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What does law have in common with a folk tale? Perspectives of application of Propp's method in jurisprudence

Abstract

This study aims to present to the readers the achievements of Russian literary scholar Vladimir Propp and to analyse the possibility of applying them in jurisprudence. Propp researched literary pieces from the magical tale genre and came to a conclusion that their plot is composed of 31 repeating functions performed by 7 types of characters. Propp showed that despite variations in the names of actions, characters and superficial attributes in various folk tales, the deep level of the text of these works allowed readers to notice some identical elements between them. Propp's major work - *Morphology of the Folktale*, together with anthropologist Claud Lévi-Strauss's thought and the findings made by Noam Chomsky became an inspiration for the development of the French school of structuralism and narratological research.

The discussion presented in this article fits the research realm called law and literature, especially its narratological branch. This study presents a synthetic elaboration on the state of the art of research on legal narratology and possible application and limitations of Propp's thought in this field. This work does not rely on the analysis of the law in force, thereby a reference to such a method or a reference to the historical development of relevant law is unnecessary here. Instead, discourse analysis plays the pivotal role in this article. This paper points out that given the differences that occur between law and literature, Propp's

achievements may primarily play the role of inspiration for jurisprudence, though there are realms in which Propp's method may be applied directly.

Keywords: theory of law, law and literature, narratology, Vladimir Propp, *Morphology of the Folktale*

Introduction

Vladimir Propp was a Russian folk and literary scholar. 1928 saw the publishing of his most famous and influential book - *Morphology of the Folktale*.[1] He analyses 100 out of a few hundred magical tales classified before by a Finn, Antti Aarne, and puts forwards an original method for studying their structure. Propp comes to the conclusion that the plot of all the analysed pieces may be described using 31 functions (actions, events) performed by/with the participation of 7 types of characters. Propp's book was translated into Western European languages in the 1950s, falling on good soil of their humanities; it became an inspiration for structuralism that was experiencing a renaissance then and it awed anthropologist Claude Lévi-Strauss among many others. Along with Lévi-Strauss's works and Chomsky's findings, Propp's conclusions form a foundation of the birth of structurally-oriented literary studies[2] which Todorov calls narratology.[3]

At least since the 1970s the jurisprudence (especially Anglo-Saxon) has been acknowledging the achievements of literary studies, which leads to the grounding of the law and literature theme (movement).[4] The Polish legal scholarship is also exploring the interrelations between law and literature more boldly. In Morawski's 2003 book *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian* [transl. Major problems of contemporary philosophy of law. Law in the course of transformations], this theme is only signalled as an example of post-modernism in

1 W. Propp, *Morfologia bajki*, transl. W. Wojtyga-Zagórska, Warsaw 1976.

2 J.Ch. Meister, *Narratology,* 19 January 2014, The Living Handbook of Narratology, https://www-archiv.fdm.uni-hamburg.de/lhn/node/48.html (access: 24.02.2024), para. 3.3; A. Burzyńska, M.P. Markowski, *Teorie literatury XX wieku. Podręcznik*, Kraków 2006, p. 288.

3 W. Godzich, *Od narratologii akcji do narratologii decyzji*, "Teksty Drugie" 1990, No. 2, p. 39.

4 Cf. Ł. Mirocha, *Law and literature jako niedoceniony nurt jurysprudencji*, "Societas et Ius" 2013, No. 1(2), pp. 82-97; Ł. Mirocha, *Narracja w prawie? Drogi recepcji pojęcia*, in: M. Zirk-Sadowski, B. Wojciechowski, T. Bekrycht (eds.), *Integracja zewnętrzna i wewnętrzna nauk prawnych,* part 1, Łódź 2014, pp. 163-174.

the study of law,[5] but recently there have been scholarly papers and entire books devoted wholly to research that fits within the literary theory of law. Propp, along with structuralists inspired by his work, is being mentioned in studies in theory of law,[6] but for lawyers interested in interrelations between law and literature he certainly is not a forefront figure.

The discussion presented in this paper fits within the law and literature movement, intends to shed light on Propp's achievements and lends itself to an analysis of usefulness and limitations of application of his method in jurisprudence. The main body of this work is preceded by a brief report on the state of the art of this field, its narratological branch in particular.

Interrelations between law and literature

As Andruszkiewicz points out: "The starting point to the research identified as a literary school of law is an assumption that there are crucial links between law and literature."[7] Trivial as it may be, what law and literature share is the use of text. In both these fields the text may be written or spoken, while representatives of both disciplines carry out ontological discussions on what literature and law are,[8] respectively, and where their boundaries lie. Both these fields see disputes on the interpretation of text.

The last plane seems the most intensively explored by representatives of the law and literature movement.[9] Disputes in literary theory on how to interpret a work, by searching for the author's intention, by relying on the text itself, by taking into account the context of its creation or by referring to readers' impressions, resemble disputes on the interpretation of law. Variations of answers formulated in literary studies may be possibly associated with a specific group of directives of

5 L. Morawski, *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian*, Warsaw 2005, p. 58.

6 E.g., D. Kennedy, *Critical Theory, Structuralism and Contemporary Legal Scholarship*, "New England Law Review" 1986, Vol. 21, pp. 260, 269.

7 M. Andruszkiewicz, *Prawo w literaturze (Law in Literature). O stosowalności literackiej analizy prawa w prawoznawstwie*, in: D. Kondratczyk-Przybylska, A. Niewiadomski, E. Walewska (eds.), *Język prawny i prawniczy: I Kongres ogólnopolski*, Warsaw 2017, p. 9.

8 R. Wellek, A. Warren, *Teoria literatury*, transl. Maciej Żurowski, Warsaw 1976, p. 19 ff.; K. Wolny, *Teoria literatury. Zarys problematyki*, Rzeszów 1995, p. 15 ff.

9 Cf. M. Andruszkiewicz, *Interpretacja prawnicza a interpretacja literacka – kilka uwag*, "Krytyka Prawa" 2014, Vol. 6, pp. 183-197.

interpretation of law.[10] These analogies need not have a practical dimension since literary texts and legal texts have different functions. While the major role of a literary text is the aesthetic function, a legal text primarily plays a normative one.[11] Młynarska-Sobaczewska writes that "[w]hile the aim of literary narration is to tell a story or to present events in time, the aim of legal narration is to justify the point of view of a professional,"[12] which reveals further differences on these planes. Still though, one cannot forget that certain aesthetic elements, e.g. using narration, may reinforce the normative function of a legal utterance[13] and that both types of texts may play exploratory and educational functions. The differences in the function of the text ultimately translate onto the desired interpretation effect - the law requires an unequivocal interpretation, while susceptibility to multiple interpretation is an inherent feature of literary texts. Contrary to legal pieces, language precision it not a prerequisite in a literary text.

Representatives of the literary theory of law try to convince readers that a legal text may be subject to an aesthetic analysis and thus be treated as a literary piece. Researching and comparing the style of court reasoning is particularly popular. In contrast with Anglo-Saxon reasoning, "the language of continental courts may be described as devoid of imagination. The continental legal discourse features a historically determined inclination for dry authoritarian style that copies the language of the statute. Nevertheless, even such dry authoritarian style accommodates a compelling core (and requirement) of narrational structure and narrational coherence" as Smejlakova argues.[14]

Interestingly, literary scholars and representatives of the law and literature movement alike look into major literary pieces for sources of knowledge about the human nature, necessary in legal professions.[15]

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10 Cf. G. Olson, *Narration and Narrative in Legal Discourse*, 31 May 2014, The Living Handbook of Narratology, https://www-archiv.fdm.uni-hamburg.de/lhn/node/113.html (access: 24.02.2024), para. 3.1.4.

11 R. Wellek, A. Warren, *Teoria literatury…*, p. 25; K. Wolny, *Teoria literatury…*, p. 20; M. Andruszkiewicz, *Interpretacja prawnicza…*, p. 193.

12 A. Młynarska-Sobaczewska, *Narracyjność w aktach stosowania prawa*, "Państwo i Prawo" 2014, No. 12.

13 T. Smejkalova, *Story-Telling in Judicial Discourse*, "Comparative Legilinguistics" 2011, No. 5, p. 96.

14 Ibidem, p. 97; cf. M. Andruszkiewicz, *Transdyscyplinarne związki prawoznawstwa z naukami o języku. Od języków formalnych do nurtu „prawo i literatura"*, in: M. Król, A. Bartczak, M. Zalewska (eds.), *Integracja zewnętrzna i wewnętrzna nauk prawnych,* part 2, Łódź 2014, p. 39.

15 R. Wellek, A. Warren, *Teoria literatury…*, p. 37; D.A. Farber, S. Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, "Stanford Law Review" 1993, Vol. 45, p. 823.

Narration in law

Research on narration in law is only one realm of the law and literature movement.[16] Modern legal narratology deals not only with the issues associated with the legal practice (application and creation of law), but it is also applicable to the analysis of the legal discourse and in teaching law. Skuczyński identifies "four models of its reception in legal science: 1) examining its actual occurrence in legal disputes, e.g. in pleadings, court speeches, reasoning, etc., 2) examining similarities between law and literature, in particular in terms of interpretation; 3) examining the narrational structure of the law itself, which would be an alternative to its systemic nature and 4) examining how narrations that occur in legal texts model the identity of entities they concern."[17]

As has already been mentioned in the previous part, representatives of the trend in question very often analyse cases of court reasoning (or other acts of application of law) by studying them for the presence of narrational elements. Researchers point out that there are two parallel narrations - as to the facts (carried out in the past tense as a reconstruction of the established facts) and as to the law (carried out in the present tense, explaining the legislation in force or possibly how to reach it).[18] For the needs of a legal analysis, narration is defined in a manner well-established in the literary theory. Johnston and Breit broadly outline elements of narration, identifying: 1) scenes, 2) characters, 3) action that unfolds over time, 4) interpretable voice of the narrator with a somewhat discernible personality, 5) relationship to the reader, and 6) leading the audience toward a destination.[19] The course of the "action" is crucial to recognize a narrational structure. It usually begins with a regular, undistorted state of balance, which then is disturbed, which leads to a conflict resulting in an interference from a law-applying authority.[20]

16 Cf. R.A. Posner, *Legal narratology*, "The University of Chicago Law Review" 1997, Vol. 64, p. 737 (review of the work *Law's stories: narrative and rhetoric in the law*, P. Brooks, P. Gewirtz (eds.), Yale 1996). On other sub-disciplines of this movement see Ł. Mirocha, *Law and literature*….

17 P. Skuczyński, *Narracyjność języka prawniczego w procesie tworzenia prawa*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2020, No. 1, p. 72. Cf. G. Olson, *Narration and narrative*…

18 S. Stern, *Narrative in the Legal Text: Judicial Opinions and Their Narratives*, in: M. Hanne, R. Weisberg (eds.), *Narrative and metaphor in law*, Cambridge 2018, p. 132; A. Młynarska-Sobaczewska, *Narracyjność w aktach*…

19 J. Johnston, R. Breit, *Constructing Legal Narratives: Law, Language and the Media*, ANZCA Communication, Creativity and Global Citizenship 2009, p. 140.

20 Cf. A. Młynarska-Sobaczewska, *Narracyjność w aktach*…

Narration is to be governed by a certain "inexorable logic" or order of events.[21] This claim has a practical meaning in the law application process. Contemporary psychology and cognitive sciences prove that a narrational structure is important in remembering events - individuals are inclined to organize content into a narrational form (thus: to order, to seek causal links or to supplement material). This knowledge may affect the assessment of reliability of personal evidence, but may also be used to reinforce the persuasive dimension of the created reasoning.[22] This aspect of legal narrations allows for linking them with rhetoric.[23]

Narrational analysis is also conducted in reference to the law-making process. Skuczyński argues, for example, that professional self-governing bodies, when justifying their positions to planned legal changes, alter their style depending on which aspect of their activity they refer to - the interest of a professional group or the public interest.[24] Elements of narration may be successfully sought in written explanatory memoranda for draft laws or politicians' utterances in the course of the legislative process.

Finally, narration is sometimes treated as an instrument that serves criticism of law. Farber and Sherry prove that individualised emotional narration may be juxtaposed with an abstract, objective legal method. Narration - storytelling, supplements the legal discourse with a context and an emotional dimension, which is particularly close to heart of the feminist thought and also representatives of minorities or oppressed groups.[25] The personal story of a marginalized individual is to oppose domination practices and to present the situation of the individual in confrontation with the mainstream understanding of law.[26] The inspiration to place emphasis on "little narratives" in juxtaposition with "grand narratives" comes from the thought of Jean-François Lyotard. Such use of narration is challenged for

21 W. Godzich, *Od narratologii akcji do narratologii decyzji*, p. 42.

22 S. Hardy, *Narrative Theory, Psychology and Law*, "Australian Journal of Law and Society" 2000-2001, vol. 15, p. 195 ff.; C. Grose, M.E. Johnson, *Branding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, "Clinical Law Review" 2019, vol. 26, p. 206 ff. Therefore, it seems misadvised to place the narration that brings out emotions against a cool and rational analysis. Cf. G.A. Martinez, *Philosophical Considerations and the Use of Narrative in Law*, "Rutgers Law Journal" 1999, vol. 30, p. 704 ff.

23 Cf. D.B. Conti, *Narrative Theory and the Lain: A Rhetorician's Invitation to the Legal Academy*, "Duquesne Law Review" 2001, Vol. 39(2).

24 P. Skuczyński, *Narracyjność języka…*, p. 76-82.

25 D.A. Farber, S. Sherry, *Telling Stories…*, p. 811, 816.

26 G.A. Martinez, *Philosophical Considerations…*, p. 683.

its atypical nature and likelihood of exerting non-proportionate pressure by non-representative story, especially in the age of electronic communication.[27]

Narratology is an example of an external approach to law - it seeks methods for its analysis, ways to improve it and a critical look outside law itself.[28] Such an approach cannot be disapproved of "by default" - it is characteristic of many threads of contemporary jurisprudence, e.g. economic analysis of law or legal realism. Excessive reliance on a persuasive power of narration or emotional charge of the stories told may, however, distort the objective result of legal processes, thus the criticism of the presence of narration in jurisprudence does not necessarily mean only defence of law as an autonomous discipline.[29]

Propp and his method

In juxtaposition with his successors from the French school of structuralism, Propp's ambitions were limited; he narrowed down his analysis to a specific type of tale - magical folk tale. He did not want to carry out genealogical research, he believed his structural decomposition of a folk tale to be the first step towards reliable research on the historical development of stories, which lead to the creation of magical tales. He only signalled the likelihood of a relationship between stories told in folk tales and mythical or religious stories, or chivalric romances. In his *Morphology of the Folktale*, Propp writes:

> It might also be pointed out that a similar construction is displayed by a number of very archaic myths, some of which present this structure in an amazingly pure form. Evidently this is the realm back to which the tale may be traced. On the other hand, the very same structure is exhibited, for example, by certain novels of chivalry. This is very likely a realm which itself may be traced back to the tale. A detailed comparative study is a task for the future[30].

Propp's method was applied to analyse more complex pieces;[31] however, aspirations of structuralists in creating a universal grammar of a tale have not been

27 R.A. Posner, *Legal…*, p. 742.

28 G.A. Martinez, *Philosophical Considerations…*, p. 694 ff.

29 G. Olson, *Narration and Narrative…*, para. 2.

30 W. Propp, *Morfologia…*, p. 177-178, cf. also p. 162.

31 K. Lahlou, *An Attempt at Applying Vladimir Propp's Morphology of the Folktale on Charles Dickens's Great Expectations*, "Arab World English Journal for Translation & Literary Studies" 2017, Vol. 1(3).

realized. Structuralism has proven its usefulness in the analysis of simple conventionalized works of art, e.g. a James Bond book series.[32]

As pointed out in the Introduction here, Propp's contribution involved a revelation that each magical folk tale may be described by means of 31 functions, performed by/taking place with the participation of 7 types of characters. This is how Propp presents his method to his readers:

> Let us look at the following examples:
> 1. A king gives an eagle to a hero. The eagle carries the young man away to another kingdom (171).
> 2. An old man gives Sucenko a horse. The horse carries Sucenko away to another kingdom (132).
> 3. A sorcerer gives Ivan a little boat. The boat carries Ivan away to another kingdom (138).
> 4. A princess given Ivan a ring. Young men appearing from out of the ring carry Ivan away into another kingdom (156).
>
> Both constants and variables are present in the preceding instances. The names of the dramatis personae change (as well as the attributes of each), but neither their actions nor functions change.[33]

Therefore, a magic folk tale includes the following variables: names of characters (in examples above: king, old man, sorcerer and princess act as donors) and their attributes (in the examples above: eagle, horse, boat and ring), whereas actions remain constant (the example above talks about the function described by Propp under number XIV - *A new magical agent is placed at the hero's disposal*). The Russian folklorist argues that:

> 1. Functions of characters serve as stable, constant elements in a tale. (…)
> 2. The number of functions known to the fairy tale is limited. (…)
> 3. The sequence of functions is always identical. (…)
> 4. All fairy tales are of one type in regard to their structure.[34]

These conclusions do not mean that all 31 functions must be realized in each folk tale, or that all 7 types of characters are to be present in them. A tale may be composed of a few sequences of functions (within which functions appear in a set order - "*The sequence of functions is always identical"),* sequences may overlay, overlap in

32 A. Burzyńska, M.P. Markowski, *Teorie literatury…*, p. 292. Cf. J.Ch. Meister, *Narratology*, para. 3.3.

33 W. Propp, *Morfologia…*, p. 57. Numbers in brackets indicate tale numbers according to Aarne's classification.

34 Ibidem, pp. 59-62.

time or appear synchronised, which makes the analysis more difficult.[35] Analysing folk tales, Propp constructs a series of symbols that designate individual functions that make up a given piece (he formalizes the record of the piece), which he then organizes into tables and thus allows for them to be clearly compared.

The objective of this paper does not need the description of individual functions or types of a magical tale to be reported. Nevertheless, it is worth pointing to certain aspects of Propp's study. His proto-narratology is an expression of scientistic inclinations in literary research. While applicability of this method may be limited, it gives most solid results - they are "objective and independent of researcher's individual psychological and non-verifiable feelings."[36] Propp's achievements prove repeatability of actions performed by the characters in stories, a constant sequence of these actions and a limited number of such actions. The Russian scholar is not interested in the genesis of the tales he studies - he analyses them as they are and as they have been rooted, not investigating their source or creators' motivations. Lastly, Propp shows two levels of the tales analysed: superficial (replaceable names, seemingly different plots) and deep (where repeatability and other features of functions appear).

Perspectives of application of Propp's method in jurisprudence

In his 1986 essay, Kennedy notes that "[a] structuralist legal theory is difficult to imagine. The structuralists produced almost no legal analysis, except as law played some part in myth or literature."[37] The next part of this paper, resigning from the ambition to create a "structuralist legal theory", attempts to signal planes on which Propp's method could be applied.

We must first revisit the fact that so far narratological analysis has usually been applied to certain aspects of application of law - utterances of the parties to proceedings, substantiation of facts of rulings and even legal reasoning behind decisions taken by authorities.

Propp's method may be, nevertheless, applied also to the analysis of procedural law as such from at least two perspectives. The course of a trial (and other processes) is prone to morphological analysis; it may be dissected into consecutive stages, with the note that these stages may be repeated or even make up parallel sequences that occur within a single trial (e.g. proceedings pertaining to security

35 Ibidem, p. 164 ff.

36 K. Wolny, *Teoria literatury…*, p. 13.

37 D. Kennedy, *Critical Theory…*, p. 266.

within the major proceedings). Propp concludes that "[t]o begin with, it must be said that decomposition into components is, in general, extremely important for any science"[38] and this sentence may provide inspiration to dissect the course of proceedings into "functions". E.g. Initiation of proceedings, review of admissibility of initiation of proceedings, responding to the initiation of proceedings, evidentiary proceedings. At the same time, it is reasonable to not refer to the established legal terminology and to name the stages with a reference to their essence. This observation may be considered trivial - lawyers have for long been "striping" the course of proceedings into stages. The possible inspiration with Propp's achievements in this regard may boil down to naming individual stages-functions with reference to their essence (instead of referring to legal terminology), and also to formalising the records of the course of proceedings (assigning symbols to individual stages-functions, which facilitates their juxtaposition and comparison). Using these clues could have a propaedeutic significance in the first stages of legal education in the field of procedural law. Apart from this, it could help lawyers communicate with non-professional participants of proceedings for whom legal terminology is too inaccessible. Explanation of the course of proceedings by means of concepts that can be understood, or graphical presentation of such proceedings using symbols, could help overcome a hermetic barrier between professional and lay participants.

Constructing the "morphology" of proceedings and using a formalised record of individual stages-functions would also facilitate comparative studies of procedural law. Such studies could include a comparison of legal procedures in various countries, comparison of proceedings in various branches of law from the same country and examining a procedure pertaining to one branch of law in its historical aspect. This proposed approach has didactic and research values.

A similar "morphological" approach could be applied in an analysis of law-making procedures.[39] Even reading descriptions of law-making procedures so historically and culturally distant from contemporary ones, such as the description of ancient Sparta included in Plutarch's *Life of Lycurgus*, we can see the same elements that contemporary legislative processes are made up of Plutarch writes:

> "(...) hold an assembly, bring motions and put them to a vote, the decision lies with the people.
>
> When the people assembled, he (Lycurgus) did not allow anyone from the people to bring their own motions, but the people had the right to decide only on motions brought by the elders and the kings. (...) the blessed kings who govern Sparta by leading

38 W. Propp, *Morfologia…*, p. 175.

39 Skuczyński (*op. cit.*) carries out a separate narratological analysis in the context of creating law.

the Gerousia shall bring their motions to the people and the people shall decide on them but not change anything in them..."[40]

Plutarch identified the following stages: legislative initiative, discussion and, decision-making, that is stages characteristic also to the contemporary law-giving process. Comments on the usefulness of Propp's inspirations in the analysis of the course of legal proceedings remain valid in this context. It needs to be noted that contemporary jurisprudence textbooks do indeed carry out a "morphological" decomposition of stages of law-making, creating a general model of a legislative process for teaching purposes.[41]

Morphology inspired by Propp's conclusions may prove useful in the analysis and teaching of those aspects of law which assume extension in time and diachronic sequence of events. Morphology steps away from the convictions of the entity who does the analysis and a broader, non-text context of the content analysed,[42] it is a formalistic way of analysis. Difficulties and controversies may arise when distinguishing and classifying individual stages-functions, which is a prerequisite for the success of the entire analysis. Propp encountered this problem when analysing folk tales and used the criterion of consequences triggered by a given activity for qualifying it as a specific function.[43] This criterion may be adapted in the analysis of the course of court and other proceedings.

However, the concept of the author of *Morphology of the Folktale* may also turn out inspiring in a different way. Researchers may find in Propp's work confirmation of the fact that the text has two levels: a surface level, where certain differences between individual works occur, and a deep level, where similarities are manifested. When referring this observation to law or more broadly - to normative systems, we may follow at least two paths. The one path will lead us in the direction of the "universal grammar of morals and law."[44] Propp timidly signals structural identities of the works he investigates in terms of myths or religious stories, which places him at a rather great distance from Chomsky's most ambitious project; however, both of them use a similar way of thinking typical to structuralists. Structuralist investigations of both of them may be developed towards the "universal grammar of morals

40 Plutarch, Żywoty równoległe – wyjątki z żywotu *Likurga*, in: B. Lesiński, J. Walachowicz (eds.), *Historia ustroju państwa w tekstach źródłowych*, Warsaw/Poznań 1992, p. 8.

41 E.g.: L. Morawski, *Wstęp do prawoznawstwa*, Toruń 2011, p. 101; T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa*, Warsaw 1999, pp. 110-114.

42 Cf. M. Andruszkiewicz, *Transdyscyplinarne związki…,* p. 41.

43 W. Propp, *Morfologia…*, p. 125.

44 Cf. J. Potrzeszcz, *Uniwersalna gramatyka moralności i prawa*, "Forum Prawnicze" 2011, No. 4-5, pp. 30-45.

and law". The other way of using Propp's observations on the two-level nature of a text will be closer to heart to critically-oriented researchers, thus seeking an instrument of oppression in each law, hidden mechanisms of domination,[45] hidden programme, etc. Such use of Propp's thought is paradoxical in a way that stemming from a strictly formalistic method, it leads to substantial criticism. The observation about the two levels of a legal text in this understanding may be applied, for example, to the analysis of the shape of the institution of marriage. At the surface level, the legislations of certain countries only allow heterosexual marriages, others in turn prescribe the possibility for same-sex couples to enter into marriage too. However, a similarity of these solutions occurs at the deeper level and involves the fact that in both cases it is the state that acts as the authority that decides about the shape of the marriage by controlling the most intimate sphere of interpersonal relations.

The legal discourse itself is also subject of narratological research. For example, Robin West juxtaposes four main mainstreams of jurisprudence: positivism, natural law, liberalism and etatism (statism) with literary traditions (also systematised under the principle of opposition): romance and irony, and comedy and tragedy, identified by literary scholar Northrop Frye. She believes that positivism fits the irony tradition, natural law fits the romance tradition, while the comedy tradition corresponds with liberalism and tragedy with etatism.[46] On the other hand, Baron and Epstein analyse Wechsler's classic text *Toward Neutral Principles of Constitutional Law* from a narrational perspective noticing a few story lines run in parallel, which in effect leads to convincing conclusions. The authors believe that Wechsler's article has a structure of a Russian doll due to its overlapping narrational layers.[47]

Some of Propp's conclusions my also turn out useful in examining the legal discourse. They may provide inspiration when analysing classic problems of jurisprudence. An example here may be brought by the controversy concerning the thesis about a necessary relationship of law and state, close to heart of early legal positivists. This thesis was revised by MacCormick, who argues that the European Union, Churches or international sporting federations-corporations have their own laws.[48] The revision of the thesis about the necessary relationship between law and state may be read as discarding the criterion that refers to the entity (which is the creator of the law) in favour of the criterion of the function played by law. This would bring this reasoning closer to Propp's reference to functions, not characters (which may change).

45 Cf. D. Kennedy, *Critical Theory…*, p. 268 ff.

46 R. West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, "New York University Law Review" 1985, Vol. 60, p. 145-211.

47 J.B. Baron, J. Epstein, *Is Law Narrative?*, "Buffalo Law Review" 1997, Vol. 45, p. 158.

48 Cf. L. Morawski, *Główne problemy…*, p. 31.

Conclusions

Law is not a literary piece - its main function is not to evoke recipient's aesthetic sensations. This does not mean, however, that methods developed on the ground of literary research cannot be applied in jurisprudence. It seems that methods based - or at least aspiring to be based - on scientific accuracy, that is formalistic, will be more successfully transferable than those leading to ambiguous outcomes. This results from requirements set before the law - unambiguity and verifiability. Propp's method should be treated as an example of realization of scientific ambitions in literary studies,[49] which predestines it to a possible use by lawyers. The advantage of Propp's work is also its clarity and simplicity - understanding and use of his observations and conclusions does not require literary preparations. *Morphology of the Folktale* is written in an incredibly approachable style.

Even though Propp limits his investigation to a specific field - analysis of a magical folk tale, we can see in his thought threads that are transferable to the language of jurisprudence. The morphological method may prove itself effective in the analysis of phenomena that are made up of events occurring in time (trial, legislative process) even though they do not have a story line character. It may serve to improve this analysis or at least accelerate presentation of results, which is crucial from the point of view of propaedeutic research and from the perspective of lawyers' communication with remaining addressees of law. Propp's individual observations may play the role of inspiration in researching the legal discourse, which is crucial for investigators with a critical attitude. It is quite possible to imagine an attempt to formulate the morphology of the history of law - its historical development, since researchers in philosophy of history, with Spengler at the forefront, formulate the morphology of history of mankind.[50]

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49 Cf. A. Burzyńska, M.P. Markowski, *Teorie literatury…*, p. 290.

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Co prawo ma wspólnego z bajką? Perspektywy stosowania metody Włodzimierza Proppa w prawoznawstwie

Streszczenie

Niniejsze opracowanie ma na celu przybliżenie czytelnikowi dokonań rosyjskiego literaturoznawcy Włodzimierza Proppa oraz analizę możliwości ich zastosowania w prawoznawstwie. Propp zajmował się badaniem utworów z gatunku bajki magicznej, dochodząc do wniosku, że fabuła tych utworów składa się z 31 powtarzalnych funkcji, które wykonywane są przez 7 typów bohaterów. Propp ukazywał, że pomimo zmian nazw czynności, postaci, atrybutów na powierzchownym poziomie tekstu w różnych bajkach głęboki poziom tekstu pozwala dostrzec tożsamości między poszczególnymi utworami. Główne dzieło Proppa *Morfologia bajki* wraz z myślą antropologa Clauda Lévi-Straussa oraz odkryciami Noama Chomsky'ego stały się inspiracją dla rozwoju francuskiej szkoły strukturalizmu oraz badań narratologicznych.

Rozważania zawarte w artykule wpisują się w nurt badań określany mianem *law and literature*, zwłaszcza w jego narratologiczną gałąź. Opracowanie w syntetyczny sposób prezentuje dotychczasowy stan badań z zakresu narratologii prawnej oraz przedstawia możliwe zastosowania myśli Proppa w tej dziedzinie i ich ograniczenia. Praca nie ma charakteru

dogmatycznoprawnego, stąd zbędne jest odwoływanie się do metod formalno-dogmatycznej czy historycznoprawnej, zasadniczą rolę odgrywa w niej analiza dyskursu. W artykule ukazano, że z uwagi na różnice zachodzące między prawem a literaturą dokonania Proppa mogą przede wszystkim być inspiracją dla prawoznawstwa, niemniej istnieją także płaszczyzny, na których metoda Proppa może być zastosowana wprost.

Słowa kluczowe: teoria prawa, *law and literature*, narratologia, Włodzimierz Propp, *Morfologia bajki*

CYTOWANIE

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