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# Book Notes: The Structures of Law and Literature: Duty, Justice, and Evil in the Cultural Imagination, by Jeffrey Miller

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## Book Note

THE STRUCTURES OF LAW AND LITERATURE: DUTY,  
JUSTICE, AND EVIL IN THE CULTURAL IMAGINATION, by  
Jeffrey Miller<sup>1</sup>

JACK LLOYD

IN THE STRUCTURES OF LAW AND LITERATURE: *Duty, Justice, and Evil in the Cultural Imagination*, Jeffrey Miller analyzes the scholarly field of law and literature through the lens of Northrop Frye's archetypal criticism.<sup>2</sup> In six chapters, the book proposes that the study of law and literature is best accomplished through Frye's "archetypal" literary criticism.<sup>3</sup>

Chapter one criticises the law and literature field and how it is taught in law schools. Miller takes issue with the fact that "professors teaching the classes frequently "have little or no training in literary theory."<sup>4</sup> In addition, literary criticism itself is challenged as "faddish,"<sup>5</sup> and the reluctance amongst law and literature scholars to engage with Frye's work because it is outdated is described as misplaced because "archetypal criticism does not contemplate invalidating other critical approaches."<sup>6</sup>

The second chapter deals largely with creation narratives from the Christian Bible and their relevance to the development of law. Miller associates the teachings of Jesus with the concept of precedent, and analyzes the patterns seen in both the stories of Moses and Jesus as they relate to our conceptions of modern law and justice. Works by John Updike, Nadine Gordimer, JM Coetzee, Franz Kafka,

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1. (Montreal: McGill-Queen's University Press, 2013) 242 pages.
  2. Frye is considered one of the most influential literary critics of the twentieth century. Frye's *Anatomy of Criticism* and its archetypal view of literature is promoted by Miller as an analytic tool for studying law and literature. See *e.g.* Northrop Frye, *Anatomy of Criticism: Four Essays* (Princeton: Princeton University Press, 1957).
  3. *Supra* note 1 at 150.
  4. *Ibid* at 7.
  5. *Ibid* at 5.
  6. *Ibid*.

and Albert Camus are discussed through the Fryegian lens, illustrating how they enhance our understanding of law.

Chapter three examines social and legal duty as well as the interaction between narrative and conceptions of justice, both real and literary. Miller illustrates how the reasonable person standard evolved from biblical stories of exemplary persons of faith, such as Moses or Job.<sup>7</sup> The tale of Moses on Pisgeh is used to expostulate on comparative law between the faiths of Judaism and Christianity.<sup>8</sup>

Mordecai Richler's *St. Urbain's Horseman* is discussed in relation to duty and justice in the context of sexual assault.<sup>9</sup> The plot device of "The Bedtrick"<sup>10</sup> is extrapolated upon through discussion of Richler's narrative. The literary and legal fascination with this plot device is then related to the English case of *R v Collins*,<sup>11</sup> in which a woman mistakenly has sex with an intruder, believing him to be her boyfriend.

The fourth chapter is an examination of how literature reflects on the role of social and legal duty using James Kelman, Franz Kafka, John Milton, and others, to investigate the ways in which duty is created, understood, and breached. Society's creation of duty through narratives about Hell<sup>12</sup> is discussed, particularly in relation to Milton. In addition, Kelman's blind, desperately alcoholic narrator in *How Late It Was, How Late* is examined to help us see the literary, legal, and real-world implications of a duty and its breach.<sup>13</sup>

Chapter five presents an analytic framework for viewing the law in and as literature. The chapter focuses on the similarities and differences in how literature and the law use language. Miller discusses the role of the priestly class in mediating between "the language of God and the vulgate" and the role of judges in mediating between "legalese and the vernacular."<sup>14</sup> The role of *stare decisis* and language is dealt with through discussion of a variety of cases in which complex interpretive tools were used by judges and lawyers "in an

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7. *Ibid* at 65.

8. *Ibid* at 98.

9. *Ibid* at 74-78. See e.g. Mordecai Richler, *St. Urbain's Horseman* (Toronto: McLelland & Stewart, 1971).

10. The Bedtrick is a plot device in literature whereby Person A engages in sexual intercourse with Person B in the mistaken belief that Person B is in fact Person C. See e.g. Wendy Doniger, *The Bedtrick: Tales of Sex and Masquerade* (Chicago: University of Chicago Press, 2000).

11. *R v Collins*, [1972] 2 All ER 1105, [1973] 3 WLR 243.

12. *Supra* note 1 at 119.

13. *Ibid* at 116. See e.g. James Kelman, *How Late It Was, How Late* (London, UK: Vintage, 1994).

14. *Ibid* at 139.

attempt to reach (Edenic) justice,”<sup>15</sup> or at least a form of justice that is usually only seen in literature.

The final chapter reiterates the value of archetypal criticism for law and literature studies. Deeper scrutiny of several literary works is conducted. The Moses story is related to the rule of law,<sup>16</sup> as are Golem myths as a form of literature promoting the rule of law as a protective measure for subjugated groups.<sup>17</sup> The Book of Job is discussed in the context of remedies for breach of contract, and as a method of understanding the reasonable person standard and its role in an imperfect world.<sup>18</sup> Finally, the magic realism of Marcel Aymé is presented as a means to understanding a justice system which is viewed by many as “irremediably broken.”<sup>19</sup>

Miller presents a valid argument for promoting Fryegian analysis in the law and literature field without discounting other critical views of the subject. While it would be impossible to delineate any one “right way” to conduct law and literature criticism, Miller illustrates numerous areas that are ripe for further study.

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15. *Ibid* at 145.

16. *Ibid* at 151.

17. *Ibid* at 185.

18. *Ibid* at 160.

19. *Ibid* at 198.