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Economic Man and Literary Woman: One Contrast

by Robin West*

The law and literature movement has been with us long enough that it is now possible to speak seriously of a "literary analysis of law,"¹ just as it has become possible, and even standard, to speak of an "economic analysis of law." It is also standard, of course, to speak of that abstract character who has emerged from the economic analysis of law: "economic man." In these brief comments, I want to offer one contrast of the "economic man" that emerges from economic legal analysis with the "literary person" that is beginning to emerge from literary legal analysis. I will sometimes call the latter person, in the interest of rough justice and somewhat in the interest of accuracy, "literary woman."² The "literary woman" posited by literary legal theorists is coming into her own, and she is at least beginning to operate as a check on the excesses of economic man run wild.

I should add by way of caveat that these comments are intended to be programmatic and tentative. I am not suggesting, and do not believe, that the comparative vision of literary woman that contrasts with economic man and which I will describe in this essay is the only, or even the most,

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1. James Boyd White has used the phrase "literary view towards law," although in a slightly different context and toward a somewhat different end. See White, *Economics and Law: Two Cultures in Tension*, 54 TENN. L. REV. 161, 201 (1987).

2. In the interest of rough justice, I use the word "woman" to include men as well as women, "she" to include the male pronoun, and "womankind" to include mankind. In the interest of accuracy, women's moral voice seems to be distinctively tied to the moral value of empathy I discuss in this paper, and the literary method of narrative. See generally C. GILLIGAN, IN A DIFFERENT VOICE (1982); Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543 (1986).

representative vision of humanity and human nature that has emerged from the law and literature movement. I do think, though, that it is a vision we ought to pursue. The idealized literary person, sometimes explicit, but most often implicit in much of our literary legal analysis, stands in sharp contrast to her closest interdisciplinary cousin, economic man. For that reason alone, the vision of human nature she represents has tremendous moral promise. We ought to begin to make good on it.

I. LITERARY WOMAN AND ECONOMIC MAN

The economic man posited by modern legal economists (and to a lesser degree by liberal legalists) is a relatively complex figure. I want to focus here on only two of his major attributes, both of which sharply distinguish him from literary woman. First, economic man is an infallible "rational maximizer of his own utility."³ This attribute subdivides into two subparts, one "cognitive" and the other "motivational": economic man invariably knows what is best for himself,⁴ and he inevitably is motivated to seek it.⁵ He knows his own subjective welfare perfectly and pursues it relentlessly. He is the infallible judge, for example, of whether he "would prefer" pushpin to poetry, alcohol to nutrition, or heroin to shelter. He knows best not only whether a Coke or a Pepsi would yield him greater pleasure, but also whether a liberal education or an apprenticeship would better prepare him for life. His preferences perfectly mirror his subjective welfare, and his choices perfectly mirror his preferences. Thus, he relentlessly chooses what he prefers, prefers what he wants, wants what he desires, and desires what will maximize his subjective well-being. He is

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3. Thus, Posner claims in the introduction to *THE ECONOMICS OF JUSTICE*: [The tool of law and economics] is the assumption that people are rational maximizers of their satisfactions Is it plausible to suppose that people are rational only or mainly when they are transacting in markets, and not when they are engaged in other activities of life, such as marriage and litigation and crime and discrimination and concealment of personal information? . . . I happen to find implausible and counterintuitive the view that the individual . . . will act rationally in making some trivial purchase but irrationally when deciding whether to go to law school or get married or evade income taxes or have three children rather than two or prosecute a lawsuit.

R. POSNER, *THE ECONOMICS OF JUSTICE* 1-2 (1981).

4. This assertion sometimes takes the tautological form that the individual's preferences are definitionally what is best for her or him, and sometimes take the more substantive form that the individual has superior access to the sorts of knowledge required to make the judgment of what is best. The view is concisely criticized in Kelman, *Choice and Utility*, 1979 Wisc. L. Rev. 769 (1979).

5. This assumption was the target of my essay, West, *Authority, Autonomy, and Choice, the Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1985).

perfectly rational.

The second distinguishing attribute of economic man is what I call his "empathic impotence." Although economic man is perfectly rational with respect to knowledge of his own subjective well-being, he is at the same time utterly incapable of empathic knowledge regarding the subjective well-being of others.⁶ He is unable, in economic terms, to "compare" the "relative intensity" of the subjective pain of another with either his own pain or with that of others.⁷ Although the technical, jargonistic language of the law and economics movement hides the point, the economist's insistence that economic man is unable to make "intersubjective comparisons of utility," when translated into common parlance, amounts to no more than an admission (rather than an assertion) that economic man lacks even minimal empathic skills. Economic man is peculiarly incapable of the empathic knowledge, quite common to the rest of us, that his neighbor's broken leg hurts more than his own hangnail;⁸ or that a child's discomfort while eating a healthy diet is less than the pain she will feel if she eats nothing but sugar; or that the pain an impoverished buyer might sustain when the law deprives him of the freedom to contract to purchase a television set on burdensome credit terms is less than the pain that buyer would sustain in the future when he loses essentials such as food and clothing he would otherwise be able to purchase.⁹ He cannot empathize with the other sufficiently to make these comparisons.

Thus, one way—surely not the only way—to describe economic man is that he is both peculiarly *capable* and peculiarly *disabled*: he knows everything there is to know about his own subjective life, and nothing whatsoever about the subjective lives of others. He is as incapable of error regarding his own subjective self interest as he is incapable of knowledge regarding the subjectivity of others. Empathy is as foreign to him as ra-

6. See generally L. ROBBINS, AN ESSAY OF THE NATURE AND SIGNIFICANCE OF ECONOMIC SCIENCE (1935). The modern claim that we cannot compare interpersonal utilities constitutes a significant departure from the classical utilitarian position that such knowledge is both possible, and the basis of utility summations across persons. The modern economist's insistence that we are incapable of knowing anything whatsoever about the internal states of others seems to be driven primarily by the quest for objectivity and quantification. The view has been heavily criticized in both the philosophical and legal literature. See, e.g., J. RAWLS, A THEORY OF JUSTICE 90-92 (1971); B. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE (1980); Kelman, *supra* note 4, at 778-79.

7. See generally, Kelman, *supra* note 4, at 778-79 and the authorities cited therein.

8. *Id.*

9. Economic attacks on judicial interference with consumer preferences in the private market on the basis of unconscionability and voter preferences in the public sphere on the basis of unconstitutionality are typically premised either in whole or in part on this assumption. See, e.g., Epstein, *Unconscionability: A Critical Reappraisal*, 18 J. L. & ECON. 293 (1975); and Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1 (1971).

tionality is familiar. Economic man is, in short, a rational, self-regarding Hercules, and an empathic, other-regarding weakling.

Now, as I and countless other critics of the law and economics movement have argued elsewhere, the first of the economist's assumptions regarding our nature—the Herculean rationalism of economic man—is almost surely false.¹⁰ We are not invariably rational maximizers of our utility in either the cognitive or motivational sense: we do not always know what is best for ourselves, and we are not invariably motivated to seek it. I will not repeat these debates here. I do want to note, however, that, although we should not need literature, law, or a movement to tell us this simple truth, it is nevertheless one of the abiding strengths of the law and literature movement, as well as of literature more generally, that the “literary person” assumed by literary critical theory has helped us see this.¹¹ While reading narrative literature, a reader recognizes dimensions of a character's subjectivity to which the character himself is blind and constantly discovers dimensions of her own character as well, of which she was previously unaware. As Gadamer rightly insists, we “discover ourselves” as we engage in dialogue with texts, and part of what we discover in the text as well as in ourselves are wants, needs, prejudices, desires, and even “preferences” which we did not know we had, and for which we have no plausible explanation, so long as we focus narrowly on our “individualist” histories.¹² This process of self-discovery would be literally meaningless if we were as knowledgeable of our subjectivity as is economic man. But we simply are not; we remain a mystery to ourselves throughout adulthood, not just in our early years of “minority.” Indeed, for most of us, culture has the great value it has, in large part, because it is the means by which we learn who we are.¹³ Put simply, we just do not know ourselves as well as economic lawyers insist. Literature is one means by which we can glimpse this truth.

Nor are our motivations relentlessly rational, as countless critics of the

10. See, e.g., West, *supra* note 5; Kelman, *supra* note 4.

11. Even those critics of the law and economics movement who do not identify themselves as literary-legal theorists rely heavily on the notion that a narrative view of personal identity is radically opposed to the economist's discrete, moment-by-moment vision of what it means to be a human “chooser.” Mark Kelman, more clearly than any other, has made this assumption explicit. It certainly is not merely a coincidence that he is also a novelist. See Kelman, *supra* note 4; Kelman, *The Past and Future of Legal Scholarship*, 33 J. LEGAL EDUC. 432, 436 (1983); Kelman, *Spitzer and Hoffman on Case: A Brief Rejoinder*, 53 S. CAL. L. REV. 1215, 1215, 1221 (1980).

12. See generally GADAMER, *PHILOSOPHICAL HERMENEUTICS, On the Problem of Self-Understanding* (1976).

13. For the clearest statement from James White, a seminal literary theorist, of the shortcomings of the economic model of motivation and self-knowledge, see White, *supra* note 1, at 173, 180-81, 191-94.

law and economics movement have also argued. Again, although we should not need literature to tell us this obvious fact, the sharply contrasting vision of human nature offered by the law and literature movement surely has helped us see it.¹⁴ In fact, literary woman has the potential to correct a misimpression created by the nonliterary critical attacks on economic man as well. Critical-legal-studies critiques of economic man often proceed on the unnecessarily limiting assumption that while we are not motivationally unidimensional as the economists insist, we are “dual-motivational”; that is, we possess altruistic, other-focused communitarian needs and desires as well as egotistic, self-serving, individualistic desires. The complexity of literary woman reminds us, however, that this too is a false duality. We have many kinds of needs, desires, and motivations, not just one as the legal economists insist, and not just two as their communitarian critics sometimes imply. Unlike economic man, literary woman is indeed at times altruistic, as the communitarian critics of economic man insist, but she is also at times masochistic, automatic, submissive, selfish, oppressive, and perhaps sadistic.¹⁵ Indeed, we *have* literature in large part because our characters are multidimensional and worth exploring. Their complexity is a constant surprise, both to ourselves and to others.

In short, the literary woman emerging from our literary analysis of law is no Herculean rationalist. Her character is multimotivational, which is why it is worth exploring, and she does not know herself—her own subjectivity—as well as she might. She is sufficiently complex so that as a character, she is worth portraying, and as a reader, she is worthy of dialogue; she is educable.

We can sharpen the contrast between economic man and literary woman even further, however, by focusing on economic man's second distinguishing attribute. Although not as frequently controverted, the second of the economist's assumptions—that we are incapable of making “interpersonal comparisons of utility”—is also almost surely false.¹⁶ The ability to make “interpersonal comparisons of utility” is, in simpler language, the ability to empathize with the pains and pleasures, the joys and sorrows, and the happiness and suffering of others. The claim that we are incapable of making such comparisons is simply the claim that we are utterly nonempathic.¹⁷ If we cannot “intersubjectively compare” utility, we can-

14. *Id.*

15. See West, *supra* note 5.

16. See Kelman, *supra* note 4 for the related argument that knowledge we undoubtedly possess regarding the categorization of goods belies the claim that we cannot know anything about the nature of the consumer, but only about the objective processes of the chooser.

17. I have explored the connection between the capacity for empathy and the economist's assertion that we are incapable of interpersonal comparisons elsewhere. See West, *Taking Preferences Seriously* (unpublished manuscript on file with author).

not "know" the joys and sorrows of our neighbor, our friends, our spouses, our co-contractors, our co-litigants, our families, our co-workers, our employees, our lovers, or our community. But the economist's claim here is surely incorrect. We can and routinely *do* make intersubjective comparisons of utility.¹⁸ We can know the subjective lives of our neighbors, both those who are close to us and those who are not. We are not "incapable" of this knowledge. Indeed, the capacity for this knowledge is a large part of what makes us human.¹⁹ The sharply contrasting vision of human nature embodied in literary woman provides a means (one means) by which we can understand this truth. Through reading, hearing, and telling stories, we *do* precisely what economic legal analysis insists we are incapable of doing. We reach an empathic understanding—a grasping—of the subjectivity, the pain, the pleasure, the happiness, or the sadness of the other. When we read with understanding, we not only understand that happiness or pain, but to some degree we take it on as our own.

Literary woman then, unlike economic man, may not be a Herculean rationalist, but nor is she an empathic weakling: she is fully able to make intersubjective comparisons of utility. Empathic ability is the very competence that is assumed—that *must* be assumed—by both writer and reader if narrative communication is to be meaningful. Indeed, the idealized literary person posited by literary legal theorists is distinctively capable in just this way—the literary person has a virtually infinite empathic potential.²⁰ She has a virtually infinite ability to understand the subjective being of the other, even where such empathic knowledge is most difficult: of the person with the different racial heritage, the different family history, the different intelligence, or the different ambitions, goals, happiness, and sorrow.²¹ The primary attribute of the idealized literary person is her intersubjective empathic competence. Thus, while literary woman may be rationally inept, her empathic ability is truly Herculean. It is literary woman's empathic competence, which is not shared by economic man, that constitutes her moral promise. It is to that promise,

18. See the authorities cited in *supra* note 6.

19. For a persuasive and eloquent argument to this effect, see Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987).

20. On the centrality of narrative to empathic ability, see Henderson, *supra* note 19; Kelman, *supra* notes 4 & 11; Sherry, *supra* note 2; Gilligan, *supra* note 2. For a related argument to the effect that narrative and the capacity for storytelling are central to moral virtue, see McINTYRE, *AFTER VIRTUE* (1980).

21. Examples, of course, are endless, but two must be mentioned. In *BELOVED*, Toni Morrison provides a striking—as well as strikingly accessible—description of the internal subjectivity of escaped slaves in precivil war days. In (I think) equally stunning literary style and language, law professor Patricia Williams has provided invaluable descriptions of the internal subjectivity of modern people of color. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L.L. REV. 401 (1987).

and how we might fulfill it, to which I now wish to turn.

II. THE MORAL PROMISE OF THE LITERARY PERSON

That the "intersubjective comparison of utility," or, in short, empathy, is possible, does not imply that it is easy. In some cases, empathy is easy. We can easily compare the pain of a pinprick with the pain of a dislocated shoulder.²² But it is a tremendous mistake to conclude, as many critics of economic man do too quickly, that because interpersonal comparisons are obviously possible in many cases, that they are therefore straightforward and simple in all cases. In many cases, and probably in those cases in which it matters most, intersubjective comparisons of utility are profoundly difficult. In those cases in which empathic understanding is most urgently needed, it is hardest to achieve. Empathy is hard when the experience with which we are trying to empathize is one that we never have experienced ourselves, and even one that we never could experience ourselves.²³ Empathy is hard when the personality with which we are trying to empathize, the subjectivity we are trying to grasp, is radically different from our own.²⁴ It is very difficult, for example, for a member of the racial majority in this country to empathize with the subjective pain of living in a racist society. I suspect that most of us who think we do understand this pain in fact do not.²⁵ It is very difficult for a heterosexual to understand the magnitude of the pain experienced by a homosexual living in a homophobic society.²⁶ To take a more local issue, it is very difficult for a white man to empathically grasp the magnitude or nature of the pain of being the only woman or black on a law faculty.²⁷ It is not impossible, but it is difficult. It is difficult to empathize with the pain of those who are most different from us.

Now, the way that the literary woman achieves the empathic bridge in

22. I owe this example to Mark Kelman. See Kelman, *supra* note 4, at 780.

23. The adamant refusal of the "white male heavies" in the critical legal studies movement (as elsewhere) to come to grips with this deceptively simple point is the reason, plain and simple, that so many women, people of color, gays, lesbians, and other "different" and differently oppressed groups are enraged by the internal dynamics of the movement.

24. See generally Henderson, *Legality and Empathy*, *supra* note 19; Minow, *Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987).

25. Legal theorists, litigators, and judges of color have always, of course, understood this, but recently legal academics have begun to respond to the problem with greater use of metaphor, narrative, remembrance, anecdote, and even fantasy. See, e.g., Williams, *supra* note 21; D. BELL, *AND WE ARE NOT SAVED* (1987); Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

26. For a powerful description, see Mohr, *AIDS, Gay Life, State Coercion*, 6 RARITAN 38 (1986). Henderson argues that the refusal to even attempt empathic identification with gay men accounts for the disastrous outcome in *Bowers v. Hardwick*. Henderson, *supra* note 19.

27. See D. BELL, *supra* note 25.

the hard case, the means by which she gains access to the other's subjective life, is metaphor and narrative. This is the one vital lesson that the literary person, and hence the literary analysis of law, can uniquely teach us: she can teach us how to empathize in the hard case. It is for this teaching that the law and literature movement is singularly significant. For like the metaphor, narrative literature, when it is good, is the bridge that facilitates empathic understanding, and the literary person knows this.²⁸ Metaphor and narrative are the means by which we come to understand what was initially foreign. Narrative is the communication that facilitates the profoundly difficult "intersubjective comparison of utility" when more ordinary means fail. In political contexts, we rely on metaphor when our differences leave us desperate, when nothing else works and we have no other choice. "It was as though a curtain had dropped on my selfhood," Martin Luther King stated, describing the pain of segregation.²⁹ We might translate King's utterance in this way: "It is unlike anything you have ever experienced, so I will try a metaphor." And the metaphor is a good one. The white listener comes slightly closer to understanding a black man's pain, to grasping it, to seeing it, to feeling it, and most important, to assuming it as her own. Like all good metaphors, this one helps us understand the inexplicable. It helps us see what is hidden. By virtue of doing so, it helps us grow.

Surely, by now, it is no secret that as a culture we are in danger of losing the humanistic perspective that cultural traditionalism in general, and literature in particular, has to offer. As lawyers, we should be particularly wary of the serious risk this danger entails. If we *as lawyers* lose the literary voice, the literary insight, the literary vision of our humanity, if we lose the law and literature movement, we will have lost an important and even vital interdisciplinary and critical perspective on law. But there is something greater at stake, I believe, than the loss of a critical perspective. If we let go of our literary self in our relentless quest for technocratic efficiency and bureaucratic competence, we all—lawyers and nonlawyers alike—risk losing our ability to build a community. For although it is surely possible, both in practice and in theory, to make interpersonal comparisons of utility, it is also surely possible that we can become incapable of making them, particularly in those hard cases when it matters most. Although we are today "empathically competent," that can surely change. We can surely *become* the person posited as economic man. We

28. This is, for example, a constant theme, perhaps the only constant theme, in James Boyd White's writing, from *THE LEGAL IMAGINATION* (1972) through *WHEN WORDS LOSE THEIR MEANING* (1984). I don't know any other legal theorist who has said this as often, or as eloquently. See also Henderson, *supra* note 19; Minow, *supra* note 24.

29. Quoted in S. Oates, *LET THE TRUMPETS SOUND, THE LIFE OF MARTIN LUTHER KING, JR.* 15 (1982).

can become unable to make intersubjective comparisons of utility. We can become incapable of empathy. We can become hardened to others. We can surely become unable to listen to, understand, or respond sympathetically to the subjective anguish of others. But we do not have to, and the insistence that we do not have to and that we ought not to is the central, unique, and irreplaceable contribution of the law and literature movement. We can fulfill the empathic promise of the literary person rather than the egotistic danger of economic man. We can become more capable, not less capable, of intersubjectively comparing utilities. We can become more, not less, empathic; more, not less, able to understand the subjective lives of others who are radically different from us and respond sympathetically to those lives. We do so, in part, by reading and appreciating the narrative stories of the lives of others.

In closing, let me give an example of the type of question a narrative or literary perspective can help us answer. How does it feel, subjectively, to be an adult incest survivor, or, more broadly, a survivor of childhood sexual abuse? How much lingering physical, psychic, emotional and moral pain is involved? How bad is the pain? How does the "intensity" compare with other pains? What are the implications for adult life? How does it affect one's integrity? How does it affect one's sense of self? Does it damage one's capacity to tell the truth? Does it preclude adult trust, in either oneself or others? Obviously, these are questions regarding the subjectivity of the other, and they are questions for which, as lawyers, we need answers. If for no other reason, the legislator needs to know how much of our collective resources to expend on the problem of sexual abuse of children. We need to know, and presently we do not, how serious the crime is, and how grave the injury, occasioned by the apparently widespread sexual abuse of our children. To answer that question, we need to understand the subjectivity of the abused.

In connection with work I have been doing on the relationship between heterosexuality and violence, in the past two years I have read many narrative accounts of incest and sexual child abuse, and I still do not know the answers to these questions. But what my reading has taught me is that the answers to these questions are, in principle, *knowable*. I am now convinced that even those of us who have never had this crushing experience can empathize to some extent with those who have. I do not know whether the nonabused majority can ever fully understand the "relative intensity" of that abiding and utterly internal and subjective pain, or of the damage that lingers into adulthood, or of the sorrow that grows from a profound trust having been demolished, or of the sense of loss arising from a security that should be an entitlement of childhood forever being destroyed. I am not sure we can perfectly assess the "intensity of this disutility," or compare its intensity with others. But with metaphor and narrative, when all else fails, we try. With metaphor, narrative, and a will-

ingness to listen, we can succeed to some extent.

Let my try to prove the point. In a remarkably powerful account of her survival of childhood abuse, contained in an equally remarkable book,³⁰ Lillian Kelly uses both metaphor and narrative to communicate the intensity of her experience of both abuse and survival. She begins with a metaphor to communicate the intensity of the abuse: "Aside from the fear, confusion, and shame, the molestation was as if I'd passed through an enormous threshold, *as big as birth*."³¹ She then uses an allegory to convey the intensity of the aftermath.

Some years after (its always "before" and "after," isn't it?), during my senior year of high school, my close friend received two antique vases in the mail. One arrived whole, the other hopelessly shattered. My friend labored, sometimes passionately, sometimes indifferently, all through that year piecing together the delicate porcelain. When her cat knocked the half-completed reconstruction from her desk, breaking it in new places, I think my friend saw it as a minor and interesting setback, while I despaired.

She completed the project, but the vase she produced could hardly be called complete. Tiny and large chips, once part of the original, had inevitably been lost, hidden in the packing material, or carried away by a little sister. This vase was more a product of my friend's labor than that of the original artist. Strangely, though, the new vase, for all its disfigurement, scars, chips, and ragged lip, for all the horror of the shattering and an imperfect mending, when set beside its unblemished twin, was the more splendid of the two. My friend presented her vase to me as a graduation gift, and I have it still.³²

Although entirely metaphorical, or perhaps because it is entirely metaphorical, this description, better than most I have read, communicates powerfully both the comparative intensity of the pain of abuse and the subjective experience of survival. Both the injured child and the heroic, courageous adult that emerges from this short account become members of my community, a part of my sense of self. Because she shared her story, her injury has become my injury, my burden, and part of my responsibility, and her heroism has become part of my human potentiality. I understand, better than before, the magnitude of her pain and the momentousness of her strength.

The knowledge we learn in this way—knowledge of the subjectivity of others, gained and pursued through metaphor, allegory, narrative, literature, and culture—is a peculiar sort of knowledge, but it is absolutely

30. I NEVER TOLD ANYONE: WRITINGS BY WOMEN SURVIVORS OF CHILD SEXUAL ABUSE (E. Bass & L. Thornton, eds. 1983).

31. *Id.* at 197.

32. *Id.*

essential to any meaningful quest for justice, legal or otherwise. It is the knowledge that facilitates community, and the capacity for that knowledge is the capacity that makes us social. Without it, we would not crave, much less attain, justice. But it is not rational knowledge. Knowledge of the other's subjectivity is not rationally acquired, and it cannot be rationally calculated, quantified, aggregated, or compared. It is knowledge that moves us rather than informs us. We "make room" for this knowledge in our heart, not in our head. Knowledge of others, empathically acquired through metaphor and narrative, is knowledge that becomes a part of our sense of self, our sense of the other, and our sense of union with him. Without knowledge of this sort, we cannot attain true community, and without true community we cannot attain any meaningful justice.

Martin Luther King unknowingly underscored the centrality of narrative and literature (as well as their close cousins, demonstrations and street theatre) to moral progress when he explicitly ties empathy to justice in this passage:

In this final analysis the white man cannot ignore the Negro's problem, because he is a part of the Negro and the Negro is a part of him. The Negro's agony diminishes the white man, and the Negro's salvation enlarges the white man.

What is needed today on the part of white America is a committed altruism which recognizes this truth. True altruism is more than the capacity to pity; it is the capacity to empathize. Pity is feeling sorry for someone; empathy is feeling sorry with someone. Empathy is fellow feeling for the person in need—his pain, agony, and burdens. I doubt if the problems of our teeming ghettos will have a great chance to be solved until the white majority, through genuine empathy, comes to feel the ache and anguish of the Negroes' daily life.³³

III. CONCLUSION

Why, then, should lawyers read literature? Why teach this stuff? What does it add to the legal curriculum? As Richard Posner asks, why use fiction to make a point which could be proved, or disproved, with the empirical tools of social science?³⁴ Answers to these and related questions presently proliferate, surely masking (but never very well) endemic and massive insecurity over the utility of humanistic discourse to legal education. This may be because we have overlooked what is most central. Perhaps the most important use of literature, for lawyers, is the most obvious one, but the least mentioned in modern discussion of the law and literature movement. Literature helps us understand others. Literature helps

33. THE WORDS OF MARTIN LUTHER KING, JR. 22 (C. King ed. 1983).

34. R. POSNER, LAW AND LITERATURE (forthcoming, Harvard Press).

us sympathize with their pain, it helps us share their sorrow, and it helps us celebrate their joy. It makes us more moral. It makes us better people. The literary person, like economic man, is surely only one of the many persons we might become. But, unlike economic man, she is also someone we can unabashedly claim that we should become. She represents not just our cultural heritage, but more importantly (and relatedly) she represents our potential for moral growth.³⁵ She is the possibility within all of us for understanding, for empathy, for sympathy, and most simply, for love.

35. See generally J. GARDNER, *ON MORAL FICTION* (1976).