

BOOK REVIEW 01

Robert Spoo. *Modernism and the Law*. London: Bloomsbury Academic, 2018.

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The interrelationship between law and literature is becoming obvious in academic studies. Until recently, scholars were concerned with demonstrating that these two areas of study could come together in a joint approach to legal and literary facts. The long journey that this interdisciplinary approach has taken, since the presentation of a list of novels with legal content by John Henry Wigmore (1863-1943), intending to draw the attention of lawyers to reading novels with legal content, has now come to an end. Today, scholars of law and literature are aware of the countless possibilities for study that these areas can provide.

Wigmore's famous list — "A List of Legal Novels" — was published in the *Illinois Law Review II* and consisted of 375 titles that should be known to lawyers. This list of works aroused enormous interest among legal practitioners, and in 1923, Wigmore, fascinated by the success of his initiative, republished his work in the same journal with a shorter list of works, which he titled "One Hundred Legal Novels."

Two years after the publication of this list of one hundred legal novels, a new editorial release has revived interest in the subject. This is Benjamin Nathan Cardozo's renowned essay *Law and Literature*, originally published in July 1925 in the *Yale Review*. Cardozo, considered as "the most 'poetic' of all lawyers, gained notoriety for his brilliant 18-year career in the New York Court of Appeals, from where he left in 1932 to become a minister of the American Supreme Court, where he remained until his death.

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On his nomination to be an Associate Justice of the Supreme Court of the United States to fill the vacancy caused by the retirement of Justice Oliver Holmes, *The New York Times* wrote: “Seldom, fever, in the history of the court has an appointment been so universally commented as that of Judge Cardozo (Feb. 16, 1932). Cardozo liked to quote the French novelist Stendhal, who said there was only one example of perfect style: the Code Napoleon.

In Cardozo’s view, a judge or lawyer must know (and how to exploit) the literary resources of the language. Taking this advice to heart, he became famous for his use of erudite, precious, flowery, but correct language, which he used to write the opinions on the judgments in which he appeared as rapporteur. According to him, in addition to being a legal scientist, the judge also assumes the role of an artist driven by the muses, who “look at him a bit impatiently and wearily at times.”

James Boyd White (born 1938) is the author of the first textbook to deal with the relationship between literature and law. His best-known book is *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*, a substantial volume of 986 pages, published in 1973, and since then, it has been considered the starting point for university studies on the subject.

In the “Introduction to the Student”, James White, in the very first lines, shows the didactic character of his work: “I want to begin by calling this an advanced course in reading and writing, a study of what lawyers and judges do with words.” In the end, the author makes an innovative and fearless comparison between law as art and other forms of artistic expression:

I want you [student] to begin this course, then, by trying to imagine as fully as possible how it might be said that law is not a science – at least not the “social science” some could call it — but an art. And this course is directed to you as an artist. There is no body of rules expressing the art of the lawyers any more than that of the sculptor or painter. You

are as free as they, and as responsible for what you do. It is true that one of the mediums of the lawyer's art is rules. And the lawyer must know rules, and the other materials of the law, as the sculptor must know clay and the painter paint and canvas (p. xxv).

Robert Spoo's book — *Modernism and the Law* — can be aligned with James White's ideas on the subject, "There are numbers of ways in which law and literature can be brought together for critical purposes. My approach leans heavily on two. First, and foremost, I examine the ways in which law regulated modern literature, or, more precisely, how legal and extralegal mechanisms – statutes, courts, prosecutors, purity groups – intervened in what Robert Darnton calls the communications circuit." (p. 3).

Spoo's dense and well-researched book is divided into five interconnected chapters, which are preceded by a brief and illustrative introduction. Chapter 1, "Oscar Wilde, Man of Law", offers a vivid account of Wilde's biography, especially the years of his fatal friendship with the young Alfred Douglas, showing how the Irish author struggled with the issues of censorship of his work, made explicit during the trial to which he was subjected, and subsequently convicted of acts of "grave indecencies" by the Court of Old Bailey. It is the longest of the chapters.

Here the author discusses issues such as libel, posing, blackmail, privacy, publicity, name appropriation, piracy, copyright, obscenity, blasphemy, and plagiarism, all related to the Irish author.

Chapter Two, 'Obscenity and Censorship', returns to the Wilde case to later include the cases of D. H. Lawrence, Henry Miller, Virginia Wolf, and others. The controversial issue of the distinction between art and obscenity is brought up and analyzed from different angles.

James Joyce's struggle against the ban on the sale of his novel *Ulysses* in the USA takes up a large part of chapter 3, "Copyright, Patronage, and Courtesy". On November 25, 1933, the case was brought before Judge John Munro Woolsey (1877-1945), who had

read the novel and was intrigued by its content and the author's unusual style. The case was filed under the singular legal title: "United States v. One Book Called "Ulysses," in the U.S. District Court for the Southern District of New York, with the criminal charge of obscenity. The sentence was handed down a few days later, on December 6 of the same year. The final verdict was to release the book, which the judge deemed not obscene. Since then, this judicial decision has become the most famous about literary censorship.

In Chapter Four, "Privacy, Publicity, Defamation, and Blackmail", Spoo points out that

in modern times, authors and publishers, menaced with legal liability, are concerned with stating that characters and facts that appear in their works are fictitious and that the similarity to real people is mere coincidence. Mentioning the case of the editions of Hemingway's works, he states: 'The Scribner editions of Ernest Hemingway's *In Our time* (1930) and *To Have and Have Not* (1937) contained the irritable, lawyerly caveat: 'Considering a recent tendency to identify characters in fiction with real people, it seems proper to state that there are no real people in this volume: both the characters and their names are fictitious.'

In the last chapter, 5, 'Ezra Pound, Man of War', Spoo says that Ezra Pound, following Wilde's steps in the nineteenth century, "embodied a sociopolitical militancy that made him a penetrating if eccentric critic of restrictive laws during the first half of the twentieth century."

The work ends with a remarkable and useful summary of the legal cases dealt with throughout the book. Anglo-American legal cases account for most of them. International treaties and conventions, such as those of Berne, Buenos Aires and Geneva, deserved special mention.

It should be added here that Robert Spoo is a renowned researcher in the field of the interrelationships between law

and literature, with an impressive level of academic quality. This year, together with Simon Stern, he published the *Elgar Concise Encyclopedia of Law and Literature*, a long and extraordinary book that contains 134 entries on literature and law, from Abolition to Witness, written by dozens of eminent scholars from various universities around the world. He teaches at Princeton University.