

Kayla Chavez

Peters

Engl 499

29 September 2012

The Purpose of Law in Literature

“Forgive me, gentlemen of the jury, but there is a human life here, and we must be more careful.”

-*The Brothers Karamazov*

Law is an attempt to make order out of chaos, to focus and define a small part of our world which, as a whole, we may never comprehend. It is necessary to every society, as a way of organizing our world and making sense of our interactions with each other. We submit to law, trusting it will protect us from each other, and defend our property and lives, so that we can function in society without constant worry. Inevitably however, law will sometimes fail our expectations, and because of this, many lose sight of law's importance, alienating the field with accusations of inhumanity because they are so disappointed. The emerging field of Law and Literature recognizes the flaws in the legal system and seeks to remind people of law's intention to uphold order and protect people. Law and Literature does this by examining legal scenes in literature to determine what their meaning is in the story, as well as what insights the literature provides into the nature of the legal profession. While literature should not be looked at as a savior of law's purpose, using literary theory to look at law, or looking at literary depictions of law, can help us understand that the legal process is an imperfect human creation. Using ideas from the relatively new field of Law and Literature to analyze legal scenes from classic texts, (Herman Melville's *Billy Budd*, Fyodor Dostoevsky's *The Brothers Karamazov*, and Franz

Kafka's *The Trial* respectively) I will turn the elements of despair or cruelty into spotlights which point out the necessity of law, and support the belief that we should constantly work towards its improvement. The legal problems in these texts will also be compared to issues in the trial of the West Memphis Three, an unfortunately real and current example of law's shortcomings. The examination of the trial and the texts will prove that the recurring mistakes in law are not a sign of a hopeless broken system, but a vital growing system which needs attention and dedication.

It is clear when we look at the mishandled trial of the West Memphis Three that law in need of constant attention and reform. In 1993, three eight-year-old boys were murdered in West Memphis and three local youths were convicted of the murders. The court proceedings were rife with incompetence, bias, and a "remarkable lack of physical evidence" (Perrusquia). The leader of the convicted boys, given the death sentence, was Damien Echols, a young man with very evident emotional and mental instabilities. He was suspected and accused because of his interest in satanic occultism, his delusions of grandeur, and his behavioral issues, such as drinking blood and mutilating people he got into fights with. Although Damien was indeed disturbed, the police investigation and the trial itself were heavily influenced by authorities' incompetence and negativity towards the boys. After the murders, Echols was immediately picked up by police due to his eccentric lifestyle and the fact they believed he was capable of murdering children. After the trial it was found that the jury foreman, Kent Arnold, "manipulated his way onto the jury, improperly discussed the case with jurors and others before deliberations" and "convinced others to convict based on inadmissible evidence and his belief that if you looked into Echols' eyes, then 'you knew he was evil'" (Warren). Much of the evidence used against the suspects only proved the boys had eccentric interests and disturbed personalities, and persons of dubious

authority argued that because of the boys' personalities, they were the most likely to murder the victims (Sullivan). Later testing of evidence utilizing technology unavailable in the nineties led to the conclusion that some physical proof, including a hair and fiber from shoelaces used to bind the victims, did not point to the convicted boys at all, but in fact belonged to "three unidentified people" (Parker). In 2011, after eighteen years in jail, the convicts were released on suspended sentences.

Many of the problems plaguing the 1994 West Memphis case are issues that have been with law for more than a century. Kafka's unfinished book, *The Trial*, deals with some of those elements, such as unprofessional authorities continuing a trial which ends up dominating the life of the accused. As Posner notes in *Law and Literature*, "the punning title of Kafka's novel *The Trial*...in both English and German (*Der Prozess*) means both a legal proceeding and a personal crisis" (4). Law and emotion are inseparable in this novel. The main character K., is accused of a crime, but no one will tell him what he has done, and as the case drags on, it takes a considerable mental and emotional toll on him. K. quickly finds the process of getting his case examined, or even receiving clear information about what is going with his case, difficult and intensely bureaucratic. Immediately he is put off by the actions of legal officials, as they seem shoddily run, the "inside of the legal system [is] just as loathsome as its external aspect," the court-rooms are in a low income apartment complex, attorneys are corrupt, vain, and yet seem to hold little power, acting as contemptible cogs in a machine (Kafka 72). Despite its flaws and the failing of bureaucracy that are clearly illustrated in the text, "the law cannot afford to hesitate, delay in the face of the unexplainable" (Almog 58). Law, like Kafka's novel, must persist despite lacking

insight or clarity in order to uphold the image of order. This determination however helps bring about the destruction of its infallible image.

Law that is required to deal with matters which are not in its scope often leads to a dead end, or to dim and unsatisfactory solutions. Enabling judicial interventionism in every section of our lives, perceiving the law as a secular religion and sometimes almost as a cult (Rozen-Zvi, 1995), is not only doomed in advance, but also promotes an undesired process: legal norms become an unsatisfactory replacement for social and moral norms and understandings. (Almog 58).

During the events in *The Trial*, we see these undesired processes replace moral norms and understanding in the punishment of two clerks. In the beginning of the novel, K. was informed of his accusation and arrest in the apartment of his neighbor Fraulein Burstner. The clerks, Franz and Willem, who also worked with K. in the bank were there to watch over him, and while holding the meeting in Fraulein Burstner's apartment, picked up her belongings and left them messy. K. complains about their untidy and invasive actions in passing to an attorney and is distraught when he later finds them about to be whipped in the bank's storage room. They are pleading with The Whipper to let them go, as K. "never asked [them] to be punished" (Kafka 92). K. himself begs to have them let go, even offering to bribe the Whipper, saying "if I had known that they would be punished or even that they could be punished, I should never have mentioned their names" (Kafka 94). The severity of the punishment, brought on by K.'s trifling comment, elicits intense guilt in him, and to the reader the scene reveals that danger of intense devotion to laws which can lead to such cruel treatment. The clerks' punishment is the result of a legal

system far removed from its original intent to provide justice, and in fact is removed from reason and common sense altogether. Here the fictional legal practitioners overlook the unfair method of punishment and forget the purpose of having law. Devout followers of law or those otherwise possessing unwavering faith in the legal process cause meaningless violence and the clerks are stripped of their human dignity. They are ordered to take off their clothes in the room and whipped without mercy, crying out with sounds not "from a human being" (Kafka 95). The scene is pitiful and painful to witness.

Kafka's novel is a reminder of human dignity and respect, it is a warning to those encouraging a "cult of law" to not forget why we have law. The victims of the legal system in *The Trial* experience suffering far removed from their offense. K. himself is killed for a crime we never discover. The failure to relate a crime to appropriate punishment separates law from its purpose in the story. Although incomplete, the novel portrays a ludicrous and convoluted system by which the characters were supposed to receive justice. Literature here has successfully persuaded us to "perceive the legal function in a more modest light," as we clearly could not rely on it to provide a satisfying end for any involved (Almog 62). Man-made law does not always lead to justice, especially when conducted by people looking to serve their own ends. The people K. was referred to for help were often ignorant of their own shortcomings, and when K. lost patience they took offense and hid behind legal jargon, dismissing K. as someone who simply does not understand the legal process. It's clear in the novel that the failure of law to uphold justice was due to those abusing law. They denied any personal responsibility, making excuses for their misuse of the system and the constant delays and secrecy surrounding K.'s case.

In *The Brothers Karamazov*, other problems which hinder proper justice are brought to light. Dostoevsky's famous novel centers around a murder trial where the wrong man is punished for the crime. Dmitri Karamazov is accused of murdering his father, Fyodor Pavlovich, because of his erratic behavior and well-known contempt for the man, when in fact the servant Smerdyakov murdered Fyodor. The murderer counted on Dmitri's behavior to lead people away from suspecting the "loyal servant." Smerdyakov framed Dmitri "brilliantly and then killed himself," preventing any truth from coming to light (Posner 175). During the proceedings, details of the murder are muddled as the defense and prosecuting attorney interpret evidence to their own ends. While this is of course necessary to win cases, each story told by the opposing sides is filled with embellishment and assumptions, "the authorities, and even Dmitri's own lawyer, do not understand him" (Posner 175). The accounts of what happened become increasingly fictionalized, reducing those involved to mere characters in a drama play for the people present in the courtroom (most of whom attended not for any professional or personal involvement, but in order to be entertained). As Harriet Murav explains in her article "Dostoevsky and the Law," courtroom oratory makes the truth of matters difficult to get at. This is especially true in the novel. During his life, Dostoevsky was "upset by excesses of courtroom oratory, whereby a talented attorney could change the entire emphasis of a case" (Murav 316). Similar to what happened in the West Memphis trial, back then "a lawyer's skill in constructing an aesthetically pleasing story [could] cause a jury to depart from the truth" and sentence someone based on artful embellishment rather than fact (Murav 317). In *The Brothers Karamazov* we can read the entirety of the defense and prosecuting attorneys' statements and whichever we prefer, we will accept as the truth. Just like the jury in the trial, and the audience witnessing Dmitri's sentencing,

we are led to forget about what the evidence might actually indicate. What ends up being the deciding factor is how the story is told. There is an overwhelming expectation for Dmitri to be the murderer, even if there are inconsistencies or other factors which point away from him. Smerdyakov, the servant, has just as much ability to be the murderer but people do not expect it of his character. It takes Ivan, Dmitri's brother, three meetings with the ailing servant to understand Smerdyakov's capacity for murder is equal to or even greater than Dmitri's, but by the time that happens, it is too late. "I used to think you were stupid. You're serious now!" Ivan remarks, looking at Smerdyakov "in some new way" (Dostoevsky 633). He understands with evidence given by the servant that his brother is not guilty, but Smerdyakov himself sees that "no one will believe [Ivan]" since he has enough money of his own now to conceivably imitate the most important evidence, money stolen from his father (Dostoevsky 633). The people making up the jury are unfortunately more apt to believe in Ivan's dishonesty than the idea that a sick, obedient servant would frame Dmitri for the murder. Ivan cannot save his brother. Dmitri, innocent, is therefore condemned based on assumptions and no actual fact. Even as the jury is about to deliberate, we see a bias in the authorities against Dmitri. The judge urges the jury to "Be impartial...do not be impressed by the eloquent words of the defense, and yet weigh carefully, remember that a great obligation rests upon you" (Dostoevsky 750). He omits that the prosecuting attorney could also sway the jury with "eloquent words," and only warns about Dmitri's side. Whether the omission was intentional on the judge's part, or even Dostoevsky's, we may never know, but Dostoevsky's thorough understanding of the legal system and his own unfavorable opinion of courtroom oratory suggests that this omission is meaningful.

The novel also brings to light the issue of inappropriate punishment, similar to Kafka's novel. Murav explains that the "unique individuality of the criminal and the criminal's life circumstances mean the uniform penalties are inherently unjust, since the same punishment for the same crime will have a vastly different effect on the different criminals who commit it" (Murav 317-318). Unfortunately this issue is difficult to fix, since receiving different punishments for the same crime would seem unfair to those who received heavier sentences, and explaining the reasoning behind sentences requires extra effort and more time on the part of legal workers. But there is truth in the issue to consider. Individuals experience their guilt differently, some may feel no remorse for a crime while others are torn apart inside due to their conscience. Perhaps a sentence that is light to some is incredibly burdensome to others, and the receiving of a particular conviction might ruin an individual's personal growth or their ability to positively contribute to society. Harder personalities can go through all sorts of torture unreformed and unfazed because the punishment robs them of things they see as inconsequential. Dostoevsky lamented "law's insensitivity to the individual's unique story" (Murav 318). Law's desire to be quick and efficient leaves much to desire when we look at it from a more compassionate point of view. In terms of being most efficient, law would fail in some circumstances because standardized punishment (the purpose of which is to expedite sentencing) does not compensate for the fact that people suffer differently. Dmitri is mentally tortured by being accused and convicted. While giving his final statement before the verdict "something new, resigned, defeated, and downcast could be heard in his words," which indicated a profound change in him (Dostoevsky 750). By the end of the novel he cannot control his behavior, he falls apart and demonstrates inconsistencies in attitude and speech. This hints at the possibility that he has been

driven mad, although he pleads "only [his] soul is heavy" (Dostoevsky 750). After his sentencing, Dmitri comes down with a "nervous fever" (Dostoevsky 761) and is bedridden, his moods swinging from "terribly pensive...forgetting whoever was there" to suddenly speaking, "and inevitably not with what he really ought to be saying" (Dostoevsky 762). His descent into despair during and after the case is unhappy to watch. Dmitri was once a passionate, if misguided, man, but is now forever lost and useless to his society. We as the reader are keenly aware that since he was not the murderer, he did not deserve his sentence and the spiritual destruction it resulted in.

Through a Law and Literature perspective, we can see specific problems in the legal process, particularly courtroom proceedings, which can damage any individual involved. The ability of an attorney to sway jury opinion with elaborate storytelling and assumptions instead of critical examination of evidence condemned Dmitri, who had already suffered enough to destroy his character. To "interpret another's behavior, as Dostoevsky very well knows...is to have power over the other. That power easily flows into controlling, disciplining, and finally authoring," turning the accused or the victim into flat characters, with no true power or depth of their own (Murav 321). To be an author of a person's life is to strip him of his free will and dignity. We should remember that courts are not only to punish. As Mitya's defense attorney states: "courts exist not only for punishment but also for the salvation of the ruined man" (Dostoevsky 748). Legal practitioners can see through literature, like *The Brothers Karamazov*, the severity of their decisions. The text encourages a closer examination of the people they defend or accuse, it is a reminder to people involved that individual lives are stake, which we should make an effort to save at all costs.

Billy Budd, Sailor is another novel dealing with the heavy responsibilities that come with sentencing an individual. It also depicts the necessity of law to keeping order. The protagonist of the story, Billy Budd, is a much-admired sailor who has a speech impediment. Unfortunately when he is brought to the captain's room for suspicion of planning mutiny, he cannot defend himself through speech because of his impediment, and instead strikes Claggart, the security officer, dead in one blow out of frustration. Another officer, Vere, puts together a naval court-martial and has Billy killed. But Billy Budd is put to death not particularly for murdering Claggart, but in order to intimidate his shipmates so they don't mutiny. It is agreed upon those holding the trial that he must be put to death to discourage a possible uprising. The chaos and fear of mutiny that defines the time in which *Billy Budd* takes place is then assuaged by Billy's death. But to many people it seems that Billy Budd's death was unwarranted, because he had no mutinous intentions and so didn't deserve to be killed as an example. Melville paints Billy as a shining example of a man: he is strong and noble, and we are encouraged to feel great admiration for his character. This likable image makes his death all the more tragic. The opinion of Billy as admirable makes Captain Vere seem cruel in using his authority to bring together a drumhead court-martial to sentence Billy. However, studying the nature of the case more deeply complicates these beliefs. Posner argues that for the circumstances and time period, "a seaman in the eighteenth-century British navy who struck and killed a superior officer might indeed be executed," which supports Vere's side of the story (Posner 165). And although Billy did not have mutinous intentions when questioned by Claggart, striking and killing him would definitely have been construed as mutinous by his peers, who were eager for any reason to rebel against their commanding officers. So while the verdict initially seemed wrong and merciless, we have to

understand that Vere and his peers were influenced by the tense environment caused by recent mutinies aboard other ships. They were encouraged by fear, and a desire to assuage that fear. We can't accept sympathy only for the defense if we are trying to evaluate the situation from an unbiased and fair perspective, we have to examine things from the prosecutor's side as well. If Billy was let go or given a lighter sentence, other sailors would take it as a sign of weakness in the commanding ranks, and could persuade their shipmates to unite and overthrow the officers.

That the unhappy event which has been narrated could not have happened at a worse juncture was but too true. For it was close on the heel of the suppressed insurrections, an aftertime very critical to naval authority, demanding from every English sea commander two qualities not readily interfusible--prudence and rigor (Melville 61).

Captain Vere had then a great responsibility thrust on his shoulders, and Billy Budd was the unfortunate victim not of the court per se, but of that responsibility to keep the peace. As in *The Trial*, perhaps none of the judge or prosecutors were truly hard-hearted, they "should be glad to help everybody, yet as Law-Court officials [they] easily take on the appearance of being hard-hearted" (Kafka 77). There is an image of strength for the officers to uphold, and although none of those condemning Billy Budd wanted to do so, they accepted that they must. Melville writes so we understand the weight of the decision to condemn Billy Budd. Vere was "torn between private feeling and public duty," and his "bookishness, his 'pedantry,' make us realize he *knew* he faced a tough choice" (Posner 170).

While it is easy to side with the victim in literature, and especially a character as well liked among his peers as Billy Budd, we must avoid judging the rational choice Vere made as

wrong. In *Billy Budd* we have to examine both sides and understand that the legal process that takes place depicts not a corrupt system, but a system which shoulders the responsibility of upholding order in difficult, complicated times. While Billy Budd was not mutinous, the crew members who were would see his act as mutiny and be encouraged to follow through with acts of their own if his went unpunished. Vere understands that his decision to have Billy killed sacrifices an individual to preserve order in the group, and he carries the burden of being responsible for it to his own death, his last words being Billy's name. Vere's character traits, his "bookishness," severe personality, and intelligence, elevate him "above the officers of the court-martial, and, by presenting him as an introspective man rather than as merely a tough military commander, [impart] tragic overtones to his decision to condemn Billy Budd to his whispering Billy's name on his own deathbed" (Posner 170). The tragedy in *Billy Budd* is not only in Billy's death, it is also in the lifelong burden that Vere shoulders in being the one who sacrificed a good seaman for the peace of his society. *Billy Budd* illuminates for us the fact that those who practice law are not always heartless or cruel. What happened in *Billy Budd* is not just an example of flaws in law, it is also an example of the proper use of law to prevent social chaos. If Billy Budd had not died, how many more people would have suffered in a mutiny inspired by his being spared? Vere's difficult decision is supported by Posner, who states that "the command of a major warship in a major war is an awesome responsibility; upon its proper discharge may depend many lives" (170). The text does not explain what would have happened for sure if Billy received a lighter sentence, but understanding what knowledge and options were available to Vere, we cannot condemn his decision.

Billy Budd is an example of fear influencing a trial, similar to what happened in the West Memphis Three case, but the naval officers were seeking to quell the fear, instead of stoke it to ensure an improper conviction. In *The Brothers Karamazov*, the improper conviction was due to the prosecutor's portrayal of events, and the bias in the community against Dmitri, whom they considered a dangerous scoundrel, an opinion similar to the one the West Memphis community held against Damien Echols. The stubborn persistence of legal authorities to enforce their power over the case despite lack of qualifications, as seen in *The Trial*, could also be seen in the police and Kent Arnold, who were authorities determined to convict Damien Echols, Jessie Misskelley Jr., and Jason Baldwin. The novels were written long before the West Memphis Three trial, and yet we still have to deal with the flaws portrayed, which begs the question: if nothing gets solved, what is the point of paying attention and always trying to amend the legal process? Clearly it continues to fail us, so wouldn't society's condemnation be justified?

The problem with that assumption is that it helps perpetuate the flaws it sees as hopeless. It places the blame on the legal system when in reality it is those who mishandle or exploit the system who are to blame. Law is only as corrupt as the individual misusing it, and if we accept the system as hopeless, it loses the potential to be fixed. The field of Law and Literature recognizes law's need for revitalization and seeks to give legal practitioners new insights into the purpose and nature of their practice. Law and Literature combines both previously separate fields into one study where they can shed new light on each other. The new academic field also tries to shift society's negative opinions about the legal circle by using literary depictions of law to remind people of the passion and creativity inherent in the practice. One of the main ideas behind

the movement rests in this statement by Harvard Law School graduate, judge, and Senior Lecturer in Law at the University of Chicago Law School, Richard A. Posner:

[Law and Literature proponents] want to reclaim law as a humanity from economists and economics-minded lawyers, who view law as a social science. They want to do this both by giving lawyers a literary education and by shifting the emphasis in legal scholarship--any legal scholarship, however remote the subject matter may seem from literature--from analysis to narrative to metaphor. Some want to bring works of imaginative literature into the legal classroom in order to present vivid pictures of the despised, the overlooked, and the downtrodden, and by fostering empathy for them to encourage legal reform along egalitarian or even revolutionary lines. (Posner 6).

Posner has written extensively on legal subjects and is a leading voice in the Law and Literature field. He encourages us to "shift our attention from the intrinsic properties of the text to the uses made of it and to emphasize, as a necessary condition of a text's being literature, that it be read in a setting different from that of its creation" (Posner 21). Although an author may have intended to desecrate or lament the state of law in a novel, literary theory abandons the intent of the author, since we often cannot be sure of what they truly meant. Depictions of the legal process in literature, however negative they can be, must be read with a mind to improve on the issues depicted.

Shulamit Almog, a professor at the University of Haifa, an international law school, points to the beginnings of field as "marked by James Boyd White's *The Legal Imagination*(1973)" (Almog 53). [I plan to elaborate on the field's origins] In her essay,

"Literature Alongside Law as a Contemporary Paradigm," Almog rejects the idea of literature and law as separate practices in which literature works in the service of law to save it from itself. Instead she argues for the alternate idea of literature alongside law, where the relationship is linked "but devoid of hierarchical value" (Almog 54). Literature "flows alongside law," helping to "establish the collective recognition that law is vital to human existence" (Almog 59). Her perspective on the relationship between law and literature further supports the belief that both subjects are inherently connected. They are not separate fields lending ideas to each other but a discipline whose ideas are found in both studies.

In Binder and Weisberg's *Literary Criticism of Law* the authors point out a direct connection between the evolution of legal interpretation and its role as a representative of maturing culture. Pre-civil war American legal interpretation was generally thought to be indisputable; the law was the law and spoke only one truth (the opinion of the majority) for many of America's citizens. But "with the coming of religious liberty and political democracy, enlightened skepticism replaced innocent faith in natural law" (Binder and Weisberg 28). With the pressure on judges to re-examine cultural givens and recognize the majority opinion as flawed and racist, judges and legal interpreters took on a new role and legal language became more flexible as it descended from the pedestal of unwavering Justice and Truth. *Literary Criticisms of Law* points out that "not until the postwar Court confronted the problem of race did a conception of the Court as fundamentally countermajoritarian prevail" (Binder and Weisberg 111). Long before the inception of Law and Literature, Courts were awakened to a purpose beyond representing the majority or defending the majority as correct. Legal interpretation became more of an artistic practice, the language of the Courts open to different perspectives

previously suppressed. Courts took on the responsibility of determining a higher morality than society. Law and Literature is a study stemming from legal practitioners' increasing awareness of their responsibility to uphold order and make sure an individual can retain their rights when being suppressed. Laws which protect people against prejudice are the result of the legal world's realization that they are here to defend human rights. While there are issues in law, there are also many successes. With the aid of literature, those successes can be depicted alongside its flaws, reminding people of the complex nature of the legal field.

Law and Literature also emphasizes the subjects' interconnectedness. *Literary Criticisms of Law* supports this idea, suggesting that we must "be prepared to abandon a view of 'the literary' as something extrinsic to law that corrects or redeems or ornaments it" (Binder and Weisberg 18). Abandoning this notion helps us avoid the mistake of regarding literature or literary theory as a reviver of law's human aspects. Law is similar to literature in that it reflects the struggles of the society as it matures and as more people seek to be heard and represented. People sometimes fail to remember or choose to ignore law's cultural significance in order to perpetuate biases against legal practitioners and to support the belief that law has no relation to society. These biases are merely crutches people use to avoid understanding the nature of law. It is much easier to blame unjust rulings on the inhumanity or cold calculations of attorneys than it is to question the jury, judge, or other participant as a human being unfit for the practice. But more reasonable way to look at law, using the Law and Literature movement, is to understand that literary depictions of law, and actual "legal processes [are] arenas for generating cultural meaning" (Binder and Weisberg 18).

Richard Posner states "literature has fascinated judges and other lawyers, lately including law professors, as a possible model for their judicial, forensic, and scholarly efforts respectively, as a possible source of insight into the social problems that arise in legal cases" (Posner 4). He sees Law and Literature as a way to not only expose errors in legal proceedings, but also to expose the nature of issues that create current court disputes and give rise to new interpretations of laws. As human society matures, it awakens to the needs of people that have previously been marginalized or unjust opinions that have gone without question but must be questioned. The need for racial equality brought to light racist qualities in our government and the Courts changed to defend democratic equality, instead of popular opinion as they did before. Growing social issues expose dormant vices in our current judicial system. Looking at literature which depicts the struggle of groups to gain attention, legal interpreters such as judges and attorneys can more effectively understand what needs to be done.

For all the good that Law and Literature does, it also has its own shortcomings. Concerning issues in the movement, Binder and Weisberg eloquently point out that there is first, "a *sentimentalism* in which passion is never cruel or self-indulgent or muddle-headed, invention is never destructive or dishonest" (Binder and Weisberg 16). The term "sentimental" as it is used by authors, is "a second-order experience of pleasure in, or attitude of appreciation for, the experience of emotion" (Binder and Weisberg 17). While one of the purposes of Law and Literature is to remind us of the emotion in the practice of law, sentimentalism exalts the experiencing of emotion to the point where any critical reflection is regarded as undesirable or detrimental to the image of the legal process. Sentimentalism in the field of Law and Literature attacks "reason as incompatible with passion...and pretend[s] that social life could proceed

without institutions, arbitrariness, coercion, and trade-offs among social goods" (Binder and Weisberg 17). As a tool for contextualizing our world, law requires critical thought as an element to make sense of things and root out the best possible outcome in cases fueled by emotion. Critics of the legal process often misunderstand law's impartiality, using its removal of excessive or destructive emotion as a reason it is to be condemned as inhuman. While the field of Law and Literature may occasionally favor sentimentality, "its successes--in illuminating the meanings of a particular legal dispute, fashioning a normative argument adapted to a particular cultural context, or grasping and transcending the limits of a point of view" elude generalizing (Binder and Weisberg 18).

What people often forget when criticizing the institution of law is that law is a part of the much larger construction of society. As a general truth, we understand that human beings are inherently flawed and we require constant improvement as we mature. The same should follow with anything, such as government or law, that stems from human minds. Although the issues cannot all be solved, and although some issues cannot be fixed with anything resembling expediency, looking at law through literature reminds us of law's purpose as a humanity, and what needs to be done in order to progress.

The tendency of trials to fall prey to bias and prejudice is an unfortunate by-product of human nature, which favors simplicity and generalization. History is filled with people punished for eccentricity, and the unfortunate sentencing of Damien Echols proves the persistence of ignorance and fear as driving factors in our decisions. Although law has changed to not represent majority opinion, it can still submit to popular notions, as demonstrated in the accusation of

Damien Echols and his peers because of how they chose to express themselves, instead of any concrete or dependable evidence.

There are many issues plaguing the legal process, but they are not all attributable to the practice. Society craves drama and entertainment, which is why people are still convicted because of their personality or profile, and why inaccuracies and mistakes are remembered more often than law's triumphs. The desire for drama is also why we sometimes fall prey to fear-mongering and sensationalized conclusions, just as the West Memphis community did when they were told the murders were part of a Satanist cult ritual. As the trial began, enraged members of the community shouted outside the courthouse, condemning the boys.

In short, society naturally possess flaws and we are continually influenced by them. Fyodor Dostoevsky in his time felt that Russia's "national, criminal cases bear witness precisely to something universal, to some general malaise that has taken root among [Russian society], and with which, as with universal evil, it is already very difficult to contend" (Dostoevsky 694). It is difficult for us to contend with the problems in our culture as well. Although the texts examined do elucidate failures of the legal system, perhaps these failures are simply the result of people misusing the system or neglecting to recognize its limits. By using Law and Literature to remind people of the human nature and passion in law, we can accept it as an extension of ourselves and work to amend the flaws. Constant effort toward improvement is necessary, no matter how hopeless or difficult it seems. Law can redeem itself, as proven by the release of the three convicts of the West Memphis Three case. Their release would never have happened if those involved in the case did not work throughout the years to expose the problems in the case and re-examine evidence to overturn the convictions. We are often quick to point out the negative but

there are many successes in legal history to balance out what goes wrong, and decisions which seem cruel, like Vere's in *Billy Budd*, are often difficult for those who understand the weight of their responsibility to society as upholders of order and peace.

The perspectives in Law and Literature are important to keep in mind when analyzing legal events in literature. Although we tend to reject institutions which seem filled with error, and we use negative literary examples of law to blame the institution itself for those errors, that rejection eliminates the ability to improve the problems. Even if something persists over decades or centuries, constant examination is beneficial because it makes us aware of our flaws before we use the law to ameliorate a situation, and literature helps us “come to understand that the suffering, the baseness, the horrors, and the scandals of the human condition are both redeemable and redemptive” (Posner 174). Law as a discipline is used by people to bring some order out of the confusion of human interactions. We cannot condemn it because we use it both as a means of protecting rights we would otherwise have to fight for by ourselves, and as a process to sort out complicated human relations. In *The Trial*, we watch K. “struggle absurdly and pathetically and finally go down to ignominious defeat. At the same time we are made to feel...that the protagonist's grotesque dilemma is somehow emblematic of the human condition” (Posner 135). Even with all the strange legal complications in Kafka's novel, there is a persistent dependence on law, as if despite K.'s recognition of its absurdities he accepts it as something he cannot do without. Recognizing the flaws inherent in the man-made system gives us the ability to fight against them, and the opportunity to amend them. Both options are preferable to leaving the legal system to stagnate. As society changes with time, perhaps there will be viable solutions, but for now the issues illustrated in the literary texts are there as a reminder of the imperfect aspects of

law we need to work on. Law is like a magnifying glass, used by us to untangle a giant knot of fine threads. Using this closer view and systematic examination, we can untangle a segment, but of course the rest of the bundle is still going to be knotted. The threads we untangle lead to contortions elsewhere, so there seems to be no way to undo it completely. What we can do is be aware of the interconnectedness of society, and untangle section by section as they come under the scope.

Bibliography

- Almog, Shilamit. "Literature Alongside Law as a Contemporary Paradigm." *Cultural Dynamics*, 13.1 (2001): 53-65.
- Baron, Jane. "Law, Literature, and the Problems of Interdisciplinarity." *The Yale Law Journal*, 108.5 (1999): 1059-1085.
- Binder, Guyora and Robert Weisberg. *Literary Criticisms of Law*. Princeton: Princeton University Press, 2000. Print.
- Dostoevsky, Fyodor. *The Brothers Karamazov*. New York: Farrar, Straus and Giroux, 2002. Print.
- Kafka, Franz. *The Trial*. New York: Alfred A. Knopf, 1992. Print.
- Ladipus Roxanne. "The Law as Mirrored in Literature." *Issue 109 (Volume 35, Number 1)*, 2006, (35.1) 2006: 3-19.
- Melville, Herman. *Billy Budd and other tales*. New York: Signet Classics, 2009. Print.
- Murav, Harriet. "Dostoevsky and the Law." Eds. Austin Sarat, Catharine O. Frank, and Matthew Anderson. Modern Language Association of America, 2011. 314-322. Options for Teaching~~OfT~~32 *MLA International Bibliography*. Web. 17 Sept 2012.

Parker, Susie. "Fresh DNA evidence boosts defense in 1993 Arkansas slayings." *Reuters* (Little Rock, AR) 27 July. 2011. Online.

Perrusquia, Mark. "Damien Echols may be troubled but he's not a killer, some say." *The Commercial Appeal* (Memphis, TN) 27 February. 1994. Online.

Posner, Richard A. *Law and Literature*. Cambridge: Harvard University Press, 2000. Print.

Shields, Ross. "The Ethics and Beauty of The Trial: Kafka's Circumscription of Failure." *Freedom and Confinement in Modernity: Kafka's Cages*. New York: Palgrave Macmillan, 2011. Print.

Sullivan, Bartholomew. "Witnesses call boys deaths work of group with trappings of the occult." *The Commercial Appeal* (Memphis, TN) 9 Mar. 1994. Online.

Warren, Beth. "Jury foreman in West Memphis Three trial of Damien Echols accused of misconduct." *The Commercial Appeal* (Memphis, TN) 13 October. 2010. Online.

Weisberg, Richard. "The Codification of Western Law and the Poethics of Disclosure." *Cardozo Studies in Law and Literature*, 6.2 (1994): 157-170.