

**A LECTURE ON
PLESSY V. FERGUSON
AS *OEDIPUS REX***

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Hi guys. Hi Loyola people. I'm so excited to be here today. I'm Yxta Murray. I teach Criminal Law, Sexual Orientation and the Law, Feminist Legal Theory, and Law and Literature. I'm also a novelist.

I might be a little bit of a funny choice to be participating in a Law and Popular Culture Symposium because I feel like I'm waging a war against pop culture. I think television is the beast that ate the universe, and it's designed to pacify us and to delude us and to allow us an escape. Television prevents us from having relationships and doing all kinds of things. I've always had this idea that the academy was the one place that had been untouched by the beast of Hollywood, yet here we are. I can see it coming on like a storm front.

In lieu of giving Hollywood and the television industry even more energy, I'm not going to be talking about television series or movies today. What I'm going to be talking about is law and literature—how law *is* literature.

To illustrate this thesis, I'm going to be making comparisons between the famous play *Oedipus Rex* by Sophocles¹, which we're all kind of familiar with, and the famous separate-is-equal case of *Plessy v. Ferguson*².

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1. SOPHOCLES, *OEDIPUS REX* (Stephen Berg & Diskin Clay trans., Oxford University Press 1978) (440 B.C.).

2. *Plessy v. Ferguson*, 163 U.S. 537 (1896), *overruled by* *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

In the discipline of law and literature, most scholars proceed from the assumption that literature and law are two completely different forms. The “law and literature” project is often concerned with identifying the recondite similarities between legal texts and art or law.³ But for me, I’m curious to know how they’re *at all* different. I understand both works of law and literature as coming out of the same impulses and being shaped by some of the same forces.

I think that the reason why we differentiate law from literature is to make ourselves feel comfortable. The common wisdom is that literature is not like law because it is beholden to the imagination; it’s arbitrary and capricious; it doesn’t have to follow rules of logic; it’s just the whims and fancy of the artist. And we say that law is not literature because it follows the rules of logic, “truth” and order.

But I really don’t believe this dichotomy to be true. And I’m going to try to prove the profound relatedness between law and literature by showing the parallels between the Supreme Court’s *Plessy v. Ferguson* opinion, and the ancient Greek tragedy *Oedipus Rex*. I will argue that *Plessy* is, in fact, a version of *Oedipus*, in that both of these texts are tragedies.

So, here we go.

Let me begin with a definition of tragedy, and then a description of *Oedipus Rex*. Aristotle defined tragedy as a type of drama opposed to comedy which depicts the causally related events that lead to the downfall and suffering of the protagonist, a person of unusual moral or intellectual stature or outstanding abilities.⁴

3. See generally Bruce L. Rockwood, *Book Review: The Good, the Bad, and the Ironic: Two Views on Law and Literature*, 8 YALE J.L. & HUMAN. 533 (1996).

4. See ARISTOTLE, *Poetics*, in ARISTOTLE’S POETICS LONGINUS ON THE SUBLIME 19 (Ingram Bywater trans., Macmillan Co. 1930) (330 B.C.) (“Tragedy, however, is an imitation not only of a complete action, but also of incidents arousing pity and fear. Such incidents have the very greatest effect on the mind when they occur unexpectedly and at the same time in consequence of one another.”).

Okay, so tragedy concerns the fall of a great man. The hero has a tragic flaw. In *Oedipus Rex*, it's hubris. Another definition of Aristotelian tragedy is that it evokes catharsis in the audience when they're watching it. Catharsis comes from a Latin word for purging.⁵ What this means is: through the experience of watching tragedies, we undergo this tremendous emotional response. *Oedipus Rex* definitely fulfills the definitions of tragedy given to us by Aristotle, as we will now see.

The story of *Oedipus Rex* is as follows: there is a plague ravaging Thebes.⁶ Oedipus is the king of Thebes. Jocasta is his queen. Creon is Oedipus's right hand man, and Tiresias is the blind seer of the community. He's the psychic. An oracle says that in order for the plague to stop, and for the people of Thebes to be able to survive, Oedipus must find the killer of his predecessor, King Laius.⁷ If Oedipus finds the killer and either kills him or banishes him, then the plague will cease, and Thebes will be able to go back to normal.⁸ Creon brings Oedipus to Tiresias, as Tiresias knows who the identity is of Laius' killer.⁹ Tiresias is also street smart. He's standing in front of the great, powerful king, who has committed this terrible and disgusting offense without realizing it. Tiresias, not surprisingly, says to Oedipus: "I don't want to tell you who did it."¹⁰ Oedipus then—he's not the nicest guy—becomes incredibly angry. He begins to accuse Tiresias of being Laius' killer.¹¹ Finally Tiresias says, "Fine, you want to know? You did it."¹² Oedipus then goes into an even more intense rage.¹³

Freud is, of course, always coming into our minds when we read *Oedipus* now. We can't disassociate *Oedipus* from a Freudian reading. One is wondering whether Oedipus is protesting too much when he rails at Tiresias. As it turns out, when Oedipus was a young man, a prophet said, "Look, dude. Something really bad is going to

5. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 294 (4th ed. 2000) ("New Latin, from Greek *katharsis*, from *kathairein*, to purge, from *katharos*, pure.')

6. See SOPHOCLES, *supra* note 1, at 32–49.

7. *Id.* at 417–19.

8. *Id.*

9. *Id.* at 407–11.

10. See *id.* at 451.

11. *Id.* at 468–73.

12. *Id.* at 479–80, 492–94.

13. See *id.* at 495–547.

happen to you. Guess what? You're going to sleep with Mommy, and you're going to axe Daddy."¹⁴ And so Oedipus says, "I'd rather avoid that." He runs away from his ancestral home and goes to Thebes.¹⁵ On the way there, he kills some nasty guy at a crossroads,¹⁶ but who cares. And then he goes off to Thebes. He solves the riddle of the Sphinx¹⁷ and, as it turns out, the King of Thebes is dead. Oedipus takes his place at Queen Jocasta's side.¹⁸ They have a wonderful sex life. They have a couple of kids. Everything seems to be pretty good.

So, Oedipus is remembering this when Tiresias is telling him that he's the killer. He says, "No, no, not me."¹⁹ He conducts a mini trial, and in this trial he finds out that Jocasta also had an oracle come to her many years ago, after the birth of her first son.²⁰ The oracle said, "Jocasta, guess what? See that baby you just had? It's going to kill your husband."²¹ So she says, "Oh no, we can't have that. I'm going to expose my infant or kill him on a mountain."²² She gives the baby to a messenger.²³ Off goes the messenger to kill the child. The messenger, however, has mercy for the baby, and gives it to a shepherd.²⁴ The shepherd gives it to a family in Corinth, which is where Oedipus thinks he's from.²⁵ So, all these things start to become apparent to Oedipus and Jocasta. Oedipus, when he realizes what's in the air, decides to pursue his investigation. He eventually discovers his own identity, and blinds himself when he finds out.²⁶ It's really ugly. Then Jocasta hangs herself.²⁷

So, it's a tragedy! It's tragic. It's sad. And what are the themes of *Oedipus Rex*? I'm going to come up with five themes. Then I'm

14. *See id.* at 1027–33.

15. *Id.* at 1034–37.

16. *Id.* at 1040–51.

17. *See id.* at 72.

18. *Id.* at 1062.

19. *Id.* at 506–08.

20. *Id.* at 936.

21. *Id.* at 938.

22. *See id.* at 940–42.

23. *Id.* at 1476–78.

24. *Id.* at 1451–53.

25. *Id.* at 1289–90.

26. *Id.* at 1648–52.

27. *Id.* at 1594–1602, 1626–29.

going to be tracing them also through *Plessy v. Ferguson*, to prove my thesis concerning the similarities between law and literature.

To know the truth at all costs is one of the themes of *Oedipus Rex*. When Oedipus realizes what the horrible truth might be, somebody says, “Why don’t you just cut this out and go back home?”²⁸ But Oedipus refuses. He says (quoting from the play): “Let it break! Let everything break! I must discover who I am, know the secret of my birth . . .”²⁹ He won’t give up, though he knows that the revelation about his identity might destroy him.

The second theme of the play concerns our simultaneous desire to *hide* ourselves from difficult truths. Jocasta represents this denial, this hiding. When Jocasta realizes what’s going on, she says: “God help you, Oedipus—You were born to suffer, born to misery and grief. These are the last last words I will ever speak, ever Oedipus.”³⁰ She makes herself mute. She goes into the bedroom, and she assassinates herself.³¹ She kills herself, and this represents the human impulse to shield ourselves from the truth.

The third theme of the play is that we are strangers to ourselves. This is probably the most modern theme. We’re alien to ourselves. We don’t even know ourselves. Oedipus is trying to find out who killed Laius, and he is haranguing Tiresias.³² He’s beating Tiresias up. Tiresias starts to get upset and he says, “Oedipus, what do you know about yourself, about your real feelings? You don’t see how much alike we are.”³³ We’re both blind is what he’s saying. “I say you live in shame, and you do not know it, you do not know that you and those you love most wallow in shame, you do not know in what shame you live.”³⁴ So, Tiresias is saying, you’re a stranger to yourself, man. You have no clue who you really are. So, that’s, I believe, the third theme.

The fourth theme of *Oedipus Rex* is that we are out of control of our lives. Oedipus is doing everything that he can to avoid this

28. *Id.* at 1344–45.

29. *Id.* at 1363–64.

30. *Id.* at 1354–58.

31. *Id.* at 1594–1602, 1626–29.

32. *Id.* at 452–54.

33. *Id.* at 456–58.

34. *Id.* at 498–503.

prophecy. He runs away from home. He becomes a king. He is the safest person in the entire world, but he is still a victim of fate.

The fifth theme deals with the fact that, though we may believe that we are innocent, we may still be culpable of great crimes. Oedipus believes that he is untainted by sin, but he's not. Right? We are fallen.

Okay, that's five themes. Let's move from *Oedipus* to *Plessy v. Ferguson*³⁵, which turns out to be another work of tragedy.

What happens in *Plessy*? My beautiful first year law students who have been able to come to this talk today may not have been able to read *Plessy v. Ferguson* yet. It's the famous case where the Supreme Court declares that separate is equal.³⁶ The story is this: Plessy tries to sit on a train seat, which is reserved for white passengers.³⁷ He's not allowed to because he's part African American.³⁸ The racial segregation enforced by the state and the train operators is upheld by the Supreme Court³⁹ and the decision, of course, is later finally overturned by *Brown v. Board of Education*⁴⁰.

How is *Plessy v. Ferguson* a tragedy? For one thing, we know that it is a tragedy because we are very upset when we read it. It's a scar on American jurisprudence. It's a foul piece of writing and people were severely injured by it. It was a tragedy, you know, just plainly speaking. But also, in terms of the Aristotle's definition, we feel this cathartic emotion when we read it. Like, how could this have actually happened? How could this idea of racial segregation have achieved any power? This is insane. We feel cathartic emotion when we read it.

But there are even more interesting similarities between *Oedipus Rex* and *Plessy v. Ferguson*. The first theme that I discussed in *Oedipus* concerned our desire to know the truth at all costs. Plessy has the desire to define himself (as did Oedipus), but by going to the Court, he reveals his willingness to risk being defined from on high.

35. *Plessy v. Ferguson*, 163 U.S. 537 (1896), *overruled by* *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

36. *Brown*, 347 U.S. at 488; *see also Plessy*, 163 U.S. at 543 ("A statute which implies merely a legal distinction between the white and colored races . . . has no tendency to destroy the legal equality of the two races . . .").

37. *Plessy*, 163 U.S. at 541-42.

38. *Id.* at 542.

39. *Id.* at 548-49.

40. *Brown*, 347 U.S. at 494.

He says to the Court: “I know who I am, and who I am is white.”⁴¹ It turns out that he is of mixed race.⁴² And he says, “African American identity is not discernible in me. I am a white guy. You made a mistake in branding me as black, and I should be able to sit in this chair.”⁴³ The Court acknowledges Plessy’s claim when it says: “The petition for the writ of prohibition averred that petitioner was seven eighths Caucasian and one eighth African blood; that the mixture of colored blood was not discernable in him, and that he was entitled to every right, privilege and immunity secured . . .”⁴⁴ by the white race’s patriarchal hegemony of the United States. Sorry, that last bit was my own commentary.

The Court then tells Plessy that he is not whom he thinks he is. It informs Plessy that the state is allowed to make the determination of his race, and then to segregate him from whites.⁴⁵

Thus, the way in which Plessy is like Oedipus is that he believes he knows who he is until he is told otherwise by the oracle or by the gods who, of course, are the Justices of the Supreme Court. The Justices in their dramatic black robes are, for us, the gods or the fates. And they tell us that it is their office to construct our identities and destinies.

The second theme that I discussed in *Oedipus* was represented by the character of Jocasta, who sought to shield herself from knowledge of the terrible truth. To some degree, arguably, Plessy is also in denial. In his court papers, he denies his own identity. He’s passing. He’s racially passing, and one of his arguments is, “I’m a white guy.” So, there’s a bit of Jocasta-like denial, at least in his public face, which he displays for the Court. He wants to deny himself.

A third theme that exists in both the play and the case is this: that we are out of control of our own lives. How much more out of control can you get? I guess Oedipus is pretty out of control, but also, Plessy is not having a good day. When the Court responds to Plessy’s argument that the Fourteenth Amendment requires integration in this situation, it says:

41. *Id.* at 539–40.

42. *Id.* at 538.

43. *Id.* at 539.

44. *Plessy*, 163 U.S. at 541.

45. *Id.* at 548.

The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based on color, or to enforce social, as distinguished from political equality, or commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other. . . .⁴⁶

In other words, the Court tells Plessy: “I’m going to tell you what this amendment says. I’m going to tell you what the Constitution says. Yeah, you have a right to equality, and equality is that you sit in the black part of the train.” How much more out of control can you get? Their benighted opinion of equality becomes reality.

The fourth theme I discussed was this: that Oedipus was guilty of crimes though he believes himself innocent. Similarly, it turns out that Plessy is in the wrong, though he believes himself wronged. Plessy says to the State: “You did something wrong to me,” and the Court replies: “Actually, you’re a mess.” The Court maintains that the entire problem exists in Plessy’s head. That is, if anyone is guilty of making wrong and injurious assumptions, it is him. The Court writes:

We consider the underlying fallacy of the plaintiff’s argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by any reason of anything found in the act, but solely because the colored race chooses to put that construction on it.⁴⁷

In other words: “Plessy, you’re the one with the problem. You’re the one doing something wrong. We’re just simply neutral arbiters of truth.”

So, what conclusions can we draw from this analysis? First, *Plessy* is a work of literature—and more than that, it appears to be an appalling retread of *Oedipus Rex*. Second—again, referring back to

46. *Id.* at 544.

47. *Id.* at 551.

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Aristotle's definition of tragedy—the opinion is tragic because it evokes cathartic emotion in the reader. We are furious when we read it.

The majority opinion itself, actually, is sanitarily written. There's not a lot of emotional content. It's up to Justice Harlan in the dissenting opinion to tell us what the cathartic emotion underscores the case. As Harlan famously writes: "What can most certainly arouse race hate . . . [than these state enactments]? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana."⁴⁸ It's up to Harlan to identify the cathartic emotions that drive this opinion. But we knew that anyway, just because of its aftermath.

So, what does that get us? *Plessy v. Ferguson* qualifies as literature because it is a work of the imagination. In fact, it's a kind of fever dream. It's based on a fantasy on the part of the Supreme Court of what they believe defines the races, and what should happen to them. The Justices' emotions, passions, and fancies are driving this decision and so, to the extent that we feel comfortable by saying law is one thing, literature is the other thing, we should reexamine that assumption.

To conclude this talk, I don't have some kind of five prong test. Rather, I just want to end on a note of dread and discomfort. We say that the law is built on logic, and tells the truth, while art is built on fancy and *is* artifice. But even before we began thinking about the relationship between law and literature, we knew that this dichotomy is a false one. One need only read the works of Tolstoy, Woolf or Morrison to know that sometimes literature tells the truth, whereas law can lie. And after studying *Plessy v. Ferguson*, we can see that this law is a work of a twisted imagination.

In sum, I don't think that we should rest so comfortably with the "law vs. literature" distinction that we've created in our culture. Sometimes lawyers are mythmakers just like Homer, the Brothers Grimm, and the authors of Marvel Comics, and we would be wise to be more aware of the way our fancies shape our civil and human rights.

Thank you very much.

48. *Id.* at 560 (Harlan, J., dissenting).

