

Law as Literature?¹

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In March 1617 Marius Muta, a Judge of the Supreme Court of Sicily, sentenced a certain Leonardus to seven years in the galleys. It seems that Leonardus had lured his unfaithful wife outside the city walls, where he killed her, and where her body was later partially eaten by dogs. He had enticed her to the place of the murder by using his son, or her son, or their son (the Latin text says only 'per filium'), and the weight of the sentence bore less on the murder itself than on the mode of the killing:

A report of the case therefore having been made in the General Visitation in March 1617, before his Excellency, because there appeared the wicked method of killing her, she having been thus called by his son and afterwards her corpse was discovered just as though the dogs had devoured it outside the walls, Leonardus himself was sentenced to the royal galleys for seven years.²

Over eighty years later, this case was cited twice by Desiderius Spreti in his defence of Guido Franceschini, a Tuscan nobleman on trial in Rome for the murder of his wife.³ The defence argument was intended, not to secure acquittal, but to avoid the capital penalty, and the basis of this argument was that Guido's honour had been injured by the infidelity of his wife. The analogy with Leonardus, as presented in Muta's judgment, is clear, as is the usefulness of the case to the defending lawyer. But the argument of the defence was not accepted by the court, and Guido was beheaded on 22 February 1698.

More than two and a half centuries later the case found its way into English literature in Robert Browning's *The Ring and the Book* (1868-9),⁴ a poem based on the Franceschini trial as recorded in contemporary legal documents discovered by the poet. Browning's defence lawyer, Dominus Hyacinthus de Archangelis (in the actual case Spreti had been his junior), cites the case of Leonardus:

For pregnant instance, let us contemplate
The luck of Leonardus, – see at large

Of Sicily's Decisions sixty-first.
 This Leonard finds his wife is false: what then?
 He makes her own son snare her, and entice
 Out of the town-walls to a private walk,
 Wherein he slays her with commodity.
 They find her body half-devoured by dogs:
 Leonard is tried, convicted, punished, sent
 To labour in the galleys seven years long:
 Why? For the murder? Nay, but for the mode! (VIII. 809-19)

Just as Spreti gave Muta's judgment new life by citing it in the context of a new case, so Browning's version brings the case to life again, and gives it new discursive and linguistic vitality by translating it, not just from Latin into English (for Browning did not have the benefit of Gest's translation), but also from legal discourse into poetry. The poem pushes the citation in the general direction of narrative fiction, and in so doing it brings law and literature into mutually illuminating relationship. The two citations, in the Franceschini trial and in Browning's poem, tell the same story in different ways, and to look at them in relation to each other is to observe law and literature grappling and communicating with each other.

In the two versions, the same story is given different kinds of coherence. Both versions begin with the decision, but whereas Spreti moves from the decision through the reasons behind it to the actions informing it, Browning's Archangeli goes from the decision, to the actions, to the sentence, and concludes with the reason for the decision. In Spreti's account, the actions which prompted the case are processed in a discourse which privileges decision, reasoning, and sentence over 'what happened'. His narrative subordinates the story *in* the trial to the story of the trial,⁵ whereas the literary lawyer makes the trial part of the story. Archangeli foregrounds the story in the trial by avoiding the institutional passive and by using the present tense, as well as by changing the narrative sequence into something like a chronology of events. And of course Archangeli's extra-legal play with language ('pregnant') leers at a pre-legal story. The coherences of Spreti's account, on the other hand, are not those of chronological sequence. His story is shaped by the way the judgment constructs the circumstances of the case, and in a

tangible manifestation of what James Boyd White has called ‘the invisible discourse of the law’,⁶ a language of judgment writes out a language of description. The lawyer’s alliterative phrase the ‘luck of Leonardus’ serves as a further poetic comment on the nature of legal judgment by making it seem quite arbitrary.

This careful rewriting of the precedent in the poem draws out the descriptive structures which the judgmental language of the law suppresses, but on which it depends. Stanley Fish has pointed out that precedent is itself a means to authority and coherence, ‘the process by which the past gets produced by the present so that it can then be cited as the producer of the present’.⁷ Legal citation, that is to say, not only takes a narrative form; it also locates its primary case within larger configurations of social meaning to which it does not explicitly refer. Browning thus confidently translates ‘per filium’ as ‘her son’, which Gest seems to have thought incorrect. But this turning against his wife of her own son both intensifies the betrayal on which the judgment turns and which the lawyer wishes to emphasize, and also heightens the sense of a patriarchal plot against all women which the poem as a whole emphasizes. Such a plot works in social terms through legal structures – in this instance those of the Patria Potestas as represented by the corpus juris – and legal rhetoric, and the method of the poem is to turn the law against itself.

This comparison of the handling of Leonardus by Muta, via the Spreti of the Old Yellow Book, and by the Archangeli of *The Ring and the Book*, suggests some ways in which literature can engage creatively with law. Browning’s engagement here is of course critical, but his poem’s close dependence on its source meant that he could not simply be dismissive, and that his poem had to take legal discourse and its authority seriously. This results in an intricate and dense interweaving of law and literature that is as searching, and as culturally significant as the great ‘legal’ works of Browning’s contemporaries Dickens, Melville, and Dostoevsky. In *The Ring and the Book* literature comments on the law, not by treating legal themes or figures to exemplify aspects of legal formalism, but by translating law into literature. This translation involves analysis of the rhetorical structures of

legal story-telling, by bringing law and literature together in such a way that their languages comment on each other.

To analyse such interdisciplinary commentary is to seek out points at which law and literature meet. In 1982 the *Texas Law Review* held a symposium on 'Law and Literature'; in 1989 the *Michigan Law Review* held a symposium on legal storytelling; and 1988-89 also saw the establishment of two interdisciplinary journals, the *Yale Journal of Law and the Humanities*, and *Cardozo Studies in Law and Literature*.⁸ All of these suggest and explore significant points of contact between literary and legal studies, and what follows here will attempt to explain such interdisciplinary explorations, particularly in the movement that has become known as 'Law and Literature.' Law and literature meet in rhetoric: that is their common feature; for the origins of both law and literature as they have developed in the west are to be found in the theory and practice of rhetoric as developed in Greek philosophy, and in the Roman schools of declamation. Such theory and practice are closely related in the literature and law of Greece and Rome.⁹ A legal judgment, a statute, a deposition, deploys its language as carefully, as strategically, and as designedly as does a poem, a play, or a novel; its organisation is a matter of rhetoric. To stress rhetoric as the meeting-point, or common ground, of law and literature is itself a rhetorical move which involves overlooking or disregarding the clearest line of demarcation between law and literature, which is that the law involves the exercise of power in ways that literature does not. In so far as books ever change lives, they do so in ways that differ radically from imperative acts of adjudication.¹⁰ The disregarding of that key difference is itself a legal trope, a procedural fiction to which Law and Literature practitioners knowingly commit themselves in order to explore the common linguistic and rhetorical principles that may enable the disciplines to illuminate each other. (The *Yale Journal of Law and the Humanities* implicitly acknowledges the significance of this difference by holding a symposium, in its most recent issue, on 'Language, Law, and Compulsion'.)¹¹ This focus on rhetoric, whatever its limitations, does help to suggest why and how the methods of both disciplines have come under similar kinds of scrutiny and questioning from the same quarter. Legal scholars,

like their literary counterparts, have grown conscious, not just of the language of the canonical texts of their discipline, but also of the rhetoric in which they have traditionally discussed those texts, and the rise of Critical Legal Studies is the most tangible evidence of the effect, on the law, of structuralism and deconstruction.¹² Derrida has made his presence felt in both literary and legal studies, and the powerful rhetoric of Michel Foucault, whose notion of discourse as power has been enormously influential in literary studies, has challenged, and changed, many established modes of thought in the legal academy.¹³

But not everything that happens in the general configuration of Law and Literature can be put down to structuralism or deconstruction, and enough is happening, of sufficient intellectual diversity, to require some distinctions. The distinctions that I am about to make are necessarily idiosyncratic, and they do not harmonise with those made by two distinguished American legal scholars.¹⁴ This may be because it is necessary first to discriminate between developments in Britain, and in the United States. The Law and Literature movement is a distinctively American phenomenon, having little to do with the British scholarship that concentrates on the literary nature of legal activity. In Britain, Bernard Jackson and Peter Goodrich have both emphasised law as a text-based activity that is profoundly concerned with reading and writing,¹⁵ and although they stress literary features of legal discourse (such as narrative), they draw more heavily on the techniques of formal linguistics than do most American scholars in the Law and Literature field. In spite of their radical disagreements, which lie beyond the scope of this paper, Goodrich and Jackson are mainly concerned with the positivist tradition in English jurisprudence. Differentiating features in the legal cultures on different sides of the Atlantic may have conditioned quite distinct approaches to the literary features of the law.

In the United States, literary and legal scholars have been united for some years in the hermeneutical strife which has divided them. The interpretation of literary texts, and the interpretation of legal texts, have raised similar theoretical issues,

such as intentionalism, and the possibility of objectivity in interpretation as against the inevitability of subjectivity. In literary criticism, Wimsatt and Beardsley's 'The Intentional Fallacy' effectively did away with authorial intention for a generation (though there were dissenting voices, most notably that of E. D. Hirsch); Barthes's 'The Death of the Author' was a belated coup de grâce.¹⁶ Presumably because of the power with which legal texts are invested, the question of the intentions of those who frame statutes (notably the Constitution) and who make judicial decisions which then become precedents has remained contentious, particularly in the United States.¹⁷ The ongoing hermeneutical debate about objectivity and subjectivity was revitalized by the *Texas Law Review* symposium on Law and Literature in 1982. This issue contained a paper by Ronald Dworkin, 'Law as Interpretation,' which put forward an analogy between a judge making a decision and the writer of a chapter in a chain-novel, with previous decisions (like previous chapters) for his guide, but with some space to make his own contribution. This paper was also published, also in 1982, in a special issue of the literary theoretical journal *Critical Inquiry*.¹⁸ Both journals also contained Stanley Fish's reply to Dworkin, 'Working on the Chain Gang: Interpretation in the Law and in Literary Criticism'. (The same debate, between a professor of Law and a professor of both Law and English, is being carried on simultaneously in a literary and a legal journal.) When the *Critical Inquiry* collection was reprinted as a book, in 1983,¹⁹ Dworkin replied to Fish (and others) with 'Please Don't Talk About Objectivity Any More,' to which Fish responded, in the *Texas Law Review* for same year, with the brusquely titled 'Wrong Again.' (At this point the literary and legal journals are talking to each other.) Dworkin struck back three years later in *Law's Empire*, only to provoke a provocative reply from an unregenerate Fish: 'Still Wrong After All These Years,' was published in a special issue of *Law and Philosophy* devoted to responses to Dworkin's book.²⁰ (Now the debate has moved firmly into the legal domain.) The case remains undecided, with further submissions presumably to be heard, but the last word currently belongs to Fish. The Dworkin-Fish exchange has become central to discussions of literary and legal interpretation, and the writings of Fish have become the controversial focus of the discussion of

the similarities and differences between interpretation in literature and in law.²¹ Most of the work, as the drift of the bibliographical details cited above suggests, is being done by legal scholars.

Beyond all this, there is law-as-literature, or literary jurisprudence, which stresses the common systems of language shared by law and literature. This is the centre of the Law and Literature movement, the place where legal specialists might be most distrustful of it (because it opens their territory to outsiders), and the place where *litterateurs* find it most accessible (for the same reason). James Boyd White, who professes Law, English, and Classical Studies is a leading figure here. White brings the law dramatically to life by reading legal texts as though they were literary texts, and by talking about them in a vocabulary that he brings from the humanities. White's books range over English and American literature, Greek literature, and history, as well as law; and in all his writings White is concerned to bring literary texts into relationship with legal texts, generally from constitutional and criminal law.²² White insists that the heart of a lawyer's life is literary in that it is to do with telling stories, and he reads the law as a system of narrative and dramatic poetics. His central, bold claim is that the law, as a system of verbal action, should be seen among the humanities. This is because the language of the law should be (in White's terms) literary rather than theoretical; for at the centre of legal activity is a concern with the meaning of events and the quality of relations which requires a tentative and poetic language for its operations. The legal process as White sees it is thus a constant process of translation from ordinary language to legal language and back again, and cultural relationships and meanings emerge from that process. White makes a massively humanist claim for law as a social as well as a rhetorical activity, a culture of argument that is also a positive force. It is through the law, he argues, that we constitute our culture and define our social relations, and in these terms the law is an ongoing conversation through which we create a rhetorical community over time.

This is obviously far removed from what goes on in the local courts from day to day, and White has been criticised as other-worldly; but, working firmly within a liberal humanist tradition,

he is addressing himself to legal discourse in its ideal form. Law and Literature has grown from the ethos of liberal humanism, and whatever the implications of the Law and Literature movement for the academic study of law, its politics are pluralist and conservative, and clearly distanced from those of the more radical Critical Legal Studies Movement with which it is sometimes lumped. White's literary approach to the law is best exemplified in his first book, *The Legal Imagination*, a text book for law students. His analysis of the rhetorical function of conversation in *Emma*, in *When Words Lose Their Meaning*, is a good demonstration of how his method can refresh our reading of familiar literary texts. White is a much better reader of literature than Richard Posner, whose *Law and Literature: A Misunderstood Relation* (see n.17 above) is shackled by its outmoded New Critical methodology. Posner, who is both a judge and a legal academic, has little time for the Law and Literature movement as represented by White, and he champions instead Law and Economics. That is a movement to which White is strongly opposed, because it tries to appropriate law to the social sciences rather than to the humanities which is where, for White, it truly belongs. The language of economics reduces human transactions to the model of exchange, and it is precisely from such models that the literary language of the law has the power to liberate us.²³

It is odd that the only book 'about' the Law and Literature movement, that by Posner, should have been written by one of its enemies. This book was lauded by the economic right, and savaged by the left,²⁴ and a substantial if somewhat critical review essay by Richard Weisberg may provide the best guide to the politics of the Law and Literature movement.²⁵ Weisberg takes Posner to task on (particularly) *Billy Budd* and *The Merchant of Venice*, but also on the deductive logic of his impersonal jurisprudence which, in Weisberg's view, determines Posner's inadequate reading of literary texts. Weisberg argues against Posner for a humanistically-oriented application of the rule of law based on an inductive, case-specific tradition. He claims that literary art about law is itself a rich source of jurisprudential values, and that literary stories about the law force us to grapple with the unique elements that come to the fore

when the law acts on people. Weisberg's claim, based as it is on an appeal to a central humanism, leads logically to the following questions: 'Can vitalistic values – love of environment, sexual and artistic expression, individual eccentricity, personal privacy meshed with public responsibility – survive a predominantly verbal and often repressed and anti-vitalistic legal power structure? Can the perspective of children, so wonderfully conveyed by great fiction, be appreciated by modern legal institutions? Or the plight of the poor and homeless?'²⁶ These rhetorical questions, however important they may be, define the politics of the literary jurisprudence as liberal rather than radical, as strictly non-subversive of legal institutions. They are themselves no more than a form of special pleading, a plea for compassion, sympathy, pluralism, and for the humanism of 'great fiction,' rather than a demand that social or legal structures be changed. This point is worth making because Weisberg is, like White, a central figure in the Law and Literature movement. In fairness to him, it must be said that in his own literary analysis, in this review and in his book *The Failure of the Word*²⁷ probes the discursive authority of the law with radically disturbing perceptiveness to which his own theory does less than justice. His searching discussion of legal ways of talking in Dostoevsky, Flaubert, Camus and Melville goes well beyond the politically liberal terms of his theoretical framework.

The liberal-humanist terms of Weisberg's framework, and of White's vocabulary, suggest that the Law and Literature movement may have grown from the 'crisis in the humanities,' that it may be an attempt by a core discipline in the humanities to appropriate, in a pragmatic world, the authority and probity of a professional discipline. The evidence suggests otherwise. The impetus behind the movement has come almost entirely from law schools in the United States, and some reasons for the law's interest in the literary features of its discursive practices can be tentatively suggested. One such reason may be that, during the last twenty or so years, the legal profession (at least in the United States), has opened its doors to those who were formerly outsiders, and that the increased human diversity of the legal profession is reflected in a diversity of legal scholarship. The special issue of the *Michigan Law Review* on legal storytelling

(in which all papers were by legal scholars) took shape as an exploration of the 'counterhegemonic' power of various kinds of legal narrative, as if in acknowledgement that the stories of which the law is 'made up' (in both senses) are changing.²⁸ Peter Brooks, an authority on narrative, has suggested that narrative is a juncture between law and the humanities to which we can usefully attend, because narrative makes us feel that we are dealing with actual experience in a way that the normative syllogism (the basic unit of legal rhetoric) does not.²⁹ It follows from this that the analysis of narrative strategies in law may help non-specialists not only to understand, but also to challenge, a discourse of immense material power. Bernard Jackson gives a further turn of the screw to this argument by suggesting that legal discourse is sustained by narrative structures, and that the enthymeme or syllogism as used in legal reasoning draws on narrative frameworks which have a social origin.³⁰

Ivor Indyk has demonstrated that the politicization of the humanities was a direct consequence of events in Europe in 1968.³¹ In English studies, the influence of continental philosophy challenged the New Critical orthodoxy that had prevailed since the 1940s, and inspired a greater social contextualization of the discipline. The Critical Legal Studies movement may have similar origins; and although I have taken pains to distinguish Law and Literature from Critical Legal Studies, the origins of Law and Literature may also be traceable to 1968 – the year in which Martin Luther King and Robert F. Kennedy were assassinated, the year Eugene McCarthy made the running for the Democratic nomination, the year of the Chicago seven, and the year in which Richard M. Nixon won the presidential election. The date of James Boyd White's *The Legal Imagination* may be significant here: 1973, the year of Watergate, between the Nixon landslide of 1972 and the end of the Nixon presidency in 1974. For those entering law schools in the United States at the end of the sixties or the beginning of the seventies, whose political sympathies had been with Eugene McCarthy or Robert Kennedy but who turned from a political party which could stage the Democratic Convention in Chicago in 1968, and who were appalled by the illegal acts of the President and his administration in what was then Cambodia as well as in

Washington, White's book could have been important. It was a text-book that suggested a reconstitution of legal scholarship, that demonstrated that law could be talked about in ways very different from the orthodox ways then prevalent in law schools, and that stimulated the legal academy to some diversity in the ways it thought and talked about itself. It could have made a difference by suggesting that lawyers could make a difference.

So argues Milner S. Ball, Professor of Constitutional Law at Georgia, and himself a transgressor of the boundaries between law and other disciplines.³² His 'confession' effectively, and in my view correctly, grounds Law and Literature in the politics of American liberalism, and the origination of the movement in the United States may be explained by the significant configuration of law and letters in American culture.³³ The foundational texts of the American republic, the Declaration of Independence and the Constitution, are central documents of more than legal significance in the cultural life of their nation. The Gettysburg address was delivered by a backwoods lawyer who was himself a significant interpreter of democratic theory in America, whose sayings are part of American lore, and who was the subject of the most overtly political poetic venture in American literature, Walt Whitman's 'Memories of President Lincoln.' The journal edited by Richard Weisberg takes its name from Benjamin Cardozo, Justice of the Supreme Court of the United States (1932-1938), whose judgments are explicitly committed to 'living law', and who himself wrote lucidly on 'Law and Literature'.³⁴ When Don Anderson exhorts us, in our consideration of law and literature, to think always of Dickens,³⁵ he is himself thinking within an Anglo-European tradition that is in many ways alien to America; for an American would think first and foremost of Herman Melville, creator of Captain Vere as well as Captain Ahab. *Billy Budd, Sailor* is a canonical text in both American literature and American legal scholarship, having received almost as much comment from lawyers as from literary critics. Thus, *Cardozo Studies in Law and Literature* initiated itself with a symposium on this 'favorite text in law and literature scholarship'.³⁶

The intellectual activities that fall under the general heading of 'Law and Literature' are becoming too diverse to classify. It is to

be hoped that the journals do not allow themselves to get too involved in the theory of their fledgling enterprise, and that they grow into multidisciplinary meeting-places. Literary and legal texts should be brought into relationship through discourse analysis of various kinds. The established literary focus on legal discourse should broaden from constitutional and criminal law to include property, torts, and contract, possibly adding a 'culture of agreement' to James Boyd White's 'culture of argument.' And lawyers should not appropriate literature by asking questions like 'Can Shakespeare Make You a Partner?'³⁷ which relegate the study of literature to no more than a remedial activity in the serious business of the pursuit of power. Robert Ferguson's literary analysis of the generic features of the judicial opinion as having its own unacknowledged conventions, based on a rhetoric of inevitability, might be extended to other features of legal discourse; and literary debate about what canons are and how they are constituted may now be influencing consideration of 'canonical' legal texts.³⁸ Above all, there is fiction: is there any connection between the novelist's fictional contract with the reader, and the procedural pretences of the law?³⁹ The conscious pretence of a game of art is one thing; the use of such pretences in the most established discourse of social power may be quite another. Historians should join the fray, for they too live by their fictions, and historical narrative, like its legal counterpart, produces only a series of variant readings and interpretations.⁴⁰ To analyse the poetry of Wallace Stevens, or of Roy Fuller, in full knowledge that it is the writing of a practising lawyer, may illuminate both poetry as a forensic art, and some potentially creative features of legal discourse. To place one discipline at the service of another presents no great challenge, but to bring law and literature together in ways that use the methodologies of both disciplines to comment on each other is challenging indeed. The difficulty of this should not be underestimated, because the law as recorded in practice, in actual cases, is always culturally and historically specific – as is literature, and as is the practice of criticism. The much-praised plot of *Great Expectations*, which works through a series of legal arrangements, might be brought into relationship with the book's central characters in such a way as to help us better understand the concepts of character and individualism as they were constituted by the social organisation

of Victorian England. To put literary and legal disciplines in such relationship is challenging in a scholarly as well as in a critical sense because it requires not only a great deal of knowledge, but also a capacity to bring together ways of thinking that have become institutionally separated; and any breaking-down of the institutionally-erected (and patrolled) barriers between and within disciplines will always threaten established interests and practices. This challenge should now be taken up by departments of literature, language, and linguistics, and by historians, as well as by law schools.

NOTES

- 1 An earlier version of this paper was given at the Faculty of Law staff seminar at the University of New South Wales on 15 March 1990. I wish to thank Ian Ramsay for the invitation to speak at this seminar, and the members of the Faculty for their stimulating response, which has helped to shape this paper in its present form.
- 2 J. M. Gest, *The Old Yellow Book: Source of Browning's The Ring and the Book*, second edition (Philadelphia: University of Pennsylvania Press, 1927; rpt. New York: Haskell House, 1970) p.430.
- 3 Gest, pp.430, 322.
- 4 Robert Browning, *The Ring and the Book*, ed. Richard D. Altick (Harmondsworth: Penguin, 1971).
- 5 This useful distinction is established by Bernard S. Jackson, *Law, Fact and Narrative Coherence*, Legal Semiotics Monographs 1 (Merseyside: Deborah Charles Publications, 1988) p.35.
- 6 James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison: The University of Wisconsin Press, 1985) ch.4.
- 7 Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham, NC: Duke University Press, 1989) p.514.
- 8 'Law and Literature', *Texas Law Review* 60 (1982); 'Legal Story-telling', *Michigan Law Review* 87 (1989); *Yale Journal of Law and the Humanities* Vol.1 No.1 (December 1988); *Cardozo Studies in Law and Literature* Vol.1 No.1 (Spring 1989).
- 9 See S.F. Bonner, *Roman Declamation in the Late Republic and Early Empire* (Liverpool: University Press of Liverpool, 1949); and Wesley Trimpi, *Muses of One Mind: The Literary Analysis of Experience and Its Continuity* (Princeton: Princeton University Press, 1983).
- 10 Robin L. West, 'Adjudication is not Interpretation: Some Reservations about the Law-as-Literature Movement', *Tennessee Law Review* 54

SYDNEY STUDIES

- (1987), 203-78; and Peter Goodrich, *Reading the Law: A Critical Introduction to Legal Method and Techniques* (Oxford: Blackwell, 1986) p.v.
- 11 *Yale Journal of Law and the Humanities* Vol.2 No.1 (Winter 1990).
 - 12 For Critical Legal Studies, see Roberto M. Unger, *The Critical Legal Studies Movement* (Cambridge, Mass: Harvard University Press, 1986); and Duncan Kennedy and Karl E. Klare, 'A Bibliography of Critical Legal Studies', *Yale Law Journal* 94 (1984), 461-90.
 - 13 See Christopher Norris, 'Law, Deconstruction, and the Resistance to Theory', *Journal of Law and Society* 15 (1988), 166-87; 'Suspended Sentences: Textual Theory and the Law', in *The Contest of Faculties: Philosophy and Theory After Deconstruction* (London: Methuen, 1985).
 - 14 Milner S. Ball, 'Confessions', *Cardozo Studies in Law and Literature* 1 (1989), 185-97; Robin L. West, 'Adjudication is not Interpretation', pp.203-4 n.1.
 - 15 Peter Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (New York: St Martin's Press, 1987); and *Reading the Law*; Bernard S. Jackson, *Law, Fact and Narrative Coherence; and Semiotics and Legal Theory* (London: Routledge and Kegan Paul, 1985).
 - 16 W. K. Wimsatt and Monroe C. Beardsley, 'The Intentional Fallacy', in *The Verbal Icon: Studies in the Meaning of Poetry* (Lexington: University of Kentucky Press, 1954). This essay first appeared in the *Sewanee Review* 54 (1946). Fish comments on Wimsatt and Beardsley in *Doing What Comes Naturally*, p.578. Hirsch has written extensively on interpretation: e.g. *Validity in Interpretation* (New Haven: Yale University Press, 1967); 'Meaning and Significance Reinterpreted', *Critical Inquiry* 11 (1984), 202-25; and 'Coming with Terms to Meaning' [sic], *Critical Inquiry* 12 (1986), 627-30. Barthes' 'The Death of the Author' may be found in Roland Barthes, *Image-Music-Text*, essays selected and translated by Stephen Heath (London: Fontana Paperbacks, 1977) pp.142-8.
 - 17 Richard A. Posner, *Law and Literature: A Misunderstood Relation* (Cambridge, Mass: Harvard University Press, 1988) ch.5; James Boyd White, *Heracles' Bow*, pp.81-82, 100-02.
 - 18 'The Politics of Interpretation', *Critical Inquiry* 9 (1982).
 - 19 W. J. T. Mitchell, ed., *The Politics of Interpretation* (Chicago: University of Chicago Press, 1983).
 - 20 Ronald Dworkin, *Law's Empire* (Cambridge, Mass: Harvard University Press, 1986); *Law and Philosophy* 6 (1987). All the essays by Fish that have been cited are reprinted in *Doing What Comes Naturally*. See also Sanford Levinson and Steven Mailloux, eds., *Interpreting Law and Literature: A Hermeneutic Reader* (Evanston: Northwestern

- University Press, 1988).
- 21 See the articles by Norris and West cited above; and Brook Thomas, 'Stanley Fish and the Uses of Baseball: The Return of the Natural', *Yale Journal of Law and the Humanities* 2 (1990), 59-88.
 - 22 James Boyd White, *Heracles' Bow; The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston: Little, Brown and Company, 1973; abridged edition issued by the University of Chicago Press, 1985); and *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago: University of Chicago Press, 1984).
 - 23 James Boyd White, 'Economics and Law: Two Cultures in Tension', *Tennessee Law Review* 54 (1987), 161-202.
 - 24 *Wall Street Journal* 15 February 1989. From the left, Fish rigorously takes Posner to task in 'Don't Know Much About the Middle Ages', (*Doing What Comes Naturally* ch.13).
 - 25 Richard H. Weisberg, 'Entering With a Vengeance: Posner on Law and Literature', *Stanford Law Review* 41 (1989), 1597-1626. Weisberg is Professor of Law at Yeshiva University, and the founding editor of *Cardozo Studies in Law and Literature*. He studied English in the Graduate School at Cornell under Geoffrey Hartman.
 - 26 Weisberg, 1625.
 - 27 Richard H. Weisberg, *The Failure of the Word: The Lawyer as Protagonist in Modern Fiction* (New Haven: Yale University Press, 1984).
 - 28 Kim Lane Scheppelle, 'Foreward', *Michigan Law Review* 87 (1989), 2075.
 - 29 Peter Brooks, 'The Rhetoric of Constitutional Narratives', *Yale Journal of Law and the Humanities* 2 (1990), 131-2.
 - 30 Jackson, *Law, Fact and Narrative Coherence* ch.2, 'The Normative Syllogism and the Problem of Reference'.
 - 31 Ivor Indyk, 'Literary Criticism – The Structuralist Controversy', *Current Affairs Bulletin* (University of Sydney) Vol.58 No.9 (February 1982), 23-30.
 - 32 Milner S. Ball, 'Confessions'. Ball is the author of *Lying Down Together: Law, Metaphor, and Theology* (Madison: The University of Wisconsin Press, 1985).
 - 33 Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge Mass: Harvard University Press, 1984); Brook Thomas, *Cross-Examinations of Law and Literature* (Cambridge: Cambridge University Press, 1987).
 - 34 Margaret E. Hall, ed., *Selected Writings of Benjamin Nathan Cardozo* (New York: Fallon Publications, 1947), 338-428.
 - 35 *Sydney Morning Herald* 24 March 1990.

SYDNEY STUDIES

- 36 Judith Schenck Koffler, 'The Feminine Presence in *Billy Budd*', *Cardozo Studies in Law and Literature* 1 (1989), 1.
- 37 Michael L. Richmond, 'Can Shakespeare Make You a Partner?', *St Mary's Law Journal* 20 (1989), 885-96.
- 38 Robert A. Ferguson, 'The Judicial Opinion as Literary Genre', *Yale Journal of Law and the Humanities* 2 (1990), 201-19; Judith Resnick, 'Constructing the Canon', *Yale Journal of Law and the Humanities* 2 (1990), 221-30.
- 39 The standard work on legal fictions is Lon L. Fuller, *Legal Fictions* (*Illinois Law Review* XXV [1930-31]; rpt. Stanford: Stanford University Press, 1967). This is critically evaluated by Kenneth Campbell, *Law and Philosophy* 2 (1983), 339-70. For a literary account of how the legal fiction works, see Owen Barfield, 'Poetic Diction and Legal Fiction' in *Essays Presented to Charles Williams* (London: Oxford University Press, 1947), pp. 106-27. See also Philippe Lejeune, *On Autobiography*, Theory and History of Literature, Volume 52, edited by Paul John Eakin and translated by Katherine Leary (Minneapolis: University of Minnesota Press, 1989) ch.1, 'The Autobiographical Pact'; and Martin Price, *Forms of Life: Character and Moral Imagination in the Novel* (New Haven: Yale University Press, 1983) ch.1, 'The Fictional Contract'.
- 40 Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: The Johns Hopkins University Press, 1987) 20. See also Jackson, *Law, Fact and Narrative Coherence* ch. 6, 'Narrative, History and Truth'.