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Melissa J. Ganz

Marquette University, melissa.ganz@marquette.edu

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Book Review of *Common Precedents: The Presentness of the Past in Victorian Law and Fiction*, by Ayelet Ben-Yishai

Melissa J. Ganz
Marquette University

From the Reform Bills to the Corn Laws to the Married Women's Property Acts, the Victorian era has long been famous for its legislative reforms. In *Common Precedents*, her engaging study of the idea of precedent in Victorian law and fiction, Ayelet Ben-Yishai shifts the focus from statutes and codification to the complexities of the common law. In it she argues that the legal doctrine of precedent constitutes a sophisticated and powerful tool for managing change and that this quality accounts for precedent's centrality to Victorian culture. For Ben-Yishai, the key to precedent lies "in the complicated process of bringing the past into the present for the sake of a future" (3). Through a subtle analysis of Victorian law reports as well as dazzling readings of novels by George Eliot, Anthony Trollope, and Wilkie Collins, she shows how precedential reasoning fosters a sense of continuity and commonality in the face of social and cultural upheaval. Although precedent works in similar ways in law and fiction, Ben-Yishai contends, "the homologous intellectual patterns generated by precedential reasoning ... yield radically *dissimilar forms*" (22, Ben-Yishai's emphasis). *Common Precedents* ultimately offers a new account of law and literature, while revealing the importance of common-law principles and communal modes of meaning making long after the supposed ascendancy of positive law.

Ben-Yishai organizes the book into two parts. The first offers a lucid history of the doctrine of precedent and a fresh analysis of precedent's written form. Until the late eighteenth century, *stare decisis* was a flexible guiding principle of adherence to prior decisions. By the middle of the nineteenth century, it had become a rigid doctrine binding courts to follow rulings in previous cases, necessitating the publication of authoritative and accurate reports. The form of these reports, Ben-Yishai argues, at once reflects and contributes to the modern understanding of precedent. Unlike court records, which consist of short notes entered by scribes, and unlike news reports, which are thick with description, Victorian law reports typically consist of abstract, decontextualized narratives that are intelligible only to members of the legal profession. Ben-Yishai argues that these features promote “an antinarrative style”; although the reports are narratives, she explains, they “seem to be contesting their character as such” (22). Such stylistic awkwardness, while not unique to the nineteenth century, serves a particular juridical end in this period: “the insular antinarrative form tries to effect an impossible reconciliation between a concrete single case and the abstract rule that is its potential precedent” (52). Ben-Yishai supports her argument through subtle readings of cases including *Sunbolf v. Alford* (1837), a dispute involving an alleged assault and beating, and *Tinsley v. Lacy* (1863), a case involving the unauthorized publication of plays based on Mary Elizabeth Braddon's fiction. As Ben-Yishai shows, the antinarrative form of these reports works to abstract the facts of the cases from their immediate contexts so as to make them generally applicable, helping to imagine a yet-unknown future through the authority of the past.

In the second part of the book, Ben-Yishai turns from law reports to literary texts, demonstrating the centrality of precedent to Victorian fiction. Each chapter is focused on a canonical novel, and each shows how precedent functions as not only a theme but also a major formal component of the text. In the second chapter, Ben-Yishai offers an insightful analysis of Eliot's *Middlemarch* (1871–72), showing how the novel “borrows heavily from precedential structures in an attempt to fashion a common, stable, and consistent literary realism” (83). The novel ultimately embraces the idea of reform without radical change, evident in the absorption of the rebellious outsider, Will Ladislaw, into the *Middlemarch* community. But precedent figures as more than a metaphor for political reform in this text. Eliot's novel—and realist fiction in general, Ben-Yishai argues—relies on the logic of precedent to ground its epistemological enterprise. In fiction, as in common-law reasoning through precedent, truth emerges from an interplay between the general and the particular. Truth is “structural and formal, a truth of the *how* rather than the *what*” (100, Ben-Yishai's emphasis). At the same time that precedent establishes realist fiction's mode of being truthful, it helps “maintain [fiction's] ideology of stability, conventionality, immanence, and self-evidence” (100).

Having established these broad affinities between realist fictionality and precedential reasoning, Ben-Yishai looks more closely at precedent's two constitutive elements, commonality and temporality. The third chapter explores the construction of legal and fictional commonalities in Trollope's *The Eustace Diamonds* (1872), focusing on the debates occasioned by Lizzie Eustace's theft of the eponymous jewels. Rumor, gossip, and the regulation of propriety, rather than empirical evidence, Ben-Yishai shows, are crucial to determining Lizzie's guilt. In stressing the challenge of the communal to the empirical, the novel problematizes the production of “fact” and the positive law tradition from which the concept emerged. In the final chapter Ben-Yishai considers the temporalities of precedent in Collins's *The Woman in White* (1859–60), examining Walter Hartright's efforts to conceal his disruption of lineage in the Limmeridge estate. As Ben-Yishai convincingly shows, Hartright's attempt to rewrite his relationship with Laura Fairlie reveals “how change can be cast as repetition, how disruption claims

its place in a continuous line, [and] how the new always finds itself in the past” (176). Such strategies underlie sensation novelists' own efforts to expand the range of the possible in fiction.

The strengths of Ben-Yishai's study lie in her subtle analyses, lucid writing, and original juxtaposition of legal and literary texts. Ben-Yishai packs the book with insightful readings, teasing out revelatory claims from seemingly small details. She explains complicated ideas, moreover, in an engaging and accessible style. Ever alert to the progression of her argument, she includes frequent and helpful reminders of the logic and structure of each chapter. At times, though, she overstates her claims about the meaning and function of Victorian law reports. She convincingly shows how the reports' antinarrative style enabled precedential reasoning, but she is less persuasive when she suggests that this style evolved in response to the social, political, and legal changes of the nineteenth-century—in particular, the debates about the authority of the common law. As she acknowledges, the insular, antinarrative form of the reports preexisted these debates, and there is no evidence that reporters considered the implications of the stylistic conventions that they used. An expanded archive of fiction in the second part of the study, moreover, would bolster Ben-Yishai's argument concerning precedent's centrality to Victorian culture, while enabling an analysis of changing constructions of commonality and continuity. Is Eliot's treatment of precedent in *Middlemarch*, for example, consistent with that of *The Mill on the Floss* (1860) and *Daniel Deronda* (1876)? How might a writer as attentive to temporality as Thomas Hardy complicate or develop the book's claims concerning the precedential structures of Victorian fiction? Additional readings would only strengthen this sophisticated, imaginative, and beautifully written book. Overall, Ben-Yishai offers a convincing new account of precedent and an extremely rich set of case studies. Her innovative work will interest legal and literary scholars alike.