

“BASED ON ACCURACY.” THE PARALLELS BETWEEN LAW AND POETRY IN WARTIME

*True poetry
is always based
on accuracy.¹*

I. Introduction: Why Law and Poetry?

This essay aims to discuss some common points between law and poetry in what they say, and what they do, in the face of war. Both law and poetry are regarded here as special forms of discourse, or (as Weisberg and Barricelli put it) “a formalized attempt to structure reality through language.”² “Structuring reality” means naturally something more than merely reflecting it. It is rather shaping the reality with specific forms, unique to each of these discourses. The world description offered by law differs from those of other forms of discourse, say, particle physics or TikTok. Our aim, therefore, is to expound affinities between how poetry and law structure their realities.

Just as with any other social discourse, law and poetry have various impacts on social relations, thanks to the performative dimension of language. In other words, social discourses are not only about “saying” but also about “doing” by words. Such impacts, which are traditionally categorised as social functions of language, are also of interest in this study.

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¹ Serhiy Zhadan, “Wielcy poeci smutnych czasów” [“Great poets of sad times”], in *100 wierszy wolnych z Ukrainy* [100 free poems from Ukraine], ed. and trans. Bohdan Zadura (Kołobrzeg: Biuro Literackie, 2022), 5–7. Trans. to English Maciej Pichlak.

² Richard H. Weisberg and Jean-Pierre Barricelli, “Literature and the Law,” in *Interrelations of Literature*, ed. Jean-Pierre Barricelli and Joseph Gibaldi (New York: The Modern Language Association of America, 1982), 150.

Hence, it is both the saying and doing of law and poetry – their forms and functions – that we are going to track in the paper.

The title of the issue to which we submit the paper is “Law and War: Voices of Philosophers.” An immediate question occurs hence, why confront law with poetry rather than philosophy? Why do we decide to engage in this interdisciplinary dialogue, and therefore to go out of the box of each one’s expertise? There are at least two reasons for such a confrontation, no matter how challenging it is.

The first reason is related to the endemic Polish perspective of both authors of this paper. In Poland, when we think about war, our thoughts go spontaneously and irresistibly to World War Two. And it was poetry, much more than philosophy, that gave a common voice to the Polish experiences of wartime and occupation. Like Gadamer said: “The poetic word, too, often becomes an attempt to find out what is true, because the poem awakens the hidden life in words that seem weathered and worn out, and teaches us about ourselves.”³

The horror of those days gave birth to the “splendid generation” of outstanding poets, including Nobel Prize-winning Czesław Miłosz and Wisława Szymborska (but also Zbigniew Herbert, Tadeusz Różewicz, Krzysztof Kamil Baczyński, Tadeusz Gajcy and others). The poetic discourse has dominated the general consciousness and collective memory of war and remains the primary point of reference in that respect. In Poland, when we think and speak about war, we do it through poetry.

All this explains our personal commitment, but might be of little relevance to external readers, settled in other contexts and traditions. After all, war (sadly as it is) is a global experience. It has also been reflected in all possible discourses, including all available forms of artistic expression: prose (e.g. Remarque’s “All Quiet on the Western Front”), non-fiction (Alexievich’s “Boys in Zinc”), cinema (Coppola’s “Apocalypse Now”), painting (Picasso’s “Guernica”), music (Penderecki’s “Threnody to the Victims of Hiroshima”)...

By referring to the poetic discourse on war, and to our Polish cultural competencies, by no means we deny the validity of other discourses and alternative perspectives. Still – and this is the second, more universal reason for our choice – there are some intriguing affinities between poetry and law that deserve exploration on their own terms. The affinities include how both discourses describe the reality, and how they affect social relations: how they “structure” the reality of war.

Section 2 provides a general theoretical background for “law and poetry,” as a sub-discipline of law and literature studies. In Sections 3 to 5, we discuss three parallels between the discourses of poetry and law, in the manner of describing the world, the role in shaping collective memory, and rejoining together conflictual parties. In a sense, these three points may be perceived as parallels in legal and poetic semantics (describing the extralinguistic reality with linguistic signs – Section 3), pragmatics (practical function of both discourses – Section 4), and syntax (forms of uniting diverse elements into one structure – Section 5).

³ Hans G. Gadamer, *Prawda i metoda. Zarys hermeneutyki filozoficznej* [Truth and method. Outline of philosophical hermeneutics], trans. Bogdan Baran (Warszawa: PWN, 2013), 604.

The analyses in these sections are additionally inspired by selected poems of Ukrainian and Polish authors writing about war – most notably of Serhiy Zhadan, probably the most relevant contemporary Ukrainian poet. Section 6 concludes.

II. Theoretical Background: The Links between Law and Poetry

“Law and poetry” may be perceived as a sub-discipline of the “law and literature” studies – even though a relatively underresearched one. Of course, there is neither space for nor point in describing here all the tenets and varieties of this rich theoretical movement. Let us note just one point instead, about the dominant approach: Most of the studies in the field of law and literature focus on the differences between these two narratives. In a nutshell, the claim is that literature (resp. poetry) may bring into legal thinking what law lacks, or is short of: imagination, creativity, and sensitivity to the human condition. Hence, literature is recommended to legal professionals (and “law and literature” courses are offered to law students) to broaden their imagination and deepen their understanding of human and social contexts of law. Literature is useful to lawyers, the argument goes, because it is so much *different* from the legal mindset.⁴

This is a valid perspective. Still, in this article we take an opposing view: rather than stressing their disparities, we focus on *similarities* between law and poetry. This may seem paradoxical at first sight, but we hope to prove that this is also a legitimate way of approaching relations between these two discourses. We are encouraged by the fact that we are not alone in this way. Great figures have preceded us in stressing the links between the two fields – most notably Percy B. Shelley, the canonical English poet. In his often-quoted statement, Shelley claims that “poets are the unacknowledged legislators of the World” – for they discover “those laws according to which present things ought to be ordered” and behold “the future in the present.”⁵ There is more to these words than just a catchy saying. Shelley repeats this thought in the context of the political turmoil of his days (what he calls a “civil war”), in his remarks on needed political reform.⁶ Apparently, for Shelley, these are poets who can offer perspectives for terminating havoc and transforming society into the post-crisis stage. This goes hand in hand with Serhiy Zhadan’s appeals to “poets of sad times” that they should “speak about hope” when others say about anxiety, dead-ends and lack of chances.⁷ For both writers, therefore, poetry has a relevant political role to play, particularly in sad and turbulent days.

⁴ For an example of this perspective, see Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2011), 6–9, and the literature cited. In the field of legal education, see Bald de Vries, “Law, Imagination and Poetry. Using Poetry as a Means of Learning,” *Law and Method* (2019), <https://doi.org/10.5553/REM/.000039>.

⁵ Percy B. Shelley, “A Defence of Poetry,” in *Selected Poems and Prose*, ed. Jack Donovan and Cian Duffy (London: Penguin Books, 2016).

⁶ Percy B. Shelley, “A Philosophical View of Reform,” in *Selected Poems and Prose*.

⁷ Zhadan, “Great poets of sad times.”

More recently, such authors as James Boyd White⁸ and Alyson Sprafkin⁹ delved into some parallels between law and poetry, for instance in how they use language to communicate ideas, what methods of interpretation are employed in both fields, and how they are taught in formal university education. In this vein, White noted the attention to each piece of the text and single words, none of which should be regarded as redundant (the method of close reading, or “literal interpretation” as this term is understood in law). This is accompanied by the search for the coherence of the whole text – a poem, a legislative instrument, or a judicial opinion (what law calls “systemic interpretation”).

There are also further, deeper affinities between law and poetry, on the level of their ethical commitments. Both poetry and law can be said to elevate the dignity of every single person to the rank of priority. They call for weaker and silenced voices. Poetry – like law – is an interventional activity in a sense that it tries to create a context in which each voice will resound. It is the domain of freedom, repelling the temptations of the market, a space for an open debate and dialogue. It is an open space confronting different points of view with each other, multiplying the experience of reality. Poetry, like law, is the art of negotiating, clashing arguments, and freeing up space for someone else’s voice so that it can fully articulate its truth. It tries to ground its order, its “world,” based on the values of the writer. In his essays, Leszek Koczanowicz remarks: “If politics is the domain of freedom, we are certainly unable to define it.”¹⁰ We can replace the word “politics” with “poetry” here and make further attempts to define it. Poetry commemorates, saves from oblivion, builds bonds. If there is a community of law and poetry, it is undoubtedly based on a community of sensitivity and ethical obligations. Like Tzvetan Todorov said: “Literature can do a lot. It can give us a helping hand when we are deeply depressed, help us towards other human beings, help us to understand the world better, and even help us to live. By that, I do not mean it is some kind of soul rejuvenation centre, but since it reveals the world to us, it can transform each of us from the inside out.”¹¹

Needless to say, all the abovementioned claims apply only to certain types and uses of both poetry and law. This is inevitable, considering the immense internal diversity of both discourses. There is neither a single model of poetry nor law. Poetry comprises multiple genres and sub-genres, from romance to sonnet to haiku, and accepts various styles, tones and forms of expression. The same stands for law, with such genres as legislation, judicial opinions, bills of indictment, etc. More importantly, both may and have been used to serve

⁸ James B. White, “The Judicial Opinion and the Poem: Ways of Reading, Ways of Life,” in *Heracles’ Bow: Essays on the Rhetoric and Poetics of the Law* (Madison, London: The University of Wisconsin Press, 1985).

⁹ Alyson Sprafkin, “Language Strategy and Scrutiny in the Judicial Opinion and the Poem,” *Law & Literature* 13, no. 2 (2001).

¹⁰ Leszek Koczanowicz, *Lęk i olśnienie. Eseje o kulturze niepokoju* [Fear and dazzle. Essays on the culture of anxiety] (Warszawa: IBL PAN, 2020), 119.

¹¹ Tzvetan Todorov, “Po co nam literatura?” [“What do we need literature for?”], trans. Olga Mastela, in *Literackie doświadczenie nowoczesności. Antologia artykułów z “New Literary History”* [Literary experience of modernity. Antology of articles from “New Literary History”] (Warszawa: IBL PAN, 2017), 79.

various goals and interests, from promoting liberty to justifying terror. Thus, both law and poetry are characterised by what White calls “many-voicedness:” they are “profoundly against monotonal thought and speech, against the single voice.”¹²

As a consequence, we are condemned to partial descriptions. It should be stressed that our approach is by principle affirmative to both law and poetry. We try to find out what positive role they can play in “sad times,” being fully aware that they may also serve as ideological instruments in hands of autocrats. It is sometimes claimed that what such instrumental uses produce is usually bad poetry and bad law, but we are not sure of whether such claims offer more than a false consolation. Rather, the potential instrumentalisation of law and poetry is a factor that increases the need for, and the relevance of, this type of their interpretation that we propose here.

III. To Describe

As we already noted, law and poetry are types of discourses, and therefore they both bring their unique forms of description of the world. Pierre Bourdieu noted that “[l]aw is the quintessential form of the symbolic power of naming”¹³ and the same holds for poetry. There are at least two points in which both discourses resemble each other in how they name and describe. These are, as we show beneath, the search for linguistic precision and the focus on individual cases. Let us begin their discussion by introducing a passage from Zhadan’s poem “Great poets of sad times:”

And because birds do not listen,
the poet begins to count them
in their autumnal, sky flocks.

He carefully counts, writes down
every swallow in his notebook.
As many as flew away
should come back.

All must be counted.
None should be forgotten.

True poetry
is always based
on accuracy.¹⁴

¹² White, “The Judicial Opinion and the Poem,” 124.

¹³ Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field,” *Hastings Law Journal* 38 (1977): 838.

¹⁴ Zhadan, “Great poets of sad times.”

Both abovementioned aspects are present here: the focus on the individual (due to which the poet “writes down every swallow in his notebook”), and on precision or “accuracy.” But what do the swallows from the poem represent? The answers, as always in interpreting great poetry, may vary. Let us follow an interpretation that puts this text in the context of war. According to this interpretation, the swallows symbolize the victims of war: soldiers who went to a battlefield, and civilians who have stayed in conquered territories. All those who were killed, lost, captured, or buried secretly. This interpretation gets stronger grounding if one reads Zhadan’s text as a dialogue with the poem by Zbigniew Herbert, “Mr Cogito on the Need for Precision:”

Mr Cogito
is alarmed by a problem
in the domain of applied mathematics

the difficulties we encounter
with operations of simple arithmetic
< ... >
over the immensity of history
wheels a spectre
the spectre of indefiniteness

How many Greeks were killed at Troy
– we don’t know

to give the exact casualties
on both sides
in the Battle of Gaugamela
at Agincourt
Leipzig
Kutno

< ... >
somewhere there must be an error
a fatal defect in our tools
or a sin of memory
and yet in these matters
accuracy is essential
we must not be wrong
even by a single one

we are despite everything
the guardians of our brothers¹⁵

One can note an intriguing interplay between these two poems. Herbert makes explicit what Zhadan suggests: the universality of the problem and the related ethical challenge. The same story repeats on every war and battlefield – from Troy to Gaugamela to Kutno. The story of the impossibility, and the necessity, of fulfilling the demand to take into account, and by this virtue show respect to, every individual. “All must be counted. None should be forgotten,”¹⁶ and “we must not be wrong even by a single one.”¹⁷ this is the impossible ambition of both poetry and war.

1. In the search for precision

Poetry is a permanent lesson in attention. A lesson in precise thinking. An affirmation of individual consciousness trying to tell the life of her thoughts. It directs its light to what is singular and separate. Poetry draws our attention to the world, as it was, showing that it is an eternal becoming and constant transformation, which words can only try to accompany somehow. Poetry is the greatest civic lesson of attention – to another human being, to this tree, bird, bottle cap, or garbage. Who of today’s young people can name three trees and three birds that one passes on the roads of everyday routine activities? Poetry is also the ability to enter the silence, come to terms with the unspoken, and accept the impossible. Poetry takes the side of truth, examines the use of words, and stigmatizes abuses towards others and otherness. A good reading of a poem is primarily about the existential experience, and only then about an attempt to understand it, to place it on the plan of action. Conciseness, simplicity – these are the names of these poems that hit us the hardest. The precision of simplicity has the power to attract our attention and direct it to specific areas illuminated by the subjective light of our imagination. Poetry focuses on the concrete, the detail, the word. Andrzej Zawada noted in that context:

Literature is perhaps even older than science and, like science, serves cognition. But because it examines the inner reality of humans, immaterial and unique, immeasurable, and therefore non-objective, it is considered a figment of fantasy. Although it is to the same extent as quantum physics, organic chemistry or mathematics.¹⁸

If one moves to the law, naming and describing accurately is the primary, most elementary role of law. How to call what was done by the Russian army in Bucza, Irpin, Mariupol, and other places? What is the status of Ukrainian territories unlawfully annexed by the Russian

¹⁵ Zbigniew Herbert, “Mr Cogito on the Need for Precision,” in *Report from the Besieged City and Other Poems*, with the assistance of John Carpenter, and Bogdana Carpenter (Oxford: Oxford University Press, 1986).

¹⁶ Zhadan, “Great poets of sad times.”

¹⁷ Herbert, “Mr Cogito on the Need for Precision.”

¹⁸ Andrzej Zawada, “Pracownia literacka” [“Literary studio”] (Wrocław: Warstwy, 2021), 183.

Federation? To answer this type of questions, law is the best instrument at our disposal. The law can reach the level of precision unavailable to other discourses because every word counts here, and it establishes differences that may be inexistent in other discourses. To offer but one example: the difference between homicide, manslaughter and murder may be opaque for most people, yet it is consequential legally speaking. The law defines precise, clear-cut lines in what otherwise would be blurred – and it is very “poetic” in that respect. As Sprafkin aptly noted:

Law <...> produces the judicial opinion, in which the slightest nuance in language could mean the difference between one argument prevailing and another <...>. Poetry <...> produces the poem, in which the slightest nuance in language could mean the difference between one self-discovery and another, between one self-denial and another.¹⁹

2. Focus on individual

In their interest in individual beings and details, both law and poetry differ sharply from, e.g., politics or economics. The latter are interested mainly in massive processes and broad categories. The former pay attention to individuals and their unique experiences. Dozens of tanks, thousands of soldiers, millions of bullets: this is what matters in wartime politics. One bullet, one victim, one perpetrator – politically irrelevant – might be of focal interest for poetry and law.

This approach characterises, once again, the poetic language of Zhadan. Zhadan is a poet of great class and mastery, whose language solidifies with pure sounds and moods. He shares his delight with us. He looks at birds and trees sensually, following the flight of a single quill, paying attention to a protruding root. Colours and scents, places and voices, people and animals, day and night, numerous wavings and imperceptible changes of volatile and solid states of matter and dispersion organize his eye and mind to a complete extent. Joy and sadness, fear and anxiety, melancholy and given glances, minutes. That’s what poems are for, to tell us about it – about a tiny life in a universe of matters and events, which are sometimes taken care of by the second, as fragile as the first.

Poetry is a lesson in central and peripheral seeing at the same time. The detail occupies poetry constantly. Its domain is not failing to notice what is different, what is unique and separate. Poetry is interested in existence, fragments of thoughts, vibrations of the membranes of the mind. An inclination for details is its undeniable ability. The field of the poem’s attention reveals everything that is the sum of the poet’s attention – the semantic field of their meditation here and now, their fixation on the present. Poetry speaks with an ordinary person, representing the name of the author who writes it. It is an autonomous and personal voice, looking for a “you.” It usually does not give up its subject competencies, it is stubbornly single, individual, the only one. Working with a poem is, above all, learning to see details, and the ability to notice overlooked and smallest things. Poetry is approaching reality,

¹⁹ Sprafkin, “Language Strategy and Scrutiny in the Judicial Opinion and the Poem,” 283.

processual nature we hardly remember. It embraces with its verses everything that wants to advertise itself to us with its content.

The interplay of individual and universal, already noted in poetry, is also definitional for law. The law usually perceives an individual as an instance of a universal category: as a “case” that is interpreted with abstract and universal norms. The paradox of law is that to do justice to a particular individual it must abstract her to such categories, for justice, and justification, require universalisation (or, at least, universalizability).²⁰ Hence, every legal decision “is about particular persons, part of whose nature or circumstances enable us to state that they belong in certain classes, satisfy certain predicates, or instantiate certain universals.”²¹

It would be wrong to conclude, though, that the law fully subordinates particular to universal, or that individual evaporates in abstract categories. There are at least three reasons why the individual must not be denied in legal decision-making. First, many legal norms are deliberately open and/or flexible, and by this virtue, they require to consider the particularities of the case in their application. Second, in the situation of conflict between two alternative norms, the reference to a particular, unique situation under decision may be the only way to counterweigh conflicting norms and decide which of them should prevail. This applies especially, but not solely, to conflicts of general principles. Third, a court (or another decision-making authority) should always be aware of the possibility that legal norms are illegitimately over- or under-inclusive to the case at hand. In other words, it should be ready to ask whether the law rightly binds specific legal consequences with a particular situation. If the answer is negative, it should launch legal creativity to give the individual what is due.

These three ways of taking a particular into account may be called, following traditional legal terminology, *intra legem*, *praeter legem* and *contra legem*. All of them prove that the relationship between individual and universal in law is far from being straightforward. It is full of dialectical interplay of both components, none of which can be subordinated to another. And again, law resembles here poetry, which treats particular persons, objects or situations described in a poem as representations and instantiations of more general ideas. Hence, as White puts it: “Both poetry and law unite the particular and the general, the image and the idea, the general principle and the particular case.”²²

IV. To Remember

Both the law and the poetry are the media of individual and collective memory. They memorise, and stitch together the past and the future, with the hope that the future will allow us to deal with the past. This is a “therapeutic” role of memory that has been noted by Zhadan in another poem:

²⁰ Neil MacCormick, *Rhetoric and the Rule of Law: A Theory of Legal Reasoning* (Oxford, New York: Oxford University Press, 2010), 97–100.

²¹ *Ibid.*, 83.

²² White, “The Judicial Opinion and the Poem,” 119.

She's fifteen, sells flowers at the train station.
Sun and berries sweeten the oxygen beyond the mines.
Trains stop for a moment, move further on.
Soldiers go to the East, soldiers go to the West.

< ... >

Her memory is being formed, consolation formed.
Everyone she knows was born in this city.
At night she recalls everyone who left this place.
When there is no one left to remember, she falls asleep.²³

In the poem, memory brings consolation and allows coming to terms with reality. But memory may also serve to document wrongdoing, to witness crime – and both these functions are equally important in the context of war. This is the latter that Czesław Miłosz wrote about: “You who wronged a simple man / < ... > Do not feel safe. A poet remembers. / < ... > The words and deeds shall be written down.”²⁴ Therefore, let us analyse how poetry and law serve memory.

1. Remembering in poetry

Poetry saves us from oblivion and gives testimony. Poetry and memory are closely intertwined, and one is dependent on the other. Poetry is an attempt to stop time, to rewrite presence into a poem. Poems can remember like people and carry their difficult truths, their wounds and anxieties, resonating anew with each subsequent reading. “A poet remembers,” as Miłosz wrote. The poems remain and can be a constant indictment, or an everlasting admiration for reality, fragments of which poetry includes between its lines. Memory has the power of creation, deciphering the past, arranging it in its own way – similarly, poetry treats the past as a span to its present.

It was also the poetry that recorded the experience of the most tragic moments of 20th-century history. It tried to describe the world of the “inverted apocalypse.” It was often an asylum for a battered imagination looking for a form to channel its despair. What can we add to Tadeusz Borowski’s verses devoted to the inhuman times of World War II and the attempt to deal with the trauma experienced? Borowski writes about the lack of exit from existential paralysis of people affected by the experience of war. He writes about a man who becomes his own caricature. Stripped of all signs, he stumbles over his own steps in a dehumanized world. He lacks orientation and morality seems like a pipe dream. Lost, he finds no respite, neither waking nor asleep:

²³ Serhiy Zhadan, “*** [She’s fifteen, sells flowers at the train station],” trans. John Hennessy and Ostap Kin, accessed October 10, 2022, <https://intranslation.brooklynrail.org/ukrainian/three-poems-by-serhiy-zhadan/>.

²⁴ Czesław Miłosz, “You Who Wronged,” trans. Richard Lourie, accessed October 10, 2022, <https://www.poetryfoundation.org/poems/49482/you-who-wronged>.

neither verse nor prose,
just a piece of rope
only wet earth –
here is the way back.
neither bread nor vodka,
only wrath and short anger,
only more and more –
this is youth and love.
neither dream nor waking,
nor laughter and fun,
only crying at night catches –
here is a knife, rope and paper.²⁵

A few gestures, a few movements of the imagination. Finality as a solution to a painful existence devoid of values in times when human ideals were buried and abandoned in rubbish heaps, set with their backs to tradition and the past. Poetry remembers. At a time when evil is taking its toll, poetry becomes a realm of living memory, a space for witnessing.

2. Remembering in law

The law, too, plays a critical role in crafting collective memory. What might be less obvious, is the increasing tendency in recent decades to legally regulate the manner of remembering historical events – a phenomenon that has been named the “memory laws,” laws aimed to “regulate historical discussion and collective memory.”²⁶ The growing significance of such laws fuels claims about the rise of “mnemonic constitutionalism,”²⁷ which means the constitutionalisation of official interpretations of the past.

Memory laws raise serious doubts as vulnerable to political instrumentalisation and potential tools of limiting basic freedoms and censorship.²⁸ Still, the mnemonic role of law is not limited to this type of provisions. Every court’s verdict offers an official interpretation of past events and can be seen, hence, as a measure of shaping and sanctioning memory. But the law does more: it serves also as a tool of official oblivion, of forgetting. In such institutions

²⁵ Tadeusz Borowski, *Wspomnienia. Wiersze. Opowiadania* [Memories. Poems. Stories] (Warszawa: PIW, 1981), 35. Trans. to English Elżbieta Olak.

²⁶ Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias, “Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice,” in *Law and Memory: Towards Legal Governance of History*, ed. Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias (Cambridge: Cambridge University Press, 2017), 1.

²⁷ Uladzislau Belavusau, “Final Thoughts on Mnemonic Constitutionalism,” accessed February 24, 2023, <https://verfassungsblog.de/final-thoughts-on-mnemonic-constitutionalism/>.

²⁸ See Belavusau and Gliszczyńska-Grabias, “Memory Laws;” Filip Cyuńczyk, “Instrumentalization of Law in the Context of Memory Policies in Central and Eastern Europe after 1989,” *Archiwum Filozofii Prawa i Filozofii Społecznej* 3 (2020).

as expiration, abolition or amnesty, the law let us forget. This aspect of law has been called “Lethe’s law,” from the ancient Greek goddess of oblivion.²⁹ Thus, one can note one more dialectical tension within the law, between two Greek goddesses: Mnemosyne and Lethe, memory and oblivion. Some facts are officially preserved in memory, some others are decided to be forgotten. The question is, who makes such decisions, in what procedure and with what criteria? These dilemmas are particularly vivid in the area of transitional justice, but they are present in the everyday operation of law as well.

V. To Rejoin

1. *Joining a polyphonic*

Finally, law and poetry join what is divided and establish mutualities. In the context of law, these might be conflicting interests or opposing parties. In poetry, these are often different voices and idiolects. In his analysis of affinities between law and poetry, White revokes in this context Coledrige’s definition of the imagination of a poet as “the balance or reconciliation of opposite or discordant qualities.”³⁰ White adds: “The poem comprises, brings together in one place and within one form, voices or feelings or languages <... > that are normally not placed together and among which severe tensions or contradictions can be found.”³¹ The same, White suggests, does the judicial opinion.

Joanna Roszak writes: “If we start to consider poems as common places of societies, the way will open to a similar view of the space of human existence: as a commonplace.”³² As will be noted below, a very similar thought has been expressed in the context of the law.³³ Poetry is the art of negotiating and uniting around common, essential issues. This is achieved also thanks to the already noted polyphony of poetry, its “many-voicedness.” Again, we find this way of thinking in Zhadan’s understanding of poetry. The poet writes that one should look at the world like a paediatrician looks at children: listen to their stories with openness, and be always ready to make a diagnosis adequate to the patient’s condition. Because poets, as we read in *Telephone Book of the Dead*, listen to the appropriate intonations, they are sensitive to the melody of the language, to the sound of a single phrase. They try to organize their experience in syntax, and perhaps even better: through it. Poets listen to polyphony, and their task is to hear harmony and sense in it. Poetry creates reciprocity and unites by force the phrases of those who are divided:

²⁹ Emiliios Christodoulidis and Scott Veitch, eds., *Lethe’s Law: Justice, Law and Ethics in Reconciliation* (Oxford, Portland, OR: Hart Publishing, 2001).

³⁰ White, “The Judicial Opinion and the Poem,” 114.

³¹ *Ibid.*

³² Joanna Roszak, “Poezja o wojnie. Poezja jako akt pokoju” [“Poetry about war. Poetry as an act of peace”], *Studia z Kultury Popularnej* 2 (2018–2019), 8.

³³ See Zenon Bańkowski, “The Long Goodbye: A ... Life In and Out of the Law,” in *The Anxiety of the Jurist: Legality, Exchange and Judgement*, ed. Cláudio Michelon and Maksymilian Del Mar (London: Routledge, 2016).

Poetry begins where
your vocabulary supply ends.
The language sticks to the voice
like civilization sticks to the rivers.³⁴

The same can be repeated about the judge. Her role is also to listen to polyphonic voices and to find a harmony that leads to the right resolution of the case. The law, just as poetry, is about “bringing together” what is divided. This ability results from the formal qualities of both discussed discourses, from their very syntax. Yet these formal aspects have strong ethical implications, for what is eventually rejoined is diverging perspectives and individuals that share these perspectives. Hence, this formal quality of law and poetry has an interpersonal weight: it allows to build a *dia-logical* and *dia-lectical* relationship between persons.³⁵

2. *Joining a hostile*

But how about perhaps the most challenging of all relations: the one with our enemies? Are poetry and law able to build bonds across such radical divisions? In the context of war, this question becomes of key importance. The answer is positive, yet with some caveats. Both poetry and law reveal their uniting force even in such an extreme case, but they do it in different manners.

One can refer here to another poem of Zhadan, “They buried their son last winter,” in which the narrator talks about – and to – his former friend who died:

They buried their son last winter.
Strange weather for winter – rain, thunder.
They buried him quietly – everybody’s busy.
Who did he fight for? I asked. We don’t know, they say.
He fought for someone, they say, but who – who knows?
Will it change anything, they say, what’s the point now?
I would have asked him myself, but now – there’s no need.
And he wouldn’t reply – he was buried without his head.

It’s the third year of war; they’re repairing the bridges.
I know so many things about you, but who’d listen?
I know, for example, the song you used to sing.
I know your sister. I always had a thing for her.
I know what you were afraid of, and why, even.

³⁴ Serhyi Zhadan, “Antena” [“Antenna”], trans. Bohdan Zadura (Wrocław: Warstwy, 2021), 46. Trans. to English by Bartosz Suwiński.

³⁵ It is to be noted that these two words: “dialogue” and “dialectics” share the same ethymology in Greek, as they are both composed out of the words *dia* and *logos*.

Who you met that winter, what you told him.
The sky gleams, full of ashes, every night now.
You always played for a neighbouring school.
But who did you fight for?

To come here every year, to weed dry grass.
To dig the earth every year – heavy, lifeless.
To see the calm after tragedy every year.
To insist you didn't shoot at us, at your people.
The birds disappear behind waves of rain.
To ask forgiveness for your sins.
But what do I know about your sins?
To beg the rain to finally stop.
It's easier for birds, who know nothing of salvation, the soul.³⁶

The poem symbolically speaks about “repairing the bridges” that might be read as an illustration of the even more important process: That of “repairing” the relationship with the former friend from childhood, who allegedly became an enemy, and who now lies dead and buried. This is the fact of death – with all its ultimateness, its “calm after tragedy” – that urges to “ask forgiveness” for sins, to try healing memory and relation.

Again, one can note close bonds between the poetic imagery of Zhadan and Zbigniew Herbert, who wrote in “September 17” (the poem about the Russian invasion of Poland in 1939):

My defenseless country will admit you invader
and give you a plot of earth under a willow – and peace
so those who come after us will learn again
the most difficult art – the forgiveness of sins³⁷

For both authors, poetry is thus a “pre-exercise” in forgiveness and reconciliation. Yet the price or the condition of this process is extreme: in both cases, it is the death of at least one party of the relation. Only in the face of death, forgiveness becomes an option.

The law differs here from poetry in twofold ways: first, it does not put such radical conditions to establish relations. Mutuality in law is available much easier than in poetry. This results from the second difference, in the nature of such a relationship, which does not require forgiveness or reconciliation. The law allows for establishing relations in which conflicts and differences are not necessarily lessened, but they might be even strengthened.

³⁶ Serhiy Zhadan, “They buried their son last winter,” trans. John Hennessy and Ostap Kin, accessed January 16, 2023, <https://www.poetryfoundation.org/poetrymagazine/poems/150753/they-buried-their-son-last-winter>.

³⁷ Zbigniew Herbert, “September 17,” in *Report from the Besieged City and Other Poems*.

In the context of war, to describe relations between a victim and a perpetrator in legal categories means to recognise a mutuality between them, and to claim they have something in common, without blurring the differences or false equalising. The victim remains a victim. The perpetrator remains a perpetrator. Yet, there is an overarching structure of law that binds them together – and that allows for making the perpetrator responsible. According to Zenon Bańkowski, this defines the ethical sense of law: the ability to create a “borderland” where we can encounter others – even our enemies.³⁸

VI. Conclusion: Beyond Law’s Regulatory Function

Are these functions enough? Does the poetry – and the law – make sense against brute force? Let us revoke two symbols that suggest the negative answer. In Ukraine, the monument of Taras Shevchenko, the most prominent Ukrainian poet of all time, has been shot in Borodianka – what may be seen as the symbolic assassination of the Ukrainian poetry. And in the first period after February 24th, Serhiy Zhadan suspended writing.

By analogy, these of us who tend to think about law sociologically, as a set of institutions, or as a means of regulating human behaviour, may be confused with a situation when these institutions fade or collapse under the pressure of military aggression. Does the law have any point if it is unable to play its regulatory functions properly, if holding the aggressors and perpetrators immediately liable for their deeds is not feasible?

As our considerations demonstrate, something important remains even in such a case: a remnant, the most rudimentary aspect of law. The one that Hans Kelsen might have in mind when he called the law an “interpretive scheme:” law as a form of discourse that helps to order human experience in a chaotic reality. Sometimes this is all we have – law as a language – but it is not an insignificant asset. As Serhiy Zhadan (so often quoted on these pages) noted:

We are all linked by our language. Even if, at a certain moment, its capabilities seem limited or insufficient. <...> After all, what do we have in order to make our point, to express ourselves? Our language and our memory. <...> Sometimes language seems weak. Actually, though, in many cases, it is a source of energy. It can step away from you for some time, but it isn’t capable of betraying you, which is what matters most. As long as we have our language, we have, at the very least, the vague chance to articulate ourselves, speak the truth, and tidy up our memories.³⁹

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³⁸ Bańkowski, “The Long Goodbye.”

³⁹ Serhiy Zhadan, “Speech delivered by the acceptance of the Peace Prize of the German Booktrade,” accessed January 16, 2023, <https://lithub.com/poetry-after-bucha-serhiy-zhadan-on-ukraine-russia-and-the-demands-war-makes-of-language/>.

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Мацей Піхляк і Бартош Сувінський. "Тримається на точності." Паралелі між правом і поезією у воєнний час

Анотація. Цей есей має на меті розглянути деякі спільні моменти між правом і поезією на фоні війни. І право, і поезія розглядаються тут як особливі форми дискурсу, зі своїми унікальними формами структурування реальності та соціальними функціями, які кожна з них виконує. Стаття аналізує подібність права та поезії в обох цих аспектах. Виконуючи це завдання, вона спирається на вибрані вірші Сергія Жадана, одного з найактуальніших сучасних українських письменників, та деяких відомих польських поетів покоління після Другої світової війни.

Стаття суперечить домінантному в дослідженнях "право та література" підходу, який зосереджується на відмінностях між ними. Натомість ми демонструємо, що право і поезія мають багато спільного. Спорідненість можна знайти на формальному рівні (як обидві форми дискурсу підходять до тексту та які методи інтерпретації вони використовують), але також у їхніх етичних зобов'язаннях.

У статті детальніше обговорюються три аспекти, які роблять право і поезію схожими одне на одне: по-перше, спосіб опису реальності, який зосереджується на індивідуальному (або, точніше, на взаємодії між індивідуальним і універсальним) і шукає точності опису. По-друге, що обидва дискурси служать засобами пам'яті, як індивідуальної, так і колективної. По-третє, вони можуть встановлювати зв'язки та взаємність між різними або навіть протилежними елементами: точками зору, перспективами, окремими особами. У крайньому випадку війни вони можуть навіть пов'язувати ворогів – жертв і кривдників – без жодного помилкового зрівняння.

Аналізуючи ці різні аспекти права та поезії, стаття також ставить питання про дорегулятивні функції права. Як показано, навіть якщо право не може належним чином виконувати свою

регулятивну функцію (наприклад, через відсутність ефективної влади), найбільш рудиментарна функція права все одно залишається. Це право як форма дискурсу, яка допомагає впорядкувати людський досвід у хаотичній реальності.

Ключові слова: право і поезія; право і література; право як дискурс; закони пам'яті; індивідуальне та універсальне у праві; право і війна; поезія і війна; Сергій Жадан.

Maciej Pichlak and Bartosz Suwiński. “Based on Accuracy.” The Parallels between Law and Poetry in Wartime

Abstract. This essay aims to discuss some common points between law and poetry in the face of war. Both law and poetry are regarded here as special forms of discourse, with their unique forms of structuring reality and social functions each of them plays. The paper analyses similarities of law and poetry in both these aspects. In fulfilling this task, it builds on selected poems of Serhiy Zhadan, one of the most relevant contemporary Ukrainian writers, and some renowned Polish poets from the post-World War Two generation.

The paper goes against a dominant approach in “law and literature” studies that focuses on differences between the two. The above notwithstanding, we demonstrate that law and poetry have much in common. The affinities may be found on formal level (how both forms of discourse approach the text and what methods of interpretation they employ), but also in their ethical commitments.

The paper discusses more in depth three aspects that make law and poetry similar to each other: First, the manner of describing reality, which focuses on individual (or, more precisely, the interplay between individual and universal) and searches for the accuracy of description. Secondly, that both discourses serve as media for memory, both individual and collective. Thirdly, that they can establish links and mutualities between diverging or even opposing elements: viewpoints, perspectives, individuals. In extreme case of war, they can even link enemies – victims and perpetrators – without any false equalising.

By analysing these various aspects of law and poetry, the paper poses also the question about pre-regulatory functions of law. As it demonstrates, even if the law cannot properly serve its regulatory function (e.g., due to the lack of effective power), the most rudimentary function of law still remains. This is the law as a form of discourse that helps to order human experience in a chaotic reality.

Keywords: law and poetry; law and literature; law as a discourse; memory laws; individual and universal in law; law and war; poetry and war; Serhiy Zhadan.

Одержано/Received 18.03.2023