legal institutions in different geographical points and time periods.⁴ Reading and studying literature, it can be claimed after all, can lead to judges and lawyers arguing and judging better.⁵

Law is present in fictional settings. Fyodor Dostoevsky's *Crime and Punishment* presents an unsettling narrative of a life haunted by crime; an account echoed in Franz Kafka's *The Trial*, wherein the existential and criminal experience appear to blend even further. Leo Tolstoy, in turn, has shown the limitations of the legal professional, by his indelible, unfortunate judge Ivan Ilyich Golovin:

Everything was just as he had expected; everything was done just as it always is. The doctor's pretentious self-importance was familiar – he had seen the same in himself at court – and the sounding, and listening, the needless questions with obvious answers, and a heavy look that seemed to say, *Listen, just leave it to us, we'll take care of everything we know precisely how to make the arrangements, it's the same for anybody*. It was exactly the same as at court. This famous doctor cut exactly the same figure to Ivan Ilych that he himself must have cut presiding before the accused.⁶

Literary authors—such as those mentioned above—can skillfully transport readers to foreign lands or distant periods, depicting a certain society at a certain time. These authors enrich the genre of historical fiction (e.g., epics, novels), a genre that existed already in Ancient Greece. Thus, law is an important component in the creation of these fictional settings. Law often

² Agustín Parise, *Notas sobre la ficción como herramienta para la enseñanza del derecho*, 7:2 ANAMORPHOSIS: REVISTA INTERNACIONAL DE DIREITO E LITERATURA 355, 356 (2021).

³ Jorge L. Contreras, *Science Fiction and the Law: A New Wigmorean Bibliography*, 13 HARV. J. SPORTS & ENT. L. 65, 65 (2022).

⁴ Agustín Parise, *La imperiosa remisión al derecho comparado en las investigaciones de carácter jurídico*, 4:6 REVISTA UNIVERSITARIA LA LEY 36, 37 (2002).

⁵ Ronald Tinnevelt, *Literatuur, verhaal en recht: enkele inleidende bemerkingen*, in LITERATUUR EN RECHT: LIBER AMICORUM VOOR PROF. DR. T.J.M. MERTENS 1, 2 (Ronald Tinnevelt ed. 2021).

⁶ Leo Tolstoy, *THE DEATH OF IVAN ILYICH* (2008) 43.

serves as an anchor to a reality that is familiar to readers of a fictional setting and is thus instrumentalized by authors of fiction to bridge fiction and reality.⁷ Law students can benefit from exploring that interaction between law and fiction.

Legal education calls for students to take a leading role in their own learning process. Instructors must facilitate activities that stimulate student participation and the acquisition of skills and competences that will be of value throughout their professional life.⁸ This paper is divided into two parts, and it shares teaching experiences that took place in a bachelor course in law that involves historical fiction, legal history, and legal philosophy. First, the paper offers information on the context in which such a course can be placed. There, attention is devoted to two fundamental pillars of the course: law in literature and research-based learning. Second, the paper presents the teaching experiences in that course as a case study. There, information is provided about the course, including its structure and aims. That part also elaborates on the constant need to revisit and improve legal education through the lens of the course. Above all, the paper aims to reflect and to engage in a dialogue with the reader on the place of (historical) fiction in legal education, as a pedagogical instrument, and shares insights, best practices, and takeaways to this end.

Nurturing Context

Historical fiction, legal history, and legal philosophy can interact to produce a pedagogical tool. Students can indeed benefit from that interaction. This benefit has been claimed by scholars that embrace the law in literature movement and that endorse the research-based learning method of education.⁹

⁷ Parise, *supra* note 2, at 357.

⁸ M.C. Saavedra Serrano, *Aprendizaje Cooperativo basado en la Investigación en la Educación Superior*, 16:1 REDU. REVISTA DE DOCENCIA UNIVERSITARIA 235, 236 (2018).

⁹ Richard Posner highlighted how law and literature has become an established field, to the extent that it is under threat because of its own popularity. That advocate for an alternative approach to legal science stated that: “law and literature is a rich and promising field; and if the first edition of this book had rather a negative and even defensive character [...] that was more than 20 years ago and the negative tone was gone by the second edition. But the further development of the field is endangered” RICHARD POSNER, *LAW AND LITERATURE* (2009) 6. More recently, though, François Ost saw the need to shield “those poets and dramatists’ from Plato’s legislators who would ban them from the city, and explain the various advantages made possible in the field: aesthetic and humanist, moral and civic, and technical.” François Ost, *Prologue*, in MARÍA JOSÉ FALCÓN Y TELLA, *LAW AND LITERATURE* xii (2015).

Law in Literature

Law and literature offers a fertile ground for the exploration of legal history and legal philosophy. Courses that embrace the tenets of law and literature can be termed reflexive courses, where students are invited to reflect on how the law relates to its context.¹⁰ In such courses, the students are ultimately invited to evaluate human actions.¹¹ For example, to address the already mentioned Dostoevsky's *Crime and Punishment* or Kafka's *The Trial* in a course at law school, participants must inevitably engage with the question of the rationality and morality of the protagonists in the novels. A reflexive approach to education from the law and literature perspective can be traced back in time, with an impetus triggered by the 1970s seminal work of James Boyd White.¹² There, the author indeed invited students to pursue the following instinct:

I am asking you not to follow direction and example but to trust and follow your own curiosity; to work out in your imagination various future possibilities for yourself, defined by the real and imagined performances of your mind at its best; and to subject what you discover to criticism and speculation.¹³

An initial distinction has to be made when looking at law and literature as a pedagogical tool in legal education. On the one hand, there is law in literature, where scholars can explore legal themes within historical fiction. John H. Wigmore was one of its main proponents,¹⁴ and had stated already in 1913 that to explore legal history and to “appreciate the bitter conflicts and their lessons for today this deepest sense of reality for the past we shall get only in the novels, not in the statute books or the reports of cases.”¹⁵ On the other hand, there is law as literature, where scholars can explore the literary merits of a

¹⁰ Bald de Vries, *Law, Imagination and Poetry: Using Poetry as a Means of Learning*, LAW AND METHOD 1, 2, 12 (2019).

¹¹ E. Irem Aki, *Teaching Philosophy and Ethics through a Law and Literature Course in Today's Turkey*, LAW AND METHOD 1, 4 (2018).

¹² See JAMES BOYD WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* – 45TH ANNIVERSARY EDITION (2018).

¹³ *Id.* at xlv.

¹⁴ See, for example, John H. Wigmore, *List of Legal Novels*, 2 ILL.L.R. 574 (1908).

¹⁵ John H. Wigmore, *Introduction*, in J.M. GEST, *THE LAWYER IN LITERATURE* vii, viii-ix (1913). Indeed, John H. Wigmore spoke of: “[...] a higher standpoint yet. For the novel—the true work of fiction—is a *catalogue of life's characters*. And the lawyer must know human nature.” See John H. Wigmore, *List of One Hundred Legal Novels*, 17:1 ILLINOIS LAW REVIEW 31 (1922-1923).

legal text. Benjamin N. Cardozo was one of its main proponents,¹⁶ with a special interest in the expressions within court decisions.¹⁷

Law in literature—being central to this paper—invites to view how the larger culture or the *outside world* perceives law and the legal profession.¹⁸ Attention here can be devoted to – amongst others – the role of advocates, the proceedings followed, and the impact of legal doctrines.¹⁹ If perceptions are accurate (but also if being inaccurate) the student can learn of biased, exaggerated, and/or stereotyped portrayals of legal actors and events.²⁰ After all, law finds its way into the interstices of culture²¹ and an excursion into law in literature can assist in understanding the larger role of law in society.²² Here, the *schönen Literatur* or the *belles lettres* that tell a story with a legal reference can be examined by readers as a means to learn something about the law:²³ valuable legal lessons can be drawn from historical fiction.²⁴

Research-Based Learning

Engaging students and tutors in research activities can result in a method of active learning that offers a playing field for the exploration of legal historical and legal philosophical aspects of the law. Methods of active learning such as those including research- and problem-based learning empower students by placing them as active entities in the learning process, being the ones that create rather than receive knowledge.²⁵ Advocacy for a research component in

¹⁶ See, for example, Benjamin N. Cardozo, *Law and Literature*, 14 YALE REVIEW 699 (1925).

¹⁷ Michael Pantazakos, *Ad Humanitatem Pertinent: A Personal Reflection on the History and Purpose of the Law and Literature Movement*, 7 CARDOZO STUD. L. & LITERATURE 31, 38 (1995).

¹⁸ Lucia A. Silecchia, *Things are Seldom what they Seem: Judges and Lawyers in the Tales of Mark Twain*, 35 CONN. L. REV. 559, 571 (2003); and Carolyn Heilbrun and Judith Resnik, *Convergences: Law, Literature, and Feminism*, 99 YALE L.J. 1913, 1936 (1990).

¹⁹ William H. Page, *The Place of Law and Literature*, 39 VAND. L. REV. 391, 393 (1986).

²⁰ Silecchia, *supra* note 18, at 571

²¹ David A. Skeel, Jr., *Lawrence Joseph and Law and Literature*, 77 U. CIN. L. REV. 921, 922 (2009).

²² Debora L. Threedy, *The Madness of a Seduced Woman: Gender, Law, and Literature*, 6 TEX. J. WOMEN & L. 1, 15 (1996).

²³ Edward Schramm, *Law and Literature*, JA 2007 581, 584 (2007).

²⁴ John M. DeStefano, *On Literature as Legal Authority*, 49 ARIZ. L. REV. 521, 542 (2007).

²⁵ Julieta Marotta and Agustín Parise, *El aprendizaje basado en problemas (ABP) y su aplicación en un ámbito multicultural*, 38 REVISTA ACADEMIA 115, 124 (2021); and MAGGI SAVIN-BADEN AND CLAIRE HOWELL MAJOR, FOUNDATIONS OF PROBLEM-BASED LEARNING 35-37 (2004).

education has been traced back to the early-nineteenth century reforms in education proposed by Wilhelm von Humboldt.²⁶ More recently, the research component has been divided into four clusters: research led, research oriented, research tutored, and research based.²⁷ All clusters involve students and tutors engaging in different capacities and in different manners with research.

Research-based learning—being central to this paper—expects active and authentic research from students.²⁸ Students ought to be empowered to explore their research interests and to address questions that emerge in that exercise.²⁹ In the learning process, students are trained on the skills needed to become researchers and the divide between instructor and students is therefore minimized.³⁰ This type of learning also invites for student engagement,³¹ a fundamental aspect when undertaking research activities. Further, this method of active learning increases professional qualifications, including presentation and communication skills,³² since the students are no longer the audience but become participants.³³ However, it is not only the student's proactive role in the course, but also a certain passivity of the student that is an asset here. More and more, the role of affect and emotion in the legal profession and in legal

²⁶ See WILHELM VON HUMBOLDT, DER KÖNIGSBERGER UND DER LITAUISCHE SCHULPLAN (1809), available at <https://germanhistory-intersections.org/de/wissen-und-bildung/ghis:document-7> (last visited: June 25, 2024). See also Dirk Ifenthaler and Maree Gosper, *Research-Based Learning: Connecting Research and Instruction*, in CURRICULUM MODELS FOR THE 21ST CENTURY: USING LEARNING TECHNOLOGIES IN HIGHER EDUCATION 73, 74 (Maree Gosper and Dirk Ifenthaler eds. 2014); and Kristi Joamets and Maria Claudia Solarte Vasquez, *Regulatory Framework of the Research-Based Approach to Education in the EU*, 10:3 TALTECH JOURNAL OF EUROPEAN STUDIES 109, 112 (2020).

²⁷ For more information on these clusters see generally, Mick Healey, *Linking Research and Teaching: Exploring Disciplinary Spaces and the Role of Inquiry-Based Learning*, in RESHAPING THE UNIVERSITY: NEW RELATIONSHIPS BETWEEN RESEARCH, SCHOLARSHIP AND TEACHING 67 (Ronald Barnett ed. 2005); and MICK HEALEY AND ALAN JENKINS, *DEVELOPING UNDERGRADUATE RESEARCH AND INQUIRY* (2009).

²⁸ EDLAB, THE UM HANDBOOK FOR PBL & RESEARCH SKILLS 72 (2017).

²⁹ Ifenthaler and Gosper, *supra* note 26, at 74.

³⁰ *Id.* at 75.

³¹ Roeland van der Rijst, *The Transformative Nature of Research-Based Education: A Thematic Overview of the Literature*, in RESEARCH-BASED LEARNING: CASE STUDIES FROM MAASTRICHT UNIVERSITY 3, 18 (Ellen Bastiaens et al. eds. 2017).

³² Janina Thiem et al., *How Research-Based Learning Affects Students' Self-Rated Research Competences: Evidence from a Longitudinal Study Across Disciplines*, 48:7 STUDIES IN HIGHER EDUCATION 1039, 1039 (2023).

³³ *Id.* at 1040.

education is acknowledged.³⁴ Literature is arguably the greatest treasure trove for reaching understanding and attaining empathy.

Students are expected to be part of a community of thinkers that can engage in a critical way towards the development of scientific truth.³⁵ Therefore, a research-based learning experience can further benefit from teamwork, where students work together towards a common objective³⁶ (for example, participating in a round-table, creating an exhibit). Previous studies showed that students that work as part of a team were able to gain the ability to enhance analytical skills, problem solving, data management, and research skills.³⁷ In brief, the positive effects of research-based learning can be enhanced by means of collaborative efforts.

Case Study

Structure

Law in Historical Fiction sits in the context of Maastricht University's (The Netherlands) MaRBLe-programme (Maastricht Research Based Learning).³⁸ MaRBLe is an honors programme that allows students to do interdisciplinary research, while being supervised by instructors.³⁹ *Law in Historical Fiction* is imbedded in the curriculum of the Law Faculty. It combines law in literature, legal history, and legal philosophy. The course was designed in 2016 and took place for the first time in 2020.

Law in Historical Fiction spreads over one academic semester. An overview of the structure of the course is provided in Figure 1 below. Students work in close collaboration during the 24 weeks of the course, it should be noted.

³⁴ Alan M. Lerner pointed towards an affective environment in which learning develops. See Alan M. Lerner, *From Socrates to Damasio, from Langdell to Kandel: The Role of Emotion of Modern Legal Education*, in AFFECT AND LEGAL EDUCATION: EMOTION IN LEARNING AND TEACHING THE LAW 168 (Paul Maharg and Caroline Maughan eds., 2016).

³⁵ Joamets and Solarte Vazquez, *supra* note 26, at 112.

³⁶ Saavedra Serrano, *supra* note 8, at 237.

³⁷ *Id.* at 237-238.

³⁸ For information on MaRBLe see, <https://edlab.nl/excellence/marble/>; and <https://edlab.nl/excellence/marble/#1510222472632-b1465980-ea7f> (last visited: June 25, 2024).

³⁹ On other experiences implementing MaRBLe courses at the Law Faculty see, Bram Akkermans, *Faculty of Law: MaRBLe for Lawyers*, in RESEARCH-BASED LEARNING: CASE STUDIES FROM MAASTRICHT UNIVERSITY 135 (Ellen Bastiaens et al. eds. 2017).

Week	Meeting	Week	Meeting
1	Seminar 1	13	Writing Focus Time 1
2	Research Focus Time 1	14	Mid-Term Check Point
3	Visit to Special Collections	15	Seminar 6
4	Research Focus Time 2	16	Writing Focus Time 2
5	Seminar 2	17	Movie-Debate
6	Research Focus Time 3	18	Seminar 7
7	Wiki Session	19	Writing Focus Time 3
8	Seminar 3	20	“Dress Rehearsal”
9	Research Focus Time 4	21	Round-Table Presentations
10	Seminar 4	22	Seminar 8
11	Research Focus Time 5	23	Editing Focus Time 1
12	Seminar 5	24	Deadline Research Paper

Figure 1: Structure of the Course

The course offers eight, 90 minute, sessions that resemble the structure of a seminar. Ideas are exchanged and developed during these sessions. In the first part of each seminar, one of the course coordinators or a guest lecturer presents a perspective on a topic related to the course, either on methodology or on substantive research. These guest lecturers are legal scholars working either at Maastricht University, or other institutions from across the globe.⁴⁰ Presentations from recent years homed in on themes such as the legal reasoning in Shakespeare’s historical tetralogies, the 1834 Poor Law and *Oliver Twist*, and James Baldwin’s *The Fire next Time*. The presentations by guest lecturers help students to articulate further lines of research or approaches to their own materials. In the second part of each seminar, the guest lecturer interacts with students to offer insights and perspectives on the different projects of the students. Besides these seminars, this course offers a mid-term check point. On that occasion, students have a plenary session with the course coordinators to soundboard and test the progress of their projects. Feedback is offered and students are able to share the challenges and advantages that they encountered so far in their projects.

⁴⁰ Guest lecturers were affiliated, for example, with Universidad de Buenos Aires (Argentina), Keele University (England), and University of Glasgow (Scotland). Seminars take place in small seminar rooms, via an online platform, or in a hybrid format, depending on the availability of the guest lecturers.

The conclusion of the course aligns with an annual roundtable on law and popular culture, on which students present the results of their projects. This roundtable is open to the Maastricht community at large, and offers a forum for students to present their results in a stimulating and enriching environment. Importantly, the roundtable is not restricted to fiction or literature, but calls for contributions within the law and popular culture-movement at large, thus increasing the interdisciplinary exposure on the students.⁴¹ Students are offered feedback on their projects and are able to reflect on the paths to follow during the final steps of their projects. The roundtable is anticipated with a “dress rehearsal” session with the course coordinators in which students share their presentations and receive timely feedback.

The various seminars and checkpoints of the course are punctuated with weeks devoted to autonomous study, or “focus time.” This course allows for nine focus-time weeks. The five first focus time weeks are devoted to research, while the three that follow are set aside for writing, leaving the last one for editing. This division of focus time weeks responds to the needs of a research-based project, in which the research phase is more extensive than the writing and editing phases.

One element deserving particular attention is the collaboration with the university library. Maastricht University Library has been collaborating since 2014 with Wikimedia Nederland in the development of several educational programmes.⁴² By participating in these programmes, students are given the opportunity to improve their academic information literacy skills,⁴³ as well as developing their academic citizenship, by gaining experience in analysing

⁴¹ The importance of interdisciplinary education for the legal profession was underlined in Mireille Hebing et al., *Human Trafficking and the Law: The Importance of Interdisciplinarity in Learning and Teaching*, in MODERNISING EUROPEAN LEGAL EDUCATION: INNOVATIVE STRATEGIES TO ADDRESS URGENT CROSS-CUTTING CHALLENGES 34–35 (2023). See also, Tomas Berkmanas, *Innovative and Interdisciplinary Contents and Programmes in Graduate Legal Studies: Lessons Learned*, in LEGAL EDUCATION AND JUDICIAL TRAINING IN EUROPE - THE MENU FOR JUSTICE PROJECT REPORT 93–105 (Tomas Berkmanas et al. eds., 2013).

⁴² For more information on these efforts see, Odin Essers et al., *Where History Meets Modern: An Overview of Academic Primary Source Research-Based Learning Programs Aggregating Special Collections and Wikimedia*, in WIKIPEDIA AND ACADEMIC LIBRARIES: A GLOBAL PROJECT 35 (Laurie M. Bridges et al, eds. 2021).

⁴³ Similarly to some of the arguments presented in the context of the ongoing debate on artificial intelligence, instructors should devote efforts to teach how to use Wikipedia appropriately. See Diane Murley, *In Defense of Wikipedia*, 100 LAW LIBR. J. 593, 595 (2008).

historical literature and by writing and publishing a Wiki-entry on their subject. Recent studies indeed pointed that “opportunities to integrate Wikipedia as both a societal benefit and pedagogical tool only increase in higher-level courses.”⁴⁴ *Law in Historical Fiction* includes a Wiki session with the Maastricht University Special Collections curator. Another way to collaborate with the university library consists in a guided tour of its special collections. This visit is also offered by the special collections curator and provides insights on the value of books as tools to explore the law across time and space. Furthermore, in opening up this historical perspective on the book and the law, it invites students to imagine law, not only as a standing practice, but also as a conversation over time, in which they can participate.

A final point relates to law and cinema. Students are invited as part of the course to participate in the screening of a movie, as a further example of the interaction of law and historical fiction. The screening is open also to students and staff beyond the course. The event is followed by an informal debate about the movie. The course coordinators guide the debate and raise questions that trigger academic dialogue. After all, fiction – in any of its forms – serves as a lens to see the world from a different perspective⁴⁵ and lawyers should learn from other non-legal storytellers, even when having to leave behind their “often self-serving ethnocentrism.”⁴⁶

There is an essential dynamic operative in *Law in Historical Fiction*. On one level, students are engaged in identifying between law as represented in works of fiction, and comparing it to the relevant historical law.⁴⁷ Inevitably, this work leads to questions about the historical accuracy of the fictional legal

⁴⁴ Eun Hee Han et al., *Disrupting Data Cartels by Editing Wikipedia*, 25 YALE J. L. & TECH. 123, 142 (2023).

⁴⁵ Ande Davis, *Lessons from the Future: What the Law Stands to Learn from Science Fiction*, 90-DEC J. KAN. B.A. 22, 23 (2021).

⁴⁶ Philip N. Meyer, *Law Students Go to the Movies*, 24 CONN. L. REV. 893, 894 (1992).

⁴⁷ James Boyd White already in 1973 invited to look into the past. He stated in an exercise dealing with Edmund Burke: “What century, what place in English history fits [Burke’s] description? He speaks of the fourteenth century: do you believe that the British Constitution, British values, were then in existence? What does Burke mean when he speaks of the past? Is what he says of it true or false?” WHITE, *supra* note 12, at 898.

accounts.⁴⁸ On another level, students are confronted with the question whether any misrepresentation or distortion of historical law in a novel is in fact a deliberate fictional intervention, whereby fiction assumes the role of the legal critic. This means that the legal historical project is always married to an exegetical-critical question. The fundamental reason for the inevitability of this double focus is that it is impossible for any fiction to *completely* coincide with actual historical law. Indeed, that impossibility derives – as with Marcel Duchamp’s *Fountain* of 1917 – already from the context or the register to which fiction will invariably lead readers. The further advantage of this avenue is to begin to see how *law itself* does not coincide with itself, which would bring readers beyond the propaedeutic stages of the development expected from any jurist. Indeed, the course underlines legal education as an academic scholarship that responds to twenty-first century needs.⁴⁹

Aims

The course has multiple aims. The course is designed to train students in doing authentic research, in a very hands-on, practical way. In particular, this means archival, library research: students have to investigate the law of a certain jurisdiction at a specific preterit time. In the process of acquiring these capabilities, students also learn—at the substantive level—about legal history and legal philosophy. They read about legislation and jurisprudence; they compare between preceding and successive eras or between relevant jurisdictions, or between legal history and contemporary law. Finally, by doing this research on the representation of law in fiction, students are exposed to the idea, already mentioned, that the law does not coincide with itself. The law is not what it says in a legislative document, as it always requires interpretation and thus

⁴⁸ Russ VerSteege correctly stated that: “one is left to wonder whether the social and legal landscape that [works of fiction] depict reflects the social and legal landscape that existed at the time in which the stories are supposed to have taken place or at the time that the works were written. This problem is perhaps inherent in any study of law that relies on historical literature. Nevertheless, it is a problem that must be acknowledged. Therefore, it is difficult, if not impossible, at this juncture, to say what law is reflected [...]” Russ VerSteege, *Law in Ancient Egyptian Fiction*, 24 GA. J. INT’L & COMP. L. 37, 43 (1994).

⁴⁹ A possible foundation for this figure of thought that adds fiction to law can be found in Emmanuel Lévinas’s foray into aesthetics in his remarkable essay *Reality and its Shadow*. See EMMANUEL LÉVINAS, COLLECTED PHILOSOPHICAL PAPERS 1 (1987).

involves an experiential dimension.⁵⁰ For any academic working with legal materials (and for any academic and their materials altogether), there has to be a moment to come to terms with the fact that these materials do not speak for themselves, and demand interpretative acts. Indeed, the possibility of fiction is prior to law.

Experimentation

The course embraces and enhances the tenets of research-based learning. *Law in Historical Fiction* is a law and literature course offered in the Netherlands that does not commit to a particular canon.⁵¹ Instead, it provides in *examples* of research done within the field of law in historical fiction: the seminars presented by the course coordinators and guest lecturers introduce students not to a particularly established pre-existing knowledge, but to the business of research. Indeed, the seminars establish a consecutive “essay clinic” wherein students have the opportunity to discuss their work along its various stages: from choosing the right piece of fiction, to deciding on the pertinent research question/s, to selecting relevant primary and secondary materials, to writing and editing, and, finally, to presenting the research to an audience. Reflection on the research and writing processes takes place during the entire course.

The course is highly experimental. It recommends experimentation at different levels, of which a few will be mentioned here. The students and educators within the course are virtually free at deciding on their core materials; the sole requirement is that a plausible connection to historical fiction can be made. The student should be able to find a legal dimension in the historical fiction and contrast it to the law and/or legal philosophy in reality, at that time and place. Experimentation takes place in different ways in the course. For example, starting in the academic year 2021-2022, collaboration started with the University Library. As already mentioned, the curator offered one session exploring the Special Collections of the library. One year later, collaboration with University Library was increased by including the already mentioned Wikipedia session. In the academic year 2023-2024, an alumnus of the course joined as guest lecturer, showing an additional way of gaining competencies

⁵⁰ There is ample philosophical support for this hermeneutical argument, that, through Giorgio Agamben, Jacques Derrida, and Walter Benjamin, perhaps finds its original source in Tyconius’ *Liber Regularum* (c. 382 AD). The connection is established in GIORGIO AGAMBEN, *THE MYSTERY OF EVIL: BENEDICT XVI AND THE END OF DAYS* 24 (2017).

⁵¹ See, for other Dutch experiences, a list of courses available at <https://lawandliterature.nl/nl-nl/onderwijs> (last visited: June 25, 2024).

and skills, including teaching, presenting to an audience, and dealing with substantive questions. Experimentation continued in that same year, when the course included a movie-debate around the screening of *Twelve Angry Men* (Sidney Lumet, 1957). There, students were exposed to another way of looking at law through the lens of historical fiction, enlarging the scope towards a manifestation of popular culture. These features – the liberty of choosing the topic of research papers, the experience of seeing peers teach, exchanging ideas after screening a movie, leafing through rare books in the library, the idea of writing a Wiki-entry about a novel – highlight to students how doing research involves this principle of natality,⁵² of new beginnings, and the way in which it lies within their grasp. All these elements of *Law in Historical Fiction* encourage doing research at a very practical level.

Awareness

The success of the course relies heavily on the wherewithal of the students to “play the game,” particularly regarding their capacity to inspire and enthuse one another. In that respect, it is important that the group is small,⁵³ in order for there to emerge the tight-knit collaborations wherein young researchers can mutually bounce off ideas. A student-faculty ratio of 5:1, hence working in close interaction, would presumably be ideal, with instructors accompanying the learning process. Instructors prepare in light of the law and legal ideas that are presented in the historical fictions that students address in their different projects. Guidance is therefore tailor-made for each project. Triggering actions and awareness by the instructors on the strengths and limitations is of the essence in this course.

Challenges can relate to the setting of expectations. The course works on the basis of research-based learning. Accordingly, students must be made aware that they cannot afford to remain passive within the environment provided by the course. Indeed, the success of students in the course is probably determined over the course of the first two seminars when important decisions about the projects are made and when students set the approach they will take to the

⁵² The phrase is from HANNAH ARENDT, *THE HUMAN CONDITION* 9 (1958). The concept was anticipated, though, in her earlier *THE ORIGINS OF TOTALITARIANISM* (1951), as well as in her doctoral thesis *Der Liebesbegriff bei Augustin. Versuch einer philosophischen Interpretation* (1929).

⁵³ For example, in past years, the number of students has been set at four. It is worth repeating that students are selected from the honors programmes, and hence have an intrinsic motivation to learn and to excel in their experiences.

course. Arguably, the course would have to ward off the objection of eclecticism: can it sustain the freedoms given to students and instructors? It would be a conversation worth having whether and how the scope could either be narrowed down, or defined in some other way, up front. Perhaps, a meta-historical argumentation that explains the different components of the course and their place in the course and in the development of skills could be presented during the first seminar. Such an argumentative approach—explaining the rational within the course structure—could instigate an early discussion on the expectations of all members in the course. Educators wanting to create a similar course could make their own choices in light of their learning objectives, it should be noted.

One discussion that proved particularly challenging was the inclusion of historical legal philosophy in the course. One position was to allow for any examination of legal philosophy through historical fiction. The argument here was that the validity of works of thought, unlike those exclusively of law, bears no connection to state sovereignty and the power to legislate; fiction and philosophy both are the work of the imagination. For this reason, the assumption that the dynamic between law and historical fiction will repeat itself when fiction and philosophy are at stake seems implausible (e.g., if a student were to examine George Orwell's *1984* and legal theory). Yet the countering position, to insist on legal thought contemporary to the historicity of the fiction, was ultimately decisive. The reason for this is that the central conceit of the course is to demand that students make an intra-historical comparison: from historical fiction to historical law, or, if preferable, to historical legal thought or intellectual legal history. Indeed, the very justification of the course lies in the old humanist conviction that law, like an historical fiction, should be read as representative of a particular society: it is the timeliness, not a supposed timelessness, of law that *Law in Historical Fiction* offers as an experience.⁵⁴

Academic Development

Law in Historical Fiction generates a number of activities and deliverables. The course is assessed on the basis of individual, 8000 word research papers

⁵⁴ In light of the abovementioned meta-historical argumentation, the course could do more to gather and interpret shared motifs and ideas between legal historical periods and narrative fictions. This could further bolster the connection to the course with legal philosophy.

that students, optionally, may submit as a Bachelor's essay. Nevertheless, the course includes many activities designed to appeal to the student's taste for experimentation. For one, the conclusion of the course coincides with the (already mentioned) roundtable. Importantly, the roundtable enhances the element of experimentation within the course, as it gives students a forum to present, and invites students to claim ownership of their research, while also introducing students to the broader law and popular culture-movement.⁵⁵ Students and instructors are partners in the learning and teaching experience, and this partnership has been deemed "one of the most important issues facing higher education in the 21st century."⁵⁶ In addition, the stimulating academic dialogue that takes place in the context of the roundtable can trigger interdisciplinary integration that may be instrumental in the flourishing of disciplines,⁵⁷ such as law in literature. All these activities triggered peer-motivational spirals that led to successful experiences for students and educators, alike. No members want to miss out of the experiences, being all involved in the different activities and confirming an unwillingness to leave members behind.

The course experiments with Wiki-writing, as already mentioned. Students receive instruction on the creation of Wiki-entry, but the work itself remains optional.⁵⁸ On the one hand, within the Wiki-community, there exists a good sense of responsibility, so presumably the step to publish an entry should not be taken lightly. On the other hand, Wikipedia is a very prominent channel for popular culture, and creating the entry would further synchronize the course with the research being done on law and popular culture at the Law Faculty. For this reason, developing the session further would appear valuable.⁵⁹ The movie-debate provides another nexus between historical fiction, legal history,

⁵⁵ This movement includes beside literature other fields such as cinema, fine arts, comic books, and games.

⁵⁶ Joamets and Solarte Vasquez, *supra* note 26, at 125.

⁵⁷ *Id.* at 126.

⁵⁸ For an example of the integration of Wiki into the law curricula see, John C. Kleefeld and Katelyn Rattray, *Write a Wikipedia Article for Law School Credit--Really?*, 65 J. LEGAL EDUC. 597, 598 (2016).

⁵⁹ Indeed, as noted by Normann Witzleb: "Wikipedia assignments are a welcome addition to the traditional writing tasks for students. Requiring students to engage actively with the content of Wikipedia, its production and limitations will enable students to become more critical and self-aware in their use of this now ubiquitous online resource. It also improves student skills in writing in a different environment and for a wider audience, while at the same time improving student engagement through a 'real world' exercise." Normann Witzleb, *Engaging with the World: Students of Comparative Law Write for Wikipedia*, 19 LEGAL EDUC. REV. 83, 96 (2009).

and legal philosophy. Much less exacting on the students compared with the Wiki-exercise, its uses can be developed further, for instance by adding an introductory lecture to the movie, and allowing more space for the debates that follow the screening.

Students that successfully complete the course demonstrate academic growth. This is evident from the quality of the oral presentations during the round-table and from the argumentative lines presents in their research papers. A brief overview of a sample of representative research papers seems warranted at this point. *Oliver Twist* was already mentioned. This remarkable piece of research put Dickens' second novel as the hinge between the old, Elizabethan Poor Law and its successor of 1834, the new Poor Law, demonstrating how *Oliver Twist* offers a damning critique of the injustices of Industrialized, Victorian age. The work by the student did everything the course aims for: it explained historical law (in this case two eras of historical law), demonstrated its representation within fiction (in this case, the law and law enforcement's cruelty was sometimes exaggerated, yet also sometimes euphemized), and explained how a piece of fiction satirizes or critiques the law. As expressed by the student in the conclusions of the paper that she wrote for the course:

however heavy-handed and melodramatic Dickens' depiction of Oliver's experience in the Mudfog workhouse and at the hands of its officers may be, he still effectively portrays the very real cruelties and indignities of the New Poor Law. *Oliver Twist* thus offers a shocking and memorable critique of the key legislative changes to poor relief wrought by the infamous 1834 New Poor Law.⁶⁰

Another excellent research paper examined Shakespeare's *The Merchant of Venice* in the context of historical Venetian law. The question about the enforceability of the "pound of flesh" contract was raised. Particularly impressive in this case was how the student engaged in archival research, and was able to create new collaborations with colleagues in Italy. The student stated in her paper that she:

⁶⁰ Nicole Binder, *Barbarism begins at Home. "Oliver Twist" and the 1834 New Poor Law: Dickens' Critique of the Institutional Victimization of the Poor under the Early Victorian System of Poor Relief*, paper submitted for the course *Law in Historical Fiction* at Maastricht University on 14 July 2023 (copy on file with the authors of this paper).

analysed *The Merchant of Venice*'s representation of the contract bond between fiction and reality. [Her paper] aimed at renewing the possibility of legal-literary analysis of Shakespeare's comedy by applying to it the reality of its Venetian context, instead of the largely used Elizabethan context. [...] As a matter of fact, the intention of the paper was to evaluate to what extent the inviolability and enforcement of Shylock's bond stemmed from popular culture and legal historical reality of Venetian law in the sixteenth century. [...] For the purpose of evaluating to what extent Shakespeare stemmed from legal historical reality, the essay found that the first depiction of the bond by the characters of the play was in line with Liber I Chapter XXXIII [of the *Statutum Novum* by Jacopo Tiepolo of 1242], as the bond was seen as inviolable. Nonetheless, the second interpretation of the bond, namely Portia's literal interpretation, and Shakespeare's choice of court were not in accordance with the legal historical reality of its Venetian setting.⁶¹

These various activities in the course constitute an entry point to a nebulous, dynamic field of research. By engaging in as many of such points of access as possible, students acquire practical expertise of academic life. Indeed, the course aspires to help students navigate their own, individual crossings of the Rubicon.

Improvement

Law in Historical Fiction is particularly strong as a space to experiment with change. This way of being under-determined can just as easily be interpreted as a lack. Courses can (and should) always be improved. *Law in Historical Fiction* can improve further, for instance by foregrounding better the dynamic between research and experimentation. It appears that the latter component, which is essential to the course, is not sufficiently conveyed to students. Course coordinators could attempt to offload some of the possible anxieties around experimentation by placing limitations on the scope of projects. Indeed, the limitation on the uses of legal philosophy is a case in hand. Implementing changes to the structure of the course could also offer a field for improvement,

⁶¹ Sofia Ghezzi, *The Inviolability and Enforcement of Shylock's Bond: A Look into Sixteenth-Century Venetian Contract Law through Shakespeare's Eyes*, paper submitted for the course *Law in Historical Fiction* at Maastricht University on 9 July 2020 (copy on file with the authors of this paper).

for example by placing seminars in chronological order. So while guest lecturers would still be free to choose their subjects, the course coordinators would curate these choices in a way that is historically plausible. This would have the further advantage of allowing for literary traditions and influences to be exposed and addressed within the course, while keeping with a line-up that is flexible.

The course coordinators invite students to offer feedback halfway through the course and towards the end. Those timely interventions can help students (re)direct their learning experiences. They can also preserve the notion of continuous improvement which is at the heart of the course. Dialogue amongst students and educators is indeed paramount when aiming to attain a successful experience. Students have expressed an encouraging degree of enthusiasm over the course in past years. Course coordinators have experienced gratifying moments when witnessing that students take ownership over their material and speak with authority about historical fictions, during seminars, and especially in the roundtable.⁶²

Concluding Remarks

White mentioned back in 1994 – in the context of teaching law and literature – that instructors learn from the work of each other.⁶³ Sharing best practices and ideas is of the essence in that learning process. This paper shared teaching experiences that took place in a bachelor course in law that involves historical fiction, legal history, and legal philosophy. The course benefits from subscribing to the narratives of law in literature and research-based learning. The paper pointed to structure, aims, and potential improvements. The course coordinators use the course as a sandbox where innovation is always at hand, benefiting from the ample time with students provided by the 24 weeks of the course and the student-faculty ratio. The paper indeed invited readers to reflect on the place of historical fiction as a tool for legal education by sharing an

⁶² Course coordinators have no information about how the course has influenced the performance of students beyond the course. Speculation is possible when considering the transfer of skills related to, for example, the development of lines of argumentation, the working with primary and secondary sources, and the attaining of writing and presentation techniques. These skills are fundamental tools when pursuing academic and/or professional careers.

⁶³ James Boyd White, *Teaching Law and Literature*, 27:4 MOSAIC: AN INTERDISCIPLINARY CRITICAL JOURNAL 1, 1 (1994).

experience that combines research-based learning and a law in literature approach.

Considering legal education primordially as vocational training risks obscuring its significance as academic development and *Bildung* of researchers. It is therefore crucial to spend every effort at introducing and emphasizing the elements of fiction and possibility, of empathy and contingency, and of experimentation and subjective experience. Indeed, more and more, legal education has a stake in comparative law, on global law, rather than exclusively on domestic jurisdictions.⁶⁴ The focus on fiction is, in fact, the next step within this development, as it demands that students compare between current law and legal history and philosophy, between law in a preterit reality and law in historical fiction. Ultimately, students will be able to evaluate how law is a fiction, and how fiction inaugurates law.

⁶⁴ See, for example, Jan M. Smits, *European Legal Education, or: How to Prepare Students for Global Citizenship?*, 45 *LAW TEACHER* 163 (2011).