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Law and Literature—A Comment

Harvey Couch, III*

The author here examines the ways in which law and literature complement each other; legal settings providing dramatic backdrops to fine literature and literature serving to familiarize lawyers with writing style as well as the moral sentiments of the people expressed in literature. Yet law and literature need not remain distinct entities, but blend together in certain works of such authors as Hand, Camus, and Prettyman, providing, perhaps, the lawyer's most enjoyable reading.

From Plato's account of the trial of Socrates to Harper Lee's Pulitzer Prize winning novel, *To Kill a Mockingbird*, law and literature have carried on a unique and fascinating affair. Time and again literature has drawn upon the form and the drama, as well as the failings, of the law; and judges like Holmes, Cardozo, and Hand, to name a few, have used the elements of literature with such virtuosity that a judicial opinion is, in effect, raised to the level of literature, using the word literature to delineate a certain standard of writing.

Undoubtedly, the law is presently enjoying its greatest popularity as raw material from which the writer works. At one level there are the large-selling books of Erle Stanley Gardner, and the advent of the lawyer-hero on television. But here, admittedly, the lawyer is more like the popular detective figure. However, at another level, the legal process has been used as a central image and as a means of projecting social relationships in these bestsellers of recent years: *Anatomy of a Murder*, *Compulsion*, *To Kill A Mockingbird*, and *Twilight of Honor*. The law has also been represented on the bestselling list of non-fiction: *Felix Frankfurter Reminisces*, *My Life in Court*, *Attorney for the Damned*, and *Yankee from Olympus*. Dramatizations of the law have appeared on the Broadway stage in *The Caine Mutiny Court Martial*, *Witness for the Prosecution*, and *Andersonville Trial*. Finally, the law and the lawyers have been, to varying degrees, an element in the writings of such modern novelists as John O'Hara, Louis Auchincloss (himself a lawyer), and James Gould Couzzen. The latter's *The Just and the Unjust* probably remains the most authentic legal novel.

These works indicate a decided change in the attitude that writers now take toward the law. Earlier writers, like Swift, Fielding, and Dickens, principally criticized the law; they took the law's weaknesses and used them for purposes of both satire and comic relief. In contrast, modern writers seem to view the law more seriously, using the

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law and its processes as thematic and structural devices. Novelists now use the drama of the trial process to mirror human nature, instead of using a trial's tediousness and technicalities for purposes of comedy. And this use of law and lawyers, by earlier writers, was not always light humor; there was Dickens' harsh criticism, and Swift's invective. But this attitude has changed, partially because of a change in the law, which in its growth has shed some of its youthful foibles, and partially because of the times. Today, perhaps, it is a little more difficult to stand off and throw barbs at that which helps to maintain order in a society which is undergoing great pressures and changes.

Two other explanations for this different attitude toward the law are the contemporary interest in crime and race relations. These two areas are not purely legal, and moreover have, especially in recent years, taken on serious social and political implications. Still, the law and the lawyer are closely identified with them since it is still true, as De Tocqueville pointed out, that this country settles its serious political questions through the judicial process. Using crime or racial conflicts as the generating element, the novelist can probe the relationship of these incidents to society, and conversely, society's attitude toward them.

The change in the writer's treatment of the law is also attributable to a change in literature. No longer, perhaps unfortunately, is there anything like the raucous comedy of the Restoration, or the brilliant satire of the eighteenth century. Under the influence of such writers as Joyce, Zola, and Henry James, the modern writer is concerned with humanity—with the problem of being alive, and understanding and participating in the human condition. And this inquiry must take its form in common and realistic terms and settings.

Apparently one such setting is the courtroom. Here, in a sense, the conflicts of life can be reduced and played out in the drama of the trial. In adapting such a setting the writer already has a posture for his antagonists, and a vehicle for characterization in the witness stand. A case in point is the court martial scene from Herman Wouk's *The Caine Mutiny*. This illustrates the great success with which the courtroom can be employed as a literary setting. As each witness is called and questioned the nature of the mutiny is cast into clearer perspective. Captain Queeg's answers and demeanor under cross-examination give a more effective insight into his character than could pages of descriptive narrative.

The defense attorney, Greenwald, is here forced into deciding virtually to destroy the career of a fine naval officer in order that the truth prevail. This points up, as does the situation in the recent novel, *Twilight of Honor*, the rich possibilities that the legal profession, as distinct from the legal process, holds for the writer. The lawyer is in

a position of being confronted with problematical moral issues, and is forced into making certain value judgments. And as the various forces of the social order play upon him, as he undergoes, in William James's phrase, "the total push and pressure of the cosmos," the lawyer is forced to choose and act, thereby representing man's capacity for both weakness and greatness. A splendid illustration of this is Harper Lee's *To Kill a Mockingbird*. With these myriad forces acting upon a lawyer, and with the legal process as a backdrop, Miss Lee has wrought an interesting story which probes vital social problems and human relationships.

Thus the lawyer, the courtroom, and the legal process can be fertile sources for the writer. But how can literature serve the law, especially when the law appears as such a self-contained profession.

At the lowest level, literature serves as a form of diversion from the narrower confines of the law. Here might be noted the lawyers who take an active interest in certain incidents in literary history. A good example is the inquiries made by lawyers into the identity of the author of those plays now ascribed to Shakespeare. But this diversionary aspect of literature is applicable to any profession.

Literature becomes more important to the law when it is realized that the law, too, exists in a world of ideas translated into words. And this translation must be done carefully and accurately. The capacity to grasp and use the English language is a necessity for a judge. Because of *stare decisis*, and because a court decides only what is before it, a judicial opinion must be carefully written. Admittedly a judge and a novelist write for different purposes, but each must be discriminating and precise in his choice of words. And just as a great writer will have imagination and style in addition to mere craftsmanship, these added qualities will also serve to single out the great judge. It is no accident that Holmes, Brandeis, Cardozo, and Hand are considered the greatest judges as well as the greatest writers of judicial opinions. In fact, in Cardozo, style is a virtue excessive almost to a fault.

But a working knowledge of the language should not be limited to judges. Lawyers are constantly composing documents meant to be persuasive or conclusive, and their words must be accurate and meaningful. It might be argued that a lawyer has his own form and language for one of these documents, but certainly there is nothing which says a brief cannot be well-written and interesting, as well as legalistic.

We come now to what is probably the best service that literature can perform for the law, and which stems from the imaginative content inherent in all great literature. Blackstone said "law is the embodiment of the moral sentiment of the people." One of the best

places to find an active delineation of the moral sentiment of the people is in literature, which deals with people—their emotions, desires, fears, and relationships. These are just the human manifestations with which the lawyer is confronted.

Admittedly, there are books on psychology, sociology, and philosophy. In addition to the fact that a novel will usually be more enjoyable reading, literature, for the lawyer, has two advantages over reading all of these. First, literature brings together all of these humanities in one place. And second, literature projects the abstract into the concrete. For example, there are many studies of the South, its people, customs, and problems, but William Faulkner symbolizes and interprets the way of the South in actual people, and their relationship one to another. Thus literature reduces the theoretical to the actual, making it easier for the lawyer to analogize the human problems which he faces.

This does not mean, however, that each literary work, to borrow a phrase from the law, must be limited to its own facts. Of necessity, a novel deals with the particular and the concrete, but a great work will also transcend these physical limitations. It was once said: "The reason we constantly discover new truth in Shakespeare is that his complete understanding of the particular includes the universal." Thus literature will give the lawyer insight into human nature and activity, and will also offer hints at universal truths which can be of help in making the value judgments inherent in the profession of law.

Finally, literature can be important for its element of characterization. There is the story of the lawyer who knew how to question a miser from his reading of Balzac's *Eugenie Grandet*. Of course the lawyer cannot expect the results always to be this direct and immediate. However, it can safely be said that virtually every type of human being has been dissected and studied somewhere in the annals of literature. This knowledge of the qualities, good and bad, which make up each individual is of inestimable value to the lawyer. As Dean Wigmore said: "The novel . . . is a catalogue of life's characters. And the lawyer must know human nature."

Thus far we have been considering how law and literature, as separate entities, can complement each other, though each retains its distinct character. That is to say, an opinion by Justice Cardozo may be written with literary style but it remains first and foremost a legal writing. Or, a novel may be set entirely in a courtroom, but it is still primarily a work of fiction. We come now to what might be called the fusion, in one entity, of law and literature.

To begin with, it is interesting to note how many judges put down in books their reflections on the law. This is helpful, and is to be

encouraged; a judge holds a unique position in our social framework, and his thoughts, values, and motivations are of especial interest. Once in a while, as in the case of Judge Bok, their ideas will be cast in the form of a novel. But too often the judge will lack the literary skill to make a success of his undertaking. Such is not the case with Judge Learned Hand, and *The Spirit of Liberty*. It's true this is a collage of papers, speeches, and memorial tributes, rather than an integrated whole, but this should not be an obstacle to its evaluation. This little book is neither legal writing nor meant to be literature, but the result is a unique combination of insight into the law and literary skill. Hand is here concerned with the law not primarily as a lawyer, but as a participant in the democratic system. And this concern, and his personal values, come forth in a highly literary style, replete with vivid metaphors and meaningful, exact phraseology. Here then is a book which can be enjoyed for its reflections on the law and its literary merit; and in fusing the two Judge Hand has left us a masterwork.

Another example of this kind of work is Albert Camus' *Reflections on the Guillotine*. Camus, who won the Nobel Prize for literature, has here created a savage indictment of capital punishment. In doing so, he makes delicate probings into the real meaning of justice, and the relation of justice to the needs of society. Since justice is the purpose of the law, and capital punishment is a part of this law, this essay becomes vitally important to the lawyer. And because it was written by Camus it holds importance to the literary critic. Yet, in the final estimate, this work, like Hand's, concerns something of importance to all people.

Still another example of what we are calling a fusion of law and literature is Barrett Prettyman, Jr.'s book, *Death and the Supreme Court*. This work concerns six cases in which the defendant was originally sentenced to death and which, on appeal, eventually reached the United States Supreme Court. On the one hand, the book is relatively legal in approach as the author considers the trial, appeals, the briefs, and, finally, the Court's opinion in each case. On the other hand, the author, in a somewhat literary vein, and quite successfully, recreates the setting in which the crime is committed, thus conveying a certain amount of suspense. This, and a predominantly non-legal vocabulary, make this a book that could be thoroughly enjoyed by a layman. At the same time, it deals in depth with six Supreme Court decisions which should make it of interest to the lawyer.

These writings by Hand, Camus, and Prettyman are just three of a number which could have been mentioned; works in which the law or some aspect of it is the main theme, but which, by the author's treatment, escapes the confines of what is thought of as legal writing.

All of this is not meant in the slightest to disparage legal writing. Texts, treatises, and law review articles have examined and collated the law in such a way that these writings are of inestimable value. By the same token, we want to be able to continue reading fiction with legal backgrounds or overtones. But there should be great encouragement of those writings in which law and literature coalesce. It is presumed that the law today is something of which to be proud, and if works like Hand's and Prettyman's will take the law to a wider audience, then no longer, perhaps, will the law suffer attacks like those of Swift and Dickens.