

LOOKING FOR THE GUILTY? LOOK INTO A MIRROR¹: COMPLICITY IN OPPRESSION THROUGH CHOOSING INACTION, AND THE RESISTIVE POTENTIAL OF TRAGIC COUNTER NARRATIVES IN ALBERT CAMUS' *THE PLAGUE* AND GABRIEL GARCIA MARQUEZ' *CHRONICLE OF A DEATH FORETOLD*

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The article explores connects between the two aforementioned stylistically similar yet different novels and socio-legal discourse. It establishes that literature has a lot to offer to discussions around law and society generally and violence particularly. By humanizing those whom categories relegate to stereotypes, literature invites law to confront the violence at its core; while also giving oppressed individuals and groups an engaging medium to make their dissent and suffering known. The longevity of literature and its ability to appeal to timeless values gives it a unique role in that it can restore popular faith in the potential of the legal system to attain those values despite the violence and despair that characterizes the system at present. The article, therefore, is intended to be a tribute to literature generally as well as an affirmation of its relevance to socio-legal study.

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1 V FOR VENDETTA (Warner Bros. Pictures 2005).Rephrased from V's televised speech: "If you're looking for the guilty, you need only look into a mirror."

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I. INTRODUCTION

This article attempts to explore the possible intersections between two texts as widely different as law and literature, and apply the insights gained to socio-legal issues. The novels under consideration are Gabriel Garcia Marquez' *Chronicle of a Death Foretold* (hereinafter *Chronicle*) and Albert Camus' *The Plague*. The reason for choosing them instead of novels that expressly feature law is primarily that law is understood to imply more than courtrooms and statutes. It becomes a meaning-making, culturally pervasive exercise across societies; and need not manifest itself as a complex 'legal' system to become a part of people's consciousness. The two novels, thematically as well as stylistically, demonstrate this idea while making broader points about oppression and latent violence, as will be subsequently elaborated.

It begins with a general discussion on how literature offers crucial insights that can go a long way in effecting meaningful legal reform, foreshadowing the themes that the two novels are sought to be examined under. The second section is a summary of the existing jurisprudence regarding the interaction of social norms and law with violence. The third section, offers a brief outline of the plots of the novels and states why these two novels were chosen for the purposes of the themes intended to be analyzed. Specific instances from the novels would then be woven into the themes as and when appropriate. The themes and instances

are not meant to be mutually exclusive; there would be substantial overlap and each would reinforce the understanding of the other.

The fourth section discusses the first major theme, that of the repressed violence in the unconscious of law and social norms, how they are forced to confront it, and what happens when they do. The fifth section discusses, the function of tragic counter-narratives as witnesses to the violence being spoken of. The sixth section deals with the idea of the ethic of defiance in the face of that inevitable violence. The seventh section examines the violence perpetrated against the queer community as a specific instance of the socio-legal issues these insights can apply to.

II. LITERARY JURISPRUDENCE: WHY LAW NEEDS TO STUDY LITERATURE

Literature comprises some of the very things that law excludes while defining its categories: emotional investment, imagination, creativity, metaphor, absurdity. By so doing, it becomes a foil for law to the extent that it gives a voice to those whom the law denies one. Both deal with human beings, but the vast difference in their approaches is precisely what makes their intersection a worthwhile subject of study.

The first theme of the article is how literature, by humanizing the people whom the law views as abstract categories of ‘offender’ or ‘victim’ or ‘plaintiff’ or ‘defendant’, forces law and social norms to confront the same violence that they profess to have substituted but never really do away with. While sociological and anthropological scholarship has and is capable of exposing this inherent violence, a literary perspective is unique and unprecedented. This proposition is discussed in detail subsequently. The second theme stresses on the attributes of literature that set it apart from law, adding to an understanding of why literature has the kind of impact that it does. By being an imaginative and engrossing chronicle (as opposed to dry, rational, mechanistic law), literature invites active engagement with the characters whose story it tells and therefore enables a better understanding of people by situating them in the whole narrative of their lives.² Since it is enduring,

2 Martha Nussbaum, *Equity and Mercy*, 22 PHILOSOPHY & PUBLIC AFFAIRS 83 (1993).

it survives as a testimony of an individual's or a society's circumstances at a particular time, enabling *suggnome*³; and also becomes a record of the multiplicity of perspectives that characterizes every human experience. It is because of the aforesaid attributes of literature that tragic counter-narratives can stand witness to those past injustices and the consequences of letting the intrinsic violence go unrestrained in a way that no academic discipline can.

The third theme follows from the second, and while stressing the importance of speaking out against historic injustices, it gives literature a unique place in that the kind of closure that literature offers can sometimes be an attempt to set past injustices right. The fictiveness of a novel, often ridiculed in the context of legal research, can be precisely what gives literature much of its distinctive power. The longevity of literature comes from its appeal to universal human values, and by portraying (even if fictively) a victory of those values, faith in the inherent good in humankind can be redeemed.

III. EXISTING JURISPRUDENCE REGARDING THE INTERACTION OF LAW AND SOCIAL NORMS WITH VIOLENCE

The relationship amongst law, social norms and violence has been theorized upon by legal as well as anthropological scholars. This section does not pretend to be a comprehensive account of all streams of thought in the existing scholarship, but does attempt to identify currents that would have direct bearing on the themes of the two novels. A proper analysis of the interaction of law and social norms is not within the scope of this article. However, it would suffice to say that law is understood as both a social norm itself and constitutive of norms, even though it can work the other way round as well (norms being constitutive of law).

Walter Benjamin⁴ and Derrida⁵ discuss the foundational violence of law (the law-making violence), and the conserving violence of law (the law-preserving

3 *Id.* The idea of 'judging with' as opposed to judging from a higher pedestal; as elaborated upon by Nussbaum in *Equity and Mercy*.

4 1 WALTER BENJAMIN, *Critique of Violence*, in *SELECTED WRITINGS* (M. Bullock and M.W. Jennings eds., 1913-1926).

5 Jacques Derrida, *Force of Law: The Mystical Foundations of Authority*, 11 *CARDOZO L. REV.* 921 (1989-1990).

violence). The notion that law replaces a primitive, Hobbesian state of nature with a legitimate regime is slightly paradoxical, because despite its claims to have done away with mindless violence and ushered in legitimate authority or force, law is nonetheless about force. Derrida calls it the ‘mystical’ foundation of law, because the basis for according this legitimacy to law is never really explained. As for the law-preserving violence, Benjamin speaks of law as an exercise that uses violence to preserve status quo.

The novels chosen deal with the revelation of law-preserving violence; but Derrida has argued that the distinction between law-making violence and law-preserving violence is not really sharp. One of the novels (*Chronicle*) deals with a pre-legal society, but exercises law-preserving violence through norms. The other, *The Plague*, shows how law can be dethroned even in a society with a functional legal system. Both underscore that the maintenance of social order is inherently about violence, and in terms of consequences, the ‘legitimate’ force of law is actually not any less violent than that of unwritten norms in a ‘primitive’ or pre-legal society.

Derrida⁶ and Judith Butler’s⁷ understanding of the violence inherent in categories becomes particularly useful while applying the insights of the article to violence against the queer community. For understanding violence as a concept, Iris Young’s exposition of the five faces of oppression⁸ is worthy of special consideration; since violence inflicted by law and social norms is not just physical. The threat of being targeted because of one’s identity forms a key component of what constitutes violence, again useful while understanding the violence against the queer community.

Christopher Menke⁹ talks about the tragic perspective and how it can enable a better understanding of the violence inherent in law. This takes off from John

6 *Id.*

7 GILL JAGGER, JUDITH BUTLER: SEXUAL POLITICS, SOCIAL CHANGE AND THE POWER OF THE PERFORMATIVE (2008).

8 IRIS YOUNG, FIVE FACES OF OPPRESSION (Lisa Heldke and Peg O’Connor eds., 2004).

9 Christoph Menke, *Law & Violence*, 22 LAW AND LITERATURE 1 (2010).

Denvir's *William Shakespeare and the Jurisprudence of Comedy*¹⁰ and illustrates that while comedy (as a genre) might be what the law aspires to; tragedy is a better medium for exposing the violence at law's heart. This ties in with the second and third themes of the article, which elaborate on how the tragic perspective in the two novels goes on to highlight the element of 'fatefulness' in the application of law and social norms.

Shoshanna Felman¹¹ in her book *The Juridical Unconscious* has used the Simpson trial and Adolf Eichmann's trial to visually capture the notion of the juridical unconscious. The object appears to be to move beyond the law in understanding the implications of The Holocaust. She opines that literature and art by themselves would not suffice either, to give legal voice to those whom The Holocaust had suppressed; but that it is the encounter between law and art that is needed to bear witness to the absurd meaning of the trauma.

Felman's ideas reinforce the overall thematic framework of the article, establishing why either law or literature will not do; why both are needed while trying to comprehend the violence that law and norms can inflict. The violence of norms also brings out Foucault's diffused conception of power¹²; the murder of Santiago in the *Chronicle* by the brothers reflects how power in the name of legitimacy can be exercised not just top-down by the state but horizontally by ordinary citizens as well.

This article might not fill gaps in the existing law and violence scholarship, but it does add a new dimension to the extent that it highlights how literature brings that violence out dramatically, by particularizing the impact of law and social norms on individuals instead of viewing them as abstract entities. Since

10 John Denvir, *William Shakespeare and the Jurisprudence of Comedy*, 39 STAN. L. REV. 825 (1987).

11 SHOSHANA FELMAN, *THE JURIDICAL UNCONSCIOUS: TRIALS AND TRAUMAS IN THE TWENTIETH CENTURY* (2002).

12 Foucault argued in both *Discipline and Punish* (1975) and *The History of Sexuality* (1976-1984) that re-organizations of knowledge constituted new forms of power and domination. He argues that power operates not just in a top-down fashion (typically by the state and its agencies) but also horizontally, that is, individuals also police themselves and one another, implying that power is ubiquitous.

violence is paradoxically integral to the constitution of law,¹³ and yet threatens to take away its legitimacy by spiralling out of control, literature can give guideposts as to why the exercise of that violence must be done with extreme deliberation. It can enable us to imagine alternative realities where there is an absence of a fully functional legal system so as to better understand how the violence of law is different from and similar to that inflicted by private actors.

IV. THE TWO NOVELS UNDER CONSIDERATION

Camus and Marquez, the authors chosen, were both Nobel Laureates. Camus headed the newspaper *Combat* at the time of the French Resistance, and that explains why his books (*The Plague*, *The Fall*, *The Stranger*, *The Myth of Sisyphus*, *Caligula*) have an overarching theme of resisting evil despite not having much hope of success. Though he didn't subscribe to the term 'Existentialist', he is widely regarded as one.

Marquez became the voice of Latin American literature when he won the Prize in 1982. He depicts cultural relativism, and highlights that heretofore 'primitive' or 'exotic' races and regions have a unique culture of their own that needs to be respected instead of being trampled over in course of the march towards industrialization. This uniqueness is beautifully captured through magical realism, and since then Marquez and the genre have become almost synonyms.

Though *One Hundred Years of Solitude* and *Love in Time of Cholera* are more widely recognized as Marquez canon, *Chronicle* is better suited for the purposes of this article, since it is set in a village where there is no established legal system, and makes for an interesting study of how social norms play themselves out in the absence of 'law' as commonly thought of (courts, judges, statutes et al).

Since the premise of this article is to use literature to depict the violence inherent in law and social norms, *Chronicle* is apt for the purposes of the latter and *The Plague* for the former.

13 Michael Hagi Savva, *Force of Law: Legal Theory and the Paradox of Violence*, 2003 UCL JURISPRUDENCE REV. 163 (2003).

1. *Chronicle of a Death Foretold*

As the title gives away, *Chronicle* turns the conventional detective novel on its head by revealing the names of the perpetrators of the crime, their motive, the manner, place and the victim in the first chapter itself.

It is the story of the murder of Santiago Nasar, a Turk living in a Colombian village. He was murdered by the Vicario brothers, because he was accused of violating their sister. The whole town knew of the brothers' plans, yet no one tried to stop them because the prevailing norms regarding family honour mandated such vengeance.

From the perspective of a murder mystery, therefore, such a novel is uninteresting. However the brilliance of Marquez lies in bringing a thematic complexity to the genre in a way that would not be found in a typical murder mystery. He comments on cultural imperialism, marginalization, the destructive power of norms, the superstitions and collective guilt of a town even if their only fault was inaction, fatalism, the elusiveness of memory, multiplicity of versions of the same event, and so forth.

2. *The Plague*

The Plague tells of an Algerian town Oran, which is struck by a sudden onset of bubonic plague. Regarded as an allegory of the French Resistance to the Nazi occupation during the Second World War, the novel is a doctor's chronicle of how the plague affected the people and how they responded to it. It struck them as capriciously as it disappeared, leaving ubiquitous death and destruction in its wake.

Prior to the plague, Oran is shown to be a largely passive town, entirely ordinary, even boring. When dead rats start appearing on their doorsteps and streets, the first reaction of the people is to treat it as insignificant, because nothing of significance ever happened in their town. It was only when people started dying in huge numbers that the townsfolk acknowledged that something was indeed amiss.

As the ravages of the plague got worse, the town was quarantined from the outside world and became an exemplification of the Hobbesian state of nature. Their legal system took a back foot, and chaos reigned. The collective sense of exile thus imposed made them realize that the crisis was everyone's concern, and as such everyone had a duty to defy it.

Situating the two texts in relation to each other; *Chronicle* depicts how the murder is more of a personal tragedy for Santiago and his family, but gradually becomes something the whole town attempts to forget because they were haunted by guilt. The plague in *The Plague* is a collective tragedy, and affects everyone with equal gravity. In *Chronicle*, the townsfolk understand their sense of responsibility and therefore culpability only in retrospect, while in *The Plague*, they realize that if they don't take collective responsibility, they would all perish. Both underscore how the violence inherent in law and social norms is everyone's concern, because it affects everyone, sometimes directly, at others indirectly.

Chronicle deals with the exposition of the violence inherent in social norms; *The Plague* shows why that violence should always be resisted. Both use literature, or the power of the narrative as an indispensable vehicle for doing so. It can be inferred that *Chronicle* gives a microscopic view (by focusing on one victimized individual) while *The Plague* gives a macroscopic one, but this distinction doesn't really hold because each novel also has elements of the other view.

One of the objectives of this article has been to read law into texts where it is present as subtext and has not been discussed explicitly. This is primarily why these two texts were chosen instead of say, Kafka's *The Trial*, which is expressly about the law. This would foreground the omnipresence of legal themes in literature, and also subvert claims of the law to be an independent discipline, reinforcing the idea of interdisciplinary entwinement. This ties in with the sociological school of jurisprudence, and sees law at play in conjunction with other forces of control.

V. THE REPRESSED VIOLENCE IN THE UNCONSCIOUS OF LAW AND SOCIAL NORMS

Marquez's tale of a bride who was returned because she was not a virgin and the brutal murder of an innocent man by her brothers because she accused him reveals the violence that is legitimized by oppressive social norms mandating defence of honour.

Social norms made for the larger benefit (real or perceived) of the society are often observed unquestioningly and their consequences, however brutal or unjust, are accepted as a matter of fate. This invariably causes the dehumanizing of those whom the norms hold as accountable for disrupting the social fabric, and leads to the chief function of the norm becoming maintenance of power hierarchies rather than social welfare or justice. This dehumanization or objectification of the subjects of the social norms also makes the violence more palatable, and the arbitrariness in the imposition of the norms becomes irrelevant so long as *someone* is held accountable.¹⁴

In *Chronicle*, Santiago Nasar was the convenient scapegoat who helped mask the violence of the community and of the norms it believed in, from its own eyes. He became a dead man from the moment Angela Vicario (the bride) pronounced him as guilty. His murder, though seen by the community as sad, was nonetheless regarded as necessary, because it was an effective enforcement of a social norm which assured them of the larger well-being and security of the community.¹⁵ What made his conviction even easier was the prevailing stereotype that all Turks were lecherous playboys. That the accused was innocent was a question that no one even asked. This infliction of violence only because it can or must be inflicted reveals the 'fateful' nature of norms.¹⁶

The evident problem with regarding norms (and law) as beyond human judgement is that once the retributive machine is set into motion, there is no

14 Ian Armit, *Violence and society in the deep human past*, 51 BRIT. J. CRIMINOL. 499 (2011).

15 Gustavo Pellon, *Myth, Tragedy and the Scapegoat Ritual in Cronica de unamuerteanunciada*, 12 REVISTA CANADIENSE DE ESTUDIOS HISPANICOS 397 (1998).

16 Menke, *supra* note 9.

turning back and whatever consequences follow are deemed to be legitimate regardless of how brutal they might be. Social norms and law are formulated to replace the infinite loop of attacks and counterattacks that would ensue in a society where private vendetta was the only means to justice, but they never really manage to do away with that very violence. Retribution, a need to set things right regardless of who suffers,¹⁷ is the impulse at the heart of vendetta, and remains that at the heart of law and social norms too.

Law and violence are not antithetic to each other, regardless of law's claims to have substituted violence with a just, rational order. This violence is ever-present in the repressed unconscious of the law,¹⁸ and since it threatens to take over the everyday functioning of the law as the sole authority on legitimate force, it is in law's best interest to keep it repressed. Analysing *The Plague* in this light leaves the reader with a vivid visual allegory of the impotence of law when confronted with its own violence.

Reading the plague in the story as a metaphor for everything that ails the legal system, it is seen that legal language, with all its definitions and concepts, does not have the ability to comprehend or respond to a collective trauma as great as the plague. At the literal level, the plague dethrones the law of the town of Oran, as the law proves inadequate to ensure even the survival of the people; and the crisis becomes the new law. Law that had been reified and capable of violence until the plague struck recedes into the background just when it should have risen to the occasion, causing the narrator to comment: "*the law was no longer a living being, but a petrified institution, no longer timely, only still intimidating*".

At the allegorical level, the law becomes paralyzed because it is forced to confront something it had expressly excluded; something it was built to never even take into consideration: the truth of its own violence.¹⁹ The law had never viewed itself as arbitrary, havoc-wreaking, capricious or cruel. And yet, the plague is all of this and much more, even as it operates with mechanical precision,²⁰ just like the law.

17 Nussbaum, *supra* note 2.

18 FELMAN, *supra* note 11.

19 Denvir, *supra* note 10.

20 "*The savage, calculated frenzy of the plague*": Dr Rieux's expression to describe the impact of the plague.

The plague becomes a leveller in the sense that it oppresses and alienates everyone, equally: “*under its despotic rule everyone was under sentence and impartial justice reigned in the prison*”, the narrator says. It effectively sealed all their exit points and subjected them to the same kind of helplessness. This personification of the plague (“*the shrewd, unflagging adversary*”) as the new ruler over the town makes evident its functional replacement of the legal institutions: “*while our townsfolk were coming to terms with their sudden isolation, the plague was posting sentries at the gates and turning away ships bound for Oran.*”

Here, the plague has alienated its subjects (“*the plague was no respecter of persons*”) and yet is paradoxically inseparable from their lives. They have to confront it at its arbitrary and intrusive worst, despite having no idea as to how it came about or how it functions, echoing Derrida’s understanding of the mystical foundations of authority.

VI. THE USE OF ARTISTIC LIES TO TELL THE TRUTH: TRAGIC COUNTER-NARRATIVES AS WITNESSES TO THE VIOLENCE OF LAW AND SOCIAL NORMS

This section illustrates how the styles chosen by Marquez and Camus (magical realism and allegory respectively) allow for a more nuanced understanding of the phantasmagoria that legal, social and political reality is, particularly in the context of remembering past injustices.

Apart from serving the obvious function of helping the author escape the clutches of political censorship, allegory and magical realism force the reader to delve deeper into the text, beyond the evident. They invite the reader to actively look for oblique allusions and references, to not be so smug as to accept a literal interpretation, and to appreciate that the reader’s role in imparting meaning to a text as important as that of the writer.

Magical realism frees the narrative from the restrictions of linearity,²¹ one-dimensional reality and slavish rendering. The back-and-forth done throughout

21 Rosanna Cavallaro, *Solution to Dissolution: Detective Fiction from Wilkie Collins to Gabriel Garcia Marquez*, 15 TEX. J. WOMEN & L. 1 (2005).

the narrative (through the constant refrain of “*On the day they were going to kill him*”) and the fact that the whole town “*smells of Santiago*”, shows their complicity in his murder, in fanciful terms. The fatal omens and portents throughout the novel foreshadow his death, reinforce the theme of imminence and predetermined outcomes of the enforcement of social norms. This introduction of the element of the fantastical encourages the appreciation of reality on multiple planes and leads to a heightened awareness of events as they took place.

The multiplicity of perspectives, which often goes unacknowledged by legal systems, is brought out dramatically in *Chronicle* through the differences in the versions of the various witnesses interviewed by the narrator. No two of them could agree on what day of the week Santiago had been murdered, or what the weather had been like on that day. The dominant discourse or collective memory often down plays individual injustices.²² Any claims to an objective/authoritative/comprehensive account of the past, therefore, need to be looked at with scepticism. Since ‘what really happened’ depends as much on who is telling as on who-wants-to-know,²³ a complete picture of reality is near-impossible to construct.

The volatility of memory is expressed by *Chronicle*’s narrator as: “*I had a very confused memory of the festival before I decided to rescue it piece by piece from the memory of others.*” He is conscious of the limits of his recollection, but that does not stop him from attempting to write a chronicle of Santiago’s death. This is where the importance of chronicles as witnesses to injustice comes to the fore. *Chronicle* gives meaning to Santiago’s senseless death, since his end begins the process of artistic creation²⁴ and results in a novel that would ensure that the hardship and injustice suffered by him does not go unexpressed. The novel as a literary form works better than any other here because it situates Santiago in the whole narrative of his life. The meticulous description of what he did on the day he was murdered,

22 Susan K. Serrano, *Collective Memory and the Persistence of Injustice: From Hawaii’s Plantations to Congress- Puerto Ricans’ Claims to Membership in the Polity*, 20 S. CAL. REV. L. & SOC. JUST. 353 (2011).

23 Also known as the Rashomon effect; depicted in Akira Kurosawa’s eponymous film. Different narrators produce different, even contradictory accounts of the same event.

24 Lois Parkinson Zamora, *End and Endings in Garcia Marquez’s Chronicle of a Death Foretold*, 13 LATIN AMERICAN LITERARY REVIEW 104 (1985).

how he got up, whom he spoke to and what he ate humanizes him, and reveals that there is more to him than being the subject of a town's prejudice. It also subverts the myth that his murder was not brutal or justified.

Literature, therefore, in this instance, results in a hard-hitting breakdown of the collective narrative authority,²⁵ shocking the dominant group out of their comfort zone by revealing that their perspective is by no means *the* perspective. This breakdown is critical because it can demystify law, humanize those whom social forces like law and social norms have objectified, and help particularize reified rules with respect to the individual in question. This also seriously questions the worth of eyewitness evidence as proof, particularly when inflicting serious punishments.

Similarly, in *The Plague*, while writing the chronicle, Dr. Rieux has exercised the restraint that comes from an awareness of the responsibility that being an eyewitness entails. He reveals his identity only towards the end to ensure that the reader does not read the novel from a biased perspective. At the same time, however, he has borne in mind that such chronicles can serve the critical function of resisting injustice,²⁶ stressing less on the pain and more on the solidarity that the townsfolk of Oran showed while resisting the plague.²⁷ To that extent, *The Plague* dramatizes the importance of witnessing to injustice, and of how words can speak out against delegitimation and the perversions of power.²⁸

Even though Dr Rieux ends on a note of hope, he takes care to mention that such plagues never really go away, and that there can be no tale of final victory against evil. It is convenient to forget that such horrors ever happened, but it is

25 John S Christie, *Fathers and Virgins: Gabriel Garcia Marquez' Faulknerian Chronicle of a Death Foretold*, 21 LAT. AM. LITERARY REVIEW 21 (1993).

26 Shoshana Felman, *Crisis of Witnessing: Albert Camus' Post-war Writings*, 3 CARDOZO STUD. L. & LITERATURE 197 (1991).

27 To quote directly from the text: "Dr. Rieux: resolved to compile this chronicle, so that he should not be one of those who hold their peace but should bear witness in favour of those plague-stricken people; so that some memorial of the injustice and outrage done them might endure; and to state quite simply what we learn in a time of pestilence: that there are more things to admire in men than to despise."

28 Dwight Newman, *Existentialism and Law: Towards A Rein vigorated Law and Literature Analysis*, 63 SASK. L. REV. 87 (2000).

critical that we remember the lessons learnt from them. The violence inherent in law can acquire demonic proportions and become a despotic ruler at any point, and literature that testifies to the monstrous consequences of such a takeover serves as a reminder.

Since *The Plague* is an allegory to the Nazi occupation of France, Shoshana Felman's insights about the juridical unconscious²⁹ would help understand the importance of using literature while witnessing collective trauma. She calls the Eichmann trial a concerted legal effort to transform the private stories of anguish into a record of mass trauma; to integrate the micro-narratives into one national collective account of suffering.

She reads the collapse of the writer while bearing witness to Eichmann's deeds as a symbolic manifestation of the inadequacy of words in the encounter between law and trauma.³⁰ She says that only an artist could have confronted the notions of legitimacy of the state; and that while we need law to totalize the evidence of the trauma, only art can reveal dimensions and realities that the law has consciously taught itself to ignore.

It is easy to forget past traumas as though they were a bad dream³¹; in fact it is a natural tendency. But these should not be forgotten, and literature makes sure that they are understood and placed in context.

By reading law as literature, and therefore subject to the same tendencies of selective representation, the law's claims to objectivity are deconstructed. It is all the more important to understand these claims for what they truly are, because works of literature do not have the power to send someone to the gallows, at least not directly, but the words of law do.

29 FELMAN, *supra* note 11.

30 FELMAN, *supra* note 11.

31 "Calmly they denied, in the teeth of the evidence, that we had ever known a crazy world in which men were killed off like flies, or that precise savagery, that calculated frenzy of the plague, which instilled an odious freedom as to all that was not the here and now; or those charnel-house stench which stupefied whom they did not kill. In short, they denied that we had ever been that hag-ridden populace a part of which was daily fed into a furnace and went up in oily fumes, while the rest, in shackled impotence, waited their turn." - Dr Rieux in *The Plague*.

VII. MEA CULPA, TUA CULPA: INTROSPECTION AND THE ETHIC OF DEFIANCE IN THE FACE OF THE INTRINSIC VIOLENCE

In *Chronicle*, the silent complicity of the town was crucial in bringing about Santiago's death. The townsfolk had a responsibility to not stand silent in the face of the violence stemming from the enforcement of the social norm, but no one bothered to think about the justness of the sanction imposed. Instead of viewing themselves as human beings endowed with agency, they saw themselves as subjects of a higher mystical authority,³² that is, the norms. This realization of their culpability strikes them only in retrospect, and even then they attempt to suppress it by accepting the violence as inevitable or predetermined.

In *The Plague*, however, Dr. Rieux comments: "*All I maintain is that on this earth there are pestilences and there are victims, and it's up to us, so far as possible, not to join forces with the pestilences.*"³³ Resisting the plague, according to him, was no longer a noble deed, but something "*merely logical*", because a lack of defiance meant passive complicity.

Continuing the metaphor of reading the plague as anything that ails the legal system (its intrinsic violence particularly), defiance can be understood as resisting the impulse to view human beings as objects devoid of agency. Camus says human beings are "condemned to be free", meaning that the freedom of choice that we have must be exercised after extreme thought, because we can always be held responsible even for passive omissions. In *The Plague*, Tarrou remarks: "*I'd even brought about their deaths by approving of acts and principles which could only end that way*".

These insights are particularly relevant to people engaged with the law (lawyers, judges, scholars, human rights activists, professors; hereinafter "law people") because they are constantly associated with institutions that have a

32 Patrick J Glen, *The Deconstruction and Reification of Law in Franz Kafka's Before the Law and The Trial*, 17 S. CAL. INTERDISC. L.J. 23 (2009).

33 "*None the less, he knew that the tale he had to tell could not be one of a final victory. It could be only the record of what had to be done, and what assuredly would have to be done again in the never ending fight against terror and its relentless onslaughts, despite their personal afflictions, by all who, while unable to be saints but refusing to bow down to pestilences, strive their utmost to be healers.*" Dr Rieux in *The Plague*, while describing the nature of the chronicle he was writing.

monopoly over force and can inflict violence on people. They need to acknowledge the existence of this violence as natural,³⁴ even necessary for maintaining social order, but exercise their agency so as to ensure that the violence is always kept in control and never becomes omnipotent³⁵ or the sole reason for a legal system being in place.

The sense of despair that law people feel on realizing that social wrongs can never be remedied within the existing framework, and that the violence inherent in law can never be done away with, is entirely natural.³⁶ One danger here is that of not appreciating the full magnitude of the problem, regarding partial remedies as sufficient to resolve everything and ceasing to make further efforts.³⁷ They become accomplices with those forces the instant they hide behind simplistic explanations and attempt to escape from that anguish.³⁸ The opposite danger is that of being immobilized by a sense of futility when they do appreciate the absurdity and paradoxical nature of law in all its complexity; when they realize that the same violence that causes so much injustice is also the force that keeps other kinds of violence at bay.³⁹

The responsible exercise of agency, however, requires constant discipline and introspection because even occasional lapses on the part of law people can

34 Nancy A Weston, *The Fate, Violence and Rhetoric of Contemporary Legal Thought: Reflections on the Amherst Series, the Loss of Truth, and Law*, 22 LAW AND SOCIAL ENQUIRY 735 (1997).

35 *Id.*

36 Existentialists call it existential angst. The existential ethic of revolt is exemplified in Camus' treatment of the Greek myth of Sisyphus wherein Sisyphus was cursed by the gods to roll a heavy rock to the top of a mountain. Every time Sisyphus reached the top of the mountain, the rock would roll back down. For all eternity, Sisyphus was condemned to engage in this futile and hopeless labour. Despite his futile effort, Camus imagined Sisyphus happy because Sisyphus, conscious of his fate, had the ability to affirm it. By doing so, Camus said, "[h]is fate belongs to him. His rock is his thing." By making the project of rolling the rock his own and by embracing its futility, Sisyphus created his own integrity.

37 "What they're short of is imagination. Officialdom can never cope with something really catastrophic. And the remedial measures they think up are hardly adequate for a common cold. If we let them carry on like this they'll soon be dead. And so shall we", says Dr Rieux in *The Plague*.

38 Katherine R Kruse, *Race, Angst and Capital Punishment: The Burger Court's Existential Struggle*, 9 SETON HALL CONST. L. J. 67 (1998-1999).

39 Weston, *supra* note 34.

cause damage.⁴⁰ As Dr. Rieux says in *The Plague*: “We all carry within us our places of exile, our crimes and ravages. But our task is not to unleash them on the world; it is to fight them in ourselves and others”. The mere fact of deeming that violence as ‘legitimate’ does not preclude all need for introspection.

The plague, though grim, is shown to be a sobering experience for the townspeople. It shook them out of complacency and made them more aware of both the power of violence and the importance of resistance.⁴¹ Similarly, when counter-narratives reveal the violence inherent in law and social norms, it becomes an opportunity for introspection as much as a cautionary tale. Literature, by allowing us to feel and experience vicariously catastrophes that are ideally better left to the imagination, enables us to take away the lessons that a real catastrophe would have taught. Through extrapolation and hyperbole, literature shows where a certain set of beliefs might lead, how desirable or undesirable that belief is, and then act in the present accordingly.

VIII. THE APPLICATION OF THESE INSIGHTS TO THE SYSTEMIC HOSTILITY AGAINST THE QUEER COMMUNITY

The insights gained from the two novels can inform our understanding of law and social norms as a whole; so the example discussed here is only illustrative. They can be applied equally to laws and norms relating to any minority group that is marginalized by the majority, be it marginalization on grounds of gender, race, language, religion and so forth.

40 *That each of us has the plague within him; no one, no one on earth is free from it. And I know, too, that we must keep endless watch on ourselves lest in a careless moment we breathe in somebody's face and fasten the infection on him. What's natural is the microbe. All the rest —health, integrity, purity (if you like)—is a product of the human will, of a vigilance that must never falter. The good man, the man who infects hardly anyone, is the man who has the fewest lapses of attention. And it needs tremendous will-power, a never ending tension of the mind, to avoid such lapses.*” - Tarrou, in *The Plague*, while talking to Rieux. Camus talks about the idea of complicity by inaction in *The Fall* as well, through Jean-Baptiste Clamence’s fall from grace in his own eyes, because he had failed to rescue a woman who committed suicide.

41 “No longer were there individual destinies; only a collective destiny, made of plague and the emotions shared by all. Strongest of these emotions was the sense of exile and of deprivation, with all the crosscurrents of revolt and fear set up by these”, Dr Rieux writes in his chronicle.

Countless everyday instances of discrimination and oppression of minority groups are ignored; it is only when the conflict reaches drastic levels, and something really monstrous happens that people sit up and take notice.

Taking the laws and norms relating to sexuality for instance, the violence is both in the idea of having to conform to patriarchal expectations of gender and sexuality (as a violation of freedom of choice), and in the means used to enforce these expectations. The creation of categories is inherently violent,⁴² because they exclude and include, ignore differences and assume authority. The labelling of the queer community as 'unnatural' or 'freaks' and that of heterosexuals as 'natural' constitutes violence of language and by privileging 'natural' over 'unnatural', relegates those who do not conform to heterosexuality to the background.

By talking not in terms of intimacy, passion or love but in terms of categories: 'homosexual', 'bisexual' and so on; passion, as transcendent of normative understandings of gender and sexuality, falls on the unconscious of the law, and a confrontation with the same leaves it either paralyzed or makes law take the form of violent suppression.

The continued validity of norms comes from social acceptance, and those who dissent are subjected to the force of law. The same validity of norms justifies the perpetration of physical violence against the queer community. Law and social norms, therefore, work individually as well as in tandem to regulate behaviour and legitimize violence.

Counter-hegemonic literature, particularly that depicting how the lives of queers have been blighted by state-sanctioned as well as society-sanctioned violence, would humanize them and depict the violence against them as it actually is: unjustified mindless brutalization. By revealing the performative nature of gender and sexuality, literature stresses instead on the essential humanity of individuals.

In Annie Proulx's *Brokeback Mountain* for instance, we are shown the love story of Jack Twist and Ennis del Mar. So we see them as individuals who are

42 Ruthann Robson, *Incendiary Categories: Lesbians/Violence/Law*, 2 TEX J. WOMEN & L. 1 (1993).

in love instead of merely ‘homosexuals’. Consequently, their struggles to be together engage as and enable empathy. So that eventually when Jack is lynched by homophobes, it tears us up too. It shows us precisely how violent (by infringing their space) and capable of physical violence the norms of sexuality can be. The book might end with Ennis being absolutely heartbroken, but he is not alone in his heartbreak or sense of injustice anymore; the readers have joined him. Literature, by showing love as a universal experience transcendent of all boundaries (race, class, gender, religion and so forth) has helped universalize the desire to connect romantically regardless of gender.

Applying the insights from *The Plague*, this tendency to dismiss or label people as ‘unnatural’ is present in all of us. It needs to be guarded against; because otherwise we all become accomplices in the systemic hostility that laws such as those against sodomy, those banning homosexual marriage and norms such as ‘a man should feel sexual attraction only towards a woman’ perpetuate. Even if the laws are not enforced, the heteronormativity is sufficient to induce queer people to self-regulate, and pretend to ‘fit in’,⁴³ continuing the violence of their personal space.

Human passion ought to be recognized as a critical component of social regeneration rather than something the legal system must repress.⁴⁴ By factoring in passion, emotion and the fact that its subjects are human, the legal system (and society as a whole) can be more attuned with the reality of existence, not to mention consequently more just and effective. All meaningful social change begins with a change in perspective, and literature can provide that much-needed alternative perspective in the most engaging, insightful and thought-provoking way possible.

43 Ryan Goodman, *Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics*, 89 CAL. L. REV. 643 (2001).

44 Denvir, *supra* note 10.