

СЕКЦІЯ 1
ЗАГАЛЬНОТЕОРЕТИЧНІ ТА ІСТОРИКО-ПРАВОВІ
ОСНОВИ ДЕРЖАВОТВОРЕННЯ

SECTION 1
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LEGAL NORMATIVE ELEMENTS IN LITERATURE ON THE EXAMPLE
OF THE «A QUESTION OF PRICE» SHORT STORY BY ANDRZEJ
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In recent years, the «Law and Literature» movement has been developing rapidly, embracing more and more concepts and mutual relations between those two branches. Such relations have already been distinguished by many scholars, e.g. K. Dolin [3, 8], or J. Kamień [7, 32]. A correlation between Law and Literature may be found in many fields. The most basic division encompasses areas of study such as *law as literature*, *law in literature*, and *law of literature*. Furthermore, several newer approaches signalise the need to distinguish further areas, such as *law on literature*, and *literature in law* [7, p. 32].

There arises a question why literature should at all be used as a source of legal, or in fact, any normativity. To this end, it is vital to realize the functions that respectively literature and law share and scrutinize, how one may serve as a medium to communicate the other. The most basic one is that both law and literature are considered important cultural tools that contribute to the shaping of society and to the way societies function. Literature serves many functions, with the most prominent among them being the depiction of society, influencing society, or even «ensuring a sense of security and control over experience»[4, 674]. Nancy Easterlin argues that an equally important function of literature is to create ‘complex significance’, thus allowing much more sophisticated patterns of knowledge and thought [4, p. 679]. The most basic division of literary functions divides them into the following:

a) the referential function: Literature always refers to some kind of reality, be it fictional or not. Even in completely otherworldly contexts there exists, however, some kind of connection with the author's reality. That is why, even the most fantastical texts may comprise elements of reality, which is, in fact, often the most crucial content, merely supported and exposed by the fantastical elements [6, p. 4].

b) the expressive function [6, p. 4]: With this function, the author describes his or her feelings and emotions.

c) The appellative function [6, 4]: This function portrays the argumentative role of the author, whose statements and position towards moral or political questions may be corroborated through literature. Literature has a vital function in providing a commentary about the current reality, which can serve as a much-coveted insight into the cultural and legal reality of a given time. However, an important caveat has to be added. The author, as Dorothy Hall argues, should not be taken for an expert in economy, politics (or law¹) [5, 394]. She further sees the function of literature in describing what is wrong and what is right, it is

[...] our most easily available guide to the values that sensitive and discriminating men and women have found in living» [5, p. 394].

This connection between literature and morality is already coming close to subjects lying in the very centre of legal disputes. Dana Burchardt names the process of shaping reality through normative claims as one of the main functions of law [1, p. 412]. Further remark of this author shows that law can be treated as a medium for communicating intentions. The role as a medium of communication does also bring law close to the essence of what literature is. Another aspect that can be distinguished by referring to this function is the value-setting function of law and its quality to shape and form social expectations [5, p. 395]. Those expectations need not be realistic and it is an important role of literature to show the social reaction towards expectations set forth by legal norms. Law and Literature seem to coexist and support each other in this value-setting function. Sometimes, legal elements do not find their place in a literary work as a result of the intentional legal consciousness of the author. They serve a worldbuilding function such as any other possible narrative element [2, p. 7]. However, to the author's mind, it is seldom a coincidence when legal elements are introduced to the story. As already mentioned, law, similarly to literature is an important medium of communication, able to tell a lot about customs, culture and values of a given society. Even in fictional literature, fictional laws of fictional societies can be an important remnant or reflex of real events.

A fictional story will be shortly analysed in this paper. «A Question of Price» is a short story published by the renowned Polish fantasy author Andrzej Sapkowski in 1990². It is set in «The Witcher» universe he created and is one of the most important story arcs for «The Witcher» saga. The short story incorporates motives taken from a folktale «Hans My Hedgehog» written by the Grimm Brother's in their «Children's and Household Tales» from 1812 (441 in the ATU Index³).

¹ Author's comment

² A. Sapkowski, *Kwestia Ceny*, *Nowa Fantastyka*, 9, 1990.

³ The Aarne-Thompson-Uther Index is a catalogue of folktales.

The plot of the story revolves around the protagonist, the Witcher Geralt receiving an invitation to a party in the castle of Cintra, during which the candidate to marry the local princess should be found. During its course, it turns out that the Queen of Cintra did not invite him by chance. She wanted someone who can protect her and her daughter and, furthermore, fend off any unwanted or obtrusive suitors. As it turns out, a suitor appears, claiming that few years before he saved the life of the now deceased king. In return, he was promised, «that he may receive that which the King left at home, of which he does not know nor does he expect it». And so the «Law of surprise», a law «older than mankind itself» has been called upon.

This is the main legal element in the story, situated in between the realms of natural and positive law. An argument arises, whether such law should be respected at all. The king is deceased and as the suitor turns out to look like a monster, the Queen has no intention of giving her daughter to him. However, the question of whether such an old tradition can be ignored at all has been raised, together with the question of whether it is wise to discredit a vow given by the King. One of the characters mentions that «the Kingdom is held by royal vows». The ignorant position of the Queen can be treated as a remnant of legal nihilism, an attitude present in the mindset of Eastern and Central-Eastern European countries at that time, undermining the validity of positive law. This conflict between ancient rites and customs and positive law is a popular theme in societies living in those legal systems. Ultimately, in the story, it turns out that the required factor to corroborate the effect of destiny caused by the vow is the acceptance of the suitor by the princess herself, which may be seen as an important way of empowerment of the female role, often absent from the customary law. The moral of the story, ending with the Queen giving her daughter to the suitor and realising that destiny cannot be changed by the will of mortal kings is one that is not without meaning for the message concerning the picture of the law. The discussion of whether it is fair to make such contracts and whether they should be respected by the positivist minds, together with the question of destiny and the power of ancient rites is underlining this fantasy story, showing the ties and mutual influence of literature and law.

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