

Developments

Book Review – Ed Morgan, *The Aesthetics of International Law* (2007)

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[Ed Morgan, *The Aesthetics of International Law* (2007), University of Toronto Press: Toronto, ISBN: 978-08020-9251-9, pp.272]

A. Introduction

The body of legal writing that creates and informs international law, consisting of treaties, judgments and various other instruments of law and policy, is a voluminous and ever-expanding phenomenon. An inherently modern concept, international law developed its complexity during the international community's transitions from the nineteenth-century 'law of nations' to the treaty and institutional structures created after the First World War to the flood of international legal doctrine that arose after the Second World War.¹ The continued production of international legal writing and its ensuing interpretation and re-interpretation form the basis of an intricate guide to the rules and practices of international law and more importantly, provide the fodder for the ebb and flow of consensus and disagreement that characterizes this fluid discipline. While the body of written law continues to grow, so does the surrounding discourse focused on elucidating meaning from its contents. Ed Morgan, a professor of law at the University of Toronto and a long-time contributor to the *German Law Journal*², in his book *The Aesthetics of International Law*, points to a need to understand international law in a way that goes beyond the substance of law and legal arguments to focus on the form of the law, the way that the law is conveyed, rather than its endless potential meanings.

In this concise yet comprehensive book Morgan uses an interdisciplinary approach to take the reader through many of the most pertinent issues in international law from terrorism to cross-border environmental liability to extraterritorial criminal law. Morgan places

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¹ ED MORGAN, THE AESTHETICS OF INTERNATIONAL LAW 4 (2007).

² Ed Morgan, *The Apprenticeship of Ariel Sharon*, 2 GERMAN L. J. No. 16 (2001), available at: <http://germanlawjournal.com/article.php?id=97>, last accessed 23 February 2009; Ed Morgan, *Slaughterhouse-Six: Updating the Law of War*, 5 GERMAN L. J. 525 (2004), available at: http://germanlawjournal.com/pdf/Vol05No05/PDF_Vol_05_No_05_525-544_special_issue_Morgan.pdf, last accessed 23 February 2009.

modern literary fiction and some pre- and post-modern literary specimens alongside various types of legal writing, engaging in an interdisciplinary study of law and literature that is both unique and insightful. By examining legal writing through a literary lens he illuminates a surprising number of parallels between the narratives of law and literature. Each of the book's ten chapters touches on a different area of international law and explores its relation to a set of corresponding literary works. In keeping with the focus on literary form, Morgan's own writing style takes on a literary tone, often employing descriptive language and imagery and lacing the pages with literary allusions, adding to the poignancy of this legal scholarship.

The Aesthetics of International Law contains the following wide-ranging chapters exploring the relationship between international law and literature: Edgar Allan Poe: Law and Terrorism; Henrik Ibsen and Bertolt Brecht: War Crimes Trials; Joseph Conrad, Virginia Woolf, T.S. Eliot: Public International Law; James Joyce: Conflict of Laws; Franz Kafka: Extraterritorial Criminal Law; Mordecai Richler: Universal Jurisdiction; Vladimir Nabokov: Extradition to the Death Penalty; Jorge Luis Borges: The Break-up of Yugoslavia; Thomas Pynchon: Environmental Liability; and Kurt Vonnegut: The Law of War.

In Morgan's comparative study it becomes apparent that international law is markedly influenced by its modern emergence and that authors of legal texts both knowingly and unknowingly employ many of the literary devices of the modern period.³ Morgan illustrates that international law and modern literature are not all that separate from one another, whether by coincidence or otherwise, and that in this sense international law is not a truly unique construct.⁴ Parallels in literary form intricately link drama, poetry, the novel and short fiction with the international legal writings of treaty, case law, various legal instruments and legal commentary. Rather than focusing on a cause and effect among these similarities, Morgan illustrates that there exists in the law an under-emphasized narrative complexity to rival that of modern literature.

B. Form over Substance – The Narrative Voice

In his study Morgan emphasizes the aesthetic form of written law and literature over its substance. A large part of accessing the aesthetic form of literary and legal writing, as argued by Morgan, is linked to an understanding of its narrative voice and how the voice consciously and sometimes unconsciously influences the text. The conscious form of influence, narrative self-awareness, is an element that ties together much of the modern literature that is the subject of Morgan's comparisons. A literary narrative that is aware not only of its immediate story or message but of itself as it is presenting it imparts an altered

³ MORGAN, *supra* note 1, at 4.

⁴ MORGAN, *supra* note 1, at 5.

meaning on the text that is more deeply layered. This self-awareness entails recognition that authorial perspective and choice of form are inevitably an active part of the message of the text because the author or narrator is rarely a truly impartial observer.

Morgan highlights the insights that can be gained by viewing existing international law from a perspective that considers the narrative voice and its methods of conveying meaning through language and literary form as active parts of the law. In the case of legal writing and process, rather than an authorial voice that orchestrates the form in which a story is told, it is the voice of the law maker, judge or legal scholar that exerts influence on the meaning and understanding of the text. Actively considering the narrative voice of the legal text can alter one's understanding of both text and narrator. This is the case whether or not the legal narrative is aware of the influence that its own voice and form have on its meaning; in several of the pieces of legal writing used in Morgan's comparisons there is a clear lack of self-awareness on the part of the legal 'narrator'.

The author of a work of literary fiction will often employ a battery of literary devices and techniques to exert influence on his text and its readers via narrative voice, style, structure and choice of language, among others. The same literary devices and techniques employed in fiction are present also in international legal writing and process. While international law scholarship often exhausts the discussion over the substantive meaning of the law, Morgan argues that there remains a great deal to be garnered from a discussion of law as a "writerly text" that is self-conscious of its own creativity".⁵ This mostly uncharted territory may provide a way of replenishing law that seems otherwise exhausted of meaning.⁶ For this reason, Morgan concludes with a call for a new international law scholarship that is focused on the aesthetics of its own formalistic influence.

1. Narrative Self-Awareness

Narrative self-awareness can have a transformative effect on a text. A literary example illustrating the impact of the intentional orchestration of meaning through form is Virginia Woolf's modern novel *To the Lighthouse*, found in Morgan's chapter on public international law. The plot of the story is, as Morgan puts it, "deceptively simple"⁷; it follows a family that is planning a trip to a nearby lighthouse and their seemingly benign discussions anticipating this event. Woolf's narrative and structural craftsmanship is evident when one is aware that the meaning of the novel goes much deeper than its simple plot.⁸ The story's occupation with the preparation of the trip and not the event of

⁵ MORGAN, *supra* note 1, at 169.

⁶ *Id.*

⁷ MORGAN, *supra* note 1, at 34.

⁸ *Id.*

reaching the lighthouse itself serves to imply that it is “the process of getting to a meaningful existence, rather than the shape of meaning itself, that is the subject with which the author is concerned.”⁹ This implies that to a certain extent the plot is but a vehicle for a different and deeper message to be found in the literary form. This notion is consistent with Morgan’s parallel contention that “the container that holds the law is more important than the law itself.”¹⁰ In much the same way that the novel is deeper than its plot, so is it that the law is more than its *prima facie* pronouncements.

Morgan references multiple authors who illustrate this same careful concern with form in their work. Narrative self-awareness presents itself in numerous types of literary devices. In his chapter on the break-up of Yugoslavia Morgan uses the work of the late-modern author Jorge Luis Borges to study some of the unprecedented disputes that arose in the aftermath of this difficult legal event. Borges’ collections of short stories “are more concerned with the patterns of their own narrative than with the actions of the characters.”¹¹ The story “The Circular Ruins” illustrates how even the use of imagery, a common literary device, is a way in which the narrator imposes him or herself into the text. Borges employs imagery that is paradoxical, for instance that is bright and dull, such as a statue of a god that is “both the colour of fire and the colour of ash” and also “perhaps a tiger or perhaps a colt – and all that simultaneously”.¹² In this way Borges uses imagery to blur the edges between fantasy and reality in his narrative, a concept which Morgan likens to a testing of the relationship between intellectual constructs and political realism. Consequently, the Borgesian narrative reflects the often uncertain relationship between international legal theory (a product of the imaginative mind) and the ‘real’ world of politics it purports to govern.¹³

While modern fiction exemplifies narrative self-awareness, the existing body of international law does so to a much lesser extent. Morgan describes a rare moment in which a U.S. court expressed self-awareness in its judgment in *Ahmad v. Wigen*, an extradition case involving an individual accused of terrorist attacks against Israelis.¹⁴ In his chapter on terrorism Morgan compares this decision to the work of Edgar Allan Poe. Morgan observes that “in a moment of surprising self-awareness, the court in *Ahmad* conceded that ‘defining a political act is itself a form of political act’.”¹⁵ In this instance of

⁹ *Id.*

¹⁰ MORGAN, *supra* note 1, at 176.

¹¹ MORGAN, *supra* note 1, at 116.

¹² MORGAN, *supra* note 1, at 126.

¹³ MORGAN, *supra* note 1, at 117.

¹⁴ MORGAN, *supra* note 1, at 9.

¹⁵ MORGAN, *supra* note 1, at 12.

explicit narrative self-awareness the 'narrator', in this case the judge, has explicitly drawn himself into the text by pointing out the implications of the very process in which the court is engaged.¹⁶ The implication, however, is that other than such fleeting moments of self-awareness the legal narrative is largely unaware of its own form and corresponding influence. This does not mean, however, that the narrative voice does not play an active role.

Morgan proceeds with a side-by-side comparison of Poe's "The Man Who Was Used Up" and *Ahmad v. Wigen*, finding multiple parallels in form between the two, despite the fact that the court is seemingly unaware of its own employ of certain devices. The most striking example is the narrative technique that the court uses to postpone several pertinent questions raised by the case. For instance, when the petitioner raises a finer point on the issue of extradition, the court takes this as a cue to dive into a discussion of constitutional matters and when the petitioner raises a separate issue relating to international law, the court turns it into a discussion on criminal jurisdiction.¹⁷ Each time the issue is deflected into another realm rather than being dealt with head on.¹⁸ Morgan shows how this parallels the narrative technique that Poe uses to postpone answering the question that is central to the climax of his story "The Man Who Was Used Up". In the story the main character is on a quest for truth and each of the characters he seeks a straight answer from avoids answering by often infuriatingly shifting the conversation to another subject. Poe builds suspense and heightens terror as the main character's and hence the reader's own intrigue is drawn out.¹⁹ The employ of this technique by the court arises for a different reason. Morgan argues that the problem of international law is "that it apparently cannot describe terrorism without describing too much."²⁰ Opportunities and attempts to deal with the issues surrounding cases of terrorism become circular arguments and the main points get lost in an endless discussion. In a comparison that evidences the very literary nature of his book, Morgan argues that in this way "international law is the law that is used up."²¹

II. The Pursuit of Truth in Narrative

The recognition that writing is engineered by individuals necessarily entails recognition that writing is subjective. The pursuit of truth in narrative is consequently complicated.

¹⁶ MORGAN, *supra* note 1, at 9.

¹⁷ MORGAN, *supra* note 1, at 11.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ MORGAN, *supra* note 1, at 14.

²¹ MORGAN, *supra* note 1, at 15.

Writer Alain Robbe-Grillet's theory of 'objectified subjectivity' is telling. Robbe-Grillet uses cinemagraphic structure in his novels, with the idea that truth is only in the objective eyes of the camera.²² His writing employs flashbacks, false memories, 'dissolves' linking different moments in time and other devices, which illustrate that the human mind is like "multiple hand-held cameras trained on the same events".²³ "The total film of our mind accepts simultaneously...fragments of a past, distant, future or totally fantastic reality."²⁴ Morgan writes that "in this unstable narrative universe, one version of reality, or history, can readily displace another; all it takes is a convincing change in perspective."²⁵ With each change in the prevailing perspective there is the propensity for distortion of the way international law is understood. It is consequently important to recognize the ways in which the underlying narrative voices of international law provide impetus for change in the law.

In Woolf's *To the Lighthouse*, mentioned above, the narrative perspective is multi-focal. The narrator of the novel has the capacity to enter the consciousness of each of the characters as well as to maintain its own omniscient point of view.²⁶ Each of Woolf's characters "embodies a distinct perspective on or version of truth",²⁷ like the pieces of the fragmented reality that compose the narrative truth that Robbe-Grillet conceives. Each of Woolf's characters could be likened to one of the hand-held cameras Morgan speaks of in his discussion of Robbe-Grillet's theory of narrative truth. Woolf's narrative seems to acknowledge the impact that perspective has on truth. By providing multiple distinct perspectives, including that of the unidentified narrator, Woolf undermines the truth of each autonomous viewpoint, by illustrating that it is simply one of the many possible. Had Woolf not chosen to use this multi-focal narrative, the story could have been narrated by any one of the characters, each of whom would have given the story an entirely different meaning and effect. The multi-focal narrative brings to mind the role of multiple judges sitting on a court and it is fitting that Morgan compares the judgments of the U.S. court to Woolf's novel. It can be said that it is the role of judges to embody different narrative perspectives, to act as "different hand-held cameras trained on the same events",²⁸ however, the provision of multiple versions of truth does not necessarily point the way to any one certain or genuine truth, if anything, as Woolf illustrates, the practice serves only to undermine each individual perspective as unstable and displaceable.

²² MORGAN, *supra* note 1, at 165.

²³ MORGAN, *supra* note 1, at 166.

²⁴ *Id.*

²⁵ *Id.*

²⁶ MORGAN, *supra* note 1, at 34.

²⁷ *Id.*

²⁸ MORGAN, *supra* note 1, at 166.

C. Conclusion

Morgan's chapter on Extradition and the Death Penalty examines the work of Vladimir Nabokov alongside Supreme Court of Canada extradition cases concerning the death penalty abroad. Morgan concludes this chapter by touching briefly on Nabokov's own perspectives relating to the search for deeper meaning in literary texts. Somewhat ironically, Morgan reports that Nabokov had a "frequently professed aversion to reading beyond the surface."²⁹ Nabokov is reported to have said "I never tire of retelling how I once failed a student...for writing that Jane Austen describes her leaves as "green" because Fanny is hopeful, and "green" is the colour of hope."³⁰ This amusing anecdote serves to provoke a moment of inward reflection on Morgan's own text. In a text that is occupied with uncovering novel parallels between literature and law, linking ideas and forms that are infrequently combined and stretching the traditional understanding of legal writing, its presence serves as a reminder not to take the pursuit of meaning and truth in literature and law beyond reason; at the same time Morgan emphasizes the value of this kind of explorative intellectual work.

While many of the legal and literary connections Morgan forges quickly become evident through his discussions, others are more subtle and require a willingness on the part of the reader to consider nexuses that may at first seem counter-intuitive, such as considering the epitomical war-crimes tribunal as a display of dramatic techniques encompassing Brechtian symbolism and Ibsenian realism.³¹ The pay-off for taking such leaps of faith in legal reasoning is a book that is unique and thought-provoking from its introduction to its intriguing and unsettling epilogue entitled "Pound of Flesh".

In addition to the primary focus of the book on the comparative aesthetics of law and literature, the dual study of international law and modern literature provides an informative and carefully selected survey of both disciplines. Morgan's analysis of his subject matter is carefully reasoned. His arguments have great depth and he presents them in such a way as to satisfy the reader's curiosity and yet allow room for further analysis to take place. One can imagine the potential for endless scholarship to grow from this discussion, both of the kind that Morgan calls for, legal scholarship which is focused on its own form, as well as complimentary scholarship pertaining to the countless parallels between law and literature hidden in additional topics in international law and other literary works. *The Aesthetics of International Law*, for its bold interdisciplinary expedition into modern literature and international law, has great potential to exert influence on international legal scholarship.

²⁹ MORGAN, *supra* note 1, at 114.

³⁰ MORGAN, *supra* note 1, at 115.

³¹ MORGAN, *supra* note 1, at 24.

