

Law in Literature

Legal Themes in Novellas



“THOUGHT-PROVOKING STORIES WHICH CHALLENGE OUR NOTIONS OF JUSTICE.”
—Professor David Ray Papke, Marquette University School of Law

Edited by
Elizabeth Villiers Gemmette

LAW IN LITERATURE

Legal Themes in Novellas

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Preface

Law in Literature: Legal Themes in Novellas brings together eight novellas which can be used to supplement and enhance the materials in *Law in Literature: Legal Themes in Drama* and *Law in Literature: Legal Themes in American Stories:1842-1917*. A companion volume to these three anthologies is *Law in Literature: An Annotated Bibliography of Law-Related Works*. The intended audience for all four of these books includes students of the law, students of literature, lawyers and others participating in the legal profession, and the lay public.

To compile an anthology entitled *Law in Literature: Legal Themes in American Stories:1842-1917* involved some decision-making as to what pieces should be chosen to illustrate particular topics, but the more difficult task was to find just the right stories to fit into the rubrics which were created for the presentation of legal themes throughout the book. Making choices for this anthology, and for the drama anthology, was a different process in several ways. First of all, the longer length of novellas and plays necessitated the selection of fewer pieces—in this volume eight novellas and in the drama volume eight plays. Although *Law in Literature: Legal Themes in American Stories:1842-1917* does include the following three novellas also included in this volume: *The Heroic Slave* by Frederick Douglass, *Benito Cereno* by Herman Melville, and *Life in the Iron Mills* by Rebecca Harding Davis, there was still room for the inclusion of thirteen short stories

"Novella" is a term loosely used to describe works that are either long short stories or short novels, the latter also being known as novelettes. The eight works comprising this anthology have been included here under the title *Legal Themes in Novellas* after much deliberation. They are not all long short stories, and they are not all short novels. One might even argue that Willa Cather's *O Pioneers!* is quite simply a novel and not a short novel, even less a novella. Yet *O Pioneers!* is about the same length as other works—one example is Fitzgerald's *The Great Gatsby*—which have been called novelettes at one time or another, so it seems appropriate to include it in this anthology as a novella. From a practical point of view, it was hard to imagine a book with the title *Law in Literature: Legal Themes in Long Short Stories, in Short Novels, in Novelettes, and in Novels*. Rubrics are sometimes useful, but not always.

The time period of the eight works included here covers a seventy-five year period from 1838-1913. Once again, there was a sense that *O Pioneers!* should have been replaced with a nineteenth-century work in order to have been able to give the book the title *Law in Literature: Legal Themes in 19th Century Novellas*, but such manipulation of fitting works into centuries serves no legitimate purpose. *The Avenger* by Thomas De Quincy was published in 1838, *The Heroic Slave* by Frederick Douglass in 1853, *Our Nig; or Sketches from the Life of a Free Black* by Harriet E. Wilson in 1859, *Life in the Iron Mills* by Rebecca Harding Davis in 1861, *Benito Cereno* by Herman Melville in 1885, *The Death of Iván Ilyich* by Leo Tolstoy in 1886, *O Pioneers!* by Willa Cather in 1913. The writing of *Billy Budd, Sailor* by Herman Melville was begun during the time-frame of the works included in this volume but was left unfinished at the time of his death in 1891. It was first published posthumously in 1924. The Harrison Hayford and Merton M. Sealts, Jr. Reading Text included in this volume is considered the best reading text of this important piece of literature.

The eight works included in this anthology were chosen to illustrate important legal themes such as natural, divine, and positive law; obedience to positive law; equality; finding the truth; the judicial process; theories of punishment; capital punishment; justice; murder; theft; the mens rea; legal defenses; and property concepts; but the works also were chosen to illustrate the way in which the law forces individuals to confront existential dilemmas and the questing for right answers—activities which are part of the human condition. The selections contain characters like Billy Budd, Madison Washington, Frank Shabata, Hugh Wolfe, and Maximillian Wyndham—all perpetrators of crimes according to the law but whose actions are revealed in such a way that readers might come to empathize and sympathize with each one of them. In addition, we have characters like Captain Vere and Iván Ilyich who are engaged in self-reflection and introspection as they consider the law and their applications of it. We also have characters like Alexandra and Deborah offering feminist sensibilities toward crime and the criminal, one whose loved one is the victim and one whose loved one is the perpetrator. The topics of slavery, equality, and discrimination are addressed, not from an outsider's perspective, but by the Black writers Frederick Douglass and Harriet E. Wilson. Each of the eight works included in this anthology helps us to reflect on law, its purpose, and the notion of justice.

Finally, this anthology is not intended merely as a book to familiarize the reader with legal issues and themes. It is a book that looks at the tools of the writer—literary devices and elements such as alliteration, allusion, assonance, character, irony, metaphor, personification, plot, point-of-view, setting, symbol, theme, and tone. It also raises the question of whether the tools of literary criticism, such as socioeconomic, psychoanalytic, Marxist, existential, feminist, strict constructionist, reader-

response, historical, comparative, archetypal, symbolic, multicultural, and critical race theories, used to deduce meaning from a literary text, are useful to the reading of legal texts such as constitutions, statutes and legal cases. At the heart of this discussion is the question hotly debated by legal and literary critics: Is adjudication interpretation? On the one hand, there are critics who would tell us that adjudication is interpretation, that texts are indeterminate, that judges use subjective preferences in giving meaning to a legal text. On the other hand, there are critics who would tell us that adjudication is not interpretation, that legal texts are determinate, that meaning is objective. As you engage in a careful reading of the works that follow, extrapolating meaning and identifying ambiguity, remember that both writers of fiction and writers of legal texts work with the same tools—literary devices inherent in the use of language—and ask yourself whether or not a legal text might render multiple meanings in the same way in which a fictional text might? Or, does a legal document by its very nature, have to result in only one meaning?

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Elizabeth holds a BS in Psychology from Union College, a DA in English from SUNYA, and a JD from Albany Law School. She has been a practicing attorney, an educator, and a published author. Her books on law and literature have been used as texts in both undergraduate and graduate schools. Her articles on psychology, law, literature, law/health, and law and literature have been published in legal, literary, and psychological journals.

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