

Law and Literature

María José Falcón y Tella
María José FALCÓN Y TELLA
Professor of Legal Philosophy
Complutense University of Madrid
Spain

From the first paragraph, François Ost, writer of the prologue to “Law and Literature”, offers us the key to understanding the scope of this outstanding work by María José Falcón. We are provided with an “initiation” into the American and homonymously secular movement, with all the implications that the term entails. The reader should prepare to engage with a book about books, written with enthusiasm, rigour, erudition and skill; that is, with all which is required to recognize the truth that words reveal life to us when their speakers are present within them.

The author begins the work by presenting her academic credentials. More than three decades of incessant searching for the law in substantives that reflect it as fact, value and norm have had the impact of driving her toward that which justifies the law’s existence: no other than the flow of human life, something that may only be grasped in words by turning to literature, insofar as it fixes them and facilitates their analysis.

The rigour and erudition of the book derive from the complex endeavour of selecting texts that show us the three principal elements of the profound link between law and the human word, or law and literature. These elements include the way in which law is present in the shaping of our lives (law in literature), how literature, as words and stories, is present in law (law as literature) and, finally, literature in the law, to which the author adds a comment on the “law” of literature, which is something more than authors’ rights and the law of literature.

Rigour and erudition, moreover, because the author has covered many works of law and literature in order to reveal to us each one of these elements and facets. Skill because, to present them to us, she unflinchingly adopts the appropriate form to reflect them. The law of literature, then, constitutes an essay regarding the rights of the creator and owner of the literary work (private law), as well as the limits of their creativity (criminal law), which flawlessly leads into a delicate analysis of the protection of freedom of expression (constitutional law) and the important role that literature plays in the gestation and formation of a critical spirit capable of controlling power and the law that power creates, with the aim of preventing the always-lurking slide toward totalitarianism, since it is known that human freedom revolves around death or life, inertia or existence, and though many are called by the latter, few choose it.

And from the essay to the treatise, since within very few but pithy pages, the author describes the extent to which one may approach the law as a story and how the law may thus be understood as a singular class of literary tale to which literary interpretation may be applied. This remains in its very early stages of development for the moment in mainland Europe, since in my view, sooner or later continental Europe will end up discovering the creative freedom of a judge interpreting general and abstract rules once lawyers have “recreated” the facts. Judges in the Anglo-Saxon tradition enjoy such freedom with the aim of showing that a proven fact is similar to one of the innumerable case-law precedents created by their predecessors or, which amounts to the same thing, that evidence constrains more than inference, while moreover, it matters little how binding a judgment is (whether it is to be generalized or will pass into the limbo or just or unjust decisions, except, naturally, for those affected by the judgment itself), since the interest of the critical interpretation must simply be to make authors aware that they decide, write, and in writing they speak and their works are heard. This is not to censure, but rather to commend, since what such speaking and debate encounter all too frequently today is no other than the lack of listening, without and within. The law is propagated as a religious myth. From spoken tradition, it is conserved or changed and, presumed to be literal, it dies in the hands of whoever, rather than remaking the law in the context of a story, attempts to derive the facts from the law.

For this reason, I would venture to affirm that this renewal of interest in speaking of law faces a formidable challenge: that of making it recover the meaning of its own words.

And lastly, the most fully developed of the analyses is that which describes law “as” literature, adopting the form of an anthology comprising a selection of authors and texts grouped chronologically by eras (the Ancient World, the Middle Ages, the Modern Age and the Contemporary Era). This analysis didactically reveals to us how present and alive the law is, expressly, in literary life. “Every work,” the author cautions us, “could be, as has often happened, the object of a monographic treatment”, though, since the book’s intention is simply that of providing us with a “bird’s eye view” of the variety of legal issues that they present, it limits itself to highlighting one insight with each chosen text, which makes reading the book surprisingly pleasurable and interesting, in view of the first-rate interest that the author takes in engaging us with her fascinations. This is something that she decidedly achieves, with the mastery of someone who loves what she does and says as much.

And I am aware that it may be strange to say so, but this book elicits gratitude: it is for the reader to discover the reasons why.