

Michigan Law Review

Volume 84
Issue 4 *Issues 4&5*

1986

Law and Letters in American Culture

Lee W. Brooks
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Legal History Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Lee W. Brooks, *Law and Letters in American Culture*, 84 MICH. L. REV. 1047 (1986).
Available at: <https://repository.law.umich.edu/mlr/vol84/iss4/49>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

LAW AND LETTERS IN AMERICAN CULTURE. By *Robert A. Ferguson*. Cambridge, Mass.: Harvard University Press. 1984. Pp. viii, 417. \$22.50.

The sweeping title — *Law and Letters in American Culture* — is deceptively broad. The book's contents might be better reflected by a less resounding title, let us say, *Selected American Lawyer-Writers from Jefferson to Lincoln*, for Ferguson¹ confines his inquiry to only a few decades of "American culture" and selects only eleven law-trained authors² from this period for extended treatment. While this latter title delineates the scope of Ferguson's inquiry, however, it fails to convey his subject, which is, in a phrase that becomes a term of art in his hands, the configuration of law and letters. The "now-forgotten configuration of law and letters . . . dominated American literary aspirations from the Revolution until the fourth decade of the nineteenth century" (p. 5). This configuration, for which the "law and letters" of the title is presumably an abbreviation, was a discrete historical phenomenon, the effects of which may be traced to a unique confluence of cultural influences centered around the American Revolution.

The configuration began with eighteenth-century lawyers who were "professionally dependent upon a fusion of law and literature" (p. 6). This was a time when:

Half of the important critics of the day trained for law, and attorneys controlled many of the important journals. *Belles lettres* societies furnished the major basis of cultural concern for post-Revolutionary America; they depended heavily on the legal profession for their memberships. Lawyers also wrote many of the country's first important novels, plays, and poems. [p. 5]

The configuration was largely gone by the mid-nineteenth century, when "it was an extraordinary figure indeed who could encompass law and literature and remain active in both" (p. 200). During this period, the practice of law changed dramatically, the social and artistic conditions of authorship were transformed, and the configuration created by the "fusion of law and literature" (p. 6) gradually disintegrated. At the same time, individual lawyer-writers contributed incrementally to the ongoing changes in their professions, responding to the *status quo* as they found it in characteristically diverse ways.

Throughout the period during which the configuration dominated the most literate segment of the American populace, conflict between its two constituent elements had both creative and destructive effects on writers and their writing. The configuration gave rise, most nota-

1. Robert A. Ferguson (J.D., Ph.D., Harvard University) is Associate Professor of English at the University of Chicago.

2. The principal authors discussed are Thomas Jefferson, John Trumbull, Royall Tyler, Hugh Henry Brackenridge, Charles Brockden Brown, Washington Irving, William Cullen Bryant, Daniel Webster, Richard Henry Dana, Sr., Richard Henry Dana, Jr., and Abraham Lincoln.

bly in the United States Constitution, to enduring legal principles and cherished legal language, but, as soon as that period of revolutionary crisis passed, literary artists began to rebel against their concubinage in the house of law and to seek the equal and independent status they have now held for nearly a century and a half. It is ironic (though it might well not have surprised the deeply pessimistic Founding Fathers³) that American lawyers have come to be widely mistrusted, even despised, while literary (and subliterary) artists with no particular views to impart regarding the public good are vehemently admired by the most highly educated classes.

An awareness of this eventual change in attitudes colors Ferguson's description of the configuration's first flowering in the careers of Thomas Jefferson and his colleagues, whose communal work product was the outgrowth of a common literary education. As clerical influence waned in the mid-eighteenth century, law became the career of choice among those with the power to choose. The lawyer's ideal was oratorical versatility and elegance grounded in classical learning. Students of law sought especially to emulate Cicero, who was admired not only for his polished eloquence but for his balanced commitment to law, letters, and public service. These early lawyers were generalists,⁴ who often had no more technical legal learning than the study of William Blackstone's *Commentaries on the Laws of England* could supply,⁵ and "[t]he ultimate goal was what Rufus Choate [found] in John Quincy Adams: 'the hived wisdom of a life of study and a life of action'" (p. 30). The configuration of law and letters was a product of the search for this ideal.

Realization of the ideal meant "[s]ubordination of literature to law" (p. 88). However dedicated the young student might be to letters, the professional "man of letters" was expected to give his best energies to his profession and to scribble any purely literary works only as his leisure permitted. To the extent that literary excellence contributed to law practice, it was in the service of a "legal aesthetic" derived from writers like Blackstone, under which, according to Ferguson, "[c]reativity really meant the ability to impose order upon unruly material" (p. 33). How different this "aesthetic" is from literature's natural or customary ends the reader may judge for herself.

Both law and letters evolved in the decades after the Revolution. Ciceronian orators gave way to technicians learned in positive law. Ever-proliferating statutes and case reports provided an extensive new

3. "From the conclusion of this war we shall be going down hill," Jefferson had predicted as early as 1781." P. 99.

4. "In the absence of statutes and case law, precision in language study became legal expertise." P. 73.

5. It is instructive to consider how little overlap there is between the University of Michigan's Law Library of 617,000 volumes (as of July 1, 1985) and Thomas Jefferson's "vast library of six thousand volumes." P. 334 n.45.

source of legal knowledge, and lawyers increasingly were not "men of letters" in the traditional sense.⁶ At the same time, writers of literature were developing a more professional notion of authorship — and a dim view of lawyers. The "new aesthetic" of romanticism, with its focus upon individual experience and its appreciation of the "subversive component" of creativity (p. 271), was out of step with the old ideal of instilling civic virtue through the "culminating inclusiveness" (p. 217) of forensic eloquence. And the American romantics' frequent appeals to natural law to justify their moral stance,⁷ while establishing a common ground with lawyers of an earlier era, set them at odds with the legal positivists of their own day.

As law and letters evolved separately, the configuration, which began with "symbiosis" (p. 25), reached its "crest" in the speeches of Daniel Webster, "its collapse" (p. 241) in the careers of the Richard Henry Danas (father and son), "disappeared with the Civil War" (p. 199), and made a brief reappearance in the speeches of President Abraham Lincoln — "the last Blackstone lawyer to lead the nation."⁸ Ferguson presents the passing of the configuration as a process of cultural entropy, wherein analytic diffusion gradually breaks down energetic intellectual synthesis. Projecting the trend into the present day, he sees "[t]he lawyer's deliberate combination of intellectual breadth, artistic insight, and political commitment" give way to "the stark separation of intellect, art, and politics" (pp. 9-10).

Ferguson assesses this process harshly. The movement toward legal specialization, he suggests, is "a deliberate rejection of comprehensive ideas and a corresponding loss in communicative power," and legal knowledge has "less and less to do with America's general search for self-expression" (p. 290). As an example of what has been lost, Ferguson points to the novels of James Fenimore Cooper, who, while not a lawyer, "made the law a permanent avocation" (p. 90). This avocation brought him into the configuration, where he scrutinized American character and institutions "with an impressive precision of language and thought." Ferguson concludes: "Cooper always strives to make the meaning of America clear — a goal that writers and other intellectuals seem to have lost sight of in the twentieth century" (p. 303).

Ferguson asserts that attention to the configuration serves two purposes. First, "[t]he central texts of American republicanism acquire new coherence from a legal aesthetic just beneath the surface" (p. 7).

6. The waning efficacy of Daniel Webster's oratory in the face of an "increasingly technical jurisprudence" (p. 230) illustrates this change. *See* pp. 227-35.

7. *See* p. 266 (citing Melville, Emerson, Thoreau, and Hawthorne).

8. P. 305. Lincoln's use of the configuration was innovative. "No classicist, Lincoln nonetheless functions as part of a continuing Ciceronian ideal . . ." P. 306. He made up for his lack of classical language training through a self-taught linguistic mastery — "a complicated mixture of popular dialect, biblical phraseology, and literary cadence." P. 309.

Second, reassessment of the writings of this formative period in light of the configuration helps to fill a "gap in the American critical tradition" and to reconstruct the "truncated canon" created by literary critics who "tend to skip the eighty years from the Great Awakening to the American Renaissance in their haste to associate colonial religious preoccupations with the romantic inwardness of the nineteenth century" (p. 8). Accordingly, most of this book is devoted to Ferguson's readings of selected works by lawyer-writers, including such political works as Jefferson's *Notes on the State of Virginia* and the speeches of Webster and Lincoln.

Ferguson generally avoids the conclusory aesthetic judgments and disparaging disputation one might anticipate from a scholar with an agenda of literary rehabilitation. Instead, he supplies a few key insights into the literary methods and goals of lawyer-writers that may (or may not) change the way certain texts are read. In his reading of Jefferson's *Notes*, for example, Ferguson finds structural and philosophical correspondences with a constellation of legal treatises that suggest a shared aesthetic of ordered inquiry. Topical headings that may strike modern readers as artificial and oddly overinclusive were, Ferguson contends, "strategies of control" (p. 41) to Jefferson, and served to contain the "profound anxiety" (p. 50) and "compulsive fears" (p. 53) to which Jefferson and his contemporaries often fell prey in the face of the strangeness of the North American continent, the backwardness of its populace, and the instability of its government. Ferguson characterizes this set of strategies as "an American aesthetics of order and control" (p. 76).

In a similar way, Ferguson discovers an "aesthetics of cohesion" (p. 82) in much of the writing of this period, especially its oratory. Derided by Henry David Thoreau for its "hip-hip-hurrah and mutual-admiration-society style" (p. 239), political speech was purposely crafted as a means of controlling what were perceived to be the inherent dangers of America's democratic tendencies. "The speaker's aim — one modern readers consistently miss — was to include and incorporate listeners, not to challenge their understanding" (p. 80). The eloquence deployed within the configuration of law and letters "represented a means of creating cohesion through the manipulation of emotion" (p. 81).

Rehabilitating formerly undervalued texts by positing new aesthetic criteria is only Ferguson's most direct means of furthering his agenda. A frequent theme throughout the central chapters of the book is how the configuration's internal tensions and conflicts shaped the careers and writings of those working within its confines. Indirectly, these tensions affected both the value and the volume of literary production during the period. As Ferguson makes plain, the effects could be destructive. The configuration's subordination of literature to law

gave lawyers a convenient set of "excuses for not writing well" (p. 88) and even an excuse for not writing at all. On the other hand, the "vocational anxieties" of young writers who were pressed by poverty and a sense of duty to practice law often became a source of insight and creative energy.

Charles Brockden Brown's ambivalent efforts to escape from the reality of an impending and uncongenial legal career led to the creation of novels in which the powerful oppositions within his own psyche proliferated into an array of distinct and earnest voices. In his discussion of Washington Irving's *A History of New York*, Ferguson traces successful satire and "imagery of estrangement" to an anger born of "[v]ocational resentments" (p. 155). The intensity and abstract form of the same "vocational tensions" can be found in the nature poems of William Cullen Bryant, with their recurring "juxtaposition of ideal nature against the real world of man" (p. 176).

The centrality of these tensions is suggested by what happened when they were resolved. When Brown finally became a lawyer, his career as a novelist was over (p. 131). More tellingly, when Irving became a successful author, he lost his anger, and, with it, "the intellectual wit and sharp humor that made him famous" (p. 172). Thus, while the configuration may help literary historians to complete a "truncated canon" (p. 8), the configuration's effect at the time was to truncate a number of literary careers.

Ferguson's view of the deadening placidity that descended upon Bryant's later works exemplifies his use of the configuration to explicate both writings and writers. The thesis put forward by Bryant's contemporaries Whittier and Emerson was that Bryant's editorial work and political involvement "undermined both his virtue and his creativity" (p. 173). The antithesis, offered by Bryant's friends, was that he was a man of letters, and, as such, high-minded enough to keep his poetry "chaste and tidy" (p. 174), free of the taint of business. The synthesis, proposed by Ferguson, is that: "It was not politics and worldly affairs that ruined the poet but a deliberate emotional detachment from these affairs consistent with lifelong goals as a man of letters" (p. 182). That is, once "intrusive tensions" were successfully removed, the poetry's placidity — a virtue to some contemporaries, a vice to most later readers — followed naturally.

Law and Letters in American Culture is an interdisciplinary book, and it works better in some disciplines than in others. Fundamentally, it is a book of history, whose primary texts happen to be works of literature written by lawyers. It succeeds very well at recovering a lost context within which those texts may be read. As a work of literary criticism, it is less satisfying. Ferguson's inquiry is less into individual texts — though his readings are sometimes insightful — than into common themes and tactics. His frequent use of biography to expli-

cate literature tends to disclose historical truth more often than literary excellence.

Even Ferguson's assertion that a lost "legal aesthetic" may be discerned in these works suggests that his concern is more with historical truth than with aesthetic recovery. Does an "aesthetic" preceded by such a modifier really help us talk about artistic success? Are we next to be introduced to a "political aesthetic," a "business aesthetic," a "football aesthetic?" Understanding the concerns, methods, and goals of a group of artists is not the same as finding their work beautiful.

As a final possibility, perhaps this book should be read as a legal work, or, more precisely, as an anachronistic part of the configuration of law and letters. Ferguson — a contemporary law-trained author — may be proposing that an aesthetics of order, control, cohesion, and collective, open-ended inquiry is in fact relevant to that peculiar and remarkably un-self-conscious genre, academic prose. As such, Ferguson's work may be less path-breaking than Jefferson's *Notes on the State of Virginia*, but it is commendably true to Jefferson's "legal aesthetic."

— Lee W. Brooks