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Law and Literature: 'No Manifesto'

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INTRODUCTION TO SYMPOSIUM

Law and Literature: "No Manifesto"

by James Boyd White*

With what hopes and expectations should a lawyer turn to the reading of imaginative literature? To books and articles that purport to connect that literature in some way with the law? In particular, is "law and literature"—to which this Symposium is directed—to be thought of as an academic "field" like law and psychiatry, say, or law and economics? If so, what can it purport to teach us? If not, how is it to be thought of?

To some it may sound odd even to suggest that meaningful connections could be drawn between two such different things as law and literature. "How can literature have anything to say to lawyers," such a one might ask, "when literature is inherently about the expression of individual feelings and perceptions, to be tested by the criteria of authenticity and aesthetics, while law is about the exercise of political power, to be tested by the criteria of rationality and justice?" To reduce the law to its merely literary aspect would seem to erase the dimensions of politics, authority, responsibility, and power—the whole sense that the law is about real consequences—and to substitute for it a kind of empty aestheticism, a celebration of style over substance. Is this what those who speak of "law and literature" wish to do?

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It is mainly to these familiar and perfectly understandable questions that my remarks here will be addressed, but I will touch on others as well, buried in them as assumptions: What do, or can, we mean by the categories "literature" and "law" themselves, and by the distinction between them? What do we mean by "power," "political," and "aesthetic"? By "style" and its correlative "substance"?

I.

In thinking about what lawyers may hope to learn from another discipline, it is natural for us to speak in terms of what I have elsewhere called "findings" or "methods."[1] That is, we are accustomed by the conventions of social science to look to another discipline either for the propositions that it establishes about the world (its "findings"), which we can import directly into the law and found arguments upon, or for its techniques of analysis (its "methods"), which again we can import into the law and put to our own use.[2] Obviously, the different social sciences speak to us on different subjects, and offer findings of somewhat different kinds, but as we approach any of them one of our hopes is to learn a set of propositions about the world—propositions about the working of the human psyche, about class formation, about the true incidence of a particular tax, about the rigidity with which social prejudices are held, and so on. Likewise, we hope to learn from these sciences methods of analysis which we can ourselves employ when presented with questions that can be thought about in those terms.[3]

Whatever the merits of these ways of thinking about what the social sciences can offer us—and I shall have something to say about that below—they can obviously be of little value in forming the hopes and expectations that we should bring to imaginative literature, for no one I think turns to literature for propositions of fact upon which new policies can be based or for methods of interpretation to be employed by lawyers.[4] It is

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1. *See* White, *Intellectual Integration*, 82 NW. U.L. REV. 1, 9-11 (1988).

2. By "social sciences" here I mean to refer to those disciplines (or branches of disciplines) that have formed themselves on the natural science model in the American way, not to such fields as cultural anthropology, or humanistic psychology, or interpretive sociology, which themselves often work in ways I would call literary.

3. At the moment the most familiar example of this is probably neoclassical microeconomics, whose methods some seem to think can simply supplant the methods of law entirely, introducing a new element of rationality, even of neutrality, into our deliberations. *But see* Balkin, Review Essay, *The Economic Structure of Tort Law*, 87 COLUM. L. REV. 1447 (1987) and White, *Economics and Law: Two Cultures in Tension*, 54 TENN. L. REV. 161 (1987).

4. Unlike the sciences, natural and social, literature is in the first instance not an academic field but an art. The works we read as literature were not written to us, as twentieth

not that literature has nothing to teach us about the world or about the analysis of texts, but that it teaches in a different way: it expands one's sympathy, it complicates one's sense of oneself and the world, it humiliates the instrumentally calculating forms of reason so dominant in our culture (by demonstrating their dependence on other forms of thought and expression), and the like. It is one of the deepest characteristics of literary texts to throw into question the nature of the language in which they are written; this necessarily throws into question as well the nature of any language in which they might be talked about or into which they might be translated. This in turn means that these texts are in a deep sense about the inadequacies of the propositional view of language, so dominant in our academic culture, upon which our talk about "findings" necessarily rests. Literature is art, and its form is essential to its meaning. What it teaches us is indeed about the world, but it is also about ourselves—our minds and languages—and it is not translatable into propositions of moral or social truth.

Think how differently "learning" is conceived of and talked about in the language of "findings" and in the language of a literary (or legal) education. When I look for the "findings" of the natural or social sciences, I

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century lawyers and academics, but to their authors' own worlds, and not to our concerns but out of their own motives and hopes. There is no reason to think that these texts, taken together, form a "field" like an academic field, with consistent or coherent values or beliefs or concerns (beyond those involved in a mind's attempt to express itself through an inherited language in such a way as to form relations both with that language and with other people). To look for the teachings of "literature," as if it were a science that proceeded incrementally over time, or as if it contained in distilled form the wisdom of the ages, would be as silly as looking with similar hopes to music or painting. The concerns that writers do share by virtue of the writing itself, referred to in the parenthetical above, are deep, with wider implications than have been recognized. But they manifest themselves in performances to which one must learn to respond as performances, not in conclusory statements of position that can serve as analogies to the "findings" of social science.

Likewise literary criticism is not a "method" in the technological sense suggested. There are many different yet valuable ways of paying attention to texts and none of them is reducible to a scheme or theory. People sometimes talk as if "New Criticism," for example, were such a phenomenon, a technology built upon articulated premises that render it much the same in any hands. But "New Critics" included an enormous variety of people, almost none of whom were committed to rigid theoretical principles, and the same can be said of other movements too, from "deconstruction" to the "new historicism." In literature one cannot imagine oneself first choosing a theory, on grounds independent of any experience of reading, then employing it, as if its results were entailed in its premises.

Of course one can read law as if it were literature, literature as if it were law, and I have tried to do both these things in THE LEGAL IMAGINATION and WHEN WORDS LOSE THEIR MEANING. The hope of such work is that we can come to see and understand more fully what we do when we read and speak in the law, when we make and read literature, in part by drawing our attention to the activity of language use itself, of which law and literature are related versions. But all this is a very long way from saying that the law should somehow incorporate a critical method from one or another school of literary criticism.

think of myself as seeking to acquire information that will add to my present stock. This information may shift the sufficiency of the information I already have, but I do not expect it to change *me*. In thinking this way I see myself as an observer, for the most part unchanged by the process of observation, making records and reports of what I see. Literary texts do not work this way at all: they offer engagements the point of which is to change the self—to transform one's sense of language, of the mind, and of the world—and to do this in ways that systematically resist conversion into other forms of discourse.

To say that literature offers us neither "findings" nor "methods" of the social scientific type is not to say that it offers us nothing, or that what it offers can be relegated to some trivial side of life, as a kind of entertainment or decor—as if what it offered were about "style" rather than "substance" or "feeling" rather than "thought." It would be pathetic to think that we had "nothing to learn" from Sophocles or Shakespeare, for example, simply because they did not offer us "findings" or "methods" that we could use in the analysis of legal issues. This would erase the whole value of our high culture both to us as people and to our profession. To say that we have "much to learn from literature," but "only as people, not as lawyers" would imply an equally sorry view of the law and of ourselves, for it suggests that what we do with our minds and feelings all day is a mere technique, unaffected by our deepest understandings, and a technique that calls on no significant aspects of the self. On that view, who would want to become a lawyer?

But to say this is not to claim that it is easy to talk about what a literary education can offer the lawyer or the law. If we are not to use a language of methods and findings, how are we to speak? If neither law nor literature is to be regarded as a kind of intellectual technology, how are they to be thought of?

II.

These are difficult questions—one could easily devote a lifetime to them—to which we should not expect any easy or short-hand answers. Literature teaches through the engagement of one mind with the work of another. What it teaches will emerge not in new propositions but in the life of the learning mind, in the kinds of engagements it offers to others. One cannot hope to make an adequate summary statement of that life, those engagements.

But we do know that what literature teaches will be different for each of us, and that we must accept responsibility for what we make of our educations of this kind, just as we accept responsibility for our other conduct, and for our characters more generally. Of people working in this field we should thus expect not uniformity but variety: in voice, style, and

direction of thought; in political positions; and in fundamental concerns. Beyond the shared commitment to engage with literary and legal texts (and with each other) in a whole-minded way, there should be no Manifesto of a law and literature movement.

This Symposium nicely reflects the diversity I speak of: Robin West, to begin with, makes an eloquent statement of the way literature works to expand the sympathies of the reader.[5] This is a most difficult topic, but one of the first importance. George Eliot speaks to it this way:

> The greatest benefit we owe to the artist, whether painter, poet, or novelist, is an extension of our sympathies. Appeals founded on generalizations and statistics require a sympathy ready-made, a moral sentiment already in activity; but a picture of life such as a great artist can give, surprises even the trivial and selfish into that attention to what is apart from themselves, which may be called the raw material of moral sentiment.[6]

As Eliot here suggests, our sympathies can expand only as the imagination does so, as we come to recognize something different from ourselves and include it in the frame of consciousness. William Ian Miller's piece on the saga literature, in form and tone so different from West's, reveals a mind attending with passionate conviction to the details of another way of living and imagining life and in doing this it performs the kind of engagement by which literary learning works.[7] Teresa Phelps claims that this sort of "engagement with the other" underlies the very legitimacy of law, showing that in *Huckleberry Finn* the redemptive and legitimate "law" of the raft is based upon mutual recognition of one person by another, while the illegitimate and oppressive "law" of Missouri and Arkansas is based upon objectifications that deprive it of authority.[8] At central moments in their texts both Professors Phelps and West use the word "love," an act of daring that performs its own meaning.[9] Gregory Leyh comes from a different direction altogether, bringing criteria of integrity drawn from hermeneutics to bear upon the work of Ronald Dworkin.[10] Craig Lawson shows us how to read a constitutional text (in this instance the Preamble of our own Constitution) as a literary text, and how that

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5. West, *Economic Man and Literary Woman: One Contrast*, 39 MERCER L. REV. 867, 875 (1988).

6. G. ELIOT, *The Natural History of German Life*, in ESSAYS OF GEORGE ELIOT 270-71 (1963).

7. Miller, *Beating Up on Women and Old Men and Other Enormities: A Social Historical Inquiry into Literary Sources*, 39 MERCER L. REV. 753 (1988).

8. Phelps, *The Story of the Law in* Huckleberry Finn, 39 MERCER L. REV. 889 (1988).

9. *Id.* at 901; West, *supra* note 4, at 878.

10. Leyh, *Dworkin's Hermeneutics*, 39 MERCER L. REV. 851 (1988).

reading illuminates it as law as well.[11]

Both John Cole and Peter Teachout focus on the differences between theoretical and literary language, both asserting, as I would too, and against the dominant trend among legal academics today, that the natural affinity of law is with the literary—with the poetic, with the uncertain world of ordinary language—not with the abstract, conceptual, and theoretical.[12] In this they identify for me not what literature has most to teach the world, or even lawyers, but what it has most to teach academics, legal and otherwise; for the commitment of the world of scholarship to an impoverished view of language as a code for the communication of observations and ideas, working by words that have discreet and stable meaning to establish change of deductive or inductive reasoning, has until recently been nearly total. As both Professors Cole and Teachout show, this view of language is so dominant that it must be written against afresh each time one picks up a pen, and they both do this well.[13]

For me the main direction of literary teaching runs along the two lines these writers mark out, leading us first towards incrementally more complete, but never wholly adequate, understandings of other people and other minds, of other ways of thinking and being and imagining the world; these understandings in turn lead us toward a literary rather than

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11. Lawson, *The Literary Force of the Preamble*, 39 MERCER L. REV. 879 (1988). It is a pleasure for me to repeat here the acknowledgement made in WHEN WORDS LOSE THEIR MEANING, that my own reading of the Preamble in that book owes a great deal to an earlier draft of Professor Lawson's piece.

For a lovely reading of the Constitution itself from a literary point of view, *see* Leubsdorf, *Deconstructing the Constitution*, 40 STAN. L. REV. 181 (1987).

12. Cole, *Thoughts from the Land of And*, 39 MERCER L. REV. 907 (1988); Teachout, *Chicago Exposition: The New American Jurisprudential Writing As a Cultural Literature*, 39 MERCER L. REV. 767 (1988). In a different way this is the point of the fine student comment on the meaning of words as well. *See* Comment, *Jurisprudence by Webster's: The Role of the Dictionary in Legal Thought*, 39 MERCER L. REV. 961 (1988).

13. Professor Teachout has worked out a view of those matters in a series of review-essays that taken together in my view constitute the most interesting commentary we have on the work of legal academics in the past twenty years. *See* Teachout, Book Review, 2 VT. L. REV. 229 (1977) (reviewing G. GILMORE, THE AGES OF AMERICAN LAW (1977)); Teachout, Book Review, 53 N.Y.U. L. REV. 241 (1978) (reviewing J. REID, IN A DEFIANT STANCE: THE CONDITIONS OF LAW IN MASSACHUSETTS BAY, THE WISH COMPARISON, AND THE COMING OF THE AMERICAN REVOLUTION (1977)); Teachout, Book Review, 67 VA. L. REV. 815 (1981) (reviewing G. WHITE, TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY (1980)); Teachout, *The Heart of the Lawyer's Craft*, 42 WASH. & LEE L. REV. 39 (1985); Teachout, *Worlds Beyond Theory: Toward the Expression of an Integrative Ethic for Self and Culture*, 83 MICH. L. REV. 849 (1985); Teachout, *The Soul of the Fugue: An Essay on Reading Fuller*, 70 MINN. L. REV. 1073 (1986); Teachout, *Sentimental Metaphors*, 34 UCLA L. REV. 537 (1986); Teachout, Book Review, 62 IND. L.J. 1283 (1987) (reviewing R. ROTUNDA, THE POLITICS OF LANGUAGE: LIBERALISM AS WORD AND SYMBOL (1986) and B. ACKERMAN, RECONSTRUCTING AMERICAN LAW (1984)).

conceptual understanding of language and to the mind, and affect our reading not only of "literature" but of all the texts that make up our world. For again and again in our reading of literature we discover at work what I call a literary understanding of language—one that recognizes its incompleteness, its inadequacies, its gaps and its imperfections, and does this largely by the continual recognition of other possibilities. In literature our language itself is put into question, and with it the habits of thought and feeling (and the social and political relations reinforced by those habits) that we have theretofore taken as natural. This affects our reading not only of "literature" but of all the texts we confront in life; and the literature from which we can learn, once we begin to learn how to do it, includes the literatures we make and read in our ordinary lives.[14]

What I think literature has most to teach, then, is a way of reading, and reading not only "literature" but all kinds of texts and expressions: a way of focusing our attention on the languages we use, on the relations we establish with them, and on the definition of self and other that is enacted in every expression.[15] It teaches a way of reading that becomes a

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14. I accordingly think that the now-popular phrase "law and literature" is actually somewhat misleading. Aside from the mystery brushed over with the word "and," and the implication that there exists a school operating on common premises, the word "literature" itself seems too narrow. It suggests a limitation to "high literature," which itself raises at least two difficulties: who is to determine what literature shall count as "high," and what hidden (or not to hidden) political agenda is embedded in that choice? There is also a faint air of *belles-lettres* about the term, of the precious or merely aesthetic; and perhaps another implication as well, that literature is somehow opposed to law.

For me the very point of reading literature has been to work against such implications of narrowness and cultural segmentation towards a fuller sense of what is actually at stake when one person uses language to speak to another. What begins as a literary activity in the usual sense—reading literature simply for the love of it—can end in quite a different way, reading with a constant eye to the text as a cultural, ethical, and political performance. For all texts take place in cultural and social contexts which they must address, and confirm or transform. Every text is written in a language, and the language always entails commitments to views of the world—of oneself, of one's reader, and of others—with which the writer must somehow come to terms. Similarly, every text is radically social: it always defines a speaker, an audience, and a relation between them, and it may define others as well, as potential readers or as the objects of the discourse. Every text thus creates a community and it is responsible for the community it creates. This means that every text is at once an ethical and a cultural performance—whether its writer knows it or not—and it can be judged as such. For me the truly "literary" text—whether it is in form a novel or play, a work of philosophy or history, a moral or political essay, or a judicial opinion—is one that is most aware of these circumstances, and addresses them most completely.

15. When I say that literature teaches by "focusing attention," I mean nothing surprising. Think of one's experience of learning Latin, for example, the discovery that there are verbal objects in the world that are systematically related in the structures we call grammatical. Here one learns to focus one's attention on an aspect of experience that earlier one simply could not see at all, and the same is perhaps true of all of the most important forms of learning, from mathematics to psychoanalysis and religion. Indeed, as the quotation from

way of writing too.

Literature lives through language, and so must we: the question is by what art is this possible, and it is at this point that literature speaks most directly to the lawyer, who is herself an artist of this kind.

III.

Some talk about "law and literature" proceeds on the assumption that what literature has to offer is a form of high consumption, the sort of pleasure we refer to as "aesthetic," with that word preceded, by implication at least, by a word like "merely." It can have no inherent moral or political significance. Think of the cultivated Nazis reading and enjoying exquisite poetry while simultaneously degrading their culture, and their polity, and destroying human beings, in almost unimaginable ways. Perhaps literature may teach us something about "style," regarded as the dressing in which we clothe our thoughts—perhaps, for lawyers, with overtones of flattery or seduction—but surely nothing substantive.

In my view this position deeply misunderstands reading in general and literature in particular, for the literary texts here marginalized as merely "aesthetic" are deeply imbued with political and ethical meanings, meanings we must be prepared to understand and to judge. But these meanings are not coercive—they do not force themselves on every unwilling mind with equal force—and our readings can be perverted or twisted, just as our other activities can. It is no argument against poetry that evil men have sometimes loved what they found there. We are responsible for the ways in which we attune ourselves to what we read, for how we judge it, and for who we become in relation to it.

But the pressure of any literature worthy of the name is always against such abuse. The maker of literature uses the language of his culture to create something new, a new set of experiences, or a new place, from which that language and the culture itself can be seen afresh and criticized. The effort is to bring the reader to the edge of language, where it can, sometimes, be seen by the mind that uses it in the split second before it dominates the world. In this fundamental sense literature is integrative: insisting upon the incorporation of what a particular language or tradition or set of ideas leaves out, upon unstated or opposing truths. It thus inherently values a multiplicity of voices and the self that can hear them. Multivocality is not merely an aesthetic value, but a political one; literature is accordingly anti-systematic, anti-bureaucratic, and anti-authoritarian by nature. In this sense its true "lessons" are very nearly the opposite of what some people hope from it, those who speak as if the

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George Eliot suggests, this may be true of sympathy as well.

"wisdom of the past" will tell us what to do.[16] It is a degradation to reduce the reading of such texts to a form of high consumption.

The view that what literature has to teach us, as people or as lawyers, is reducible to "style" is an empty one too, for what is here dismissed as mere "style" is actually central to the intellectual substance of a text. It is here, in the transformations of language, in the establishment of relations with the reader, that everything of value in the text actually happens. To claim that "the lawyer has nothing to learn from literature except with respect to style" would in my view demean all the central terms of that sentence—"lawyer" (and "law"), "literature," "learn," and "style"—and with them our own capacities for thought and life.[17] The real question is, "Who are we in our relations to our languages and to each other?" The answer, the deepest kind of "substance," is to be found only in our "style," in our actual performances.

A related mistake is to claim that the literary view of law fails to see that law is about power.[18] Actually, to learn to read in the way I describe is to expose the root of power, which is linguistic and ideological in nature. Whoever controls our languages has the greatest power of all. Think, for example, of what we think of as state power, the exercise of physical force or violence by the police or the army, the kind of "real power" to which the literary mind is supposed to be blind. This is a physical power,

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16. *See* W. BENNETT, TO RECLAIM A LEGACY: REPORT ON THE HUMANITIES IN HIGHER EDUCATION (1984). The kind of literary work I am describing is not value-neutral: it continuously affirms the value and presence of the individual mind, the mind that has its origins outside of this or that discourse, of any discourse—outside the bureaucracies of language—and it affirms the value of sympathetic engagement of mind with mind, person with person. This view of life thus has a politics built into it too, a politics of respect for the possibilities of human life in oneself and in others, balanced by the perpetual acknowledgement of limits. In its egalitarian insistence on the importance of the individual mind, on the individual moment of creativity, it is a subversive politics; but it is conservative too, in that it sees the past as enabling and teaching, as well as restricting, us.

17. For an elaborated statement of the view I describe here, see Posner, *Law and Literature: A Relation Reargued*, 72 VA. L. REV. 1361 (1986).

18. "The law is not one of the humanities, but a branch of government," says Judge Posner. *Id.* at 1392. Of course among us the law is normally a branch of government, but it exists outside of government as well; and in every case it works through the making and reading of certain kinds of texts in particular ways. It is in the composition and interpretation of these texts that the life of the law resides. For an elegant development of this position and its significance *see* J. VINING, THE AUTHORITATIVE AND THE AUTHORITARIAN (1986).

The economist or other policy scientist can offer us ways of characterizing the world as it is, or as it ought to be (all on certain assumptions), and can in these ways speak to what we call "policy." But such analyses are addressed to those who make social choices as if they made them in the abstract, unconstrained by external authorities. To the extent that they do acknowledge institutional constraint, say in the form of a constitutional prohibition, this must be acknowledgement merely: social science cannot interpret that constraint, or give it meaning, for that is the task of law, not social science.

"real power," only because it is a political power, that is, only because people agree to inhabit a particular linguistic universe and to be controlled by it. In some sense, of course, power comes from the muzzle of a gun; but this power is dependent upon another, which lies in the social arrangements by which people organize guns and themselves with respect to guns. This kind of power is rhetorical, a form of persuasion and acquiescence; it always rests upon texts of one kind or another; and it can be studied, as it is exercised, linguistically and culturally.[19]

In this sense power is of course everywhere. What is special and important about legal power is that it is a claim to authority, that is, a claim to exercise power that is itself justified by arrangements external to the actor. This is what distinguishes it from violence. This is a distinction that those who look through meaning to the simple act of force cannot perceive or express, yet it is the distinction upon which legitimate government rests. There is a difference between a judge and a thug, between a marshal carrying out an arrest under a warrant and a lynch mob; it is difference between legal force and mere violence; and it is the difference that lies, at bottom, in the respect that is paid to decisions made by others, or to what I have called arrangements external to the actors themselves. These arrangements are always texts, or treated as texts, and, as Joseph Vining has so powerfully shown,[20] for their authority to be real—rather than merely a brutal authoritarian order—these texts must be both conceived of and read in certain specific ways, in the ways of the law. In this sense the true test of authority is literary in character.[21]

Of course legal texts are not "merely aesthetic" texts, to be read for sheer delight, but neither are literary texts in my view simply that; of course legal texts involve the exercise of power by one person over another, as poems do not, but the criteria by which we can judge such exercises is in a deep sense literary, for it is in the reading of the texts that one may find the meaning of the verbal act, including as an act of power, most fully illuminated. The central question for us as lawyers is how legal power ought to be exercised: upon what conception of oneself, of the litigants, of one's audience, of the prior texts that bear upon the case, of the culture of argument that is the law. Real-world answers to such questions cannot be merely theoretical in character, but must be performative, ac-

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19. For an elaboration of this view of power in a specific context, see my discussion of Thucydides in J. WHITE, WHEN WORDS LOSE THEIR MEANING ch. 3 (1938).

20. *See* J. VINING, THE AUTHORITATIVE AND THE AUTHORITARIAN (1986).

21. This is not to say, of course, that the process of justification works perfectly, or even well, or that there is not brutality and radical injustice in the best of legal systems, for of course there is, but to point towards a conception of what we are trying to do that may enable us to say that what we see, and what we do, is not merely brutality, mere injustice, but a struggle towards civilization.

tual enactments in the texts; criticism must be particular too, the analysis of the textual and political communities that a particular argument or opinion creates in its performances of language.

But upon what can our criticism be grounded? Not upon a universally shared ontology, certainly not upon a theoretical system, but upon the identities and relations we ourselves create in our written and other conversations with each other. We can try to look to the reality of the world "out there," perhaps using the languages of social science or common sense—or even literature, in a different mode—to do so. But the reality we see is not uncreated, not language-free, and we are as responsible for what we see and say when we look out to the world as we are when we speak as lawyers and judges. There is no basis external to ourselves and our communities upon which we can rest. The ground of judgment must be created by each of us, and by us collectively, in the way we talk with each other; this talking must itself be criticized in the terms we propose to criticize others. In this sense not only our questions, but our answers, should be literary.

IV.

Think back now to the brief account of the social sciences I gave at the beginning of this Introduction, each science generating its findings by its own methods and offering them for our use. These findings and methods are often in direct or indirect conflict with each other, and none can address the central legal question, namely the character of our obligation to judgments made by others. How then can these findings and methods be put to work in the context of the law? This no science can tell us, except in its own terms, recommending its insights, truths, and techniques as superior to all others. None can recognize what lies outside itself; none invites a reader to speak simultaneously its language and some other language, a language that undercuts or qualifies it by exposing its limits, its dead spots, its uncertainties.

This is to suggest that the very language of interdisciplinary work with which I began, and which is so familiar and natural to us—the talk of "findings" and "methods"—is in fact deeply inadequate not only to "law and literature" but to intelligent interdisciplinary work of any kind, which necessarily requires a negotiation of the relation between languages of a kind for which these disciplines have no place. This is not to say that we cannot learn from the "findings" and "methods" of various social sciences, but that this learning is far more difficult than such a language suggests.[22]

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22. Whatever the merits of the social sciences as methods for making and informing

One way to look at the social sciences is as ways of framing the world. The frame of one can include the other: thus, we have a history of economics, an economics of history, a sociology of psychology, a psychology of sociology, and so on. But how is the process of framing itself to be thought about and spoken of, especially when we recognize the existence of competing and inconsistent frames? As John Cole shows us, this is a problem of language and discourse, or what I call a literary problem;[23] the very process of interdisciplinary work itself thus requires an art fundamentally literary in character, perhaps best described as a kind of translation.

V.

What the habitual reading of literature offers is not a set of propositions or a method leading to a set of results, but the experience of directing one's attention to a plane or dimension of reality that is normally difficult or impossible to focus upon, namely the ethical and linguistic plane, where we remake in our texts both our languages and ourselves. To the literary mind language is not simply transparent, a way of talking about objects or concepts in the world, but is itself a part of the world; language is not an instrument that "I" use in communicating ideas to "you" but a way in which I am, or make myself, in relation to you. The literary text offers its reader not information or ideas but an experience of language, a contact with a living mind, of a sort that will erode forever

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social policy, they cannot be applied to what is most distinctive about what lawyers and judges actually do, which is to discover, determine, interpret, and compose legal texts. At times, of course, lawyers will function much as sociologists or economists or historians and in doing so they have much to learn from the methods of those disciplines. But the "methods" cannot just be applied to the law, any more than the "findings" can. There must be a process of translation: first learning the method, say, of the psychologist, then learning how differently it must be applied in the legal context. This process of translation, of language learning, is itself not a scientific one, and about it the social sciences can have rather little to say. It is at heart compositional and literary, in fact a form of writing.

The main contribution of social science—and of natural science too, for that matter—is to tell the court or legislature or administrative agency something about the consequences that are likely to flow from one choice or another. But it necessarily stops with its (necessarily tentative) judgments about consequences, and not all judgments are or ought to be consequential in nature. The proper place of consequential reasoning in our thinking as a whole is a question not for the social scientist but for others, including the lawyer. With respect to the consequences themselves, social science gives us lawyers materials of argument, and this may of course be of great value in particular judicial cases or legislative disputes. But it will always be of limited value: these sciences cannot help with the distinctively legal task of determining which texts are authoritative and what they mean, nor can they help with the question that this situation necessarily forces upon the lawyer, namely what relations should be established between other discourses and the law.

23. Cole, *supra* note 11, at 909-35.

the confidence with which we are otherwise likely to talk about "information" or "ideas" or "communication." The texts that do this are not only those taught in "literature" courses—some of which are in this sense not literary at all—but all texts that lead us to the point of self-consciousness about our language and the relations we create in our use of them. It is not so much literary theory, which often operates on nonliterary premises, that will teach us in this active way, but literary practice, the practice of reading, and of writing.

When our attention is once drawn to this dimension of life, we come to see that the heart of justice is not the distribution of nonlinguistic items in the world, but ethical and relational: it lies in the attitude, and in the capacity of mind, by which authoritative texts are read and interpreted; in the kind of attention given to opposing claims and to the experiences of opposing parties; in the quality of openness (or closedness) to new formulations, new voices; in the sense that the judicial or legal opinion is an ethical and political, as well as an intellectual, text for which the mind composing it is responsible. Thought of this kind does not by itself tell us how to read a particular case or statute, and in that sense does not dictate results; instead, it keeps us aware of the degree to which results are not dictated but chosen, and can be chosen for well or ill, and of the importance to us, greater than any series of judicial votes, of a legal culture that is engaged in the process of educating itself and the public by the sincere and self-critical way it addresses the questions that come before it. Attention of this kind surely will lead to different results, but not mechanically so; and it will lead as well to different ways of finding meaning in the results we do reach.

Therefore we cannot expect the "law and literature movement" to tell us how to decide cases, or to teach us lessons, or to offer us a technology that might supplant the law. We should instead expect, or hope, for variety, for the distinct sounds of a thousand voices, for the perpetual affirmation of the individual mind as it seeks community with others. This kind of work cannot be done bureaucratically, mechanistically, or incrementally. It must be done anew each time.

I began this Introduction by asking this question, meant to capture the essence of many such questions I have heard: "How can literature have anything to say to lawyers when literature is inherently about the expression of individual feelings and perceptions, to be tested by the criteria of authenticity and aesthetics, while law is about the exercise of political power, to be tested by the criteria of rationality and justice?" I hope the reader can now see something of what I mean when I say that this question misstates everything it touches. Literature and law are both about reason and emotion, politics and aesthetics; they both promise to integrate what that question falsely separates, and to do so by drawing attention to what is at stake whenever one person writes or talks to another.