THEOLOGY of LAW

Law and Other Fairy-tales

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Abstract

"Make-believe" is not just for children. Law, banking, and money are all social practices which are partially constituted by beliefs. Many fairy-tales socialise children by teaching the superiority of civilisation over chaos (Red Riding Hood), by warning of the importance of keeping promises (the Lambton Worm), and by insisting on the need to follow the commands of those in authority (Peter Rabbit). In so doing, they foster the virtues and temperament of law-abiding citizens, without which the make-believe of law cannot be sustained. Some fairy-tales, however, teach that there are circumstances in which civilisation is a cruel joke (The Emperor's New Clothes), that promises given under duress are not binding (Rumpelstiltskin), and that laws ought not to be obeyed if they are seriously unjust (Bluebeard).

I have been invited here today by Professor Karen Coats to talk about "Law and other Fairy-tales". A banking lawyer, whose own literary output for the last 30 years has been non-fiction, may seem a strange choice of lecturer for such a topic. Lawyers are not known for their imagination, though the sane amongst us escape from the dusty, confining rationalism of our craft through the solace offered by good art, drama, music, and literature. In my case, that included reading fairy-tales to my own children.

I suppose that I had better pay my academic dues by offering at least a heuristic definition of what a fairy-tale is. A fairy-tale is a story in which there is an element of the magical, of the uncanny, of the fantastic.[1] They are stories which require at least an element of the suspension of disbelief. If the story told is convincing, there may come a time when we forget that we are engaged in "make-believe". Classic examples of the genre are those collections of

[1] J.R.R. Tolkien, 'On Fairy-Stories', in *Poems and Stories* (1980, repr. London: Harper Collins, 1992), 122.

folk stories compiled by the Brothers Grimm and Hans Christian Andersen. Beatrix Potter,[2] Rudyard Kipling, Frank L. Baum, and C.S. Lewis would be twentieth century inventors of new fairy stories. More recent versions, which build on the tropes of the classic fairy-tales while subverting them are the movies *Shrek*, the smash-hit musical *Wicked*, the tales told by Angela Carter in *The Bloody Chamber* and her other works, and the *Discworld* novels of Sir Terry Pratchett.

Fairy-tales are a feature of all cultures. If I focus on European fairy-tales it is because those stories are, with the exceptions of the *Ramayana*, the stories of Anansi spider, *Aladdin* and other fragments of *The One Thousand and One Nights*, the ones I learned at the knee of my mother and the aunt who lived with us.

The title of my lecture gives a clue to one of the reasons why a lawyer may dare to speak about other fairy-tales.

1. Law is a Fairy-tale

I live in a world of fairy-tales. I live in a world of make-believe. Law and banking are both make-believe worlds. They are testaments to the power of human collective imagination, our ability to conjure up realities that in turn shape our lives for as long as the spell is not broken.

Terry Pratchett, who understood how fairy-tales work, explained the make-believe nature of the rule of law in *Thud!*

> 'Coppers stayed alive by trickery. That's how it *worked*. You had your Watch Houses with the big blue lights outside, and you made certain there were always burly watchmen visible in the big public places, and you swanked around like you owned the place. But you didn't own it. It was all smoke and mirrors. You magicked a little policeman into everyone's head. You relied on people giving in, knowing the *rules*. But in truth a hundred well-armed people could wipe out the Watch, if they knew what they were doing. Once some madman finds out that a copper taken unawares dies just like anyone else, the spell is broken.'[3]

[2] J.R.R. Tolkien thought that, because of their strong moral element, the beast-fables of Beatrix Potter "lie near the borders of Faërie, but outside it", though he was prepared to admit *The Tailor of Gloucester* and possibly *Mrs Tiggywinkle*: 'On Fairy-Stories', 127. My definition of fairy-tales is slightly broader, and happily encompasses all of Beatrix Potter's animal stories.
[3] Terry Pratchett, *Thud!* (London: Doubleday, 2005), 61-62.

In *Unseen Academicals,* another of Terry Pratchett's novels, the benevolent dictator, Lord Vetinari, remarks that: 'No civil police force could hold out against an irate and resolute population. The trick is not to let them realise that.'[4]

The recognition that the rule of law is make-believe, that the rule of law only exists for so long as most of the people are prepared to go along with the demands of the system, is one senior judges are prepared to acknowledge, even in the official law reports. According to Lord Donaldson in *X Ltd v Morgan-Grampian plc* [1990] 2 WLR 421 at 432: 'Lord Hailsham once said that "the rule of law is a confidence trick". What he meant was that the rule of law depends upon public confidence and public acceptance of the system whereby Parliament makes the laws, the courts enforce them and the vast majority of citizens accept them until they can get them changed.' The functions of a legal system in stabilizing expectations and disciplining violence can only be achieved if there is a reasonable degree of voluntary obedience to the law.

As one who has lived through the fall of the Berlin Wall and the subsequent revolutions in Eastern Europe at the end of the twentieth century, I have witnessed how force alone cannot sustain a regime indefinitely once its subjects no longer believe in it. Conversely, the experience of living under the Covid restrictions shows how swiftly the collective imagination can be captured and people induced to comply with rules which would in other circumstances have been regarded as intolerable.

Not only is law a fairy-tale, there is also something folkloric about law's justification. One usually unspoken but nevertheless ever-present reasons for obeying the law is the threat of uncontrolled violence which will result if law and order breaks down. In the world of fairy-tale, the savagery which lies in wait beyond the protection of civilisation is frequently symbolised by the wolf.[5] The Latin playwright, Plautus, wrote "*Lupus est homo homini*", claiming that, at least when people are strangers to one another, their behaviour is apt to be savage and aggressive. It was Thomas Hobbes who, in his *De Cive* (1642)*,* took up the phrase stating, with reference to the ways in which different polities deal with one another: "Man to

[4] Pratchett, *Unseen Academicals* (London: Doubleday, 2009), 453.
[5] As Erica Berry explores in *Wolfish: The stories we tell about fear, ferocity and freedom* (Edinburgh: Canongate, 2023), the wolf is presented as the Other in opposition to many aspects of civilisation.

Man is an arrant Wolfe". In *De Cive*, written when England was on the verge of Civil War, Hobbes applies Plautus's maxim to the relations between different states. By the time of *Leviathan* (1651), Hobbes is arguing that the war of all against all (*bellum omnium contra omnes*) is the state of nature from which people wish to be rescued by acknowledging an all-powerful sovereign. In *Leviathan*, it is the threat of wolflike, savage, violence which drives people from the state of nature to seek the protection of the law-making sovereign. The make-believe of obedience to law is sustained by the imagination of the lupine violence which would result from the law's absence.

Not only is law make-believe, so too is banking. Even in the days when money was measured in gold, there was never enough gold to go round. As I remind my students, the only bank in the world with enough money to satisfy its obligations to its depositors is Gringotts, the fictional bank in J.K. Rowling's Potterworld.

In Terry Pratchett's *Making Money*, Moist von Lipwig, Postmaster General in Ankh-Morpork, asks Mr Bent about how banking works:

> 'I read somewhere that the coin represents a promise to hand over a dollar's worth of gold,' said Moist helpfully.
> Mr Bent steepled his hands in front of his face and turned his eyes upwards, as though praying.
> 'In theory, yes,' he said after a few moments. 'I would prefer to say that it is a tacit understanding that we *will* honour our promise to exchange it for a dollar's worth of gold provided we are not, in point of fact, asked to.'
> 'So … it's not really a promise?'
> 'It certainly is, sir, in financial circles. It is, you see, about trust.'
> 'You mean, trust us, we've got a big expensive building?'
> 'You jest, Mr Lipwig, but there may be a grain of truth there.'[6]

Here too, Pratchett's fictional characters speak the truth known to bankers and economists. As Professor Charles Goodhart puts it: 'Fractional reserve banking is inherently a confidence trick, and, should confidence be lost, as is bound to happen from time to time, the house of cards is prone to tumble down.'[7] The banking system only functions because, believing the promise that our money will be available on demand, we don't all demand it at the same time.

[6] Terry Pratchett, *Making Money* (London: Doubleday, 2007), 39.
[7] Quoted in Campbell and Cartwright *Banks in Crisis: The Legal Response* (Aldershot: Dartmouth Publishing, 2002), 7.

As the queues outside Northern Rock's branches in September 2007 show, when that spell is broken, the system is in real danger of collapse.

2. The Law in the Lore

If the first part of this lecture was about how law is a fairy-tale, the second part is about how fairy-tales speak about law. It is, if you will, about the law in the lore. As a lawyer, I am especially interested in what fairy tales teach about law, about lawfulness, and about when to obey and when to disobey the law. There are dangers here, of course. I do not want to be the man with a hammer to whom everything is a nail. Not all fairy-tales are about law or have implications for law. Many explore other themes instead. Nonetheless, fairyland is a land of laws. The rules of fairyland are an essential part of the conceit.

All stories are powerful. Terry Pratchett opens *Witches Abroad* with the statement: "People think that stories are shaped by people. In fact, it's the other way around."[8] Fairy-tales are especially powerful because of the strong images they create in the mind at an early age. As the actor Kristen Bell, who was the voice of Princess Anna in *Frozen*, reminds us: "Everything IS a message to our children, because they are sponges that soak up everything and are learning how to be adults through what they see."[9] In many fairy-tales, the powerful message lies just beneath the surface. *Little Red Riding Hood* teaches the useful life lessons: don't talk to strangers and never walk through the woods on your own. *Cinderella* warns us that if you are proud like the ugly sisters, you will receive your comeuppance; whereas if you are humble like Cinderella, you will be honoured. *The Three Billy Goats Gruff*, one of my favourite stories to read to my own children, teaches the subtle lesson that if you are not strong enough to win a straight fight with a troll, cunning, deflection and diplomacy might still enable you to achieve your goal (or at least, to avoid being eaten alive).

The philosopher Alastair Macintyre argued that it is only in becoming more aware of the narratives which shape us, and which we tell in our turn, that we can both understand ourselves and know how to act. We are, in his phrase, a "storied self".[10] Building on MacIntyre's insight, Elizabeth Oldfield suggests that, despite our changing taste in literature

[8] Terry Pratchett, *Witches Abroad* (London: Corgi, 1992), 8.
[9] Quoted in Andrew Pulver, "'Rescue yourself!': Keira Knightley on why her daughter can't watch Cinderella", *The Guardian,* 19 October 2018. Available online at https://www.theguardian.com/film/2018/oct/19/keira-knightley-kristen-bell-disney-princesses-cinderella-snow-white

throughout our life, “perhaps the truest hint of our deep values comes in the stories we loved as a child.”[11]

There are morals to be found in fairy-tales, and in fairyland, those morals form a universal moral order. It is in the nature of fairy-tales to point to law, and the law to which they point is the law of human nature. Fairy-tales draw you into another world in order to shed light on the issues in our own. But they don’t work if you do not ever emerge fully from the wardrobe into the Lantern Waste. Those who share A.S. Byatt’s dislike of the works of C.S. Lewis and Philip Pullman,[12] do so because they feel that the moral *is* the story, that the didactic aim is not an emergent property of the story but has been transparently imposed on the story by its author.[13] It’s a narrative version of divine command theory (the moral of the story must be *x* because that is the answer the author requires) rather than one in which the moral is inherent in the story itself. By way of counter-example, Terry Pratchett’s dwarfs help us to reflect on how to relate to our Jewish and Muslim neighbours precisely because the dwarfs in Ankh-Morpork come to life as vivid characters rather than as ciphers. I can easily imagine what it would be like to meet Cheery Littlebottom, Captain Carrot, Burleigh & Stronginthearm because they are three-dimensional figures in my mind’s eye and not just cardboard cut-outs placed in the story so that Pratchett can ram home a pre-packaged message.

G.K. Chesterton, a prodigious writer whose own eclectic output included some works we might include within the fairy-tale genre, described fairy-land as "nothing but the sunny country of common sense."[14] The great claim of the judges who developed the common law of England in the days before it was swamped by a tsunami of legislation, was that the common law reflected the common lore, the collective common sense of the men who sat on

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[10] Quoted by Elizabeth Oldfield, ‘What children’s stories tell us about our values (1) The Mousehole Cat and a life of love and courage’.
[11] Oldfield, ‘What children’s stories tell us about our values (1)’, available online at: https://morefullyalive.substack.com/p/what-childrens-stories-tell-us-about
[12] A.S. Byatt, ‘Foreword’ to Terry Pratchett, *A Blink of the Screen: Collected Shorter Fiction* (London: Corgi, 2013).
[13] C.S. Lewis would be disappointed to learn that some readers had such a reaction to his Narnia stories. He was insistent that he did not start out with a list of basic Christian truths which he then sought to allegorize, but rather that he began with images and as he wrote stories about those images the Christian “element pushed itself in of its own accord.” ‘Sometimes Fairy Stories May Say Best What’s to be Said’, in ed. Walter Hooper, *Of This and Other Worlds* (London: Wm Collins, 1982), 72-73.
[14] *Orthodoxy* (1908, repr. London: Hodder & Stoughton, 1996), 65.

the juries which decided both criminal and civil cases.[15] The common law claimed to be consonant with common morality and therefore fairy-tales, if they are teaching us good morals, are also teaching us to be good citizens.

In highlighting the claim by the common law judges to be reflecting common sense, I should highlight a delicate issue of gender politics. The common law was made by white men but the moral sentiments which fairy stories inculcated in those jurors and judges were in many, perhaps most cases, ones which they learned from the bedtime stories their mothers and other female care-givers told them. Although Angela Carter is right to point out how thin-blooded the girls and women appear in the male-curated published collections of fairy-tales, I wonder if I was alone in finding the female characters in the fairy stories I was told the most compelling and the ones whose dilemmas had the most emotional impact.

Fairy-tales teach us the importance of obeying the rules

Taboo and prohibition are key to fairy tales. For small children, they are an essential part of not merely socialisation but also survival skills. Small children need to learn that, in most instances, they need to obey the rules set by their parents and other authority figures, whether they agree with them or understand them or not. Beatrix Potter illustrates this in *The Tale of Peter Rabbit*. The price of breaking the rules and going into Mr McGregor's garden is that although Peter Rabbit escapes with his life, he loses his coat and becomes sick.[16] The trite lesson to be drawn from tales about the consequences of disobeying a prohibition is that rules are to be obeyed, and there are consequences if they are not followed. Whilst teaching children to obey rules set by those in authority is undoubtedly an important part of their education (as I remember learning for myself when I stuck a pin into an electric fire), as they grow older we want to equip them to be able also to reason independently for themselves.

Fairy-tales show us the importance of law in story

The story of *Sleeping Beauty* is one that ought to be dear to the hearts of every lawyer. Its message is the power of amending or qualifying a law. A beautiful girl is born to a king and queen. As she is a princess and this is fairyland, it is imperative that she should have a fairy

[15] The Sex Disqualification (Removal) Act 1919 ended the prohibition on female jurors. K. Crosby's research shows how the immediate impact of the change in the law varied from one location to another: 'Keeping Women off the Jury in 1920s England and Wales' (2017) 37 *Legal Studies* 695-717.

[16] 'On Fairy Stories', 142.

godmother, and why not as many as possible. So her parents summon all the fairies in the land to attend her christening, i.e. her naming ceremony. One by one the fairies come to give her their gifts. The first bestows beauty on her, the second the love of a prince, and so on, until eleven of them have spoken and only one remains to give her blessing.

Then, at that moment, the doors to the palace blow open and in comes another fairy, one who had been overlooked by the king and queen. She is the thirteenth fairy in the room.[17] She comes in to the room, goes over to the child, and instead of giving a blessing, pronounces a curse on the girl. The wicked fairy declares that one day the child will cut her finger on a spindle and will fall asleep forever. Then, as quickly as she had come, the wicked fairy departs. The king and queen are horrified, and turn to the fairies for help. The eleventh who have already given their gifts shake their heads, there is nothing more they can do. Then the twelfth steps forward. She cannot totally undo the curse, but she can temper it, by announcing that the girl will not die, but will sleep until wakened by a kiss from a prince.

The first thing this story teaches is one of the laws of fairy-tales themselves. Although characters in fairy-tales can defy the laws of nature as they operate in this world, there have to be some rules in fairyland. Michael Ward says C.S. Lewis understood that "the best fairy-tales have a very strict logic to them. They had to possess order and pattern or else they wouldn't please their readers. Just because a fairy-tale is full of magic and marvels doesn't mean that things can be 'arbitrary'."[18] Tolkien makes the same point: the storyteller "makes a Secondary World which your mind can enter. Inside it, what he relates is 'true': it accords with the laws of that world. ... The moment disbelief arises, the spell is broken; the magic, or rather art, has failed."[19]

Sleeping Beauty does not work as a story if, once the wicked fairy has pronounced her curse, the other fairies are able to come forward and simply cancel out her spell. All narrative suspense dissolves if the reader thinks that at any point in the story, some new super-power can be deployed to overcome without rhyme or reason whatever obstacle has appeared. Even

[17] Though in Charles Perrault's version of the story, there were seven fairies originally invited and the wicked fairy is number eight.
[18] Michael Ward, *The Narnia Code: C.S. Lewis and the Secret of the Seven Heavens* (Carol Stream, IL: Tyndale House Publishers, 2010), 9, referring to Lewis's argument in 'On Stories' in *Of This and Other Worlds*, 37.
[19] Tolkien, 'On Fairy-Stories', 146. What I, as a lover of cricket (a game famous for the intricacy of its laws) enioy is that Tolkien goes on to say at 147: "A real enthusiast for cricket is in the enchanted state ... [The best I can achieve] I, when I watch a match, ... [is] willing suspension of disbelief".

the appearance of *Deus ex machina* at some crucial point in the narrative (think Tolkien's eagles at the conclusion of both *The Hobbit* and *The Lord of the Rings*) only works (insofar as it does in the latter instance) because the reader has been convinced up until that point of the sheer impossibility of such an intervention.[20]

In *Sleeping Beauty* itself, lawyers find their hero in the twelfth fairy. The twelfth fairy introduces the proviso, the exception, into the command. The eleventh fairy's curse: "You will sleep forever", becomes "You will sleep forever, unless wakened by a kiss." Such an analysis does not, of course, render *Sleeping Beauty* an entirely positive story. Kristen Bell, who played a Disney princess in *Frozen*, always asks her children when they are watching *Sleeping Beauty* together, "Don't you think that it's weird that the prince kisses Snow White without her permission? … Because you cannot kiss someone if they're sleeping!"[21]

The Lambton Worm and the importance of keeping promises

Many fairy stories such as *Cinderella* (though not *Sleeping Beauty*) teach the law of just desserts.[22] They reinforce the moral sentiment that it is right that villains receive their comeuppance. G. K. Chesterton expressed the importance of this message in this way: "Fairy-tales do not tell children the dragons exist. Children already know that dragons exist. Fairy-tales tell children the dragons can be killed."

One aspect of the law of just desserts which is a key part of the moral order of fairyland is that promises must be kept. Through fairy-tales, we are taught the importance of not making promises you cannot keep and the dire consequences of breaking one's promises. The Brothers' Grimm story *The Frog Prince* is a fairy-tale which teaches this message (the princess does not want to keep her promise to kiss the frog who retrieved the golden ball she lost in the river). The folk tale from the North-East of England, 'The Lambton Worm', is one example of the uncompromising nature of that message. In exchange for learning the secret of how to kill a dragon that has been terrorising the region, John Lambton promises a witch that he will kill the first living thing he sees after vanquishing the dragon. When the first

[20] It is perhaps for this reason, suggests Elizabeth Oldfield, that parents feature so little in great children's literature: 'What children's stories tell us about our values (2) Malory Towers and wanting to be a brick'. Available online at https://morefullyalive.substack.com/p/what-childrens-stories-tell-us-about-4fd.
[21] Quoted in Andrew Pulver, "'Rescue yourself!'.

thing to run towards him is his son and not the dog he had intended to kill, he cannot bring himself to do so. The consequence of his failure to keep his bargain is that nine generations of his family are cursed not to die peacefully in their beds.

Rumpelstiltskin

What fascinates me, however, is the exception that proves the rule. In the story of Rumpelstiltskin, a miller boasts that his daughter can turn straw into gold. The king, hearing this rumour, decides to test its authenticity by locking the girl up in a tower overnight. If she is able to turn straw into gold, she will be made queen. If not, she will be executed. That night, Rumpelstiltskin comes to the girl and offers to turn the straw into gold but at a terrible price. He demands that she agree to hand over to him her first-born child. Despairingly, the girl agrees. Rumpelstiltskin spins the straw into the gold, the girl marries the king and, some time later, she gives birth to a son. Here the story of Rumpelstiltskin reaches its denouement, for Rumpelstiltskin returns to claim what he says is rightly his. After all, the girl did promise him her first-born child. He delivered on his half of the bargain by spinning the straw into gold, and now it is time for her to perform her half of the bargain: *Pacta sunt servanda* (promises must be kept). On a mechanical application of that rule, the baby boy is handed over to Rumpelstiltskin and never seen again. With the exception of Rumpelstiltskin, no-one else lives happily ever after.

And yet, the sympathies of the audience are not with Rumpelstiltskin but with the Queen and her baby boy. The line between good and evil is signposted in the story through the characterisation of the beautiful Queen, the innocent baby boy and the description of Rumpelstiltskin as an ugly dwarf (this problematic equating of beauty with morality is not applied to the two men who are responsible for framing the dilemma for the woman at the centre of the story: the king and the miller).[23]

Unlike the message in many fairy-tales, in *Rumpelstiltskin*, we are supposed to recognize that it would be wrong for the Queen's promise to be enforced. But exactly why would it be wrong for the Queen's promise to be enforced? The immediate answer is because it was

[22] Tolkien criticised Andrew Lang's fairy-stories for not doing so but instead offering "mercy untampered by justice": 'On Fairy-Stories', 153.
[23] 'The Ugly Duckling' and 'The Frog King' are examples of fairy-tales which teach the opposite truth, that what appears to be ugly may not be so.

extracted from her under duress. The Queen only made the promise that she did because she was under threat of execution (though this threat was not made by Rumpelstiltskin and he had no part in the girl's arranged marriage to the king!) And yet, there are further questions which we might ask. Would we have the same reaction if Rumpelstiltskin had demanded from the Queen not her first-born child but a lock of her hair, or a quantity of silver, or a horse? The problem is not the mere fact of the promise made in extreme circumstances but rather its extreme nature. The Queen promised something she would not otherwise have promised and which, perhaps, she had no right to promise. The lives of other human beings are not a proper subject for contractual bargaining. The story of *Rumpelstiltskin* helps us to explore the issues philosopher Michael J. Sandel examines in his 2013 book, *What Money Can't Buy: The Moral Limits of Markets*.

The story of Rumpelstiltskin requires its audience to go through the following process of practical reasoning:

1) To formulate the simple rule: Promises must be kept, and to evaluate its moral status;
2) To consider the facts of the promise made by the Queen to Rumpelstiltskin and to consider whether it falls under the simple rule;
3) To evaluate the outcome of applying the simple rule to the promise made by the Queen to Rumpelstiltskin;
4) To re-formulate the rule into a more complex rule such as promises must be kept unless they have been extracted under duress and or result in an immoral or unconscionable bargain.

That is the exercise which judges are sometimes required to perform when they are adjudicating. They are required to identify and evaluate the legal rules which appear to apply; to identify and evaluate the factual situation before them; to identify and evaluate the outcome of applying the legal rules initially identified to that factual situation; and then, finally, to consider whether it is, all things considered, necessary to re-formulate those legal rules.

As the story of Rumpelstiltskin teaches us, a simple rule which says that a party is contractually bound by any document they have signed is, for all its merits in terms of clarity, a bad rule insofar as it fails to recognise the circumstances of duress, undue influence,

unconscionability, mistake and incapacity which may render it unjust to hold someone to the terms of that document.

Fairy-tales need not be crude morality tales, in which the audience are spoon-fed pre-processed answers. They can instead be invitations for older children to begin to engage in sophisticated practical reasoning.

Bluebeard – the escape from tyranny

Rumpelstiltskin introduces us to another recurrent theme in fairy-tales: power and its abuse. Sometimes power is wielded by monsters, and the audience are not invited to recognise in it anything more than brute violence. At other times, the power is exercised by human beings. Foolish kings, wicked step-mothers, and abusive husbands are all archetypes in fairy-tales. Rules are laid down which are unjust or even tyrannous.

One of the most famous fairy-tales of all, *Cinderella*, begins with the heroine suffering under tyranny. The rules of the household in which she lives are not designed to enable everyone in that microcosm of a kingdom to flourish. Instead, Cinderella is forced to endure a life of drudgery for the benefit of her step-mother and step-sisters.

We have already seen how prohibition and taboo have great mythical significance and are therefore key plot points of many fairy stories. We have already commented on the instruction to obey those who are older and wiser than ourselves. All of these are issues in *Bluebeard*, the French folktale which Charles Perrault gave immortality to when he included it in his *Histoires ou contes du temps passé* in 1697 and which Angela Carter re-told as *The Bloody Chamber*. A young woman, at that liminal age between sexual and emotional maturity, agrees to marry a much older, wealthier man. The power dynamic and the unwholesome, potentially abusive, nature of the relationship are already framed for us. This tension has not gone away in our societies. Anna Billers aptly describes *Fifty Shades of Grey* as a Bluebeard story.[24]

When Bluebeard announces to his innocent young wife that he must leave the country (and Carter captures the pathos of this moment by him spilling the news immediately after the

[24] http://annabillersblog.blogspot.com/2017/04/fifty-shades-of-grey-is-bluebeard-story.html. Interestingly, Biller quotes Maria Tatar as having separately come to the same conclusion.

consummation of the marriage), the rich old man gives his wife the keys to his castle. Although seemingly handing his possession the keys to his treasure, Bluebeard re-asserts his dominance by telling her that she can go anywhere in the castle, except one room. During Bluebeard's absence, the woman's curiosity eventually gets the better of her and she opens the forbidden chamber. In there, she finds the corpses of his previous wives.

Some scholars see *Bluebeard* as a fable teaching wives the importance of being obedient to their husbands, but I do not find that interpretation persuasive. If the young woman had not opened the door to the bloody chamber, she still would not have survived. In fact, she would have remained ignorant of her husband's sadistic nature and so even more vulnerable. I am more impressed by Maria Tatar's reading in *Secrets beyond the Door*.[25] *Bluebeard* is a warning about not blindly obeying rules and taboos which are operating to protect abusers.[26]

In *Bluebeard*, the element of the magical and the fantastical is attenuated. The fantastic elements of the story are reduced to the initial sense the woman has that the rich suitor is a Prince Charming come to rescue her from a life of poverty and, in some versions of the story, her inability to remove the traces of her visit to the Bloody Chamber so that, when her husband returns, she cannot deny that she disobeyed his instruction.

At this point, we can step beyond the borders of fairyland into the adjacent country of ancient myth. One of the myths that continues to resonate today is that of Antigone.[27] Antigone is one of four child born of Oedipus's unknowingly incestuous relationship with his mother Jocasta. The others are her two brothers, Eteocles and Polyneices, and her sister Ismene.

After their father's death, there is some sort of agreement between Eteocles and Polyneices about who will rule Thebes. Perhaps the brothers were twins and agreed to rule jointly, perhaps they agreed to take turns. Whatever the original agreement or other reason for the argument, Eteocles refuses to share power. Polyneices raises an army and attacks the city. In the battle for control, both brothers are killed. Jocasta's brother, Creon, is the last men

[25] Maria Tatar, *Secrets beyond the Door: Bluebeard and His Seven Wives* (Princeton University Press, 2004).
[26] Maria Tatar, *The Classic Fairy Tales* (London: W. W. Norton & Company, Inc., 1999).
[27] Ali Smith, *The Story of Antigone* (London: Pushkin Children's Books, 2015); Anne Carson, *Antigonick* (New York: New Directions, 2012); Seamus Heaney, *The Burial at Thebes. Sophocles' Antigone.* (London: Faber & Faber, 2004).

standing, and becomes king. Creon's first order of business is to declare Polyneices a traitor and to order that his body be left unburied.

At this point in the narrative, the two sisters, Antigone and Ismene take centre stage. Ismene, the seemingly law-abiding sister, reluctantly accepts Creon's command. Antigone, by contrast, sees Creon's order as contrary to the will of the gods. She defies Creon, buries Polyneices and, as a consequence is sentenced to death by Creon.

Antigone's defiance of Creon's orders is not savage or lawless. Antigone asserts that there is a higher law which limits Creon's power to command. Her obligations to ensure that her dead brother receives a respectful burial trump Creon's laws. Creon's command is a violation of *dike*, the order of the universe. It is therefore Creon who is acting lawlessly, and he is portrayed as a tyrant in Geoffrey Chaucer's *The Knight's Tale*, and in its later dramatic adaptation, *The Two Noble Kinsmen*, written by William Shakespeare and John Fletcher.

Conclusion

In this lecture, we have ranged far and wide through Fairyland. The first thing we explored was how law and banking are 'make-believe', human institutions which depend on our belief in their effectiveness in order to be made effective. The fact that law and banking are make-believe reminds us of the power of the imagination. As psychiatrist and neuroscientist Iain McGilchrist reminds us in his *magnum opus*, *The Matter With Things*, imagination, emotion, and intuition are key components of practical reasoning, at least as important as explicit reasoning.[28] "Human cognition is never just abstract and mechanical, but must be personal as well. As such, it involves not just calculating and categorising, but feeling and judging, and that this is *essential* to our humanity." (*TMWT* p.873). Fairy-tales help us to imagine what it would be like to be in Cinderella's shoes, to walk through the woods as Red Riding Hood, or to face the agonising choices of the young woman at the centre of the drama in *Rumpelstiltskin.*

I have sought to argue in this lecture that fairy-tales are a teaching aid for helping us to learn the importance of obeying the law and of keeping our promises. But fairy-tales also train the moral emotions, they can teach us to empathise, and they can give us opportunities to engage

in practical reasoning. Fairy-tales not only teach us what the rules are and the consequences of disobeying them, fairy-tales can also teach us when it is right to disobey the law, when a promise should be broken, and when the demands of justice trump the commands of the rich and powerful.

C.S. Lewis, who read a lot of books in his lifetime, commented that: *"No book [with the exception of books of information] is really worth reading at the age of ten which is not equally (and often far more) worth reading at the age of fifty"*.[29] Ours is not an age of innocence. We cannot read fairy-tales without the hermeneutic of suspicion lurking on our shoulder. Ours is an age attuned to the hidden agendas, the subliminal messages, and the negative evaluations encodes in fairy-tales. There is no way back to innocence, and the alternative of ignorance is not an attractive destination. Nonetheless, I continue to think that fairy-tales are worth reading, even if or especially if you are fifty year old lawyer like me. The problematic elements in fairy-tales should be a reason for discussing the assumptions made in the stories with our children, not a reason for refusing to read the stories at all. We can profit from the lore, which can speak prophetically to us all, even to lawyers and to little children who will all grow up into a world shaped by law and haunted by wolves and fairy goldmothers.

Post Scriptum

Let me leave you with one final cautionary tale: if you are going to prepare a lecture and PowerPoint in good time before speaking at Cambridge University, remember to do at least one of the following three things: print out your lecture notes, email your Presentation to your host, or upload both your lecture notes and your Presentation to the Cloud. Otherwise, you might find yourself having to re-write your lecture notes and your Presentation from scratch.

Biography

David McIlroy (Gonville & Caius 1990) is a practising barrister and Head of Chambers at Forum Chambers. He also Global Distinguished Professor of Law at the University of Notre Dame and Visiting Professor at the Central for Commercial Law Studies, Queen Mary

[28] Iain McGilchrist, *The Matter With Things: Our Brains, Our Delusions, and the Unmaking of the World* (London: Perspectiva, 2021), 549.
[29] C.S. Lewis, 'On Stories', in *Of This and Other Worlds*, 38.

University of London. His recent lectures include “Wrestling with the gods in Discworld” and “Mere Legality: C.S. Lewis on Objective Morality, Natural Law, and the Rule of Law”.