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Faculty Scholarship

LAW AND LITERATURE DEFINING ITSELF

Earlier this spring, the University of Chicago Law School convinced Martha Nussbaum, University Professor of Philosophy, Comparative Literature, and Classics at Brown University, to join its faculty to teach law and literature. At Michigan and Duke, James B. White and Stanley Fish have long held joint appointments in their respective law schools and English departments. What use can law schools possibly have for literary critics? Although over 60 law schools, including Georgia, currently offer a class in law and literature, the focus of this interdisciplinary enterprise remains somewhat fuzzy.

My current project involves a book-length attempt to describe the parameters of the law and literature movement that first emerged in the early seventies with the publication of James B. White's classic *The Legal Imagination* (1973). Of the four types of scholarship that have developed, the most accessible might be described as "Law and Literature as Ethical Discourse." Professor Nussbaum's work illustrates this approach. She asserts that "certain truths about human life can only be fittingly and accurately stated in the language and forms characteristic of the narrative artist."¹ If fiction, therefore, is the repository of information necessary for the judgment we must exercise in our daily lives, then it can also be relevant to our legal judgment. For example, in an essay entitled "Equity and Mercy"² she responds to concerns raised by Justice Scalia in *Walton v. Arizona*, 497 U.S. 639 (1990), about the counter-intuitive and unbalanced way the Supreme Court weighs aggravating and mitigating factors in capital sentencing procedure. The essay is a hard-headed and



Professor Paul Heald teaches in the areas of contracts, unfair trade and secured transactions, and this year began a new course offering — Law and Literature. A prolific legal scholar, Prof. Heald has written numerous articles on law and economics, intellectual property law, and recently, law and literature. As chair of the Faculty Programs Committee, Prof. Heald was the principal organizer of this April's Sibley Lecture and Literature and Legal Problem Solving Conference (see related story on pg. 9). Professor Heald joined the UGA law faculty in 1989, and earned tenure this winter.

convincing use of ancient Greek drama and philosophy to resolve a discrete and controversial legal problem. My own "Medea and the Un-man: Literary Guidance in the Determination of Heinousness Under *Maynard v. Cartwright*," 73 *Tex. L. Rev.* 571 (1995), is a similar attempt to make particular works of literature relevant to answering a real legal question.


Another group of scholars would collapse literature and law completely. Literary critics such as James B. White argue that we constitute ourselves as communities both through the laws we respect and the art we create. Who we are, and how we live together, is a function of the rhetoric we use. A good judge or an effective legislator has the same responsibility as a good author to maintain a sense of community rather than to undermine it. Scholars like White focus on legal language and apply principals of literary criticism to judge the effectiveness of the performance of legal texts. Our own Professor

Milner Ball could be roughly placed in this tradition.³

A third group of legal historians seeks to trace parallel threads in literary and legal history. Movements in painting, music, architecture, fiction, and philosophy seem to share much in common at any particular moment. We shouldn't be surprised to discover that the law typically evolves in relation to the rest of a culture. For example, a study by Professor Brook Thomas⁴ sheds a great deal of light on the evolution of American law in the nineteenth century by examining the writing of James Fenimore Cooper, Nathaniel Hawthorne, Harriet Beecher Stowe, and Herman Melville.

A fourth group of scholars apply their legal expertise to interpret literary texts like Shakespeare's *The Merchant of Venice* or Herman Melville's *Billy Budd*. They believe that a legal

perspective sheds new light on the meaning of these works. After reading a great deal of this style of criticism, my conclusion is that literary critics have more valuable things to say about law, than lawyers have to say about literature.

In the law and literature course I taught this fall, the students were exposed to all four strands of law and literature scholarship, with a main focus on the ethical. After all, shouldn't the overriding purpose of any law school course be to sharpen decision-making skills and improve judgment? Reading fiction can do that in ways that reading a statute simply cannot. 

—Professor Paul J. Heald

¹ Martha C. Nussbaum, *Love's Knowledge* 5 (1990).

² *Phil. & Pub. Aff.* 83 (1993).

³ See, e.g. Milner S. Ball, *The Word and the Law* (1993).

⁴ *Cross-examinations of Law and Literature* (1987).