

Book Review

François Ost: *Shakespeare. La Comédie de la Loi.* Michalon, Paris 2012.

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If asked ‘What book should a jurist have read?’, can you imagine one or another masterpiece of Shakespeare (1564-1616) missing from your list? Certainly not, if you are a regular reader of *No Foundations: An Interdisciplinary Journal of Law and Justice*, but I here confess my perplexity as a legal practitioner whose philosophical baggage weighs no more than that of a Ryanair passenger.

But then again, a classical author is a writer whose works have never fully said what they have to say: having long explored the relationship between law and literature, Belgian professor François Ost, himself an author of several theatrical plays since his early youth, has met the challenge of digging in the works of the Elizabethan master to extract the golden nuggets that will enlighten contemporary readers and persuade all to (re)read them, and to shine on for future generations. And to think that there are still those who affirm that Shakespeare did not write his texts! This is surely to avoid facing up to it that, before such a genius, one feels as if regressing to an amoeba-like state.

The Anglo-Saxon world takes Shakespeare as an exceptional ‘legal storyteller’, a fellow-traveller who continues to inspire United States Supreme Court judges whose rulings are studded with quotations from his works. Thus, in this culture, the multiple links between literature and the law are not forgotten. In fact, Justice Stephen Breyer of the US Supreme Court, was not slow to mention at his confirmation hearing before the Senate Judiciary Committee: ‘the study of literature remains one of the most useful things in the exercise of my judicial responsibility as a judge’

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(Ost 2007, 28). And these links come to light here, as attested by multiple studies on ‘Shakespeare and the Law’. For most francophone readers, and particularly jurists, the former might be a discovery, even though some are aware that with Racine and Molière, Voltaire and Rousseau, Hugo and Balzac, Camus and Simenon, Gosciny and Hergé, and many others, francophone literature is teeming with texts that can (and would be worth) a view through the legal lens. For we see the world as we shed light on it.

1. The Law in action

Law *in* literature tells how fiction deals with the most fundamental legal and political questions concerning justice, power, the basis of the right to punish, and so on. To be sure, François Ost makes it clear from the outset that it is not possible to ‘reduce all Shakespeare to law, and to interpret his thirty-something plays only in terms of power, justice, decrees, vengeance, or equity’ (Ost 2012, 9).¹ But the legal key is uniquely productive in revealing a deep meaning, which in contemporary life remains a vast material source of *legal culture* [droit culturel], that is, *law in action*: not the virtual law of codes, but the law effectively put into action by the courts.

An initial question intrigued me: how is it that the legal spirit came to Shakespeare? Some affirm that the young William worked in the service of the court clerk at Stratford. For others, he worked as a notary’s clerk. In any event he benefited from a library well stocked with law books. In addition, he was constantly caught up in the legal system due to endless civil and criminal disputes before religious or civil jurisdictions, local or royal. In England at the time a peculiar relationship existed between theatre and trial, between stage and courtroom, thanks notably to the Inns of Court, those small residential communities bringing together legal professionals and students eager to learn the law. Mid-way between a club and an abbey, these institutions formed one of the cultural and literary centres of London life. These were the hangouts of the most educated elites of the epoch, who cultivated the art of legal reasoning and eloquence. Shakespeare assiduously frequented these schools of law, such as Gray’s Inn.

What a pity that such a thriving tradition is not available for training today’s lawyers. Were we to increase the activities of comprehension, the subjects of debate, and role-playing, we would better contribute to the training of human beings capable of operating within a different world, of learning to move from obedience to initiative, from an overabundance of knowledge to creative intelligence and the value of relational thinking.

However, let us make no mistake about the playwright’s scheme, warns François Ost: with the legal spirit within him, he was not a philosopher of law, for he first and foremost addressed the imagination of his audience. ‘He nurtures this imagination with discourse, images, gestures, colours, music; he conveys it in the rhythm of his verb and action’ (Ost 2012, 36). His plays, ‘test, as if in a living laboratory, the

¹ All page references herein are to the French original version. All translations are our own (Editors’ Note).

validity of political and legal constructions that confront one another in the reality' (Ibid., 41) of an England torn by social, economic, political, religious, and legal transformation.

2. The most beautiful plea for mercy in literature

We now enter upon some of the plays studied, for example *The Merchant of Venice*, and briefly recall its plot. Antonio, a wealthy Venetian ship merchant, decides to borrow three thousand ducats from the Jewish usurer Shylock in order to help his friend Bassanio to go to Belmont where he hopes to woo the beautiful and wealthy Portia. Like the other suitors, he must undergo the test her late father devised and choose between three caskets, of gold, silver, and lead. But at the moment he defeats his rivals, he learns that Antonio has just been thrown in jail for being unable to pay back his debt to Shylock (a character definitely mad about law) who insists that a pound of flesh be cut from the body of his debtor pursuant to the contract. For François Ost the play clearly highlights the absurdity of certain penalty clauses, the cruelty of legal formalism, and contains the most beautiful plea for equity (mercy/ forgiveness) in literature.

Due to the force of play [*jeu*], Shakespearean fiction acquires 'a supplementary reality, an increase of energy, a supplement of clarity showing contrasts more vividly and revealing the hidden truth' (Ost 2012, 72). Thus a less well-known play on the other side of the Channel, *Measure for Measure*, shows, centuries before French sociology takes up the subject, that non-law may still be law, and sometimes even the best law as it deals with criminal law (Angelo wishes to enforce to the letter a policy of mores somewhat rigorist to say the least) which is not always meant to be enforced. Were we to think differently we would soon be exposed to disappointments, just as Angelo learns the hard way that 'he who makes the angel makes the beast' (Ost 2012, 142).

3. The theory of law as narrative

In learned and intellectually vibrant pages, the author is also interested in politics and public law through the theory of the King's two bodies: the Body natural, subject to life's vicissitudes, and the Body mystic or politic, which is unfettered. Going back to the earliest times of the Church, this doctrine refers to the idea that, as representative of God on earth, the King would assume something of the double nature of Christ. Remnants of this exist in the famous adage 'The King is dead, long live the King!' 'Thereby a fictive persona is constructed embodying supra-human perfection: endowed with ubiquity and immortality, the kingly person is incapable of unreason and weakness' (Ost 2012, 168). This theme stands at the core of plays such as *Richard II*, *Julius Caesar*, *Hamlet* and *King Lear*.

While William Shakespeare, creator of the magical Globe Theatre, can be seen as one of the most distinguished 'legal story-tellers' from the standpoint of the 'theory of law as narrative', nonetheless his overall legal scheme, his ideal political horizon,

his vision of desirable justice remain inaccessible. Whenever a given point of view is sketched, it is questioned in the following scene. Hence the extreme ambiguity of his work, in which he tries to represent the spectacle of humanity in its infinite complexity. Hence the vitality of his inspiration, which those referring to it can use in support of their respective position, as attested by American jurisprudence.

Shakespearean comedies, in the generic sense of a theatrical representation including all genres mixed up together, enact a collective imaginary and present 'a combination of values brought together by a narrative which people believe in and is capable of stimulating their continuous engagement' (Ost 2012, 308).

At a time when lawyers in continental Europe are formatted too often in the same way that some software is learned, *Comédie de la Loi* is recommended reading for all those involved in the law, beginning with students. For the law is not just a matter of rules to be applied mechanically; rather, it requires those who practice it to understand the deepest motivations of society. In this regard, the texts that François Ost brings to our attention with his illuminating perspective give us cause not only to think, but also to decide.

Bibliography

Ost, François: 'Preface'. In François Jongen & Koen Lemmens (eds): *Droit et Littérature*. Anthemis and La Chartre, Bruges 2007.

Ost, François: *Shakespeare: La Comédie de la Loi*. Michalon, Paris 2012.