

LAW & LITERATURE

Spring 2010 • George Washington University Law School

Professor Daniel Solove

Course Description

This course will explore the intersection between law and literature. Literature is important for understanding law because it teaches a certain way of thinking -- one that is synthetic, creative, and comfortable with ambiguity and ambivalence. Each class will explore one or more interrelated topics through a variety of literary and philosophical works of short to moderate length. Readings will include works by Melville, Shakespeare, Kafka, Glaspell, Morrison, Capote, Garcia Marquez, and others. Topics will include: formalism; the paradoxes of equity; narrative, storytelling, and framing; custom, law and the political order; law, society, and power; interpretation, authority, and legitimacy; punishment, retribution, and redemption; and others. This course will provide an opportunity to think about the law in a new way, to read engaging works of fiction and non-fiction, and to examine the law from a humanistic and philosophical perspective.

I. INTRODUCTION

- A. What Can Literature Teach Us About Law? (Class 1)

II: THE RULE OF LAW vs. EQUITY

- A. *Billy Budd* and the Tragedy of Formalism (Classes 2 and 3)
- B. Judging and Responsibility: Fuller's *Speluncean Explorers* and Glaspell's *A Jury of Her Peers* (Classes 4 and 5)
- C. Shakespeare's *The Merchant of Venice* and the Paradoxes of Equity (Classes 6 and 7)

III: INTERPRETATION

- A. Interpretation and Authority in Kafka's *The Trial* (Classes 8 and 9)
- B. The Power and Limits of Words and Rules (Class 10)
- C. Rhetoric and Candor in Legal Analysis (Class 11)

IV: NORMS AND THE LAW

- A. Norms and Narrative in Garcia Marquez's *Chronicle of a Death Foretold* (Class 12)
- B. Customs, Norms, and Law: Jackson's *Lottery* and LeGuin's *Omelas* (Class 13)
- C. Morrison's *The Bluest Eye* and the Limits of Law (Class 14)

V. JUDGMENT AND NARRATIVE

- A. The Art and Ethics of the Trial: *Anatomy of a Murder* (Classes 15, 16, and 17)
- B. The Complexity of Judgment: Dostoyevsky's *The Brothers Karamazov* (Classes 18, 19, and 20)
- C. The Power of Narrative: Durrenmatt's *Traps*, Dr. Death, and Dershowitz (Classes 21 and 22)
- D. Capote's True Crime Narrative: *In Cold Blood* (Class 23)

VI. LAW, JUSTICE, AND MORALITY

- A. Law and Morality in Sophocles' *Antigone* (Class 24)
- B. Justice and Revenge in Kleist's *Michael Kohlhaas* (Class 25)

DATE	CLASS #
M Jan 4	1
W Jan 6	2
M Jan 11	3
W Jan 13	4
M Jan 18	NO CLASS
W Jan 20	5
M Jan 25	6
W Jan 27	7
M Feb 1	8
W Feb 3	9
M Feb 8	10
W Feb 10	NO CLASS
M Feb 15	NO CLASS
W Feb 17	11
M Feb 22	12
W Feb 24	13
M Mar 1	SPRING BREAK
W Mar 3	SPRING BREAK
M Mar 8	14
W Mar 10	15
M Mar 15	16
W Mar 17	17
M Mar 22	18
W Mar 24	19
M Mar 29	20
W Mar 31	21
M Apr 5	22
W Apr 7	23
M Apr 12	24
T Apr 13 (constructive Monday)	25 FINAL ESSAYS DUE

Readings

Readings: This class has a lot of reading. If you plan ahead, your weekly reading load will be balanced. Many of the readings are contained in the reading packet. The others, to be purchased separately, are:

HERMAN MELVILLE, BILLY BUDD

Harrison Hayford & Merton Sealts, eds.
U. Chicago Press
ISBN 0226321320

WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE

Cambridge Univ. Press edition
ISBN 0521532515

FRANZ KAFKA, THE TRIAL

Breon Mitchell trans.
Schocken Books edition
ISBN 0805209999

GABRIEL GARCIA MARQUEZ, CHRONICLE OF A DEATH FORETOLD

Vintage edition
ISBN 140003471X

TONI MORRISON, THE BLUEST EYE

Penguin Books edition
ISBN 0452282195

FYODOR DOSTOYEVSKY, THE BROTHERS KARAMAZOV

Richard Pevear & Larissa Volokhonsky trans.
(Vintage edition)
ISBN 0679729259

TRUMAN CAPOTE, IN COLD BLOOD

Vintage Books edition
ISBN 0679745580

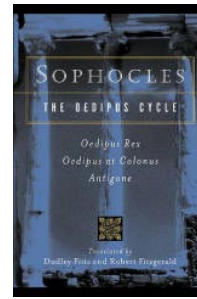
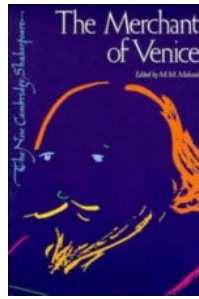
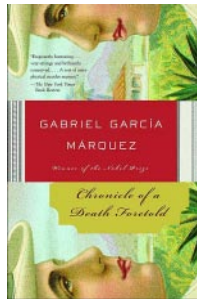
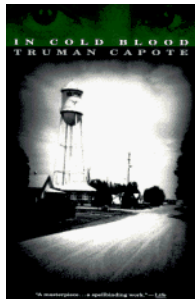
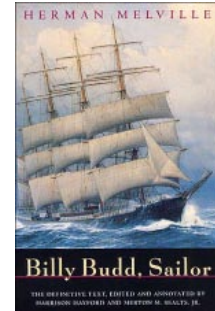
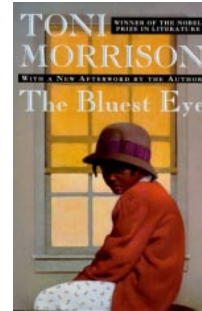
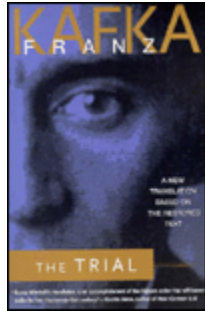
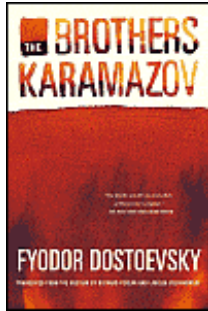
Sophocles, *Antigone*

(in **THE OEDIPUS CYCLE**)

Dudley Fitts & Robert Fitzgerald trans.
(Harvest Book edition)
ISBN 015602764X

HEINRICH VON KLEIST, MICHAEL KOHLHAAS

Frances King trans.
(Mondial edition)
ISBN 159569076X



Recommended Readings: I have listed extensive recommended further readings for each theme. I certainly do not expect you to read them during the semester. Rather, I include them with the hope that this course is merely a beginning of a life-long encounter with great works of literature and philosophy.

Workload and Grading

Class Participation: This seminar depends upon your careful reading of the texts and your willingness to participate. You will be expected to participate in class discussion. 20% of your grade will be based on class participation.

Short Questions: From time to time, I will pose short questions to the class. I expect emailed responses of about a paragraph or two (300-500 words). Your responses to these questions will be counted toward your class participation grade.

Essays: You will write 2 long essays, of no more than 3000 words each (the word count excludes citations, which should be in footnotes). This translates to roughly 10 double-spaced pages in Times Roman font (there are about 300 words per page in this format). Each essay should explore your thoughts, reactions, and ideas from the readings and the class discussions. Essays should focus on the class readings. Essays should have a thesis and should develop that thesis by delving into the assigned texts and discussing them in detail.

The essays will be due on the final day of class, **Tuesday, April 13th**. Each will count for 40% of your grade.

I. INTRODUCTION

A. WHAT CAN LITERATURE TEACH US ABOUT LAW?

Class 1: Introduction

Readings

Adam Liptak, *Next on the Syllabus, Romeo v. Juliet*
N.Y. TIMES (Oct. 30, 2002)

Daniel J. Kornstein, *The Law and Literature*
66 N.Y. State Bar Journal 34 (May/June 1994)

BENJAMIN CARDOZO, *LAW AND LITERATURE (1925)*

Ronald Dworkin, *How Law Is Like Literature*
in A MATTER OF PRINCIPLE (1985)

RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION (1st ed. 1988)*

Richard H. Weisberg, *Literature's Twenty-Year Crossing Into the Domain of Law: Continuing Trespass or Right by Adverse Possession?*
in LAW AND LITERATURE: CURRENT LEGAL ISSUES
(Michael Freeman & Andrew Lewis, eds. 1999)

Overview

The field of law and literature has often been divided into two areas – “law-in-literature” and “law-as-literature.” Law-in-literature focuses on the depiction of law and jurisprudential questions in works of literature. What insights can works of literature contribute to the study of law? In what ways does literature enhance our understanding of the law? How does literature contribute to how we grapple with the larger jurisprudential issues in the law?

Law-as-literature examines legal opinions and arguments from a literary lens – as works of literature. What similarities does law share with literature? How does focusing on the construction of narratives by lawyers and judges contribute to our understanding of the law? What role do rhetoric and style play in the crafting of judicial opinions?

Posner expresses skepticism about the extent to which literature can help us understand the law. Do you agree with Posner's arguments? Contrast Posner to Weisberg, who explains how literature enables us to understand law in ways that other disciplines cannot. Finally, consider Jane Baron, who offers a very critical, yet also hopeful, assessment of law and literature.

II. THE RULE OF LAW vs. EQUITY

A. MELVILLE'S *BILLY BUDD* AND THE TRAGEDY OF FORMALISM

Class 2: Melville's *Billy Budd*

Readings

Daniel J. Solove, *The Darkest Domain: Deference, Judicial Review, and the Bill of Rights*
84 Iowa L. Rev. 941 (1999)

PAUL W. KAHN, *THE REIGN OF LAW* (1997)

HERMAN MELVILLE, *BILLY BUDD, SAILOR* (1924)
(Harrison Hayford & Merton M. Sealts, Jr. eds. 1962)

Overview

It is often said that we live in a society governed by the rule of law rather than the passions and whims of particular individuals. What does the rule of law mean? What should be done when the application of a law to a particular case leads to injustice?

Formalism is a highly deductive approach to legal reasoning that understands the legitimacy of law to reside in the fixed immutable meaning of legal rules. Formalists attempt to adhere strictly to the letter of the law, even if the outcome in a particular case seems unwise or unjust. In contrast to a strict adherence to the letter of the law, equity involves making special exceptions in the law for unique cases and molding the law to reach just outcomes.

The excerpts from Daniel Solove and Paul Kahn provide a brief historical and theoretical background about formalism and the rule of law.

Herman Melville's *Billy Budd*, published posthumously in 1924, explores the relationship between the letter of the law and equity. As you read the book, think about how Captain Vere describes the dichotomy between the rule of law and "moral scruple." Does this dichotomy necessarily have to exist in the case of Billy Budd? Does Vere really adhere to the rule of law or do his passions infect his judgment?

Read Chapter 21 twice. It is very important and will be one of the focal points of our discussion. Also consider why Melville discusses the surgeon's thoughts about how Vere should have proceeded in the matter of Billy Budd (Chapter 20)? Why does the narrator go into the digression about hidden madness in Chapter 11?

Class 3: Melville's *Billy Budd***Readings**

ROBERT COVER, *Of Creon and Captain Vere*
in JUSTICE ACCUSED (1975)

Steven L. Winter, *Melville, Slavery, and the Failure of the Judicial Process*
26 Cardozo L. Rev. 2471 (2005)

Daniel J. Solove, *Melville's Billy Budd and Security in Times of Crisis*
26 Cardozo L. Rev. 2443 (2005)

Overview

For this class, I have provided excerpts of secondary works interpreting *Billy Budd*. Robert Cover argues that *Billy Budd* is an allegory for how Melville's father-in-law, Chief Justice Lemuel Shaw of the Massachusetts Supreme Court, interpreted the Fugitive Slave Act. Steven Winter provides more historical background. Finally, Daniel Solove examines how *Billy Budd* addresses similar issues of security in times of crisis that we are facing today.

B. JUDGING AND RESPONSIBILITY IN FULLER'S *SPELUNCEAN EXPLORERS* AND GLASPELL'S *A JURY OF HER PEERS*

Class 4: Fuller's *Speluncean Explorers*

Readings

Lon L. Fuller, *The Case of the Speluncean Explorers*
62 Harv. L. Rev. 616 (1949)

Paul Butler, *The Case of the Speluncean Explorers Revisited*
112 Harv. L. Rev. 1917 (1999)

Overview

Judging involves making hard choices and taking responsibility for them. Part of judging requires one to recognize the range of available choices, a skill that involves imagination and creativity.

Fuller's *The Case of the Speluncean Explorers* presents an interesting fictional case, based loosely on the actual case of *The Queen v. Dudley & Stephens*, 14 Q.B.D. 273 (1884). The opinions in *Speluncean Explorers* illustrate various jurisprudential approaches to grappling with applying a strict rule of law to a unique and compelling situation. Think about the ways in which the situation in the *Speluncean Explorers* is related to that in *Billy Budd*. Are there creative ways available to reconcile the rule of law with doing justice in this particular case? Think about how the justices in the *Speluncean Explorers* approach the issue. Which judge's opinion strikes you as most compelling? How you would decide the case?

Do you think that Judge Tatting did the right thing by withdrawing and not reaching a decision? Note that his choice not to decide resulted in the court's affirming the convictions of the defendants. In other words, his choice has effects. In light of the consequences of his choice not to decide, is his choice a responsible one?

Next, consider Paul Butler's fictional opinion resolving the issue from a radically different perspective. What is the opinion's view of the rule of law? What role does the opinion argue the jury should have played in this case?

Class 5: Glaspell's *A Jury of Her Peers***Readings**

Susan Glaspell, *A Jury of Her Peers* (1917)

**Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*
43 Vand. L. Rev. 1665 (1990)**

**Toni M. Massaro, *Peremptories or Peers?—Rethinking Sixth Amendment Doctrine, Images and Procedures*
64 N.C. L. Rev. 501 (1986)**

**Marina Angel, *Susan Glaspell's Trifles and A Jury of Her Peers: Woman Abuse in a Literary and Legal Context*
45 Buff. L. Rev. 779 (1997)**

**Liza Mundy, *Fault Line*
Washington Post Magazine (Oct. 26, 1997)**

Overview

Turning to juries, consider Susan Glaspell's story, *A Jury of Her Peers*. What if the legal system cannot reach a just outcome? Is it appropriate to circumvent the legal system? Compare the women's approach toward judging in *A Jury of Her Peers* to that in the opinions in the *Speluncean Explorers* and Butler's essay. How is the women's approach different/similar? Is Minnie viewed by the women in *A Jury of Her Peers* as a Billy Budd figure? In other words, do Mrs. Hale and Mrs. Peters protect Minnie because they think she is innocent? If not, why?

The excerpted secondary commentary on *A Jury of Her Peers* provides useful background and insights. Finally, the Mundy article explores the benefits and costs of attempting to solve a difficult problem (domestic violence) with a rigid rule-bound solution.

C. SHAKESPEARE'S *THE MERCHANT OF VENICE* AND THE PARADOXES OF EQUITY

Class 6: Shakespeare's *The Merchant of Venice*

Readings

WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* (1597)

Overview

In Shakespeare's *The Merchant of Venice*, Shylock attempts to use the letter of the law (a strict literal interpretation of a contract) for sinister aims. But is the equity in the play really fair? *The Merchant of Venice* poses very deep questions about the double nature of both the rule of law and of equity as well. Everything seems to have a dual side in this play.

Is Shylock a disadvantaged minority or a ruthless villain? If Shylock is the villain, why is he so eloquent? Why does the play seem to invite us to sympathize with him? Given the way Antonio has treated Shylock in the past and Antonio's pledge that he will treat him the same way in the future, why does Shylock loan the money to Antonio? What is Shylock's tone of voice? Are his lines to be read seriously? Sarcastically? Bitterly?

Consider the interwoven stories in the play: (1) the pound of flesh; (2) the rings; (3) Jessica and Lorenzo's elopement; and (4) the caskets. How are they related? Why does the play not end with the culmination of the Shylock-Antonio trial? Why have it end with a simple quibble between husband and wife? Why include the ring episode at all?

Class 7: Shakespeare's *The Merchant of Venice***Readings****Kenji Yoshino, *The Lawyer of Belmont***

9 Yale J. L. & Humanities 183 (1997)

Overview

In this class, we will continue to discuss *The Merchant of Venice*. We will focus considerable attention on Portia. The Kenji Yoshino excerpt sets forth some ideas worth thinking about.

Consider the many "bonds" or contracts in the play: (1) Antonio and Shylock's contract; (2) Bassanio's oath to Portia never to part with the ring; (3) Portia's father's will; and (4) Antonio's contract with Portia at the end. Contrast all of the contracts in the play and how the characters respond to their being breached or carried out. With regard to the Antonio/Shylock contract and the Bassanio/Portia contract, both are breached. Why does Portia, who so extols the virtues of mercy in the context of the Antonio/Shylock contract, take such a rigid stance in the Bassanio/Portia contract? With regard to Portia's carrying out her father's will, pay attention to the casket scenes. Does she carry out her obligations to her father in good faith? If not, in what ways does Portia cheat?

III. INTERPRETATION

A. INTERPRETATION AND AUTHORITY IN KAFKA'S *THE TRIAL*

Class 8: Kafka's *The Trial*

Readings

FRANZ KAFKA, *THE TRIAL* (1925)
(Breon Mitchell trans. 1998)

Samuel Wolff & Kenneth Rivkin, *The Legal Education of Franz Kafka*
22 Columbia-VLA J. Law & the Arts 407 (1998)

Parker B. Potter, Jr., *Ordeal by Trial: Judicial References to the Nightmare World of Franz Kafka*
3 Pierce L. Rev. 195, 195-96 (2005)

Overview

In this class we explore a novel that many say captures the modern condition of life – Franz Kafka's *The Trial*. Kafka's works are surreal, have a dreamlike quality, and often have many bizarre twists and events. They are allegorical; they are puzzling, enigmatic, and can be endlessly pondered over. They resist one easy interpretation; in fact, they invite multiple interpretations.

The excerpt from Samuel Wolff and Kenneth Rivkin provides a brief background into Kafka's legal education. The short excerpt from Parker Potter demonstrates how frequently courts have made reference to Kafka's *The Trial*.

How do you characterize this novel? Is it a comedy? A satire? An allegory? Although it is frequently characterized as a dark and brooding novel, *The Trial* is often quite funny. When Kafka read portions of the novel to his friends, it was reported that he read them in a way that had everyone laughing. Reread some of the scenes looking for the humor in them.

The Trial works on many levels. What is the "Law"? What is the Court System? What is the "trial" that is being conducted against K.? The title in German for *The Trial* probably more accurately translates to "The Process." Is the novel about the law and legal procedure? Is it about totalitarianism? Bureaucracy? Is the novel an allegory about death and dying? Is the trial a psychological one and the events of the novel are symbolic of what is going on inside K.'s head (or take place inside K.'s mind)? Is the novel about one's becoming paranoid or insane? Is the novel meant to represent life itself, the modern condition? Is the novel about our ability to find truth? Is it about faith and religion and the inability to ever know divine Law or God? Perhaps it is about all these things simultaneously and we are to see the connections and parallels among them.

Focus on the theme of the law and its interpretation. *The Trial* illustrates the difficulty in arriving at the truth – in particular, the truth about the Law. What is the Law? Does anybody have access to the Law? Do the Court officials know what the Law is? Does the Law even exist? What does the novel demonstrate about the way the law works -- its authority, legitimacy, psychology, bureaucracy, procedure? On pp. 215-217, the priest tells K. a parable. The priest and K. then discuss various interpretations of the parable. Read the parable again and think about how it relates to the novel. What does this scene illustrate about interpretation?

Think about the Court that applies and enforces the law. Why do the workings of the Court seem so makeshift and unprofessional? Why are Court offices in attics? The courtroom where K. initially appeared is really a “fully furnished living room.” (p. 55). A portrait of an examining magistrate appears to have him sitting on a throne but he’s actually sitting on a kitchen stool with an old horse blanket folded over it. (p. 106). What do these details and others tell you about the Court? About the nature of authority? About the legitimacy of the Court?

Focus as well on the background and personality of Josef K. What type of a person is K.? How much about K.’s life and personality do we learn? How does the trial affect K.? Although the novel begins with K. being arrested “one morning” (p.3), we later find out that this is K.’s 30th birthday. His trial ends on his 31st birthday. Why do you think this is? After his arrest and his initial court proceeding, the Court seems to forget about K. K. seems to seek out the Court rather than vice versa. Perhaps he is not trying to escape from authority but is seeking it out. What does this say about K. and about human nature in general? What could K. be guilty of? Is he guilty of a crime or is he just experiencing guilt? Guilt about Fraulein Burstner? Guilt over the way he lived his life? Or generalized guilt without being tied to anything in particular? Or is K. inexplicably subjected to suffering (perhaps K. is a modern version of Job)?

Class 9: Kafka's *The Trial***Readings****Blaise Pascal, *Pensées*, Nos. 44, 60, 130**

in PASCAL: SELECTIONS (Richard H. Popkin, ed. 1989)

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. 384 (1985) (excerpt)

Martha Robinson, *The Law of the State in Kafka's *The Trial**

6 ALSA Forum 127 (1982)

Heidi E. Faletti, *The Workings of Law in Kafka's *Der Prozess* and Boll's *Die Verlorene* Der Katharina Blum*

6 ALSA Forum 148 (1982)

Judge Alex Kozinski & Alexander Volokh, *The Appeal*

103 Mich. L. Rev. 1391 (2005)

[optional reading]

Overview

In this class, we will continue to discuss *The Trial*. First, read the three short excerpts from Blaise Pascal's *Pensées* ("Thoughts"). Pascal was a 17th century mathematician and philosopher, and the *Pensées* were published posthumously seven years after his death in 1669. Think about these musings by Pascal on the nature of law and authority in light of Kafka's *The Trial*.

The commentary about Kafka's *The Trial* will provide you with some thoughts and ideas about the novel. For your amusement, I have included a humorous fake judicial opinion based on *The Trial* written by Judge Kozinski, a federal appellate court judge on the 9th Circuit. The Kozinski excerpt is optional reading.

Recall the final scene of *The Trial*. What do you make of this scene? When the window flings open in the building before K. dies (p.230), what do you make of all the questions asked about the human figure leaning out of the window? And why when the knife is being passed over him does K. know that "it was his duty to seize the knife as it floated from hand to hand above him and plunge it into himself"? Finally, what do you make of the final paragraph (p. 231)?

One final note. In an instance of life imitating art, in the case of *Joe Kafka v. United States*, 121 S. Ct. 1365 (2001), the U.S. Supreme Court issued its typical one-sentence order, denying certiorari without explanation: "The petition for writ of certiorari is denied." Recall the parable in *The Trial* on pp. 215-17: "Before the Law stands a doorkeeper. . . . The doorkeeper sees that the man is nearing his end, and in order to reach his failing hearing, he roars to him: 'No one else could gain admittance here, because this entrance was meant solely for you. I'm going to go and shut it now.'"

B. THE POWER AND LIMITS OF WORDS AND RULES

Class 10: Freedom and Precision with Words

Readings

Webb v. McGowin

168 So. 196 (Ala. Ct. App. 1935)

Stanley Fish, *The Law Wishes to Have a Formal Existence*

in *THERE IS NO SUCH THING AS FREE SPEECH* (1994)

Amy Hempel, *In the Cemetery Where Al Jolson Is Buried*

in *REASONS TO LIVE* (1985)

Charles Black, *Law as an Art*

in *THE HUMANE IMAGINATION* (1986)

Jacobellis v. Ohio

378 U.S. 184 (1964)

Paul Gewirtz, *On "I Know It When I See It"*

105 Yale L.J. 1023 (1996)

State v. Yanez

716 A.2d 759 (R.I. 1998)

Overview

Rules are constructed of words, and the application of law thus involves the reading and interpretation of words. But one of the difficulties is that words and texts can be interpreted in many dramatically different ways.

Read the *Webb v. McGowin* case followed by Fish's essay, *The Law Wishes to Have a Formal Existence*. Is Fish correct in his views about the law? If Fish is correct, so what?

The *State v. Yanez* case provides a stark illustration of some of the difficulties in statutory interpretation. What is the correct interpretation of the statute in *Yanez*? Is there a correct interpretation? Does this case illustrate Fish's argument or can it be used to refute it?

Amy Hempel's *In the Cemetery Where Al Jolson Is Buried* is not expressly about law. But it illustrates the theme of the limitations of words in general. Focus on the theme of communication and speech in the story. How does the narrator fail her friend? Why is there so much trivia in the dialogue? What does the ending about the chimpanzee mean? The story suggests that in certain circumstances, words might be empty. How does this apply to the law?

Charles Black takes a more optimistic view about imprecision in language. He celebrates the lack of mathematical exactness in law. What do you think of Black's argument?

Paul Gewirtz's essay explores Justice Stewart's oft-criticized line in *Jacobellis v. Ohio* about obscenity – "I know it when I see it." This line has been used as an exemplar of judging by personal fiat rather than by the rule of law. Gewirtz attempts to rehabilitate the line and he examines the role of nonrational elements in judicial decisionmaking. Is his argument convincing? What role should nonrational elements play in judicial decisionmaking? Is it possible to eliminate such elements? If they can't be eliminated, how should we evaluate them?

Gewirtz contends: "We should encourage judges to believe and say: This is the best I can do now; it doesn't solve all the problems, but it's a start, and I'll keep thinking." Do you agree? Keep in mind that this was a criminal case. Suppose Justice Stewart came out the other way and upheld the defendant's criminal conviction. Would an opinion saying "I know it when I see it" and "this is the best I can do" be justified?

C. RHETORIC AND CANDOR IN LEGAL ANALYSIS

Class 11: Rhetoric and Candor

Readings

RICHARD A. POSNER, *CARDOZO: A STUDY IN REPUTATION* (1990)

Hynes v. New York Central R. Co.
131 N.E. 898 (N.Y. 1921)

Palsgraf v. Long Island R. Co.
162 N.E. 99 (N.Y. 1928)

ANDREW L. KAUFMAN, *CARDOZO* (1998)

Pierre N. Leval, *Judicial Opinions as Literature*
in LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW
(Peter Brooks & Paul Gewirtz eds. 1996)

RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992)

JOHN NOONAN, JR., *The Passengers of Palsgraf*
in PERSONS AND MASKS OF THE LAW (1976)

Princz v. Federal Republic of Germany
813 F. Supp. 22 (D.D.C. 1992)

Princz v. Federal Republic of Germany
26 F.3d 1166 (D.C. Cir. 1994)

Overview

This class, like the one before, will explore law-as-literature. In this class, we will examine issues of style, rhetoric, and candor.

One of the main focal points of our discussion will be Judge (later Justice) Benjamin Cardozo. Cardozo is considered one of the most influential judges of all time, and his opinions had a significant impact on the law (especially torts and contracts). We will examine the role that style and rhetoric play in judicial opinions as well as the way that judges frame the facts of the case. To what extent does the use of rhetoric make a judge less candid? How much candor is desirable?

The first reading is Richard Posner's *Cardozo: A Study in Reputation*, which provides an informative and interesting background about Cardozo's life, work, and influence.

Next, examine two of Cardozo's most well-known judicial opinions, *Palsgraf v. Long Island R. Co.*, 162 N.E. 99 (N.Y. 1928) and *Hynes v. New York Central R. Co.*, 131 N.E. 898 (N.Y. 1921). You're probably familiar with *Palsgraf* from your Torts class, and you might have read *Hynes* as well in Torts. As you

read the opinions, pay particular attention to Cardozo's articulation of the facts and his style.

Richard Weisberg extols Cardozo's use of rhetoric as well as the importance of rhetoric generally in judicial opinions. Judge Pierre Leval has a very different view. Who has the better argument?

Judge John Noonan's *The Passengers of Palsgraf*, presents a very different take on the opinion than Weisberg. Noonan points out a number of facts that are not contained in Cardozo's opinion. Are these facts relevant? Why does Cardozo not include them? Whose view of *Palsgraf* is more convincing, Weisberg's or Noonan's? If you agree more with Noonan's view, how does this impact Weisberg's theses about the relationship between style and substance in judicial opinions?

Is Cardozo's writing of the opinion so strongly and powerfully in support of his conclusion a distortion? If a case is hard and a judge has a tough time coming to a conclusion, shouldn't the opinion reflect this? Is Cardozo being candid?

Recall Paul Gewirtz's essay on Justice Stewart's famous "I know it when I see it" line. Justice Stewart could have pretended to apply some legal doctrine or test, but he chose instead to be candid and admit that he really didn't have an answer. Should he be extolled for his candor? What would Justice Cardozo have done?

In the *Princz* case, compare and contrast the three opinions in the case: Judge Stanley Sporkin's district court opinion, Judge Douglas Ginsburg's majority opinion, and Judge Patricia Wald's dissent. How does each judge narrate the facts?

Step out of your lawyer shoes and think about each judge's opinion more as a lay person might. How do you feel about the court's analysis? In terms of language and tone, which opinion do you prefer? What are the virtues and vices of each?

This case presents another example of how a rule must be applied to a very unusual situation. Does this case have similarities to the *Speluncean Explorers* case? How would you decide this case?

IV. NORMS AND THE LAW

A. NORMS AND NARRATIVE IN GARCIA MÁRQUEZ'S *CHRONICLE OF A DEATH FORETOLD*

Class 12: Garcia Márquez's *Chronicle of a Death Foretold*

Readings

MICHAEL HECHTER & KARL-DIETER OPP, *SOCIAL NORMS* (2001)

Lawrence E. Mitchell, *Understanding Norms*
49 U. Toronto L.J. 177 (1999)

C. K. ALLEN, *LAW IN THE MAKING* (7th ed. 1964)

GABRIEL GARCIA MÁRQUEZ, *CHRONICLE OF A DEATH FORETOLD* (1983)

RUBEN PELAYO, *GABRIEL GARCIA MÁRQUEZ: A CRITICAL COMPANION* (2001)

Rosanna Cavallaro, *Solution to Dissolution: Detective Fiction from Wilkie Collins to Gabriel Garcia Marquez*, 15 Tex. J. Women & L. 1 (2005)

Overview

In the next few classes, we will explore the relationship between law and social norms. Begin by reading the two short excerpts – one from Michael Hetcher and Karl-Dieter Opp, and other by Lawrence Mitchell. What is a norm? How is it different from the law?

The excerpt from C.K. Allen describes how norms and customs often form the foundation for law.

With this background of law and norms in mind, turn to Garcia Márquez's *Chronicle of a Death Foretold*. Garcia Márquez was born in Columbia in 1928. He is perhaps best known for his masterpiece, *A Hundred Years of Solitude*. In 1982, he won the Nobel Prize in literature. His novella, *Chronicle of a Death Foretold*, is based on a real murder that took place in Sucre, Columbia, in 1951.

The novella begins with the end – the murder of Santiago Nasar. The novella reconstructs the events leading up to the murder by piecing together fragments from witnesses and documents. Legal narratives are often constructed of multiple voices. Witnesses relay their perspective of a particular event, often shaded by biases, prejudices, and cloudy and selective memory. Focus on what this reconstructed account tells us about the murder and about how and why it happened. What role do social norms and customs play in the murder? Who is responsible for Nasar's death? To what extent is the town complicit in the murder?

B. CUSTOMS, NORMS, AND LAW: JACKSON'S *LOTTERY* AND LEGUIN'S *OMELAS*

Class 13: Customs and Change

Readings

Shirley Jackson, *The Lottery* (1948)

Michel de Montaigne, *Of Custom* (1575)

JOHN DEWEY, *HUMAN NATURE AND CONDUCT* (1922)

Ursula K. Le Guin, *The Ones Who Walk Away from Omelas*

GUIDO CALABRESI, *The Gift of the Evil Deity*
in IDEALS, BELIEFS, AND ATTITUDES IN THE LAW (1985)

Overview

The first set of readings for this class involves the relationship between law, norms, and customs. Much of the law emerges from norms and customs. Often, customs remain widely practiced even after the reasons for their existence have become forgotten. When we start to challenge customs, norms, and laws that we have previously accepted unthinkingly, what are the consequences?

Consider Shirley Jackson's *The Lottery*. Does anyone in the society have a clear idea of why the lottery exists? What purpose(s) does the lottery serve? Why do the villagers cling to the lottery? Mrs. Hutchinson contends that the lottery is unfair. What is the nature of her critique? What aspect of the lottery doesn't she criticize? What does this story tell us about the law?

The excerpts from Michel de Montaigne and John Dewey offer differing perspectives on the extent we can (and should) we change our customs. How do they differ on this point?

The second set of readings explores the consequences of the critical awareness we acquire when we view norms, customs, and the law skeptically. When we see things critically and reflectively, how does this change our behavior and policy choices? In Le Guin's *The Ones Who Walk Away from Omelas*, where do the ones who walk away from Omelas go? Do you agree with the ones who walk away? Is Omelas a better world than its alternative, the real world where many more live in terrible suffering?

Calabresi's *The Gift of the Evil Deity*, explores the consequences of understanding the law with greater clarity. In particular, Calabresi asks how our knowledge of the costs of society's rules should effect our policy decisions. Focus on Calabresi's discussion of the rescue of the fool in the rowboat. Why do we spend lots of money to rescue victims of disasters or accidents rather than spend the money on general safety measures that could save more lives?

Calabresi argues that in the "temple of truth" we realize that everything has a cost, that everything is a trade-off. We realize that allowing automobiles involves a choice between lives and convenience. What does it mean to acknowledge these choices? Is this something that the ones who walk away from Omelas acknowledge?

C. MORRISON'S *THE BLUEST EYE* AND THE LIMITS OF LAW

Class 14: Morrison's *The Bluest Eye*

Readings

ROBERT ELLICKSON, *ORDER WITHOUT LAW* (1991)

Lawrence Lessig, *The Regulation of Social Meaning*
62 U. Chi. L. Rev. 943 (1995)

TONI MORRISON, *THE BLUEST EYE* (1970)

Overview

Law is not the only force regulating social conduct. Social norms often play an even more profound role than the law in governing society. The Robert Ellickson excerpt examines how a community of cattle ranchers and farmers in a small community do not rely much on the law but on their own set of social norms for resolving disputes with neighbors. The Lawrence Lessig excerpt discusses ways in which the law can attempt to change norms.

Toni Morrison's *The Bluest Eye* illustrates some of the sinister and troubling aspects of norms. I assigned this work even though it is not expressly about the law because it has important ramifications for our understanding of the law's relationship to society. Focus on the absence of law in the book. Notice all the instances that would ordinarily invoke a legal response or the protection of law: the delivery of the torn sofa to the Breedlove's home, the molestation of Pecola by Cholly, the fact that Soaphead Church was a known child molester. What impact would you expect the law to have in these situations? Why is the law so noticeably absent in this story? If the law could permeate into this society, would it have saved Pecola?

After being so ensconced in law, we are accustomed to seeing law as a dominant force shaping social structure. In the society depicted in *The Bluest Eye*, however, we see the profound power of social norms in shaping social structure. What are the central social norms at play in the novel? What role could the law play to combat such norms? Can the law do anything? If so, what? If not, what impediments would prevent the law from working?

The novel also explores the internalization of norms of oppression. Why do the characters in the novel blame each other and fellow victims of oppression? Why does the community ostracize Pecola? Why does the community participate in Pecola's destruction? Morrison writes: "One problem was centering: the weight of the novel's inquiry on so delicate and vulnerable a character could smash her and lead readers into the comfort of pitying her rather than into an interrogation of themselves." (p. 211). What is Morrison trying to accomplish? Why provoke sympathy for Cholly by describing his life and trauma? Are we to feel sorry for him? Forgive him? If we blame Cholly, do we commit the flaw that Morrison sees the community as doing?

V. JUDGMENT AND NARRATIVE

A. THE ART AND ETHICS OF THE TRIAL: *ANATOMY OF A MURDER*

Classes 15, 16, and 17: Trials and Narrative

Readings

Anatomy of a Murder (1959)

(directed by Otto Preminger; starring James Stewart and Lee Remick)

Michael Asimow, *Anatomy of a Murder—The “Lecture”* (1998)

Timothy Hoff, *Anatomy of a Murder*

24 Legal Studies Forum 660 (2000)

We will watch the film in classes 20 and 21 and discuss it in class 22. Please don't read the Asimow and Hoff essays until after class 21 – they contain spoilers.

Overview

It's movie time! We will watch the great classic film, *Anatomy of a Murder*. Because of its length (160 minutes), we will watch it over the span of two classes and then will discuss it in the third class. As you watch the film, pay particular attention to the trial techniques of defense attorney Paul Biegler. Is he a good lawyer or a sleazy manipulator – or something of both? Does his famous “lecture” to his client cross the ethical line?

B. THE COMPLEXITY OF JUDGMENT: DOSTOYEVSKY'S *THE BROTHERS KARAMAZOV*

Class 18: Dostoyevsky's *The Brothers Karamazov*

Readings

FYODOR DOSTOYEVSKY, *THE BROTHERS KARAMAZOV*

Parts I and II

ALBERT CAMUS, *THE REBEL* (1954)

MIKHAIL BAKHTIN, *PROBLEMS OF DOSTOEVSKY'S POETICS*

(Caryl Emerson, trans. 1984)

Saul Bellow, *Where Do We Go From Here: The Future of Modern Fiction*

Michigan Quarterly Review 33 (1982)

Overview

Fyodor Dostoyevsky's *The Brothers Karamazov* is one of the greatest novels ever written. It is long and slow-moving in the beginning, but it picks up after the first hundred pages or so and becomes quite a page-turner. I realize that the book is quite long and difficult, but bear with it and you will be rewarded.

The Brothers Karamazov is a novel of ideas, exploring the interrelationship between politics, religion, justice, judgment, and law. At its center, it is a story about three brothers. Ivan Karamazov is an intellectual and a thinker. Dimitri (Mitya) Karamazov is the passionate one, who lives life to the fullest. Alexei (Alyosha) is a quieter gentle person who is an apprentice to a monk. Their father, Fyodor, is an irresponsible buffoon of a man, and he creates great tensions that spark the central drama of the novel.

The opening part of the book introduces the family, including their half-brother Smerdyakov, as well as others. Focus on the differences between the brothers. In what way are they different? In what way are they similar?

What is Ivan's belief system? What are Ivan's views toward crime and justice? Ivan says that if there is no immortality, then everything is permissible. What does he mean by this? What are Ivan's beliefs about the nature of evil? What does he mean that "no one's to blame"?

How do Ivan, Alyosha, and Dimitri react to their father's behavior? What is Zosima's belief system?

Book 4 is titled "Strains." What are the strains involved in Book 4?

In Book 5, what is Ivan's argument? Try to follow it carefully. Do you agree with Ivan? How does the Grand Inquisitor story relate to the rest of the novel?

Book 6 focuses on the life of Zosima. Dostoyevsky said it was meant to be a refutation of Ivan's beliefs. How does it contrast with Ivan's ideas and worldview? Does it refute Ivan?

Class 19: Dostoyevsky's *The Brothers Karamazov***Readings****FYODOR DOSTOYEVSKY, THE BROTHERS KARAMAZOV***Part III***Overview**

In Book 7, what is the significance of the parable of the onion? What challenge does Alyosha face? How does he respond to it?

Book 8 focuses on Dimitri. What do we learn about him in this chapter? Is he guilty of the crime he is accused of?

Book 9 involves the preliminary investigation of Dimitri. Examine the questioning and investigation of Dimitri. Why does it fail to get at the truth?

Compare and contrast the women of the book – Katerina (Katya), Grushenka, and Lise.

Class 20: Dostoyevsky's *The Brothers Karamazov***Readings****FYODOR DOSTOYEVSKY, THE BROTHERS KARAMAZOV***Part IV and Epilogue***GARY ROSENSHIELD, WESTERN LAW, RUSSIAN JUSTICE: DOSTOEVSKY, THE JURY, AND THE LAW (2005)****Daniel J. Solove, *Postures of Judging: An Exploration of Judicial Decisionmaking***9 *Cardozo Studies in L. & Literature* 173 (1997)**Overview**

In Book 10, what is the significance of the subplot with the schoolboys? Why does Dostoyevsky include it in the book?

In Book 11, what is the meaning of Ivan's dream? Why does Smerdyakov do what he does? How does this affect Ivan?

Book 12 involves Dimitri's trial. What is the argument in the prosecutor's speech? In the defense attorney's speech? Does justice occur at the end of the trial? How does Dostoyevsky depict the trial and the law?

The excerpt from Gary Rosenshield provides background about the jury trial in Russia during the time Dostoyevsky wrote *The Brothers Karamazov*. The excerpt from Daniel Solove examines how judges are inescapably caught in tension between generality and particularity and how *The Brothers Karamazov* can illuminate legal philosophy.

C. THE POWER OF NARRATIVE: DÜRRENMATT'S *TRAPS*, DR. DEATH, AND DERSHOWITZ

Class 21: Dürrenmatt's *Traps*

Readings

FRIEDRICH DÜRRENMATT, *TRAPS* (1960)

Overview

We construct stories of selfhood as well as stories about law and justice. How are these two types of stories related? What are the consequences of constructing narratives? How do we evaluate narratives? Are there any "true" narratives?

The novella, *Traps*, by Friedrich Dürrenmatt, a German playwright, is a remarkable work of literature (which, sadly, is out of print). How does the preface relate to the themes in the novella? There is a lot of talk of accidents in the preface and in the story. How does this relate to the other themes of the story? Who is Alfredo Traps? Which narrative best describes him? Why does Traps do what he does at the end?

Also consider the philosophy of the retired legal figures toward storytelling and the truth. Do they understand the consequences of their storytelling? Do the retired legal figures understand Alfredo Traps? Does Traps understand himself? Do we understand Traps and who he is at the end of the novella?

Class 22: Narrative**Readings**

Ron Rosenbaum, *Travels With Dr. Death* (1990)

Alan Dershowitz, *Life Is Not a Dramatic Narrative*

in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW*
(Peter Brooks & Paul Gewirtz eds. 1996)

Overview

We will continue discussing *Traps* in the next class, but will also weave into the discussion Ron Rosenbaum's *Dr. Death* essay. How does Rosenbaum's essay relate to *Traps*? Is Dr. Death telling fictions? Is Ron Rosenbaum engaging in a similar activity as Dr. Death?

Finally, consider how the Dershowitz essay relates to the other two works. What does this essay add to the themes and ideas in *Traps* and *Dr. Death*?

D. CAPOTE'S TRUE CRIME NARRATIVE: *IN COLD BLOOD*

Class 23: Capote's *In Cold Blood*

Readings

TRUMAN CAPOTE, *IN COLD BLOOD* (1965)

Daniel Mendelsohn, *The Truman Show*

N.Y. Review of Books (Nov. 17, 2005)

Overview

Truman Capote's *In Cold Blood* provides an extensive account of the mindset of murderers. Unlike Billy Budd or the cave-explorers in the *Speluncean Explorers*, the murderers in Capote's book are not innocent or justified in their actions. However, Capote aims to provide us with a more complete understanding of the murderers. To what extent does this affect the way we punish them?

Truman Capote's *In Cold Blood* is based on true events. It was not written to be a work of fiction, but to be a true crime narrative. Capote became interested in the events in the novel by noticing a small newspaper article about the murders in 1959. He spent five years meticulously researching the crime. Capote interviewed Dick and Perry extensively, and grew especially fond of Perry. The book was published in 1966, a year after Dick and Perry were executed.

Focus on how the law handles the way criminals like Dick and Perry are judged and punished. Do you think Dick and Perry were appropriately punished? Why does Capote include what Dr. Jones would have testified to but did not? (p. 294). What is Capote's attitude toward Perry? Does Capote's depiction of Perry alter the way you judge his actions? What does this novel tell you about the crime that would not have been included in a typical newspaper article account of it? Is it a worthwhile endeavor to have such a detailed account of this crime? In other words, what does this novel contribute to your understanding of the crime and to the way you judge the perpetrators?

Capote played a significant role in the events in the novel, yet he doesn't appear in it. Should he have included himself?

VI. LAW, JUSTICE, AND MORALITY

A. LAW AND MORALITY IN SOPHOCLES'S *ANTIGONE*

Class 24: Sophocles's *Antigone*

Readings

Sophocles, *Antigone* (441 B.C.)

Susan W. Tiefenbrun, *On Civil Disobedience, Jurisprudence, Feminism and the Law in the Antigones of Sophocles and Anouilh*
11 *Cardozo Stud. L. & Literature* 35 (1999)

THEODORE ZIOLKOWSKI, *THE MIRROR OF JUSTICE: LITERARY REFLECTIONS OF LEGAL CRISIS* (1997)

Overview

Sophocles' great play, *Antigone*, explores the tension between law and morality. Is it acceptable to disobey an unjust law? Is Creon in the wrong? Antigone? Both? Neither? How is Creon like Antigone? Does Antigone's gender influence Creon's reaction to her?

B. JUSTICE AND VENGEANCE IN KLEIST'S *MICHAEL KOHLHAAS*

Class 25: Kleist's *Michael Kohlhaas*

Readings

Heinrich von Kleist, *Michael Kohlhaas* (1810)

Richard Sterne, *Reconciliation and Alienation in Kleist's "Michael Kohlhaas" and Doctorow's Ragtime*

12 *Legal Studies Forum* 4 (1988)

Overview

Heinrich von Kleist (1777-1811), a Prussian writer, wrote *Michael Kohlhaas* in 1810. The novella was greatly admired by Franz Kafka. To what extent is Kohlhaas similar to Antigone? To what extent is he different? Are Kohlhaas's actions justified? Is the individual ever justified in taking matters into his or her own hands and elevating his sense of morality above the law of the state?

RECOMMENDED FURTHER READINGS

I. INTRODUCTION

CLASS 1: INTRODUCTION

General Works on Law & Literature

MARIA ARISTODEMOU, *LAW AND LITERATURE: JOURNEYS FROM HERE TO ETERNITY* (2001)

GUYORA BINDER & ROBERT WEISBERG, *LITERARY CRITICISMS OF LAW* (2000)

IRVING BROWNE, *LAW AND LAWYERS IN LITERATURE* (1883)

GREGG D. CRANE, *RACE, CITIZENSHIP, AND LAW IN AMERICAN LITERATURE* (2002)

KIERAN DOLIN, *FICTION AND THE LAW: LEGAL DISCOURSES IN VICTORIAN AND MODERNIST LITERATURE* (1999)

ROBERT A. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* (1984)

RICHARD FIRTH GREEN, *CRISIS OF TRUTH: LITERATURE AND LAW IN RICARDIAN ENGLAND* (2002)

THOMAS C. GREY, *THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY* (1991)

JEFFREY C. KINKLEY, *CHINESE JUSTICE, THE FICTION: LAW AND LITERATURE IN MODERN CHINA* (2000)

BARRY R. SCHALLER, *A VISION OF AMERICAN LAW : JUDGING LAW, LITERATURE, AND THE STORIES WE TELL* (1997)

ERICA SHEEN & LORNA HUTSON (editors), *LITERATURE, POLITICS, AND LAW IN RENAISSANCE ENGLAND* (2005)

BROOK THOMAS, *CROSS-EXAMINATIONS OF LAW AND LITERATURE: COOPER, HAWTHORNE, STOWE & MELVILLE* (1987)

RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992)

RICHARD WEISBERG, *THE FAILURE OF THE WORD* (1984)

JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (1973)

JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING* (1984)

JAMES BOYD WHITE, *JUSTICE AS TRANSLATION* (1990)

JAMES BOYD WHITE, *HERACLES' BOW* (1985)

MELANIE WILLIAMS, *EMPTY JUSTICE: ONE HUNDRED YEARS OF LAW, LITERATURE AND PHILOSOPHY* (2002)

THEODORE ZIOLKOWSKI, *THE MIRROR OF JUSTICE: LITERARY REFLECTIONS OF LEGAL CRISIS* (1997)

Law and Popular Culture

Maxwell H. Bloomfield, *The Supreme Court in American Popular Culture*, 4 *J. of Am. Culture* 71 (1981)

Maxwell H. Bloomfield, *The Warren Court in American Fiction*, *J. of S. Ct. Hist.* 86 (1991)

Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 *Wisc. L. Rev.* 527 (1986)

Christine Alice Corcos, *Prosecutors, Prejudices, and Justice: Observations on Presuming Innocence in Popular Culture and Law*, 34 *U. Toledo L. Rev.* 793 (2003)

Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 *Yale L.J.* 1579 (1989)

Lawrence M. Friedman & Issachar Rosen-Zvi, *Illegal Fictions: Mystery Novels and the Popular Image of Crime*, 48 *UCLA L. Rev.* 1411 (2001)

Jennifer Jaff, *Law and Lawyer in Pop Music: A Reason for Self-Reflection*, 40 *U. Miami L. Rev.* 659 (1986)

ROBERT M. JARVIS & PAUL R. JOSEPH, *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* (1998)

Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 *UCLA L. Rev.* 1305 (2001)

STEVE REDMAN, *UNPOPULAR CULTURES: THE BIRTH OF LAW AND POPULAR CULTURE* (1995)

RICHARD K. SHERWIN, *WHEN LAW GOES POP* (2000)

Jessica Silbey, *Patterns of Courtroom Justice*, 28 *J. L. & Soc'y* 97 (2001)

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Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 Yale L.J. 1059 (1999)

Milner Ball, *The Future of Law and Literature: Convocations and Conversations*, 10 Cardozo Stud. L. & Literature 107 (1998)

Richard Epstein, *Does Literature Work as Social Science: The Case of George Orwell*, 73 U Colo. L. Rev. 987 (2002)

Daniel J. Kornstein, *A Practicing Lawyer Looks Back on Law and Literature*, 10 Cardozo Stud. L. & Literature 117 (1998)

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Robin L. West, *Adjudication is Not Interpretation: Some Reservations about the Law-as-Literature Movement*, 54 Tenn. L. Rev. 203 (1986)

Robin L. West, *Communities, Texts, and Law: Reflections on the Law and Literature Movement*, 1 Yale J.L. & Human. 129 (1988)

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LAW IN LITERATURE: AN ANNOTATED BIBLIOGRAPHY OF LAW-RELATED WORKS
(Elizabeth Villiers Gemmette ed.1995)

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Judith Resnik, *Constructing the Canon*, 2 Yale J.L. & Human. 221 (1990)

Richard Weisberg & Kretschman, *Wigmore's "Legal Novels" Expanded: A Collaborative Effort*, 7 Maryland Legal Forum 94 (1977)

Richard H. Weisberg, *Wigmore's "Legal Novels" Revisited: New Resources for the Expansive Lawyer*, 71 Nw. U. L. Rev. 17 (1976)

John H. Wigmore, *A List of One Hundred Legal Novels*, 17 Ill. L. Rev. 26 (1922)

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THE WORLD OF LAW: THE LAW AS LITERATURE (Ephraim London ed. 1960)

LAW IN LITERATURE: LEGAL THEMES IN DRAMA (Elizabeth Villiers Gemmette ed. 1995)

LAW IN LITERATURE: LEGAL THEMES IN NOVELLAS (Elizabeth Villiers Gemmette ed. 1996)

LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES (Elizabeth Villiers Gemmette ed.2000)

TRIAL AND ERROR: AN OXFORD ANTHOLOGY OF LEGAL STORIES
(Fred R. Shapiro & Jane Garry eds. 1998)

LEGAL FICTIONS: LAWYERS AND THE LAW (Jay Wishingrad ed. 1992)

Anthologies & Collections: Non-Fiction

INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER (Sanford Levinson and
Seven Mailloux, eds., 1988)

LAW AND LITERATURE (Michael Freeman & Andrew Lewis eds. 1999)

LAW AND LITERATURE (Patrick Hanafin, Adam Gearey, & Joseph Brooker eds. 2004)

LAW AND LITERATURE: TEXT AND THEORY (Lenora Ledwon ed. 1996)

LAW AND LITERATURE PERSPECTIVES (Bruce L. Rockwood ed. 1996)

LAW'S STORIES (Peter Brooks & Paul Gewirtz eds. 1996)

WILLIAM R. BISHIN & CHRISTOPHER D. STONE, LAW, LANGUAGE AND ETHICS (1972)

LAW AND AMERICAN LITERATURE: A COLLECTION OF ESSAYS (Carl S. Smith et al. ed., 1983)

II. THE RULE OF LAW vs. EQUITY

CLASSES 2 & 3: MELVILLE

Commentary on *Billy Budd*

ROBERT COVER, *Of Creon and Captain Vere*, in JUSTICE ACCUSED (1975)

Jami K. Elison, *The Prosecution of Billy Budd (Ultra Vires of Positive Law)*, 35 Willamette L. Rev. 57 (1999)

C.B. Ives, *Billy Budd and the Articles of War*, 34 American Literature 31 (1962)

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Judith Schenck Koffler, *The Feminine Presence in Billy Budd*, 1 Cardozo Studies in L. & Literature 1 (1989)

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Kevin W. Saunders, *Billy Budd and the Federal Sentencing Mandates*, 22 Oklahoma City U. L. Rev. 211 (1997)

Daniel J. Solove, *Melville's Billy Budd and Security in Times of Crisis*, 26 Cardozo L. Rev. 2443 (2005)

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Brook Thomas, *Billy Budd and the Untold Story of the Law*, 1 Cardozo Studies in L. & Literature 49 (1989)

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Steven L. Winter, *Melville, Slavery, and the Failure of the Judicial Process*, 26 Cardozo L. Rev. 2471 (2005)

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Edwin M. Yoder, Jr., *Fated Boy: Billy Budd and the Laws of War*, 31 J. Maritime L. & Commerce 615 (2000)

Edwin M. Yoder, Jr., *Melville's Billy Budd and the Trials of Captain Vere*, 45 St. Louis U. L.J. 1109 (2001)

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V. JUDGMENT AND NARRATIVE

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