What Zombies Can Teach Law Students: Popular Text Inclusion in Law and Literature

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by Thomas E. Simmons*

"You can't kill someone who's already dead."¹

I. INTRODUCTION

The recent spike in tales about zombies has generated inspired responses from legal scholars.² Films, such as World War Z³ (based on
a fan-favorite novel), and television series, such as *The Walking Dead* (based on a comic book that routinely flies off the shelves), have captured the imaginations of viewers. These and other zombie stories make for productive legal critiques.

Zombies offer some of the same possibilities for exploring the application of legal principles as caped superheroes or Frankenstein's monster. While zombies are horrifying, infectious, flesh-eating ghouls, zombies as a construct are one-dimensional relative to the complex dualism of a werewolf or the variegated sexuality of a vampire. A world where humans face a zombie apocalypse, however, presents a rich tableau for exploring fundamental principles of legal organization, structure, and procedure. This Article teases out some of that potential, suggesting teaching techniques and methodologies that demonstrate the possibilities of the judicious and meaningful inclusion of references and texts, such as *The Walking Dead* television and comic book series, in a law school curriculum.

As an assistant professor at a law school, I occasionally sprinkle references to zombie narratives in place of the standard players: "A", "B", and "C." For example, to illustrate the present-interest concept for annual exclusion gifts in trust, I display comic book representations of key characters, provide their names and relationships to one another, then outline a scenario from *The Walking Dead* where Rick Grimes makes a gift in trust to Shane Walsh as trustee to pay to Rick's wife, Lori, for life, remainder to son, Carl. The point here is that the remainder gift to Carl, while a completed gift and a vested interest, funding ambitions for a casebook with the more than 300 federal case opinions using the word "zombie" or variations thereof).

7. See DREZNER, supra note 2, at 3 ("Clearly, the living dead have lurched from marginal to mainstream."). According to a 2009 estimate, a third of all zombie films were created in the past decade. Id. at 2.
9. I will use the term “text” to include narratives portrayed in print, in film (whether movies, videos, or television productions), plays, and audio presentations. Arguably, texts may also include video games.
would not qualify as a present interest for annual exclusion purposes.\footnote{11} I point out that this is true even though we all know that Lori's term of enjoyment from the trust is going to be abbreviated, given that she dies in episode four of season three.\footnote{12} I have only had one complaint from students related to this particular hypothetical. A student raised his hand, and frowning, said, "I haven't seen that episode yet." Spoiler alerts may therefore be in order.

Educational benefits are achieved from employing references to popular-culture plots or characters with which students have familiarity and share with other students, even students with diverse cultural, social, and geographical backgrounds. The visual cues that accompany a hypothetical that utilizes actual imagery of those characters enhances learning for many students.\footnote{13} The technique of mapping fictional realities as frameworks for exploring new legal concepts forges connections with students, while allowing the exploration of the new and novel against a background of the familiar.\footnote{14} It grabs the attention of students.\footnote{15} It grounds new concepts in recognizable contexts.\footnote{16} It cultivates a shared narrative as common ground for students of various worldviews and experiences.

In addition to utilizing popular narratives in illustrative hypotheticals as an educationally sound technique for introducing legal concepts, "what if" scenarios from popular texts can be framed as a way of testing the limits of a doctrine once it has been effectively mapped out for students. This Article's various suggestions may be employed by law school professors by incorporating lessons from the exploration of the zombie mythos within an existing, recognized hornbook course—specifically, by referencing zombies or particular zombie texts to

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\footnote{11} See id.; see also John L. Price & Samuel A. Donaldson, Price on Contemporary Estate Planning § 2.5.2 (2014). \\
\footnote{12} The Walking Dead: Killer Within (AMC television broadcast Nov. 4, 2012). \\
\footnote{13} See Victoria S. Salzmann, Here's Hulu: How Popular Culture Helps Teach the New Generation of Lawyers, 42 McGeorge L. Rev. 297, 299-301 (2011). "[V]isual media are necessary tools for visual-learners and excellent supplemental tools for the rest of the students. Accordingly, popular-culture references, particularly visual ones, may be the key to teaching this generation of law students." Id. at 301; see also Lenora Ledwon, Understanding Visual Metaphors: What Graphic Novels Can Teach Lawyers about Visual Storytelling, 63 Drake L. Rev. 193 (2015) (exploring Y: The Last Man as a means of improving lawyers' visual literacy). \\
\footnote{14} See Salzmann, supra note 13, at 306-07. \\
\footnote{15} See id. at 308. \\
\footnote{16} See id. at 307. "While it may be difficult to create a hypothetical that equally taps into the schemas of each individual in the class, painting the same fact scenario into a popular-culture reference that most of the students will be familiar with immediately puts a particular student at ease because he is already familiar with the context." Id.
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further illustrate various points. While teaching public health law, for example, a professor may incorporate discussions about how existing policy and governmental infrastructure may respond to a zombie outbreak.17 In a contracts course, students may puzzle over whether a zombie attack could constitute a force majeure. In an estate tax course, the impact of the undead on a transfer tax system, which relies on decedents, could be explored.18 These examples of uses of zombie texts suggest possibilities within the established curriculum, distilling lessons and discussion points relative to doctrines and procedures from a popular literary narrative.19

The productive use of zombies in a law school curriculum is not limited to hypothetical scenarios and posing "what if" questions. The content of an interdisciplinary law and literature course could be expanded to include consideration of texts that reference zombies.18 While serious, canonical works such as Dickens's Bleak House,21 Otto

18. See, e.g., Chodorow, supra note 2.
19. The most successful use of this technique can be found in a book using superheroes' narratives to explain fundamental concepts of physics. James Kakalios, The Physics of Superheroes (2d ed. 2009). The bookshelves are full of authors' attempts to adopt this approach, especially in regards to blending philosophy and popular culture. See, e.g., Slavoj Žižek, Looking Awry: An Introduction to Jacques Lacan Through Popular Culture (1992) (examining Lacan through the lens of popular culture texts such as Stephen King's Pet Sematary); 35 Star Trek and Philosophy: The Wrath of Kant (Kevin S. Decker & Jason T. Eberl eds., 2008); 68 The Walking Dead and Philosophy: Zombie Apocalypse Now (Wayne Yuen ed., 2012); see also Daily & Davidson, supra note 8 (deploying comic book narratives to illustrate legal rules); Simon Singh, The Simpsons and Their Mathematical Secrets (2013) (employing episodes of The Simpsons television show to explore mathematical concepts); The Blaug 100 Winners’ Circle, A.B.A. J., Feb. 2014, at 11, 11 (describing a blog by lawyers Jessica Mederson and Josh Gilliland, "The Legal Geeks," who "are perhaps the nation's foremost experts on the legal issues that can be studied from John Cusack movies"). Law students are therefore already "primed" for this interdisciplinary technique if they have been exposed to any of these types of books, blogs, or essays using examples from popular culture to introduce and examine difficult concepts, from physics and math to philosophy and law.
20. The most "literate" of zombie texts that might be included in a course (such as "Law and Literature"), the title of which suggests that only literature merit inclusion in the syllabus, would include works such as Brooks, supra note 4, Jane Austen & Seth Grahame-Smith, Pride and Prejudice and Zombies (2009), Daryl Gregory, Raising Stony Mayhall (2011), Alden Bell, The Reapers Are the Angels (2010), and Lindqvist, supra note 1.
Preminger's *Anatomy of a Murder*, and Kafka's *The Trial* constitute examples of literature and film that merit serious study in a course in law and literature, I will assert that lesser texts should also be included, both as a way to highlight why Martin Scorsese outshines George Romero (even if one prefers repeat viewings of Romero) and to permit students to engage with less challenging works that still contain significant "teaching moments" about the law. The willingness to include lesser works of popular culture in a law and literature course alongside the greats, like Dickens and Kafka, underscores the fact that the primary thrust of a law and literature course taught to law students should be the law. Texts should be selected by law professors not for aesthetic achievements or historical importance, but for a text's suitability in positing the study of law within a fictional narrative. Law should not be incidental to the study of literature; literature should serve the study of law. Recent scholarship under the rubrics of "law and

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22. *ANATOMY OF A MURDER* (Columbia Pictures 1959). It is not uncommon for a law and literature syllabus to include consideration of respected films. *See infra* note 49.


25. For a brief introduction to the films and influence of George Romero, see *infra* notes 34-36 and accompanying text.

26. *See Arthur Krystal, What is Literature?,* HARPER'S MAG., Mar. 2014, at 89, 94 ("[R]eason alone should be sufficient to tell us that War and Peace is objectively greater than The War of the Worlds, no matter which one we prefer to reread." (emphasis added)).

27. A single seminar devoted specifically to implications for the law deriving from a zombie outbreak might present students with an opportunity to consider the methodology developed by law and literature theorists to familiar or unintimidating narratives. I plan to deliver a presentation entitled *The Rule of Law in the Zombie Apocalypse,* open to law students as well as students from other disciplines at the University of South Dakota in Vermillion, utilizing film clips from zombie movies to emphasize and illustrate various points.

28. For arguments to include less canonical works in a law and literature analysis, see LENORA LEDWON, *Ten Kinds of Law and Literature Texts You Haven't Read,* in *TEACHING LAW AND LITERATURE* 425 (Austin Sarat et al. eds., 2011) (proposing that graphic novels and other texts be included) and Jonathan Todres & Sarah Higinbotham, *A Person's a Person: Children's Rights in Children's Literature,* 45 COLUM. HUM. RTS. L. REV. 1 (2013) (assessing Dr. Suess’s texts); see also Nick J. Sciullo, *Unexpected Insights into Terrorism and National Security Law through Children's Literature: Reading the Butter Battle Book as Monstrosity,* 3 BRIT. J. AM. LEGAL STUD. 507, 508 (2014) (arguing that Dr. Seuss’s works constitute “an explored avenue for understanding the complexities of law”).
popular culture" or "law and culture" supports this assertion. In some ways, the law and culture movement is an outgrowth of law and literature; in others, law and culture is its antithesis. First, however, to lay the groundwork for illustrations of a law and literature approach to zombie texts, an outline of the zombie mythos (for those unfamiliar with the great films of George Romero) and a brief summary of law and literature methodologies is in order.

II. DISCUSSION

A. Zombies 101

Zombies in mythology and culture can be traced back to voodoo religious practices in Haiti and elsewhere. In early films, such as White Zombie, a voodoo master transforms an innocent victim into a zombie with a potion or magic incantation. In a more contemporary film utilizing the "old school" voodoo context, The Serpent and the

29. See generally Richard K. Sherwin, When Law Goes Pop: The Vanishing Line Between Law and Popular Culture (2000) (bemoaning the negative impacts on the law from popular culture's emphasis on commodification and instant gratification). Popular culture and law theorists may examine attitudes towards the rule of law in reality courtroom television shows, how television programs demonstrating cutting edge forensic techniques influence jurors' expectations about the evidence needed to convict, or how the importance of baseball underpins its unique treatment under antitrust law; see also Richard Boyd, Narratives of Sacrificial Expulsion in the Supreme Court's Affirmation of California's "Three Strikes and You're Out" Law, 11 LEGAL COMM. & RHETORIC: JALWD 83, 86 (2014) (asserting that the Supreme Court's "acts of storytelling and narrative persuasion" govern outcomes and prescriptions more than "the coolly rational process of interpreting legal doctrine and principles").

30. See generally Robin West, Literature, Culture, and Law at Duke University, in TEACHING LAW AND LITERATURE, supra note 28, at 98. "Cultural-legal theorists do not, for the most part, examine the products of culture to unearth and then reflect on truths they may contain regarding the nature of the law. This lack is unfortunate." Id. at 99. "There has been no systematic treatment, of which I'm aware, of the possibility that cultural products, no matter how defined or conceived, might actually contain insights into the nature of law that influence jurisprudential debates." Id. at 107.

31. See generally Leah Gordon, The Book of Vodou: Charms and Rituals to Empower Your Life (2000); see also Danielle N. Boaz, Dividing Stereotype and Religion: The Legal Implications of the Ambiguous References to Voodoo in U.S. Court Proceedings, 14 SCHOLAR 251, 255 (2011) ("Haitian Vodou is a combination of rituals, beliefs, and practices that originate from Africa, indigenous Caribbean populations, and other influences.").

32. WHITE ZOMBIE (United Artists 1932). The voodoo master is played by Bela Lugosi.
Rainbow, a pharmaceutical company investigates a drug used in Haitian voodoo for use as an anesthetic.\textsuperscript{33} The modern zombie has only existed since George A. Romero’s influential 1968 film, *Night of the Living Dead*.\textsuperscript{34} Additional Romero films followed, constituting a canonical trilogy against which all other zombie films are measured.\textsuperscript{35} With Romero’s trilogy, the basic “rules” for zombie fiction were laid down: zombies are re-animated corpses hungering for human flesh, which transform their victims into zombies.\textsuperscript{36} An infected individual typically becomes a zombie by one of two paths: dying from zombie-inflicted wounds and then re-animating post-mortem, or suffering a non-lethal zombie infection (for example, from a superficial bite) and transforming into a zombie.\textsuperscript{37}

Zombies retain little or nothing of the humanity, personality, or identity of the person whose body has been reanimated; they are not themselves human. Zombies feel no pain, fail to take evasive actions to avoid harm, and are not capable of being cured. The only way a zombie can be de-animated is by a traumatic blow to the head.\textsuperscript{38} The cognitive functioning of a zombie is profoundly impaired relative to an individual. Zombies are non-verbal, their fine motor skills are nearly non-existent, and their gross motor skills are significantly impaired. They shuffle and lurch about awkwardly and without any trace of elegance or coordina-

\begin{itemize}
  \item \textbf{33.} The Serpent and the Rainbow (Universal Pictures 1988). This film was loosely based on Wade Davis, The Serpent and the Rainbow (1985), a non-fiction account.
  \item \textbf{34.} Night of the Living Dead (Image Ten 1968).
  \item \textbf{35.} Day of the Dead (United Film Distribution Co. 1985); Dawn of the Dead (United Film Distribution Co. 1978).
  \item \textbf{36.} Romero has directed additional zombie films as well, though his initial trilogy constitutes the most influential of his oeuvre. See, e.g., Land of the Dead (Universal Pictures 2005).
  \item \textbf{37.} See sources cited supra notes 34-35.
  \item \textbf{38.} Zombies can survive in nearly any environment. In *World War Z*, years after the successful resistance of the zombie outbreak, the undead continue to walk the ocean floors. Brooks, supra note 4, at 299-309. Thus it can be safely assumed that zombies, not requiring oxygen for continued animation and being unaffected by gunshots to the chest, do not have functioning cardiovascular systems.
\end{itemize}
tion. They are, quite simply, a mass of moving rot. The origin or cause of this affliction is typically vague or unimportant.

Subsequent films have toyed with these basic Romero conventions, but left them largely intact. For example, Dan O'Bannon's *Return of the Living Dead* introduced brain-eating (that is, not simply flesh-eating) zombies. *28 Days Later* portrayed fast-moving zombies. Director Peter Jackson's *Braindead* utilized zombies who could not be dispatched by the typical methods and who could love one another.

Despite these variations, of critical importance to the zombie mythos in connection with the law are the basic precepts of zombie lore. Zombies are not human; in fact, the human whose shell has been reanimated is deceased and cannot be revived. Typically, a corpse only reanimates as a zombie several minutes or hours after medical death has occurred.

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39. Jennifer M. Proffitt & Rich Templin, “Fight the Dead, Fear the Living”: Zombie Apocalypse, Libertarian Paradise?, in THINKING DEAD: WHAT THE ZOMBIE APOCALYPSE MEANS 29, 29 (Murali Balaji ed., 2013). Admittedly, the level of cognitive complexity in zombies could be argued, especially in view of the diverse narrative approaches to zombies. But see Klepak v. State, 622 So. 2d 19, 20 (Fla. Dist. Ct. App. 1993) (per curiam) (disapproving of an assistant state’s attorney’s reference to jurors as “lobotomized zombies”). Given that the prosecutor’s choice of words was malapropos in open court or otherwise, it suggests an underlying assumption that all zombies are not created equal, cerebrally speaking. See id. It is proposed here that zombies have very low cognitive functionality. See infra notes 80-87 and accompanying text. To explain the often observed repetitive behaviors exhibited by some zombies, George Romero has proposed that zombies exhibiting human-like behaviors, like sweeping a sidewalk or trying to hang up laundry, are merely exhibiting “remembered behavior,” more as a reflex or instinct than conscious thought. George A. Romero & Alex Maleev, *Welcome to New York, The Empire of the Dead*, EMPIRE OF THE DEAD 1, at 5 (Marvel Comics, Mar. 2014).

40. *Night of the Living Dead* contains a tentative suggestion that the phenomenon was caused by NASA’s destruction of an exploratory space probe returning from Venus with high levels of radiation. NIGHT OF THE LIVING DEAD, supra note 34; but see Brooks, supra note 4, at 42 n.4 (explaining the etiology of the zombie affliction as a virus); 28 DAYS LATER (DNA Films 2002) (tracing the zombie outbreak to a virus).

41. RETURN OF THE LIVING DEAD (Orion Pictures 1985).

42. 28 DAYS LATER, supra note 40.

43. BRAINDEAD (WingNut Films 1992) (released in the United States as *Dead Alive*).

44. Living individuals who transmogrify into zombies without dying first admittedly present a more difficult scenario unless medical death could be established as occurring as a part of the transmogrification process. This seems more probable than not since zombies are typically portrayed as having no cardiovascular or respiratory function. See supra note 38. Thus, even individuals who transform directly into zombies without an intervening period while they lie dormant as mere pre-animation corpses would be properly categorized as decedents. But see Chodorow, supra note 2, at 1214 (arguing that “[i]t seems a stretch to conclude that those who transform seamlessly into zombies should be considered dead” and that classifying those zombies who transformed into zombies without a discrete event of death would “open the door to declaring dead a wide range of people we currently
Second, zombies possess few, if any, human traits—they operate on a level akin to a dog in terms of their ability to reason or respond to their environment. However, zombies possess an un-dog-like singularity of purpose and lack any compassion, affection, or attachment. They are imperfectly animated—shuffling and disengaged. Zombies do not partake of the human and yet this fact underscores their ability to shock and to intimidate. They look like humans, perhaps humans that we knew and loved, but they are not human. The human whose shell a paltry zombie consciousness inhabits is dead. Whatever animates a zombie (a virus perhaps) has entirely displaced the former person, and that person is, in fact, deceased. Zombies, therefore, invoke nothing in the way of sympathy or humanity, although they do seem to enjoy some basic level of consciousness and will directed exclusively towards consuming human flesh.

Finally, zombies present a serious and powerful threat to human safety with only three possible responses from survivors: flight from the threat, containment of the threat, or destruction of the threat. We can run from the zombies, we can trap or ensnare the zombies, or we can neutralize (de-animate or “kill”) the zombies. Given the disparities in zombie populations to surviving humans, the most effective response, at least in the short term, is to avoid zombies by taking refuge in places the zombies cannot reach. Thus, in most zombie texts, efforts tend to center less on extermination of the threat posed by zombies and more on judicious avoidance of the threat.

Consider to be alive” such as individuals who have “suffered a personality change, physical disability, or decreased brain function,” including individuals with Alzheimer’s disease. Professor Chodorow’s argument rests on the assumption that these “seamless zombies” (my term), though functionally different from living individuals, “never lose heart or brain function.” *Id.* This assumption cannot be sustained in light of the overwhelming majority of zombie texts demonstrating that a zombie cannot be killed or even significantly slowed by shots or blunt trauma to the chest. If zombies are unaffected by destruction of all cardiovascular and respiratory function, it follows that they never had functional cardiovascular or respiratory function to start with (or at the least that zombies function without them and such systems are superfluous to the animation of the undead).

45. See Brooks, *supra* note 4, at 63-64 (describing how survivors begin constructing homes on stilts with retractable staircases connected to neighbors with retractable walkways); The Walking Dead: Seed (AMC television broadcast Oct. 14, 2012) (narrating Rick’s group’s occupation of a high-security prison with its fences and guard towers to keep zombies from infiltrating their camp).
B. Law/Literature Methodologies

The use of literature in teaching about the law has grown significantly since its recognition began to take hold in the 1970s. The Association of American Law Schools (AALS) Directory of Law Teachers reported that in 2010 there were 157 law and literature professors in American law schools. The broad scope of law and literature and its various approaches belies neat summary; thus a brief attempt here, must suffice which intentionally bypasses some of the great variety of scholarship and theory that has developed since the 1970s.


49. I do not attempt to distinguish between the approaches of law and literature methodologies and law and film interdisciplinary studies. Although films and comic books are very different art forms than novels, the approaches adopted for analyzing film as compared to literature are relatively inconsequential. Typically, films are subjected to a legal analysis by means of looking "closely at a film or a set of films as cultural objects which, when engaged critically, help us think about law as an evolving web of social and political connections and, in light of those connections, about its capacity for justice." Jessica Sibley, The Politics of Law and Film Study: An Introduction to the Symposium on Legal Outsiders in American Film, 42 SUFFOLK U. L. REV. 755, 755-56 (2009). Some law professors introduce a film or two in a law and literature course. Professor Daniel Solove of George Washington University incorporates Anatomy of a Murder. Daniel Solove, Law & Literature: Course Description, GEORGE WASHINGTON UNIV., http://docs.law.gwu.edu/fac-web/isolove/Law-Humanities/Law-Literature-Syllabus_files/Law-Literature-Syllabus-
Two primary categories of the interdisciplinary approach of law and literature are recognized: one, law as literature, approaches judicial decisions as a distinct literary genre; the other, law in literature, examines literary texts with a legal lens or for lessons valuable to lawyers and students of the law. The former may be law as taught within a university's English department, where the language of Oliver Wendell Holmes is held up as the finest prose. The latter may be literature as taught at a law school, where the narrative structure of Angelou or Dickens is examined by the legally trained and the legally oriented for the narrative perspicuity or opaqueness of the language.

Within law in literature, various methodologies vie for supremacy. Some contend that lawyers benefit from close readings of literature in rather abstract ways, such as developing empathy or learning to suspend judgment and consider various viewpoints. Certainly literature succeeds in demonstrating the impact of the law on individual subjects, something statutes or regulations cannot do, and case law can do only imperfectly. Lawyers who read literature are exposed "to the complexity of the human condition." Reading literature can also teach attorneys and law students how to write well, how to read carefully, and how to tell a story or communicate an idea.

Literature makes frequent references to law within a story as a plot device and a foil for characters and their actions. Judge Posner notes
“that the frequency of legal subjects in literature is partly a statistical artifact and that law figures in literature more often as metaphor than as an object of interest in itself, even when the author is a lawyer (like Kafka) or a law ‘buff’ (like Melville).” Thus, despite the fact that literature is full of stories with lawyers as characters and courtrooms as settings, locating useful narratives of the law may be easier said than done. Just because there is a trial scene in a popular novel does not mean that exploration with legal tools will necessarily prove worthwhile.

The best texts for an interdisciplinary law-literature focus are those that satisfy at least three important criteria. First and foremost, works should be selected that resonate with readers and viewers. The stories that move us and speak to us make better platforms for exploring legal issues than those that bore us or confuse us. Students will naturally devote closer attention to texts that get under their skin.

Second, the finest works of film and fiction contain greater depth for exploration. Camus, Kafka, and Shakespeare are frequently utilized in law and literature courses; these authors easily satisfy this second criteria as great works of art, but may present challenges for casual readers. Granted, the effort is worth it. Sifting The Iliad through


54. It should be acknowledged that, given the multitude of texts that could be selected for inclusion on a law and literature syllabus, text selection based on individual preference should include consideration of the instructor’s own preferences and biases. If a professor leathes Camus, it will be difficult to communicate an excitement and interest for the author. The professor would be better off selecting from the many texts that are about law that will not suffer from the professor’s poor opinion. Thus, the argument for inclusion of popular zombie texts in a law and literature class should take account of the professor’s personal views and opinions of the material.

55. See Krystal, supra note 26, at 94 (“[W]hile lesser writers summon enthusiasm or indifference, great writers power their way into our consciousness almost against our will.”).

56. For uses of Camus’s The Stranger, see Posner 3d ed., supra note 46, at 60-70. For uses of Kafka’s The Trial, see supra note 23 and Christine Bell, Teaching Law as Kafkaesque, in Tall Stories? Reading Law and Literature 11 (John Morrison & Christine Bell eds., 1996) (defending the use of Kafka’s writings to illustrate legal points). For uses of Shakespeare’s Measure for Measure (which, along with The Merchant of Venice, is typically viewed as the most “legal” of Shakespeare’s plays), see Constance Jordan, Interpreting Statute in Measure for Measure, in Shakespeare and the Law 101 (Bradin Cormack, Martha C. Nussbaum & Richard Strier eds., 2013) and Andrew Majeske, Equity’s Absence: The Extremity of Claudio’s Prosecution and Barnadine’s Pardon in Shakespeare’s Measure for Measure, 21 Law & Literature 169 (2009).

the interdisciplinary sieve of law and literature can be profitable, but at the cost of the loss of some readers for whom the text is (sadly) too intimidating.\textsuperscript{58}

Third, an ideal choice of film or fiction is one that bears fruit when subjected to a legal analysis. Some works of fiction are obvious choices as they address matters of justice, of judgment, of procedure, of the duties of an adversary, or of the thrill and transformative potential of the trial. These are works that deal explicitly with the law, lawyers, and trials. Melville's \textit{Scrivener},\textsuperscript{59} \textit{My Cousin Vinnie},\textsuperscript{60} John Grisham's novels,\textsuperscript{61} \textit{To Kill a Mockingbird},\textsuperscript{62} \textit{A Jury of Her Peers},\textsuperscript{63} and Act IV of \textit{The Merchant of Venice}\textsuperscript{64} are all obvious and profitable choices for a law and literature analysis since they are about lawyers, courtroom trials, or both.\textsuperscript{65}

But again, as Judge Posner points out, "[O]ne must be careful about the meaning of 'about.' Literature may contain many details of vanished social customs without being 'about' them, or without being just about them."\textsuperscript{66} A courtroom trial that takes place within a novel may be merely a plot device (a trial, like a boxing match or a road trip, typically serves a plot well), or it may serve as a metaphor for something other than a literal trial. Literature which is truly about justice, laws, or trials speaks to universal conflicts and truths. But the thematic qualities of a text should rarely be promoted as a vehicle for teaching the laws of evidence, the Uniform Commercial Code, the \textit{Erie} doctrine, or any law in particular, even when the narrative employs a particular

\footnotesize{58. For a law and literature approach to \textit{The Iliad}, see POSNER 3d ed., supra note 46, at 99-103; WHITE, supra note 46, at 153, 214.
62. HARPER LEE, \textit{To Kill a Mockingbird} (1960).
64. WILLIAM SHAKESPEARE, \textit{The Merchant of Venice} act 4.
65. Other excellent choices include the trial scenes in \textit{Alice and Wonderland} and in Saint John's Gospel. LEWIS CARROLL, \textit{Alice's Adventures in Wonderland} 117-28 (Pennyroyal ed., 1982) (1865); John 18:19-38.
66. POSNER 1st ed., \textit{supra} note 53, at 75 (emphasis added).}
legal doctrine or procedure as plot, setting, or device.\textsuperscript{67} Literature is not a substitute for the study of the law as law; law cannot be taught exclusively through literature. Yet the study of law, by its very nature, can deemphasize the ways the law actually interfaces with people. Literature unearths "the meanings of law in the lives of its subjects."\textsuperscript{68} In that regard, it can teach us perhaps the most important lessons about the law—the impact of the law on us as individuals—and if we overlook this, how can we be great lawyers or great teachers of law?

A text is best suited to a law and literature analysis when it is about a universal truth or conflict with implications for the law.\textsuperscript{69} In this regard, \textit{Oedipus Rex}\textsuperscript{70} works particularly well in illustrating the uncompromising tenets of strict liability doctrines, the horror of involuntary wrongs, and the responses to those wrongs in which we all participate, though it is not a play that utilizes lawyers as characters nor a courtroom or law office as a setting.\textsuperscript{71} Indeed, in recent decades

67. \textit{But see} \textit{Body Heat} (Warner Brothers 1981) (containing a narrative constructed around the rule against perpetuities (RAP)). However, the exception proves the rule insofar as it has been pointed out that the film's understanding and employment of RAP is actually flawed. \textit{See} Michael Asimow, \textit{Estate Planning and Body Heat}, UNIV. OF SAN FRANCISCO (Jan. 1998), http://usf.usfca.edu/pj/articles/BodyHeat.htm. \textit{The Descendants} contains a better use of the rule against perpetuities insofar as its legal correctness. \textit{The Descendants} (Fox Searchlight Pictures 2011); \textit{see also} Randall W. Roth, \textit{Deconstructing The Descendants: How George Clooney Ennobled Old Hawaiian Trusts and Made the Rule Against Perpetuities Sexy}, \textit{48 REAL PROP. PROB.} \& \textit{TR. J.} 291 (2013) (outlining the historical background on which the film was based).

68. West, \textit{supra} note 30, at 100. "Literature contains insights into the nature of law not readily found elsewhere." \textit{Id.} at 100-01.

69. Some works of fiction work particularly well in a law and literature setting because they utilize laws and courtrooms as settings or as plot devices, but simultaneously are about much broader and universal problems and how the law and those problems interact for the characters and for the reader. Dickens' \textit{Bleak House} is the "perfect" work of literature in this regard. \textit{See} POSNER 1st ed., \textit{supra} note 53, at 129 (noting that although \textit{Bleak House} criticizes a particular legal procedure—that of chancery— it is also "a metaphor for broader problems of human selfishness and indifference"). However, teaching \textit{Bleak House} in a law and literature class presents special difficulties. Although Dickens is not nearly so challenging in terms of the density of language as Shakespeare (and to many is more enjoyable than Camus) \textit{Bleak House} is long—approximately 354,443 words long. Professor Robert Ferguson of Columbia Law School includes \textit{Bleak House} in his Connections of Law and Literature course by requiring students to have read the text prior to the beginning of the course. \textit{See} L6500, \textit{Connections of Law and Literature: Section Information}, COLUMBIA LAW SCHOOL, http://web.law.columbia.edu/courses/L6500#.LUvUwarSa-Sp (last visited Aug. 22, 2014).


71. "Absolute liability [in \textit{Oedipus Rex} makes law a more effective metaphor of necessity—of the external world that bears down on people and ruins their dreams."
law and literature scholarship has largely abandoned examination of legal novels.\textsuperscript{72} Ultimately, I too am less interested in how texts describe legal institutions than in how institutions, lawyers, and their societal impact are illuminated by fiction. I am more interested in Dickens's portrayals of characters embroiled in chancery than what Dickens's texts teach us about the functioning or details of chancery's procedures. Fiction can teach things about aspects of the law both good and bad. The law itself, because of its inherent abstractions, is ill equipped to reveal its flaws and its achievements. Law students, having mastered how to think like lawyers, operate on high levels of abstraction and eschew the results lay persons might predict in favor of what the law requires. Law students also need to remember how to deviate from technical abstractions, consider that law is nothing more than a branch of the humanities, and descry that law, the most human of any endeavors, has a heart.

Zombie texts present an excellent platform for this kind of humanized legal analysis, despite falling short of the second criteria (that is, zombie stories are seldom characterized as fine works of art; \textit{World War Z} is good, but it is not \textit{The Brothers Karamazov}\textsuperscript{73} good).\textsuperscript{74} Zombie stories are accessible; thus, students may be more excited to talk about the latest installment of a popular television show\textsuperscript{75} than \textit{Billy Budd}.\textsuperscript{76} Moreover, a zombie world offers unique opportunities for exploring the values of the law when society breaks down.\textsuperscript{77}

\textsuperscript{72} West, supra note 30, at 103. Focus has turned instead to hermeneutics. \textit{Id.}; see also Austin Sarat, Cathrine O. Frank & Matthew Anderson, \textit{Introduction to Teaching Law and Literature}, supra note 28, at 1, 2 (noting “the rise of new historicism and cultural studies in the 1990s”).

\textsuperscript{73} FYODOR DOSTOEVSKY, THE BROTHERS KARAMAZOV (Richard Pevear & Larissa Volokhonsky trans., 2002) (1880).

\textsuperscript{74} See also infra notes 190-203 and accompanying text for arguments for the inclusion of lesser texts in law and literature courses.


\textsuperscript{76} HERMAN MELVILLE, BILLY BUDD, in BILLY BUDD AND OTHER TALES, supra note 59, at 1. \textit{Billy Budd} was first published posthumously. \textit{Id.}; see also, \textit{e.g.}, Lawrence Friedman, \textit{Law, Force, and Resistance to Disorder in Herman Melville's Billy Budd}, 33 T. JEFFERSON L. REV. 61 (2010) (drawing lessons from the use of force in \textit{Billy Budd} to the value of the adherence to the rule of law).

\textsuperscript{77} \textit{See generally} Elkins, supra note 49, at 823 (“My basic criterion [for selecting films for a course in law and film] was simple: to select films that presented lawyers as central, memorable characters, and in doing so, would present us with stories worth talking about.”).
C. Zombies and the Law: Two Pedagogical Alternatives

Two primary approaches can be utilized in applying a law and literature analysis to zombie texts. The first starts with the essential premise of a typical zombie narrative and extracts likely legalistic responses based upon existing doctrine and institutions. For example, we can consider how quarantine regulations would be utilized; the circumstances under which habeas corpus might be suspended; or the manner in which trans-national institutions, such as the United Nations, would react to a zombie apocalypse. These are “what if” questions which can be posed against the backdrop of a generalized zombie outbreak without dissecting any particular text.

In the discussion that follows, I will utilize this approach to consider the legal consequences of categorizing zombies, that is, whether as persons, as human remains, as animals, or as non-animals. This approach will employ a relatively static use of individual zombie narratives and pose questions in the abstract, questions which may be purely academic in an actual zombie outbreak. After all, most zombie stories demonstrate that central governments and institutional frameworks are completely displaced when significant numbers of the dead rise and attempt to eat us, and that the state of legal frameworks will be one of anarchy.

In a state of anarchy, there will be no courts, no administrative agencies, few advocates, and no formal enforcement mechanisms or sanctions. There will be only lawless pockets of survivors amidst millions of zombies. It is therefore pointless to ask whether hunting regulations would likely be modified to allow “open season” on zombies in a world without functioning state game, fish, and parks departments. For our purposes, however, I will speculate presuming an idealized general form of a zombie apocalypse populated with typical, animated, and hungry corpses at a point in time perhaps three months after the collapse of organized human resistance.

In addition to these “what if” questions posed against a hypothetical zombie outbreak, we can examine the decisions and responses of the survivors situated within a particular narrative, considering themes and character choices with reference to the rule of law, justice, and procedure. We can ask what a specific zombie story tells us about the most

78. DREZNER, supra note 2.
79. See BLACK'S LAW DICTIONARY 104 (10th ed. 2014) (defining anarchy as “[a]bsence of government; lawlessness”).
fundamental legal values that survive the apocalypse and what the legal environment of the zombie apocalypse looks like.

This approach requires an analysis of particular settings, plots, characters, and their motivations in a given text as opposed to asking in the abstract how the law might treat the challenges inherent in a zombie apocalypse. *The Walking Dead* will serve our purposes for this particularized analysis, and we will consider what the television show and comic book series tell us about the retention of basic legal frameworks in a setting of destruction, anarchy, and the imminent possibility of human extinction. We will consider whether the survivors simply jettison legal structures as unnecessary and superfluous or whether they actively attempt to maintain some semblance of legal institutions. We will ask whether these portrayals ring true and whether we agree with the text’s assertions about the true value of law in an extreme environment. First, however, zombie categorization in the abstract should be considered.

1. Classification of Zombies. There is something to be gained from exploring the way that the law would likely respond to zombies themselves. Although zombie texts seldom take the time to pose fundamental questions, these are questions that we should ask and be prepared to answer as lawyers and teachers of the law. Thus, what rights (if any) would zombies be entitled to under existing legal doctrines? In answering this question, we would first ask how the law would classify zombies. What are zombies, legally speaking?

In my view, zombies would be properly categorized as non-human (or perhaps more precisely, as non-persons). A weak argument could be advanced that zombies are akin to profoundly impaired humans with ataxia instilled with an unexplained craving for human tissue. This argument should be rejected on the basis that the person whose corpse the zombie inhabits has died and that their corpse, although animated,

80. “In its common meaning, an ‘individual’ is an actual human being.” Martinez v. State, 325 Ga. App. 267, 273, 750 S.E.2d 504, 509 (2013). The word “person” is more expansive, including individuals as well as entities or organizations such as corporations, LLCs, trusts, estates, governmental entities, and joint ventures. E.g., Unif. Adoption Act § 1-101(11) (1994).
is still properly classified as deceased. A person who is deceased is no longer a person, legally speaking.

Perhaps zombies could be categorized as animals. Under the mythology of World War Z, the animating principle behind the undead is a virus. Essentially, it appears that zombies are animated only by the functioning of a virus. A virus cannot be said to be an animal. But in many zombie films, zombies, although slow-witted and clumsy, are capable of learning and reasoning on the level of perhaps a dog or possibly a chimpanzee. The initial scene in the zombie film that all

81. Death has historically been defined as the absence of respiratory or cardiac activity. David B. Sweet, Annotation, Homicide by Causing Victim’s Brain-Dead Condition, 42 A.L.R. 4th 742, 745 (1985). Zombies clearly have no cardiac or respiratory functions. See supra notes 38, 44. In 1968, Harvard Medical School developed a new definition of death predicated “on the occurrence of the following: (1) unreceptivity and unresponsivity to externally applied stimuli, (2) no spontaneous movements or breathing, (3) no reflexes, and (4) an isoelectric (‘flat’) electroencephalogram (EEG), with the tests to be reconfirmed 24 hours later.” Sweet, supra, at 746. Beginning in 1970 with Kansas, states began changing their definitions of death to encompass “brain death;” the current Kansas statute reads as follows: “An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.” KAN. STAT. ANN. § 77-205 (1997). Kansas’s statute is fairly representative. Thus, even if zombies exhibit some (presumably very low level) brain activity, they would still be characterized as legally deceased based upon an “irreversible cessation of circulatory and respiratory functions.” See id.; but see Chodorow, supra note 2, at 1214 (concluding that whether people who become zombies are decedents for purposes of the federal estate tax could vary state-by-state).

82. E.g., In re Estate of Hiller, 240 F. Supp. 504, 504-05 (N.D. Cal. 1965) (holding that a decedent’s estate is not a person within the meaning of Bankruptcy Code and therefore may not file a voluntary petition in bankruptcy).

83. See 7 U.S.C. § 2132(g) (2012) (defining “animal” for purposes of the federal Animal Welfare Act as “any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet”). Zombies are presumably cold-blooded given that their degree of animation decreases with cold weather, at least insofar as portrayed in The Walking Dead comic book series and World War Z. But see DEAD SNOW (Euforia Film 2009) (portraying Nazi zombies in the mountains of Norway unaffected by the cold, which would suggest that Nazi zombies, at least, may be warm-blooded). Thus, zombies would not qualify as animals under the Animal Welfare Act, as that Act defines animals as only warm-blooded creatures. It does not appear that any state animal cruelty laws define animals with reference to whether they are warm-blooded or cold-blooded; these state statutes define animals more broadly and may include fish and even invertebrates. See infra note 89. A broader definition of “animal” may therefore entitle zombies to greater protections under state law than federal law.

84. In World War Z, the disease is popularly known as “African rabies.” BROOKS, supra note 4, at 34.
others are measured against, Night of the Living Dead, opens with a zombie using a rock to smash a car window. The law would likely struggle with the question of whether to treat zombies as animals (entitled to some legal protections from wanton cruelty) or as something more akin to bacteria or slime molds (entitled to no legal protections).

This is what the law does: insofar as possible, it categorizes the new and novel within its existing structures. This exercise reflects the limited role of the courts in interpreting the law as compared to the expansive powers of the legislature in declaring the law. Prior to a legislative pronouncement, courts are faced with referring to existing law when facing a novel issue, even one not initially contemplated by the legislature. Thus, when faced with categorizing zombies, courts would turn to existing legal frameworks and determine whether zombies should be properly categorized as animals. Ultimately, a state legislature or Congress would likely enact comprehensive zombie regulations. Until then, the courts' categorization of zombies would constitute the binding legal framework. Even in the absence of functioning courts or legislatures, some survivors, infused with respect for the rule of law, may undertake similar categorization exercises among themselves, considering competing policy arguments and the implications of those assertions.

The arguments for and against categorizing zombies as animals may unfold as follows:

**Pro-Zombie Argument:**

Zombies respond to stimulus, they experience hunger, they are capable of some basic emotional responses: rage, surprise, and boredom. Zombies are capable of perception. Zombies are capable of learning on some level—at least on the level of a mouse in a maze. Zombies can distinguish between zombies and living people and do

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85. See, e.g., United States v. Jones, 132 S. Ct. 945, 949 (2012) (holding that the installation of a GPS tracking device on a suspect's car to track the vehicle's movements constitutes a "search" within the meaning of the Fourth Amendment); see also S.D. CODIFIED LAWS § 34-46-20 (2014) (re-defining tobacco products to include "e-cigarettes"); UNIF. PARENTAGE ACT § 702 (2002) (excluding from the definition of a "parent" a sperm donor who provides his semen to a licensed physician for use in artificial insemination of someone other than his spouse); Hin-Yan Liu, Categorization and Legality of Autonomous and Remote Weapons Systems, 94 INTL. REV. RED CROSS 627 (2012) (analyzing whether autonomous remote weapons systems are "weapons" under international humanitarian law).

86. A particularly bright student will likely challenge the professor at this junction by asking who in their right mind would ever adopt the pro-zombie position? Stated another way, what would be the pro-zombie position's agenda in advancing the argument that zombies ought to be categorized as animals?
not eat other zombies. Zombies utilize their vocal chords, if not to speak, then at least to grunt, growl, and employ some means of primitive expression. They are not human; they are animalistic, noxious beasts, but as such they deserve to be treated as animals under our laws in the same manner as grizzly bears or Tasmanian devils.

Anti-Zombie Argument:
Zombies are much more like smallpox than puppies. No one in their right mind resists the complete eradication of smallpox, and neither should we resist the wholesale elimination of the threat posed by the undead. All of us have lost loved ones in the zombie outbreak, and one of the hardest things about the state of the world today is seeing our loved ones, glassy-eyed and shuffling about, trying to eat us. But they are not our loved ones; they are zombies. Our loved ones have died and their corpses have been reanimated by unthinking machines that do not even respond to pain, do not even protect themselves from blows, and do not even seek to avoid annihilation. Even a mouse runs from a tormenter; the zombies lack even this basic instinct of self-preservation. They are not animals. They are germs.

Pro-Zombie Rebuttal Argument:
Given the unfortunate catastrophe of the zombie apocalypse, our doctors and our laboratories are unable to offer us any scientific analysis as to the level of consciousness to which zombies are capable. In these circumstances, we should err on the side of assuming at least the most primitive level of consciousness. Moreover, the oldest zombie is perhaps four to five months old. A four- to five-month-old human infant would have only the most basic gross motor skills, verbal abilities, or powers to distinguish or empathize; a human infant focuses only on its basic needs. Perhaps with time, zombies will develop higher levels of consciousness just as humans and other animals do. We don’t know. Zombies should qualify as animals, at least for the time being, until we know more about them.

Anti-Zombie Rebuttal Argument:
Zombies lack any kind of free agency or even the basic instinct of self-preservation, and the danger they pose to the human race—what’s left of it—cannot be overstated. The pro-zombie argument actually uses the fact that zombies are selective in eating us rather than other zombies to argue for rights for the undead. It’s ludicrous. We must act in our own best interests, not the best interests of the zombies.
Zombies are not baby seals; they are not bald eagles; they are not animals. They are, in fact, the greatest danger the human race has ever faced. And make no mistake, categorizing zombies as animals will come at a cost, a cost of life, possibly at the cost of humanity itself.

Balancing both sides, the pro-zombie argument would be more likely to prevail, at least in the short run. However, the legal realists’ school would correctly point out the enormous prejudices zombies would likely encounter in the courtroom, as they are responsible for the destruction of most of the world’s population and intent on biting, eating, and infecting the few survivors who remain. If zombies typically operate on the level of a mammal, laws concerning animals should be applicable to the undead. Legislative action may ultimately intervene to specifically delineate the legal character of the undead, but until that occurred, courts would attempt to shoehorn zombies into an existing legal category. Consequences would flow from the categorization of zombies as animals.

Most states’ animal cruelty laws could apply to zombies, making it a crime to commit wanton cruelty upon a zombie, except as necessary in the defense of life or property. If it could be successfully demonstrat-

87. Donald C. Nugent, Judicial Bias, 42 CLEV. ST. L. REV. 1 (1994). Nugent writes, [I]t is a difficult, if not nearly an impossible, task for judges to separate themselves from all of the various influences which they bring with them to the decisionmaking process. Some influences are internal or personal, such as the age, generation, religion, values, upbringing, temperament, and the physical condition of the judge. Others are external, such as the culture and norms of the community in which the judge lives, legal and political tensions, the megatrends produced by the information society, the extent of the judge’s power, the judge’s time constraints and access to information, and the rules regulating the manner in which judges may fulfill their judicial duties. Id. at 6 (footnotes omitted). Judges would not be immune from the powerful (and deserved) prejudices against zombies.

88. See DAILY & DAVIDSON, supra note 8, at 279-80 (speculating that non-Earth born aliens such as Superman, Martian Manhunter, and Hawkman would be considered non-humans or non-persons under the law and therefore entitled to protections only under animal cruelty laws or the Endangered Species Act). This conclusion rings false. Although Kal-El (a/k/a Superman), for example, is clearly not a human in the traditional sense, he nevertheless is humanoid and in-fact is human in every significant aspect (aside from his superpowers) except for the origin of his birth and perhaps the structure of his DNA. Kal-El thinks like us and acts like us. It seems unlikely that a court would deny Kal-El the right to free speech, the right to a court-appointed attorney, etc., although he may be properly denied certain rights, depending on his immigration status.

89. See O.C.G.A. § 16-12-4(a)(1) (2011 & Supp. 2014) (defining “animal” for purposes of animal cruelty laws as to “not include any fish nor shall such term include any pest that
ed that zombies do not experience distress or pain, then a strong argument could be made that they should be exempt from this particular law governing animals, since animal cruelty laws appear targeted towards protecting animals from pain. If laws that prohibit people from forcing animals to fight one another may apply to zombies as well, assuming that zombies could be encouraged or enticed to fight one another.

If zombies are animals, legally speaking, zombies would clearly be considered dangerous animals. Therefore, applicable hunting and trapping regulations would treat zombies in the same way that an escaped killer lion or a rabid dog might be treated. Some laws target the neglect or hoarding of animals. If zombies are animals, the hoarding prohibitions may apply to any survivors who kept unacceptable numbers of zombies in an enclosed space. Those who did contain or collect zombies (as Hershel does inside his barn in The Walking Dead) could also face strict liability for any resulting injuries.

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might be exterminated”); Idaho Code Ann. § 25-3502(2) (2000) (defining “animal” as “any vertebrate member of the animal kingdom, except man”). Creative arguments relative to zombie categorization under such statutes might include asserting that zombies are “pests” similar to termites under the Georgia statute or that zombies nominally have backbones. However, if the animating principal component of a zombie is something in the nature of a virus or some type of invertebrate parasite inhabiting a corpse-host, zombies do not qualify as vertebrates under the Idaho statute.

90. E.g., State v. Hatton, 228 S.W.2d 10, 13 (Mo. App. 1950) (upholding a conviction for “willfully and maliciously maiming, wounding and torturing . . . two dumb animals” (internal quotation marks omitted)). “Statutes have been enacted in most jurisdictions which have for their common object the protection of animals from the ill treatment or cruelty of persons, by making subject to indictment and punishment one who willfully or wantonly abuses or neglects or cruelly mistreats them.” 4 Am. Jur. 2d Animals § 23 (2007).

91. E.g., Meija v. State, 681 S.W.2d 88 (Tex. App. 1984) (affirming misdemeanor conviction for knowingly causing roosters to fight). In The Walking Dead, the Governor’s use of zombies in his staged arena fights at Woodbury for entertainment purposes would violate these types of statutes. See Robert Kirkman, The Walking Dead Compendium One ch. 5 (2013) [hereinafter TWD Compendium One].

92. 4 Am. Jur. 2d Animals § 112 (2007) (analyzing laws which permit an individual attempting to protect his own person or property to kill or injure a dangerous pet without liability to the pet’s owner).

93. E.g., Patterson v. City of Bellmead, No. 10-12-0035 7-CV, 2013 Tex. App. LEXIS 3136, at *1 (Mar. 21, 2013) (upholding the constitutionality of a municipal code prohibition of more than four cats or dogs per residence). The prohibition in that case applied only to cats and dogs (and therefore would not apply to zombies) and the targeted provision at issue motivated the plaintiff’s unsuccessful equal protection arguments. Id. at *5.

94. “[A] complainant may bring a common law action for injuries caused by a dog if the plaintiff can successfully prove that the dog had vicious propensities and that the owner or keeper had knowledge or the means of knowledge of those propensities.” Mazzini v.
Non-profit organizations dedicated to the prevention of cruelty to animals would reconsider their internal policies as well, perhaps amending their bylaws and organizational documents to exempt zombies from the class of animals for which they advocate. It seems unlikely that People for the Ethical Treatment of Animals (PETA) or the America Society for the Prevention of Cruelty to Animals (ASPCA) would undertake to advocate for zombies in the absence of widespread membership support. Organizations like PETA would be free to fight against cruelty to zombies if they chose to and still maintain their tax-exempt status, as Congress allows the Internal Revenue Service (IRS) to grant tax-exempt status to organizations that are organized to prevent cruelty to animals.\textsuperscript{95} PETA could also elect to define a narrower class of animals and exclude zombies from its advocacy efforts.

At first blush, it therefore stands to reason that the undead would also be treated as chattels, such as horses, dogs, and toasters, which can be bought, sold, transferred, and encumbered as personal property.\textsuperscript{96} Two facts concerning zombies contradict the simplicity of this conclusion. First, zombies are much more akin to wild animals than domesticated pets.\textsuperscript{97} Wild animals are deemed the property of the sovereign and not the chattel of the landowner on whose property the wild animal might be found, at least until the quarry is captured or taken.\textsuperscript{98}

Second, zombies are simultaneously both low-functioning, animal-like creatures and decaying human remains. Zombies are \textit{animated} human remains, but they are human remains all the same, reverting to mere

\textsuperscript{95} 26 U.S.C. § 501(c)(3) (2012). “The main purpose of such a society [i.e., a local humane society] is to inculcate in the public a kindly and humane attitude toward animals, to secure the passage of laws looking to their protection, and to aid in the enforcement of the existing statutes against cruelty by instituting proceedings thereunder against offenders.” 4 AM. JUR. 2D Animals § 25 (2007). The treasury regulations do not contain any definition of “animal” for purposes of tax-exempt organizations devoted to preventing cruelty to animals. 26 C.F.R. § 1.501(c)(3)-1 (2014).


\textsuperscript{97} “The common law has for many years made a distinction between animals ferae naturae and animals mansuetae natura, or between wild animals and domestic animals.” Tracey v. Solesky, 50 A.3d 1075, 1081 (Md. 2012).

\textsuperscript{98} See Pierson v. Post, 3 CAI. Cas. 175 (N.Y. Sup. Ct. 1805). Thus, the unusual situation of Michonne’s “pets” would find legitimacy under the law. \textit{See The Walking Dead: Beside the Dying Fire} (AMC television broadcast Mar. 18, 2012) (introducing katana-wielding Michonne, who leads two armless zombies on a leash to better navigate the zombie-populated environs).
human remains only upon having been effectively neutralized (typically by traumatic brain injury). The law closely regulates the burial, disposal, delivery, transportation, destruction, dissection, donation, disturbance, and trafficking of human remains.\textsuperscript{99} Many of the laws governing human remains would be deemed to apply to zombies both before and after the dispatch of a particular zombie.

The comprehensive regulations governing human remains have two primary impetuses. Human remains constitute a public health risk if not properly and promptly handled; disease and sickness can easily result from human remains that are mistreated or left untreated. Accordingly, laws regulate the disposition, transportation, and internment of bodies. In addition, human remains invoke deep emotional attachments and responses. There is something intensely personal and intimate about a deceased person's remains, something that deserves respect and deference. Thus, laws require human remains to be reposed with dignity and recognize the enforcement of a decedent's wishes regarding their funeral arrangements, burial instructions, and organ donation.\textsuperscript{100} Because we have concluded that zombies would be properly categorized as both dangerous wild animals and, at the same time, animated human remains, the law would likely seek to apply the rules and regulations concerning both quite different matters in a single hybridized set of doctrines and reject the simple categorization of zombies as mere chattels.\textsuperscript{101} From this synthesis, we would derive "zombie law." In time, zombie law would become a recognized course in law school, possibly even as part of a first year law student's course load.

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\textsuperscript{99} 22 A. M. JUR. 2D Dead Bodies § 1 (2013).

\textsuperscript{100} See, e.g., NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM PROBATE CODE 170 (2010), available at http://uniformlaws.org/act.aspx$\text{title=ProbateCode}$(providing in section 3-701 that "prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements."); see also Hirst v. Elgin Metal Casket Co., 438 F. Supp. 906 (D. Mont. 1977) (holding manufacturer liable for mental suffering caused by leaky "leakproof" casket); Allen v. Jones, 163 Cal. Rptr. 445 (Ct. App. 1980) (holding mortuary liable for mental distress for misplaced cremated remains). These cases represent a rare deviation from the general rule that damages for mental distress or pain and suffering are unavailable in ordinary breach of contract cases, and are reflective of the intense emotional responses we hold with regards to human remains.

\textsuperscript{101} Perhaps it is the inherent difficulty in classifying zombies that explains part of the horror and fear they invoke. See, e.g., Jeffrey Jerome Cohen, Monster Culture (Seven Theses), in MONSTER THEORY 3, 6 (Jeffrey Jerome Cohen ed., 1996) (noting that monsters, like zombies, constitute "disturbing hybrids" that resist systematic classification). Monsters "radically undermine the Aristotelian taxonomic system, for by refusing an easy compartmentalization of their monstrous contents, they demand a radical rethinking of boundary and normality." \textit{Id.}
in view of the overriding importance of zombie law in the zombie apocalypse. New professors would be recruited, and symposia and specialty law journals on zombie law would proliferate.

Essentially, zombie law would comprise an offshoot of personal property law, like both animal law and the law of human remains. Given the extreme hazards that the animated undead would represent to individuals and society, the values inherent in ensuring dignity and respect to human remains would often give way to preserving public safety from the risks that zombies represent. The law would favor zombie eradication over sensitivity to the emotional impact of corpses.

2. Survivors' Legal Responses in The Walking Dead. Having determined that the courts would likely treat zombies under a hybrid of animal law and the law of human remains, we have exhausted a productive inquiry into the law of zombies as zombies, and now turn to the deeper questions raised by the human response to the zombie apocalypse. Zombie fiction consistently acknowledges that a lengthy narrative cannot be sustained that only considers zombies. The living dead are frightening, they are dangerous, and they are especially horrifying insofar as they remind us of something that they are not—our deceased loved ones. Zombies invoke fear and disgust because of their appearance and the threat they pose to human safety. Zombies look frightening and they try to eat us. When they bite us, zombies infect us as zombies. Ultimately, the living dead are little more than a force to be feared and defeated. Other than the initial "shock value" of the appearance of a zombie, any zombie story could replace the zombie hordes with man-eating slugs or flesh-eating fish with hardly any additional changes to the plot and the narrative would function without impairment. Zombie films and stories, therefore, focus on the

102. See Hunziker v. State, 519 N.W.2d 367, 370-71 (Iowa 1994) (interpreting a statute which prohibited disinterment of human remains against a background of property law); Sherman v. Kissinger, 195 P.3d 539, 542 (Wash. App. 2008) ("There is no dispute that, as a matter of law, dogs are characterized as personal property."). Whenever possible, courts should not look to specialized statutes dealing "with human biological materials as objects sui generis, regulating their disposition to achieve policy goals rather than abandoning them to the general law of personal property." Moore v. Regents of the Univ. of Cal., 793 P.2d 479, 489 (Cal. 1990).

103. See, e.g., ATTACK OF THE GIANT LEEECHES (American International Pictures 1959) (killer leeches); THEM! (Warner Bros. 1954) (killer ants); see also ARACHNOPHOBIA (Hollywood Pictures 1990) (killer spiders); ATTACK OF THE KILLER TOMATOES (Four Square Productions 1978) (killer tomatoes); CUJO (Sunn Classic Pictures 1983) (killer dog); JAWS (Zanuck/Brown Productions 1975) (killer shark); NIGHT OF THE LEPUS (A.C. Lyles Productions 1972) (killer rabbits); ORCA (Dino de Laurentis Cinematografica 1977) (killer
human responses to zombies as the focal point of their narratives, and
the human response postulated typically supposes self-interest and
conflict. Anarchy, zombie texts tell us, will not be pretty. It is the
human versus human narrative more than the human versus zombie
narrative that actuates successful zombie stories.

In the seminal film Night of the Living Dead, what interests the
viewer is not the shambling undead outside the farmhouse where the
survivors have gathered, but the drama of the survivors' interactions
with each other inside the farmhouse. Rather than working together
to maximize their chances for survival, they form factions against
each other. Similarly, in 28 Days Later, the narrative quickly abandons
its “road trip” narrative through an infested England to the power
struggles among a group of survivors in a fortified mansion under the
command of a group of undisciplined soldiers. There is only so much
that is really interesting about zombies and the threat they pose to
survivors. The richness in a zombie text lies in the human response to
the zombie apocalypse. Herein lies the pay dirt insofar as examining
legal doctrines within storylines: it's not what the zombies do to us, but
what we do to each other that merits close attention. To survive the
zombie apocalypse, we need to focus as much on how to defeat zombies
as how to survive the collapse of the rule of law and the violent struggles
of survivors to control scarce resources. Much can be learned from the
legal consequences of these narrative postulates.

The discussion that follows targets this inquiry exclusively on The
Walking Dead because of both its popularity and its extended narrative,
which offers numerous opportunities for exploration through legal

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104. Only in zombie comedies, such as Zombieland, do humans work cooperatively to
defeat the zombie hordes. DREZNER, supra note 2, at 51-52; ZOMBIELAND (Columbia
Pictures 2009). "Romantic zombie comedies—rom-zom-coms for short—contain both implicit
and explicit elements of liberalism." DREZNER, supra note 2, at 51. Implicit in this
observation is that it's laughable to suggest that humans would work together for the
common good, cooperate, and help one another in the event of a zombie apocalypse.

105. NIGHT OF THE LIVING DEAD, supra note 34.

106. 28 DAYS LATER, supra note 40.

107. Cf., Profitt & Templin, supra note 39, at 30 ("In most [zombie outbreak] cases, the
greatest threat is not the flesh-eating living dead but both other survivors no longer
constrained by any institutions of liberal democracy and the lack of essential services
provided by the same.").
inquiry. Like the authors of other successful zombie works, Robert Kirkman, the creator of *The Walking Dead*, understands the limitations of a narrative based on an “us vs. zombies” approach. Kirkman quickly expands the story’s viewpoint to the politics, power struggles, and double-crosses which pepper the human landscape in the wake of the destruction of nearly all infrastructure and recognizable institutions.

*The Walking Dead* follows Sheriff Rick Grimes as its main character through the world of the zombie apocalypse, in particular, Atlanta, Georgia, and its surroundings. Rick initially locates his wife, Lori, his young son, Carl, and his partner, Shane Walsh, with a small group of other survivors near a quarry with the downtown Atlanta cityscape on the horizon. Atlanta has been overrun with large numbers of zombies, but the survivors stage cautious raids into the city for supplies on a regular basis.108

As the series unfolds, it becomes more obvious how dangerous the world has become, not just on account of the large “herds” of zombies that are attracted by gunfire or other loud noises and that appear unexpectedly and easily overrun most defenses, but also from other groups of violent and militarized groups of the living. Soon, the survivors abandon the dangerously situated suburban camp, and after a disastrous attempt to find refuge at the Centers for Disease Control and Prevention (CDC), settle in at the more remote location of Hershel Greene’s farm (where a barn full of zombies is secretly being kept by Hershel with the ill-founded hope that a cure will be found).109

Rick’s group next abandons Hershel’s farm for the safety of a walled prison.110 They come to accept that there is no surviving governmental infrastructure of any kind, and hopes for a cure or rescue are nonexistent. Adopting a more secure defensive perimeter, such as that offered by a walled prison, may be ill-advised because the high visibility of such a location may attract the unwanted attention of armed rival groups of survivors intent on capturing and controlling strongpoints in the landscape. Indeed, Rick’s group soon comes under attack by “the Governor” and his settlers from a nearby town, Woodbury.111

Rick is a lawman by profession and finds himself in a natural leadership role alongside Shane, despite the fact that all legal enforcement mechanisms and institutions have disappeared. Society in *The Walking Dead* is under intense and unremitting pressure. The living are

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109. See infra note 132 and accompanying text.
111. *Id.*
fighting for their survival with little ability to plan or accumulate surpluses.

The question Rick’s group—Amy and Andrea, Glenn and Maggie, Hershel, Dale, Carol, Ed, and Jim—face is not how they will survive in the post-apocalyptic world of zombies, but whether survival is possible at all, specifically, whether the human race will be entirely extinguished in the very near future. The situation appears hopeless and some opt for suicide. Based on the large numbers of zombies and the small number of survivors, it seems probable that the vast majority of the population has already been wiped out by the zombies (or from the resultant intra-human conflicts). New characters, such as Michonne, are introduced to replace the characters killed off by zombies or rival groups as the series unfolds.

In this type of environment, all that is unessential is wrecked. Institutional infrastructure has been wiped out. The survivors search fruitlessly for remains of both liberal government structures (e.g., Atlanta’s CDC building, which goes up in a ball of fire) and conservative government structures (e.g., the Fort Benning Army Base, which is but a chimera, having been overrun by the undead). The world of the zombie apocalypse is more than a post-apocalyptic wasteland; it is a post-apocalyptic wasteland brimming with flesh-eating ghouls. Does anything from our world of law and legal rights remain? Arguably no, at least in the formal or rigid sense. All institutions and government are simply gone, yet social norms and constructs that operate like law can still be discerned in the narrative.112

The Walking Dead views the law and legal institutions as positive, even essential aspects. The survivors demonstrate as much nostalgia for the rule of law as they do for fast food and hot showers, but manage to cling to only minimal forms of order and procedure. If anything of the law does remain, those remaining bits must reflect the very core of our culture and values, the very essence of what is essential in the law. An examination of The Walking Dead reveals that what remains, perhaps surprisingly, are property rights and procedural due process. The survivors hang on to procedure and they retain fundamental respect for personal property law. Perhaps these are the most important laws; the ones that are the last to give way in a civilization’s collapse.

112. See ROBERT C. ELLICKSON, ORDER WITHOUT LAWS (1991) (examining how a community of cattle ranchers do not rely so much on the law but on their own set of social norms for resolving disputes with neighbors).
a. Property Rights
   (1) The Law of Finds

In the wake of a zombie apocalypse, the vast majority of property, both
real and personal, will have passed out of private ownership. Continuing
implementation of estate and inheritance law for the huge numbers
of the recently departed is impossible. The deceased citizens' property
is rightly deemed to be owned by no one, and subject to the law of finds:
he who finds it and possesses it owns it.\textsuperscript{113} Generally, the law of finds
holds that lost or mislaid property belongs to no one;\textsuperscript{114} therefore,
taking it is not theft.

\textit{The Walking Dead} survivors routinely commit what would otherwise
be categorized as scavenging, looting, and theft. Rick approaches a home
looking for gasoline, shouting out his approach to any survivors and
announcing his intentions.\textsuperscript{115} Later, Andrea selects a mermaid
necklace for her younger sister Amy in an abandoned Atlanta depart-
ment store.\textsuperscript{116} Andrea's residual pre-apocalyptic legal values are just
under the surface, however, as she acknowledges her hesitancy in taking
the necklace from the store display case as Rick looks on because he is
"a cop," but he assures her of the legality of her actions.

During a raid into Atlanta, Rick meets Guillermo, who leads a small
group of survivors occupying a rest home for the elderly. A fascinating
exchange occurs between the two men over Rick's cache of firearms,
which he had to leave behind on an Atlanta street as he was overcome
by zombies. When Rick returns to Atlanta to recover the weapons, he
finds that Guillermo and his group have already located and taken the
weapons themselves. Both groups claim ownership to the guns. A

\textsuperscript{113} E.g., Commonwealth v. Maritime Underwater Surveys, Inc., 531 N.E.2d 549, 551
(Mass. 1988). "The law of salvage is an ancient maritime doctrine which, unlike traditional
common law, was meant to encourage the rescue of imperiled or derelict marine property
by providing a liberal reward to those who recover property on or in navigable waters."
\textit{Id.} The law of salvage resulted in a monetary award to those who recovered the property
even where the property has not been abandoned. \textit{Id.} "The law of finds, on the other hand,
grants title to the first party to discover and reduce to possession things found in the sea
which have never been owned or property which is long-lost or abandoned." \textit{Id.}

\textsuperscript{114} Bruner v. Geneva Cnty. Forestry Dep't, 865 So. 2d 1167, 1175 (Ala. 2003) (noting
exceptions to the common law of finds for abandoned property embedded in the soil, which
is owned by the owner of the land, and abandoned property submerged in navigable
waterways, which is owned by the state).

\textsuperscript{115} In approaching a personal residence, Rick identifies himself as a police officer,
announcing, "Police officer! Anybody here? I need some gas." \textit{The Walking Dead: Days
Gone Bye}, supra note 108. It turns out the occupants have committed suicide. \textit{Id.}

\textsuperscript{116} \textit{The Walking Dead: Guts} (AMC television broadcast Nov. 7, 2010).
discussion ensues. Both Rick and Guillermo recognize the continuing viability of personal property rights, at least in the abstract:

Guillermo: Where's my bag of guns?
Rick: Guns?
Guillermo: The bag Miguel saw in the street. The bag Felipe and Jorge were going back to get. That bag of guns.
Rick: You're mistaken.
Guillermo: I don't think so.
Rick: About it being yours. It's my bag of guns.
Guillermo: The bag was in the street. Anybody could come around and say it was theirs. I'm supposed to take your word?\textsuperscript{117}

It's a fleeting recognition of personal property rights as to an individual outside of a group. Both Rick and Guillermo recognize that there is no court system to adjudge the actual ownership of the bag of guns and the only real mechanism for resolving the disputed ownership is by use of force. But the two men still consider the legal question of ownership in the pre-apocalyptic abstract, accepting at least momentarily that Rick bears the burden of proof to establish ownership and that his claim would fail before a hypothetical tribunal for lack of sufficient evidence.\textsuperscript{118}

In the aftermath of the zombie outbreak, Rick's group's survival efforts are directed almost exclusively at mounting effective defensive measures against zombies and conducting effective raids to obtain food, medicine, and basic necessities from deceased owners. It is, in some respects, an environment of temporary surplus, with essentially limitless supplies of these goods. Everyone can have a brand new car if they want one. For example, Glenn joyously guns a red Dodge Challenger into camp,

\begin{quote}
\textsuperscript{117} \textit{The Walking Dead: Vatos} (AMC television broadcast Nov. 21, 2010). What are we to make of this exchange? It's difficult to justify Rick's willingness to accept Guillermo's point that Rick's lack of evidence and difficulty in proving ownership diminish his claim to ownership. Rick knows that the guns do actually belong to him and also knows that there is no judicial forum in which his claims would be recognized, even if he had sufficient proof. Guillermo's point is not that Rick may lose in a hypothetical court, but rather that he cannot be convinced of Rick's claim of ownership. Rick's acceptance of Guillermo's point seems to be based on Rick's assumption that Guillermo would hand over the guns with additional proof. In the absence of any judicial enforcement mechanisms, there really are no personal property rights, except to the extent the parties choose to recognize them.
\end{quote}

\begin{quote}
\textsuperscript{118} Cf. POSNER 1st ed., supra note 53, at 28. ("In a system without legal institutions it is by definition impossible to make a legally enforceable commitment."). Essentially, except within the group where the individual members voluntarily recognize the property rights of other group members, there is no continuing concept of sanctioned property rights, or at least the concept is rapidly decaying.
\end{quote}
boasting about his new car. As months pass, food and medicines grow stale on the shelves, cars begin to break down with no trained mechanics to fix them, and fuel becomes increasingly difficult to scavenge. The survivors rapidly approach a world of utmost scarcity.

(2) Vestiges of Real and Personal Property

The survivors within Rick's group continue to honor certain basic real and personal property rights. When Dale's bolt cutter is needed by the group, Dale is approached and negotiates an exchange for the use of his tools. When Rick's group is camped at Hershel's farm, Hershel repeatedly announces his right and intent to eject them from his realty. While Rick's group resists this plan, none of them question Hershel's property rights to exclude unwanted visitors from his land and regulate the use of his property (for example, by prohibiting the use of firearms). Perhaps Rick's group presumes property ownership can no longer be sanctioned except by the application of force, but they are unprepared to take Hershel's farm by force, either because of the risk of loss that would accompany such an action or because they would prefer not to instigate violence against other non-aggressive survivors, including some to whom they are growing emotionally attached.

(3) Accelerating Erosion

Before long, Rick's group begins to incorporate theories of common ownership to property. The day after Glenn brings his new Dodge Challenger into camp, it is stripped for parts by other members of the group. It is assumed that he has no right to complain. This is a startling development legally speaking, but appears to be unremarkable to any of the characters (aside from Glenn's disappointment). Rick—the most rule-bound of any character after Dale—smiles about it.

Granted, the Dodge wasn't originally Glenn's car—it was only his because he looted it from a parking spot in downtown Atlanta. Dale's bolt cutter received more deference; despite its utility to the group at

120. The Walking Dead: Tell it to the Frogs (AMC television broadcast Nov. 14, 2010).
121. The Walking Dead: Cherokee Rose (AMC television broadcast Nov. 6, 2011). Rick acknowledges to Hershel: “This is your property, and we will respect that” (namely, by not carrying guns). Id.; The Walking Dead: Pretty Much Dead Already (AMC television broadcast Nov. 27, 2011) (where Rick reminds his group, “We're guests here. This isn't our land.”).
122. The Walking Dead: Guts, supra note 116.
large, no one asserts that Dale cannot regulate the use and enjoyment of his own personal property or that his property rights give way to the needs of the group, even if Dale elected to exercise his rights for purely selfish reasons. Perhaps, in time, post-apocalyptic law will evolve towards recognition of three broad categories of property: (1) property governed by pre-apocalyptic law, including both property owned prior to the apocalypse and property for which consideration was exchanged post-apocalypse (such as Dale's bolt cutter); (2) "looted property," obtained post-apocalypse that may be taken without compensation if the group deems necessary (such as Glenn's Dodge); and (3) the vast swaths of at-large property without legitimate owners subject to the law of finds, or, in the case of real property, by quasi-adverse occupancy (such as Hershel's farm, the town of Woodbury, or the fenced prison compound).123

The survivors recognize a kind of adverse possession pertaining to real property.124 Adverse possession is typically asserted against a bona fide owner after an occupant has met the statutory possession requirement of several years' time.125 Occupancy for several years in the world of the zombie apocalypse is no longer practical, and there are no longer any bona fide owners with regard to most land. Ownership rights by means of occupancy, however, are recognized. Hershel, a landowner pre- and post-apocalypse, when justifying his decision to eject Rick's group from his farm, emphasizes that there are now plenty of farms to

123. Perhaps "pseudo-adverse possession" would be more accurate here. Adverse possession presupposes a sovereign who can recognize property rights among competing owners, and there is no traditional sovereign in The Walking Dead. Neither are the at-large unclaimed swaths of land properly categorized as public property, but more like public domain property. See, e.g., Donaldson v. Beckett, 1 Eng. Rep. 837 (1774) (rejecting perpetual copyright in favor of that which can be the property of anyone); see also Austin C. Murnane, The Prospector's Guide to the Galaxy, 37 FORDHAM INT'L L.J. 235, 259 (2013) (advancing the argument that "only a government with sovereignty over territory may grant property rights to an individual" to support the idea of United Nations sovereignty over celestial bodies).

124. See, e.g., Acquisition of Title to Property by Adverse Possession, 39 AM. JUR. PROOF OF FACTS 2D 261 (John F. Major ed., 1984). In The Walking Dead comic book, Dr. Stevens explains how the survivors at Woodbury took possession of their camp: "We found this town pretty early on. The National Guard station, the narrow alleys—we decided we could defend this place. So we staked our claim." TWD COMPENDIUM ONE, supra note 91, at ch. 5 (emphasis added).

125. See Berger v. Horsfield, 176 N.Y.S. 854, 856 (App. Div. 1919) ("[T]itle gained by adverse possession rests upon the laches of the real owner, who fails to assert his title against the one claiming adversely. . . ."). In California, for example, the statutory period is five years. CAL. CIV. CODE § 1007 (2007).
choose from.\textsuperscript{126} Hershel suggests that any unoccupied land may be rightfully seized, improved, used, and defended.

The survivors' initial camp alongside the quarry pit within sight of the downtown Atlanta skyline is occupied for a relatively short period of time. Their occupancy of Hershel's farm never ripens into anything greater than a license subject to Hershel's ongoing consent.\textsuperscript{127} However, the third site for Rick's group, the prison near the occupied town of Woodbury, is clearly one where the group "puts down roots" and invests significant time and effort to improve the property, exterminate the zombies inside the prison walls, and maintain an effective defensive perimeter through the use of the prison's tall fences. Because there is no overarching government authority to enforce individual property rights, when the occupants are attacked by the rival group from Woodbury, they must defend their possession by force. Later still, Rick and Carl will re-settle in Alexandria, which repels the attacks of rival settlements as well.\textsuperscript{128}

The survivors within a given group continue to recognize basic real and personal property rights between each other, subject to certain urgencies that dictate some property—especially looted property—is held by the group at large. As between groups, however, the only recognition of property rights is dependent on the threat and projection of force. Rick's group does recognize the real property rights of Hershel, but Hershel's group and Rick's group have begun to coalesce. The groups do not treat each other as outsiders, and so the use of force is held in check to a greater degree than as against Guillermo's group in the Atlanta rest home, or the Governor's rival Woodbury group. A group may decline to exercise force to eject rival occupants, especially given the surplus of available land to choose from, but presumably even the decision to leave a rival occupant in possession of property hinges on an economic assessment of the costs and risks inherent in a forceful ejection.

\textsuperscript{126} The Walking Dead: Pretty Much Dead Already, supra note 121. To his daughter Maggie, Hershel says: "They're just going to have to go out and find their own farm. There's plenty of them now to choose from." \textit{Id.}


A license is an agreement which merely entitles a party to use the land of another for a specific purpose, subject to the management and control retained by the owner; a license conveys no interest in the land, is ordinarily not assignable, and may be contracted for or given orally.

\textit{Id.}

\textsuperscript{128} ROBERT KIRKMAN, THE WALKING DEAD COMPENDIUM TWO ch. 9 (2013) (unpaginated).
b. Procedural Due Process

In addition to residual respect for property law, the survivors also demonstrate their retention of procedural formalities. *The Walking Dead* illustrates at least four situations where procedure is employed to reach an outcome or conclusion. The first is in response to a criminal act, the second is an involuntary-commitment fact pattern, the third is in end-of-life decision scenarios, and the fourth is a pre-emptive prisoner execution dilemma. Varied procedures are employed that serve to contrast the importance of procedure to the survivors of the zombie apocalypse.

Before Rick arrives at the group's suburban camp and reunites with his wife and son, Shane implicitly fills the role of the group's leader. Both Rick and Shane were sheriff's deputies, yet their approaches to governance and decision-making are at odds in several respects. Shane represents a new order, totalitarianism that rejects abstraction or idealism. Rick—at least initially—represents the old order governed by consensus. The contrast in the value frameworks and procedural preferences of Shane and Rick highlight what basic rights and due process can be retained in the zombie apocalypse and what may be lost.

(1) Shane and Andrea's Approach

Shane approaches decision-making materialistically and despotically. Except to the extent the group actively and effectively resists his exercise of power, Shane makes all the decisions and uses a strict cost-benefit analysis—the decision which has the greatest likelihood to preserve the highest number of lives is the right decision. When a subgroup does not return from a raiding trip into Atlanta, for example, he vetoes the idea of a rescue party that may result in the loss of greater life. His preference is to abandon them to their fate. Shane, by contrast, eschews a cost-benefit analysis when it comes to deploying search parties for Carol's missing daughter, Sophia. He prefers consensus decision-making in spite of its inefficiencies and he resists pragmatism.

Shortly after Rick's arrival in the camp, Shane is rebuffed by Rick's wife, Lori (with whom Shane had been engaging in a sexual relationship during Rick's absence). Sometime after Lori's rejection, Shane begins a romantic involvement with Andrea. Andrea soon begins to articulate Shane's worldview as the most effective and appropriate in the

environment of the zombie apocalypse (perhaps Andrea’s worldview predated her relationship with Shane, the narrative does not tell us). Their worldview is practical and straightforward, weighing projected costs and benefits to human safety to reach a conclusion for any given question.

However, Shane and Andrea’s approach stands in stark contrast to Rick’s, which is illustrated when Shane unilaterally decides to unlock the barn where Hershel keeps a number of zombies, including his deceased wife, as he prays for a cure that will restore the zombies to their former selves. The zombies escape and a disorderly firefight ensues, satisfying Shane’s objective to eliminate the risk posed by the barn full of zombies so close to camp, with or without Hershel’s approval. Prior to unleashing the zombies, Shane had unsuccessfully attempted to convince Rick that the barn zombies should be eliminated as a potential threat to the survivors in their nearby clutch of tents. By opening the barn door, Shane forces the issue and bypasses a consensus-oriented process.

Shane justifies opening the barn doors based on the aim of protecting the group from the zombies inside the barn, but no emergency is imminent until Shane takes matters into his own hands by unlocking the doors and allowing the zombies to escape. Shane’s decision may have been based at least in part on dramatics rather than utilitarian principles, since he could have just as easily engineered a much safer extermination of the zombies inside the barn with sharpshooters positioned in the hayloft. Perhaps Shane believed he lacked the ability to convince sufficient numbers of the group of the validity of his viewpoint, so instead he resorted to the riskier tactic of simply opening the barn. At any rate, by opening the barn doors to force the issue, Shane demonstrates that he values his concept of security and the ability to shape the group’s destiny over consensus decision-making, Hershel’s property rights, or even containment of threats to individual safety.

(a) The Punishment of Ed

Shane’s emotional maturity is lacking; he is hot-headed and brusque. Moreover, he is a man who takes pleasure in violence.

132. The Walking Dead: Pretty Much Dead Already, supra note 121.
133. Andrea tells Shane, “It’s your presentation that leaves something to be desired.” The Walking Dead: Triggerfinger (AMC television broadcast Feb. 19, 2012).
Violence is rewarding, even cathartic, for Shane, and the combination of these traits make for a man ill-suited for power. Indeed, his exercise of that power is typically selfish, reactionary, and spontaneous. Shane's initial response at Lori's rebuff to his advances is surprise, denial, and rage. At the same time Shane is being rejected by Lori, a scene unfolds where Carol's abusive husband, Ed, insists that his wife leave her friends and accompany him. When she hesitates, he slaps her and twists her arm. Shane promptly tackles Ed and beats him unmercifully, promising to kill him if Ed assaults his wife again.135

Shane's unilateral response to Ed's assault, while effective in curtailing Ed's abuse of Carol, is both disproportionate and unsanctioned. More importantly, Shane's actions seem to serve Shane's personal needs in unleashing his anger over Lori's rejection. Ed is a convenient target for Shane's rage. Ed is unpopular with the rest of the group, making him even more vulnerable to Shane's frustrations. In that situation, Shane could at least partially justify his actions as advancing order and protecting Carol from further injury. Shane takes advantage of the opportunity and Ed's unpopularity to vent his frustrations with having been rejected by Lori. Shane's overreaction goes unpunished and is only questioned by Jim.136

(b) The Civil Commitment of Jim

In the episode Vatos, Jim becomes temporarily unhinged. He is seen engaged in irrational, strenuous physical activity in the midday Georgia summer heat atop a hill near the survivor's quarry-side camp. It seems he is digging, and digging ceaselessly, without any ascertainable objective. He initially refuses to stop when the group, led by Shane, cautiously approaches him.137

Shane draws near to Jim and succeeds in commencing a dialogue. Jim stops digging, at least for the moment. The rest of the group stands
behind Shane, neither endorsing nor resisting Shane's leadership. Shane offers no opportunity for their input. When Jim refuses to relinquish his shovel, Shane attempts to take it by force, quickly overcoming Jim and restraining him for a few hours by tying him to a tree until he has calmed down and appears to be, in Shane's words, no longer "a danger to [him]self or others."\(^{138}\)

Although initially Shane's actions might appear justified as a short-term civil commitment (or at least more restrained than his brutal punishment of Ed), closer analysis reveals a praxis similar to the opening of Hershel's zombie-filled barn.\(^{139}\) Jim presents no danger to others, and although he may have been risking a heat stroke, he was resting and speaking rationally at the time Shane swiped at the shovel and then tackled him. Although Jim refuses to provide a rational explanation for his actions, there is no suggestion he is dangerous. Perhaps most importantly, Shane acts sua sponte and without any consultation with the group, even though there is no particular urgency to act against Jim. Jim is not going anywhere. Thus, even if he starts shoveling again while the group discusses the matter, the possibility of causing harm to himself does not appear to be so imminent that

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138. *Id.* Essentially, Shane continues to act as a sheriff's deputy by taking charge of a situation and exercising his discretion to diffuse a threat or neutralize a danger. Whether Shane's actions against Jim would be defensible as those of a police officer in the field is beside the point; Shane is acting outside the capacity of mere law enforcement when he implements an ongoing detention and confinement beyond what is necessary to diffuse the situation. Jim recognizes this and begins taunting Shane, referencing Shane's recent punishment of Ed, "You're gonna beat my face in like Ed Peletier, aren't you? . . . See, now that's what happens when someone crosses you," then telling the group, "He is not judge and jury." *Id.; but see S & S Landscaping Co. v. N.D. Workers' Comp. Bureau, 541 N.W.2d 80, 82 (N.D. 1995)* (upholding, as consistent with due process rights, an administrative board that "takes a position (similar to a party) and evaluates the arguments of all the parties (as a judge)" and in fact "performs all three functions of investigation, prosecution, and adjudication.") (quoting Meadow Fresh Farms, Inc. v. Sandstrom, 333 N.W.2d 780, 784 (N.D. 1983)).

139. *See generally Debra T. Landis, Annotation, Modern Status of Rules as to Standard of Proof Required in Civil Commitment Proceedings, 97 A.L.R.3d 780 (1980).* An individual can be involuntarily committed when a court finds by clear and convincing evidence that the person is suffering from a mental illness rendering them dangerous to themselves or others. *In re Commitment of Z.G., 2013 WL 5852646, at *2 (N.J. Super. Nov. 1, 2013).* One is dangerous to oneself under New Jersey law when:

[B]y reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical harm or death will result within the reasonably foreseeable future.

discussions would be impractical. Based upon these observations, the restraint of Jim constitutes an unnecessary and unjustified violation of Jim's rights.140

(c) Beth's Attempted Assisted Suicide

In 18 Miles Out, Hershel's seemingly healthy teenage daughter, Beth, who has been catatonic for several days after collapsing in the kitchen, awakens and articulates her desire to commit suicide.141 Lori, Maggie, and Andrea put Beth under a suicide watch. Andrea is especially sympathetic to Beth's decision, having been thwarted in her own attempt to commit suicide by Dale at the CDC campus.142 Andrea and Lori argue about Beth's desire to commit suicide. Lori resists the suggestion that the decision should be left to Beth while Andrea endorses Beth's autonomy and right to die.143

Andrea convinces Maggie to take a break. Andrea then locks Beth inside the bedroom, opens the adjoining bathroom door, and leaves Beth alone. Andrea implicitly encourages the option of suicide, observing bleakly to Beth that "the pain doesn't go away. You just make room for it."144 Then Andrea departs, leaving Beth alone. Beth, using a piece of broken mirror, slits one wrist. Maggie and Lori save her after prying open the locked door.

Criminal sanctions for assisting with another individual's suicide are less than uniform but widely recognized.145 Arguably, Andrea's actions would constitute a violation of these statutes. While Andrea did not provide the instruments of suicide (the shards of glass), she actively encourages Beth to consider suicide and takes measures (opening the bathroom door, locking the bedroom door, and commenting on the bleak

140. Jim does swing his shovel at Shane, but only after Shane has attempted to take it from him by force. The Walking Dead: Vatos, supra note 117. Shane's decisions might be entitled to deference insofar as they are carried out by a police officer, but Shane's authority far exceeds that of a law enforcement officer as he proceeds to restrain Jim against his will until Shane determines that Jim has ceased to pose a threat.


143. The Walking Dead: 18 Miles Out, supra note 141.

144. Id.

145. See generally John H. Derrick, Annotation, Criminal Liability for Death of Another as Result of Accused's Attempt to Kill Self or Assist Another's Suicide, 40 A.L.R. 4th 702 (1985).
future) to permit and encourage Beth to slit her wrist without interference. 146

An illustrative case, Commonwealth v. Bowen, 147 held that an individual's active incitement, encouragement, and persuasion that procures the perpetration of a suicide constitutes murder unless the victim independently decided to kill himself. 148 Applying the Bowen holding to Andrea's incitements of Beth would present a causation question: whether Andrea's encouragement motivated Beth's self-destructive acts or whether Beth would have slit her wrist regardless. 149 Maggie condemns Andrea's radical idea of individual autonomy (to which Andrea retorts, "Of course [suicide] is [an option]" 150). Andrea's views offend Maggie; they rankle pre-apocalyptic law and values as well.

(2) Rick's Approach

Rick's approach to procedural governance and decision-making is more complex and nuanced than Shane's and Andrea's, but less successful in

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146. Cf. People v. Roberts, 178 N.W. 690 (Mich. 1920) (upholding the conviction of a man who prepared a poison for his wife—who suffered from multiple sclerosis and had attempted suicide previously—and left it beside her bed when she thereafter drank it and died).

147. Id. at 359-60. In Bowen, a jail inmate urged his fellow inmate to hang himself (ironically, in order to avoid being hanged for murder). The urgings resonated. The fellow inmate hung himself in his cell and his cellmate was tried for murder. Id. The court observed,

148. Id. at 360; see also ALASKA STAT. § 11.41.120(a)(2) (2004) ("A person commits the crime of manslaughter if the person . . . intentionally aids another person to commit suicide."); State v. Marti, 290 N.W.2d 570 (Iowa 1980) (involving a conviction for involuntary manslaughter where the defendant provided a weapon to an intoxicated person who shot himself); Commonwealth v. Hicks, 82 S.W. 265 (Ky. 1904) (affirming the conviction of an accessory to suicide); Nicholson ex rel. Gollot v. State, 672 So. 2d 744 (Miss. 1996) (affirming that suicide remains a crime in Mississippi); State v. Jones, 67 S.E. 160 (S.C. 1910) (upholding the conviction of an inciter to suicide based on a casual connection between the incitement and death).

149. See People v. Kevorkian, 527 N.W.2d 714, 716 (Mich. 1994) (overruling Roberts, 178 N.W. 690, and holding that where Dr. Kevorkian was merely involved in events leading up to death, such as providing means, the proper charge is assisting in a suicide rather than murder, which may be prosecuted as a common law felony).

150. The Walking Dead: 18 Miles Out, supra note 141.
preserving human life. Rick rejects a cost-benefit approach to human life. For instance, he accepts significant risk to search for Sophia, even weeks after her disappearance. Daryl suffers both a gunshot and an arrow wound in the process and ultimately, Sophia is revealed to have been bitten and transformed into a zombie soon after her disappearance when she emerges from Hershel’s barn after Shane has unlocked it.

Rick’s pro-democratic approach employs group discussions to reach a consensus for decisions affecting the group. Over time, his emphasis on democratic principles is eroded by the necessities of survival, and he concludes that the costs of consensus-building and rule-adherence outweigh the benefits. By the time of the Beside the Dying Fire episode in season two, he warns the group, “This isn’t a democracy anymore.” By “democracy,” Rick means, broadly speaking, decision-making by consensus, a semblance of a jury for judicially tinged issues, valuing the sanction of majoritarian preferences, and the procedural mechanisms in which input and differing viewpoints are compared and assessed. Before he abandons “democracy,” Rick’s approach is illustrated in several instances. The first illustration of Rick’s conception of democratic procedures occurs following the zombie attack predicted by Jim’s dream, an attack which leaves Jim gravely injured.

(a) Jim’s Refusal of Treatment

After the group suffers its first major zombie attack, the deceased members of the group are buried in the graves excavated during Jim’s delirium, and the poorly protected quarry-side camp is abandoned. Jim, having been bitten during the attack, is suffering from a very high fever and experiencing unbearable pain. Bouncing in the back of Dale’s

151. See The Walking Dead: Triggerfinger, supra note 133. Shane points out to Rick’s wife, Lori, that his techniques have saved her life four times, while Rick’s techniques have not once saved her life. Andrea also claims that Shane has done more than Rick to keep the group safe. Id.

152. Even early on in the comic book series, Rick tells Shane, in response to Shane’s hesitation about snatching additional firearms, “If you had seen the place the way I did . . . you wouldn’t have been so worried about the rules. I don’t think it’ll ever be the same again.” TWD COMPENDIUM ONE, supra note 91, at ch. 1 (ellipsis in original). In the comic book, Shane’s views do not contrast against Rick’s in the same modality as in the television series; in the comic book, Shane is an unrealistic optimist, convinced that government salvation and a cure are just around the corner. See id.

153. The Walking Dead: Beside the Dying Fire, supra note 98.

Winnebago, he describes his bones as feeling "like [broken] glass." It is understood that Jim is terminally ill and that he will reanimate as a zombie soon after his imminent death.

It is in this context that Jim begs Rick to leave him behind. A conference is held and the first question raised is whether Jim is competent to make a decision about his own welfare. Resolving that he is competent, the group then debates whether Jim's wishes should be respected, ultimately deciding they should. Jim is assisted to a shady spot overlooking the landscape, provisioned with water, and offered a firearm for protection. The group then departs, and Jim's fate is presumably sealed.

The procedures employed to consider Jim's desire to be left behind—his right to be left alone—are truncated out of necessity because the group needs to reach the CDC before nightfall. The hallmark of due process is the right to be heard. Jim's request is conveyed to the group, and they devote serious consideration to it. Rick accurately summarizes what Jim requested. With Rick's guidance, the proper considerations are appropriately ordered (first, Jim's competency to make a decision, then whether his decision should be honored), and the issues are discussed, considered, and determined by consensus, rather than by Rick or anyone else acting alone. However, when Dale is attacked later, Rick and Daryl's reaction, while merciful, fails to adhere to such conventional safeguards.

155. Id.
156. Id.
157. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 269 (1989) ("[N]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." (quoting Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251 (1898))). This is the "notion of bodily integrity." Cruzan, 497 U.S. at 269. "Every human being of adult years and sound mind has a right to determine what shall be done with his own body. . . ." Id. (quoting Schloendorff v. Soc'y of N.Y. Hosp., 105 N.E. 92, 93 (N.Y. 1914) (Cardozo, J.)). The qualifier of the adult being of "sound mind" was determinative in Cruzan, as Nancy Cruzan was incompetent. Id. at 265. Justice Rehnquist, writing for the majority, held that states, in safeguarding human life, may require evidence of the incompetent's wishes to refuse medical treatment by clear and convincing evidence. Id. at 280; see also generally Thaddeus Mason Pope & Lindsey E. Anderson, Voluntarily Stopping Eating and Drinking: A Legal Treatment Option at the End of Life, 17 WIDENER L. REV. 363 (2011) (examining personal autonomy and palliative treatment in a legal context).
158. E.g., O'Dell v. Netherland, 521 U.S. 151, 171 (1997) (Stevens, J., dissenting) ("When a defendant is denied the ability to respond to the state's case against him, he is deprived of 'his fundamental constitutional right to a fair opportunity to present a defense.'" (quoting Crane v. Kentucky, 476 U.S. 683, 687 (1986))).
(b) The Euthanasia of Dale

After the group has resettled on Hershel's farm, Dale is ambushed by a stray zombie and disemboweled. Hershel confirms that nothing can save Dale's life. Rick raises his gun to end Dale's suffering, but cannot bring himself to pull the trigger, so Daryl takes over. Dale approves of Daryl's assistance, raising his head to the barrel of the gun in the moment before it discharges, ending Dale's life. Rick later thanks Daryl for ending Dale's suffering. The hasty mercy killing of Dale—while condoned by the tone of the narrative—jettisons the simplest procedural formalities and cannot withstand the standards of pre-apocalyptic legal scrutiny.

Only three states statutorily permit physician-assisted suicide in carefully delineated circumstances. The patient must make two verbal requests and one written request to the physician, the prescribing physician and a consulting physician must confirm a terminal diagnosis and that the patient can make health care decisions, and there are certain prescribed waiting periods. There is no physician available to Rick's group; the closest thing is Hershel, a veterinarian. Thus, the formal requirements for legalized euthanasia could not be met even if analyzed under, for example, Oregon's Death with Dignity Act.

161. Oregon, Vermont, and Washington have legislatively legalized aid in dying. See OR. REV. STAT. §§ 127.800-127.995 (2013); VT. STAT. ANN. tit. 18 §§ 5281-5292 (2014); WASH. REV. CODE §§ 70.245.010-70.245.904 (2014); see also State v. Melchert-Dinkel, 844 N.W.2d 13 (Minn. 2014) (holding that a statute prohibiting persons from advising, encouraging, or assisting another in committing suicide violates First Amendment free speech protections); Baxter v. State, 224 P.3d 1211 (Mont. 2009) (overturning, on state constitutional grounds, the application of homicide statutes to physicians who aid in the death of mentally competent, terminally ill patients); Morris v. Brandenberg, No. D-202-CV 2012-02909 (N.M. 2d Jud. Dist. Jan. 13, 2014) (ruling a statute prohibiting assisted suicide violates New Mexico's State Constitution). Since the narrative of The Walking Dead occurs in Georgia, these legal claims would not specifically apply. See Sharon Kovacs Gruer & Mary Ann Hasselbring, Assisted Suicide in the United States, 26 NAELA NEWS 17, 18 (2014) (urging elder law attorney's to inform clients that changing residency to qualify for doctor assisted suicide may cause state income tax or inheritance tax issues).
162. OR. REV. STAT. §§ 127.800-97; WASH. REV. CODE §§ 70.245.010-904.
163. See OR. REV. STAT. § 127.810 (requiring a written, signed, dated, and witnessed request for medication to end one's life); OR. REV. STAT. § 127.840 (also requiring a supplementary oral request to the patient's attending physician no less than fifteen days after the initial request, with the physician required to offer an opportunity to rescind the request).
There is no physician involved, Dale has not had sufficient time to contemplate and consider his decision to die, nor has he meaningfully expressed it. He has not verbalized it, nor has an assessment of his competency to make a decision been undertaken. Even allowing for relaxed standards on account of the zombies’ decimation of most of the world’s infrastructure and institutions, Rick’s decision to take Dale’s life, while the group stands passively behind him, is like a replay of Shane’s unilateral decision to restrain Jim from digging holes in the midday Georgia sun.

About half of the states classify assisted suicide as a criminal act. Individuals possess the inherent right to refuse medical treatment or intervention (even when doing so will lead to their death) as Jim did, but not to actively seek assistance in dying, as Dale may have. The distinction might seem incongruous. Why should it be legal for the group to abandon Jim, an action that clearly will result in his death, but illegal for Daryl to extend an act of mercy to Dale and end his terrible suffering? The law does indeed recognize such a distinction. Daryl’s actions, while arguably morally praiseworthy, would net him a conviction for first degree murder in pre-apocalyptic courts. Dale’s death from Daryl’s gunshot illuminates how wide the gulf has grown between the pre-apocalyptic rule of law and the death-infused wasteland of a post-apocalyptic rural Georgia.

165. Philosophy Professor Menzel has written, Many have argued that the same value of autonomy that underlies the right to refuse life-sustaining treatment is also implicated in a right to choose death. They regard as irrational a situation where the law allows people to die certain and expedited deaths by refusing to eat and drink, or by refusing life-supportive treatment, but does not allow them to have their doctors provide them with a quick and painless death. It would seem to be similarly irrational to allow people to use advance directives to expedite death by refusing life-supportive treatment, but not by [physician-assisted death]. Paul T. Menzel, Advance Directives, Dementia, and Eligibility for Physician-Assisted Death, 58 N.Y.L. SCH. L. REV. 321, 325-26 (2014) (footnotes omitted); see also Paul T. Menzel & Bonnie Steinbock, Advance Directives, Dementia, and Physician-Assisted Death, 41 J.L. MED. & ETHICS 484 (2013) (arguing that requiring competency for individuals to obtain the assistance of a physician in ending life unfairly excludes individuals with dementia, even those in terrible pain who have maintained a consistent outlook throughout life regarding physician-assisted death).
166. This is not to suggest that The Walking Dead portrays the pre-apocalyptic world as utopian or even peaceable. The series opens with cornered criminals openly firing on uniformed officers (including both Rick and Shane) a few days before the zombie outbreak. The Walking Dead: Days Gone Bye, supra note 108.
The dilemma forces Rick's group to confront the fact that without civil infrastructure of any kind, their options for treating Randall with any semblance of pre-apocalyptic dignity are simply unavailable. In a proceeding in Hershel's living room, conducted very much like a legal hearing, various viewpoints are articulated and considered. Those assembled quickly conclude the risks to the group's survival outweigh the costs to Randall, though no one appears gleeful or even comfortable with this assessment. The group reaches a consensus to execute Randall. Dale offers an articulate resistance to the plan, but everyone else in the group agrees that the risks in releasing Randall or continuing to risk his escape are simply too great.

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168. The Walking Dead: Judge, Jury, Executioner, supra note 159.
169. Id.
170. The “hearing” is a result of Dale demanding time to discuss and consider options other than Randall's execution: “There's gotta be a . . . process,” he pleads. Id.
171. Id.
Rick, in implementing the decision of the majority, enters the barn to carry out the task. He hesitates, finding his temperament is unsuited to that of an executioner. He proceeds, instead, to free the prisoner. Shane, who is observing quietly, is aghast. He follows Randall into the woods surrounding Hershel's farm and breaks his neck.\textsuperscript{172}

What are we to make of this? In all of \textit{The Walking Dead}, this may be the most troubling legal sequence. The group employs a thoughtful procedure, meeting as a group, allowing all voices to be heard, carefully considering each available option, and yet the decision that results offends any reasonable person's sensibilities. The group, undoubtedly, has authorized and directed Rick to carry out unjustified premeditated murder.\textsuperscript{173} Shane's views and actions, meanwhile, remain consistent with his utilitarian approach.

Rick deviates from the horrific decision to execute Randall. From a procedural point of view, Rick abandons his respect for the decision-making-via-consensus modality and elects to ignore the verdict of the majority of his peers by taking matters into his own hands. Rick, in other words, has taken on the mantle of Shane's doctrinal views as one who determines outcomes on an ad hoc basis, a man who is the law and decides what the law will be. The quandary highlights the inherent limitations in the mob rule of pure democracy unrestrained by a constitutional or natural-law overlay. The group's decision is rational, considered, and thoughtful, with due consideration for various viewpoints, reached in an unhurried, respectful process. Yet the outcome of the process—the decision to execute Randall—is morally repugnant.

Shane, at the same time, has subsumed the approach formerly taken by Rick in implementing the decision that was the product of consensus (although Shane probably kills Randall based on Shane's utilitarian assessment of the risks in not killing him, not out of some kind of newfound affection for group-based consensus). The malevolency of the group's decision aside, the process by which the decision was reached is difficult to fault procedurally speaking, but it is simply ignored by Rick. Rick takes matters into his own hands. The modality Rick seems to be adopting ignores decisions reached by consensus whenever they do not align with Rick's preferences. Whatever remained of due process has clearly become another casualty of the zombie apocalypse.

Perhaps the group's execution decision is capable of being assessed under an international law rubric.\textsuperscript{174} Analysis of group-to-group

\textsuperscript{172} \textit{The Walking Dead: Better Angels}, supra note 160.

\textsuperscript{173} See MODEL PENAL CODE § 305 (2001).

\textsuperscript{174} See generally Jordan J. Paust, \textit{Armed Attacks and Imputation: Would a Nuclear Weaponized Iran Trigger Permissible Israeli and U.S. Measures of Self-Defense?}, 45 GEO.
conflicts as international law problems may be proper, despite the fact that most groups of survivors number only in the dozens or hundreds. Each group does tend to act as a sovereign only as to its members. Rick's group functions entirely independently of other groups. Widely differing governance structures are in place and apply only to the members of that group. In most respects, Rick's group is a sovereign unto itself. But even if Randall is properly categorized as an enemy combatant, his continued detention, despite its risks, seems to be the only justifiable outcome.\footnote{175}

c. The Resurgence of Revenge

Finally, we might ask about the contours of the legal landscape following the loss of the last vestiges of due process and majoritarian rule-making. Rick once tells Shane, "Stop acting like you know the way ahead, like you know the rules. There are no rules, man. We're lost."\footnote{176} Much of \textit{The Walking Dead} does center on a people who have lost their rules, their procedures, and their ways of arriving at proper outcomes. Legal historians would predict that "losing the law"—the displacement of legal institutions with the power to enforce, regulate, and punish unacceptable behavior—would lead to the resurgence of a private system of revenge that existed in primitive societies.\footnote{177}

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\footnote{176}{93 C.J.S. War and National Defense § 8 (2014) (noting that citizens of an enemy state "are subject to arrest and detention, internment, or deportation"). Execution of enemy combatants, while controversial, is generally acceptable, at least in the battlefield. But Randall is already in detention when the decision to execute him is made, and the decision is based on protecting the group rather than as a product of any kind of finding of guilt or wrongdoing. \textit{See} Alberto R. Gonzales, \textit{Drones: The Power to Kill}, 82 GEO. WASH. L. REV. 1 (2013).}
\footnote{177}{\textit{See generally} NORBERT ROUTLAND, \textit{LEGAL ANTHROPOLOGY} 253-90 (Philippe G. Planel trans., 1994). Even technologically primitive societies, however, take measures to minimize the use of private vengeance.

Legal historians have long envisaged primitive society as marked by retaliation and blood revenge: a veritable arena of violence ruled by "the law of the jungle." ... Yet there is an error in the conventional evolutionary idea. It lies in the notion that there ever was a time when torts were not emendable or a time when blood feud prevailed unchecked. The factual data make it very clear that the societies of man have from the outset wrestled with the problem of maintaining internal peace and harmony. ...}
very first written English legal codes substitute the power of the state for the private system of revenge with specific sanctions for specific wrongs—typically, fines or tariffs. A Sketch of English Legal History explains,

We have called the written laws “tariffs.” They prescribe in great detail the various sums of money which must be paid by wrong-doers. There are payments to be made to the injured person or to the kinfolk of the slain man; there are also payments to be made to the king, or to some other representative of the tribe or nation. The growth of this system of pecuniary mulcts gradually restricts the sphere of self-help and vengeance.

Early laws sought to supplant the practice of private retribution and blood-feud and their resulting cycles of counter-retribution with a standardized remedy imposed by the state. The state stands in between the criminal actor and the victim’s family and insists the family accept a tariff or wergild, thus ending the cycle of violence. One suspects that the earliest attempts of primeval governments to displace private retribution were often thwarted by individuals taking matters into their own hands. As states grew stronger, displacement of private retribution was achieved and multifarious modes of punishment became available, such as dismemberment, and later, incarceration.

But prior to these first law codes, a wrong committed by one individual would invite retribution from either the injured party or the deceased party’s family. The act of revenge, while justified, would invite a counter-assault, and the cycle would continue. Theoretically, revenge culture generates endless cycles of violence; it is a remarkably inefficient system for punishing wrongs.

In the world of The Walking Dead, the state has been destroyed and legal codes are no longer enforced. Once Rick forsakes his residual respect for those codes he had held as a lawman, one would expect a return to the world of revenge and counter-revenge on a private scale.

178. For example, the Laws of King Æthelberht of Kent (600 C.E.), the first written code in England, provided, “If the mouth or an eye be injured, let ‘bot’ be made with XII. shillings. . . . If the nose be pierced let ‘bôt’ be made with IX. shillings.” Frederic W. Maitland & Francis C. Montague, A Sketch of English Legal History 196 (James F. Colby ed., 1915).

179. Id. at 19.

180. Id. at 20.

There is some evidence that this occurs, especially in the katana-wielding character of Michonne and her desire to exact private vengeance against the Governor (Woodbury’s leader) for the horrific acts he inflicts on Michonne’s friend Andrea.\(^\text{182}\)

The post-state resurgence of vengeance also manifests in *The Walking Dead* comic book series, which loosely parallels the plot of the television series. In the comic books, Tyreese is introduced as an emotionally fragile but devoted father with superior combat skills. After arriving at the prison settlement, Tyreese’s daughter is killed in a botched suicide pact with her boyfriend Chris. Tyreese takes revenge by killing Chris. Rick not only condones the act of vengeance, he masks it from the rest of the group by telling them that Chris killed himself. “I told the others that they killed each other, and then they both turned [into zombies]. I don’t think they’d understand. But I understand. I want you to know that,” Rick tells Tyreese.\(^\text{183}\)

Soon thereafter, the psychopath Thomas, originally an inmate of the prison inhabited by Rick’s group, decapitates Hershel’s two youngest daughters. At first, the culprit is unknown, but it soon becomes obvious that Thomas was the perpetrator and he is locked in a cell as preparations are made for him to be hanged from a guard tower. Tyreese questions the idea, saying, “We haven’t made any kinds of rules for this sort of thing. If we’re going to start a new life here—try to reestablish society—we need to have rules for this. We need to all decide what we do.”\(^\text{184}\)

Rick responds in the next panel that only the most abbreviated and primitive justice code is available to the survivors: “You kill? You die. It’s as simple as that,” he says.\(^\text{185}\) Rick argues the group should impose and implement a proportionate penalty; one who commits an unjustified killing of another human being should, in turn, be slain by the group. Before this primitive social retribution can be carried out, Thomas escapes from his cell, but is quickly cornered by the murdered twins’ sister Maggie. She carries out her own personal form of vengeance and shoots Thomas in the back. “Now I feel a little better,” she sighs.\(^\text{186}\)

Soon, Rick abandons his proposed prohibition of the unjustified taking of life, executing Dexter after Dexter threatens to evict them from the

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183. TWD *COMPENDIUM ONE*, supra note 91, at ch. 3.
184. Id.
185. Id.
186. Id.
safety of the prison compound. Although Tyreese tries to convince Rick to stay his hand, saying, “We can’t just ignore the rules, Rick. We’ve got to retain our humanity,” Rick delivers a speech which sums up just where the survivors stand in relation to the vestiges of property rights and procedural due process, that, as a sheriff’s deputy, he enforced in the receding pre-apocalyptic world:

You can sit around trying to follow every retarded little rule we ever invented to make us feel like we weren’t animals—and you can die! We will change! We will evolve. We’ll make new rules—we’ll still be humane and kind and we’ll still care for each other. But when the time comes— we have to be prepared to do whatever it takes to keep us safe. Whatever it takes! “You kill—you die.” That was probably the most naïve thing I’ve ever said. The fact is—in most cases, now, the way things are—you kill—you live.

The final decay of legal institutions and the total erosion of the respect for law as portrayed in the comic book narrative of The Walking Dead are more advanced than the depictions of the television series. The post-apocalyptic world of the comic books is much darker, more violent, and less just. The law has retreated almost entirely from the landscape and the survivors subsist only through projecting violence and power against other survivors (and, of course, the zombies). The television series takes an almost optimistic view of human nature, by comparison. On balance, the comic book narrative has the ring of greater realism about it.

Although these might be dark and disturbing messages and troubling conclusions for law students, we can use discussions of the zombie apocalypse to emphasize the importance of the rule of law, property, and procedural safeguards. After all, if the survivors of an apocalypse cling to these concepts, even as they are overtaken by the zombie hordes and hostile competing groups of survivors, they must be worthy of study and attention. If one of those law students is a survivor of an actual zombie apocalypse, we owe it to them to instill a preparedness and a mastery of the subjects that their co-survivors will desperately need.

187. Id. at ch. 4.
188. Id.
189. See Robert H. Lowie, Incorporeal Property in Primitive Society, 37 YALE L.J. 551 (1928) (considering the Eskimo and the Semang in the development of property law); Richard Posner, A Theory of Primitive Society with Special Reference to Primitive Law, 23 J.L. & Econ. 1, 28 (1980) (analyzing which “characteristic legal institutions of primitive and archaic societies are economically rational responses to the conditions of primitive life”). Posner (and I) use the term “primitive” not to suggest poor or degraded, but merely preliterate. Id. at 1. The survivors in The Walking Dead will likely, within a few generations, find themselves living in a postliterate society—if they can survive.
The world of the zombie apocalypse will need individuals trained in the law as much as or more than those trained in survivalist skills, agriculture, or medicine.

D. Repopulating Law and Literature with Lesser Texts

Zombies are accessible and recognizable elements of popular culture. Arguably, accessibility is the enemy of the great. Professor Weisberg acknowledges that “accessibility is said to offset the loss in richness of source,” but asserts that it merely caters “to the limited attention span of students today.”190 Professor Weisberg is both witty and observant (if a bit snooty) when he complains that too many readers nowadays “proudly avoid the Great Books like (and including) The Plague.”191 He asserts that the solution lies with law and literature professors designing syllabi around the canon as well as selecting diverse and superior contemporary authors like Toni Morrison.192 We must, Weisberg proclaims, “offer these students sources otherwise unexplored even by nominal English majors.”193

While Weisberg is complaining more about reading Derrida and Rorty to the exclusion of Shakespeare and Dickens (and would, I predict, be horrified with the suggestion of including comic books!), I take issue with the premise that law professors owe a duty to the canon or are bound to expose law students to what is canonical or admirable in literature (or, for that matter, architecture, music, or painting). I too mourn the fact that many law students have never watched a performance of Hamlet,194 never seen an opera, and cannot tell a Rembrandt from an O’Keeffe. Yet I assert that law professors who teach law and literature courses should design a curriculum of texts that teach about the law in a meaningful way, whether or not the texts are orthodox or exceptional.

In a law school, the selection of texts for law and literature professors should, first and foremost, advance an appreciation and understanding of the law. Literature, in a variety of texts, offers a great deal in this regard. Texts that contrast with one another advance this aim more successfully than a collection of 19th century white male English writers,

190. WEISBERG, POETHICS, supra note 46, at 121.
191. Id. at 120.
193. WEISBERG, POETHICS, supra note 46, at 121.
194. WILLIAM SHAKESPEARE, HAMLET.
even ones with superior gifts of rare genius. Juxtaposition of style, of quality, of perspective, of subject matter, and of medium illuminate legal issues with greater clarity than more similarly superlative or sanctioned ones. A possible partial syllabus developed with these aims in mind might look something like:

*Beloved*\(^{195}\)

*The Trial*

*The Stranger* (audio version)\(^{196}\)

*Judge, Jury, Executioner* episode of *The Walking Dead* (television show)

*To Kill a Mockingbird* (book or film\(^{197}\) version)

*Big City Bombing* episode of *Dragnet* (radio show)\(^{198}\)

*A Jury of Her Peers* episode of *Alfred Hitchcock Presents* (television show)\(^{199}\)

*Watchmen* (graphic novel)\(^{200}\)

*The Merchant of Venice* (a live performance if possible)

*Michael Kohlhaas*\(^{201}\)

Text inclusion necessarily implies and requires text exclusion. Excluding Melville, Dickens, or both may be the price for including an episode of *Law & Order*.\(^{202}\) Who could omit Shakespeare to view an episode of *Perry Mason*?\(^{203}\) Framing the issue in this way, it is difficult to sustain a proposal for including lesser texts in a law and literature course. Instead, law professors should consider the merits of a variety of texts—texts both accessible and compelling for students—and adopt an approach that values what literature can teach about the law above an approach that shoulders the responsibility of teaching law students about literature.

III. CONCLUSION

To answer the question suggested by the title of this Article, zombies and our tales about zombies have plenty to teach law students. We


\(^{197}\) TO KILL A MOCKINGBIRD (Universal International Pictures 1962).

\(^{198}\) *Dragnet: City Hall Bombing* (NBC radio broadcast July 21, 1949).


should cautiously welcome zombies into our classrooms for the opportunities they present to teach salient issues and doctrines. Zombies can provide a convenient springboard for discussing animal law, property, procedure, and the way in which courts categorize and define novel circumstances. By deploying a legally tuned analysis of texts like *The Walking Dead*, we can identify those aspects of the rule of law that might be the most resistant to the onslaught of anarchy and violence, those that we value the most, and why we value them.

Students typically welcome appropriate infusions of popular culture into the dense and challenging doctrines they encounter in law school. Zombie film and fiction present excellent platforms for considering legal issues in unique factual scenarios. Allowing zombies into our classrooms can reanimate discussions, resurrect otherwise dry and lifeless doctrines, and give law students meaty issues to chew on. Zombies can teach law students a great deal. In the end, our students' motivations to fill their brains with legal knowledge in preparation for careers as lawyers and the ominous task of passing the bar exam may be every bit as powerful as the zombies' ravenous hunger for the brains of our students. We can and should respond to this challenge by judiciously situating legal doctrine within the familiar, nihilistic, and emotionally compelling context of the zombie.