

Erasing the Lines Between the Law School and the Liberal Arts Curricula

**A Comment on
“A Liberal Education in Law”**

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I agree with Professor Parker that a compositional approach to legal education would enrich the law school curriculum. I also believe that the law school curriculum would be enriched by actually incorporating liberal arts courses. Law and Economics is one such course that many law schools now offer. But I suggest that a Law and Literature course can be of particular interest to those of us teaching writing and analysis and of particular value in the curriculum. This course is currently offered in a number of law schools. If it is not currently taught in your law school, then you should consider teaching it yourself.

Professor Parker suggests that the message we should be giving our students is “use *your* imagination.” She notes that “[f]irst-year classes may stifle aspects of imagination in the process of focusing on legal method and doctrine.”² Accordingly, as we socialize students into a community of discourse,³ we may be suggesting to them that their previous knowledge and experience is not useful. Yet Professor Parker also notes the value of “developing students’ ability to transfer knowledge learned in one context to new sets of circumstances.”⁴ Most law students enter law school having read and thought about literature, in their previous educational and individual lives. A Law and Literature course would encourage students to believe that they are bringing valuable experience and knowledge to law school, and that their past lives are not irrelevant to their new life in the law.

Twenty years ago, Anthony Amsterdam wrote that law schools teach case reading and doctrinal analysis to the same students twenty-nine times, under different names: Torts, Contracts, Antitrust, Corporations, Criminal

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2. Carol M. Parker, *A Liberal Education in Law: Engaging the Legal Imagination Through Research and Writing Beyond the Curriculum*, 1 J. ALWD 130, 138 (2002).

3. See generally Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 Leg. Writing 1, 9 (1991).

4. Parker, *supra* n. 2, at 138-39.

Procedure, etc.⁵ A Law and Literature course would add diversity to a curriculum in which sameness is all too characteristic. There are serious practical reasons for this change. Law school faculty and administrators comment frequently on the lack of engagement of upper-class students, especially in their final year of law school. Upper-class students are said to be unprepared for class, irregular in attendance, absent from school because they are working part-time, obsessed with permanent employment after graduation, and committed to taking courses based on the bar exam rather than their own genuine interest.

A Law and Literature course, focusing on close and critical reading of texts, would engage students in one of the most important intellectual activities in law school, regardless of the students' doctrinal focus. Reading works of literature, especially the classics, would expose students to great writing and great thinking ordinarily lacking in the appellate cases, which typically form the basis of their casebooks. Such a course would also use literary texts to deepen and broaden students' skills in writing and analysis, making them sensitive to language and more sophisticated in their writing and thinking.

The connection between law and literature is a long-standing one in American culture. In his book, *Law and Letters in American Culture*,⁶ Robert Ferguson describes the early "configuration of law and letters" in the period following the American Revolution, when familiarity with the classical authors and with principles of oratory was viewed as essential to a lawyer's excellence. Ferguson writes, for example, that Rufus Choate, Boston's leading lawyer in 1850, insisted on the "intrinsic bond holding law, literature, oratory, and public service together."⁷ As a lawyer with a large practice, Choate nevertheless spent part of every day "reading poetry, studying the classics, and translating passages from Greek, Latin, and French."⁸

This configuration disappeared at the time of the U.S. Civil War for a number of reasons: the democratization of the bar by the influx of lawyers without a classical education; the shift from a natural law to a positivistic view of the law; the need for technical expertise as the areas of law proliferated; and the personal and romantic, rather than political, vision of writers of the American Renaissance, such as Hawthorne, Melville, and Thoreau.⁹

Nevertheless, at the turn of the twentieth century, John H. Wigmore published a list of legal novels with which he thought any lawyer must be acquainted. Wigmore believed that a lawyer had "a general duty as a cultivated man . . . because of his special professional duty to be familiar with those features of his profession which have been taken up into general

5. Anthony G. Amsterdam, *Clinical Legal Education B: A 21st Century Perspective*, 31 J. Leg. Educ. 612, 618 (1984).

6. Robert A. Ferguson, *Law and Letters in American Culture* (Harv. U. Press 1984).

7. *Id.* at 83.

8. *Id.*

9. *Id.* at 199-206.

thought and literature.”¹⁰ In general, Wigmore divided these novels into four categories:

1. Novels in which the typical traits of a lawyer or judge are portrayed;
2. Novels in which some trial scene is described;
3. Novels in which the methods of law in the detection and punishment of a crime are delineated; and
4. Novels in which some point of law affects the rights or conduct of the characters.¹¹

Without doubt, great works of fiction can be the basis of discussions on significant issues of professionalism and the legal system. A lawyer is the protagonist in many works of literature. For example:

- the narrator-lawyer in Herman Melville’s *Bartleby the Scrivener*, a man of prudence, conventional thought, and smugness, who is baffled by Bartleby’s refusal to be engaged;
- the sainted Atticus Finch in Harper Lee’s *To Kill a Mockingbird*, who nevertheless attempts to save his client from a murder conviction by exposing his client’s accuser to the racist condemnation of the community; and
- the many lawyers in Charles Dickens’s *Bleak House*: Mr. Tangle, who can never conclude his arguments in the endless case of *Jarndyce v. Jarndyce*, but always has a “variety of points” to add; Mr. Kenge, who cannot stop talking because he has fallen in love with his own voice; Mr. Tulkinghorn, whose professional identity as the protector of the Leicester family name has made him indifferent to the needs of the members of the Leicester family; and Mr. Vholes, who irresponsibly encourages his client’s lost cause, and is said to “have something of

10. John H. Wigmore, *A List of Legal Novels*, 2 Ill. L. Rev. 574, 576 (1907). See also Elizabeth Villiers Gemmette, *Law and Literature: An Unnecessarily Suspect Class in the Liberal Arts Component of the Law School Curriculum*, 23 Val. U. L. Rev. 267, 285 (1989) (quoting Wigmore’s list and categories).

11. Wigmore, *supra* n. 10, at 574. Wigmore’s article was later reprinted with corrections. See John H. Wigmore, *A List of One Hundred Legal Novels*, 17 Ill. L. Rev. 26 (1922). For an update of Wigmore’s categories, see Richard H. Weisberg, *Wigmore’s “Legal Novels” Revisited: New Resources for the Expansive Lawyer*, 71 N.W. U. L. Rev. 17 (1976); Gemmette, *supra* n. 10; Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 Val. U. L. Rev. 665 (1995) (noting that 84 out of 199 American and Canadian law schools contacted reported offering some variation of a Law and Literature course).

the vampire in him.”

Trial scenes are the focal point of texts as different as Shakespeare’s *The Merchant of Venice* and Mark Twain’s *Pudd’nhead Wilson* and offer opportunities for analyzing legal eloquence and legal mores. Works like Shakespeare’s *Measure for Measure* examine the strict enforcement of a statute in a corrupt society and the conflict between law and equity. Robert Bolt’s play about Sir Thomas Moore, *A Man for All Seasons*, explores how a just person tries to deal with an unjust society, and considers the role of law in protecting the individual. Even texts with a non-legal framework can have as a central theme the relationship of law and justice to the individual. Literature gives students an opportunity to go beyond legal rules. It can also enhance their appreciation of the impact that law has on society and on individuals, and encourage their reflection on ethical issues.

In addition to analyzing law *in* literature, a Law and Literature course can also consider law *as* literature. Based on the work of such scholars as James Boyd White, Richard Posner, Richard Weisberg, Robin West, Ronald Dworkin, and Stanley Fish,¹² part of the course could deal with such issues as:

- the similarities and differences between legal texts and literary texts;
- the processes of interpretation relevant to both;
- the contribution, if any, which the study of literature can make to the interpretation of statutes and the constitution;
- the use of literature in understanding and improving judicial opinions; and
- the fundamental question of whether meaning can be discovered in a text.

There is a final reason why I would recommend including a Law and Literature course in the law school curriculum taught by a legal writing professional. Faculty, as well as students, need new interests and variety in their work. Such a course provides a fresh, stimulating counterpoint to the administrative responsibilities, which many of us have.

12. See e.g. James Boyd White, *Law as Language: Reading Law and Reading Literature*, 60 Tex. L. Rev. 415 (1982); Richard A. Posner, *Law and Literature* (rev. ed., Harv. U. Press 1998); Richard H. Weisberg, *Poethics and Other Strategies of Law and Literature* (Colum. U. Press 1992); Robin 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. 304 (1985); Ronald Dworkin, *Law as Interpretation*, 9 Critical Inquiry 179 (1982); Stanley Fish, *Working on the Chain Gang*, 9 Critical Inquiry 201 (1982).

I would like to close with a quotation from Supreme Court Justice Joseph Story who wrote in 1829:

It is this classical learning alone, which can impart a solid and lasting polish to the mind, and give to diction that subtle elegance and grace, which color the thoughts with almost transparent hues. . . .

It is by such studies, and such accomplishments, that the means are to be prepared for excellence in the highest order in the profession. The student, whose ambition has measured them, if he can but add to them the power of eloquence, . . . may indeed aspire to be a perfect lawyer.¹³

13. Ferguson, *supra* n. 6, at 1 (quoting Justice Story's inaugural lecture at Harvard Law School entitled *The Value and Importance of Legal Studies*).