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Aferword: Law, Literature and Ethics

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AFTERWORD: LAW, LITERATURE AND ETHICS

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The publication of these essays marks important maturation in the growth of law and literature as a subject. This symposium can well be taken as the chronological terminus to a period of scholarship. We have benefited from an abundance of essays in our field; now we move on to a time which will be characterized by the appearance of more lengthy and developed works.

The study of law and literature has been primarily an endeavor of symposium and essay. The symposium, in particular, has proven to be a useful vehicle for this discipline. This, in fact, is the fifth of such symposia: the first two were sponsored by Rutgers University[1]; the third was held under the auspices of Brandeis University[2]; the fourth, at the University of Texas.[3] Mississippi College now provides this offering.

The richness of the essayists' contributions is best indicated by a perusal of two important bibliographies: "Search for a Theory: An Annotated Bibliography on the Relation of Law to Literature and the Humanities" by Harold Suretsky[4] and "Law and Literature: A Comment and Bibliography of Secondary Works" by David R. Papke.[5] These two major compilations of our resource materials need badly to be kept up to date and expanded; much new material has been introduced since their publication less than a decade ago. A contemporary list would show an increasing quantity of articles published annually. More important, these articles would evince improvement in quality as well as number. These increases attest both to the proliferation of law and literature courses in the curricula of our law schools and to the abundant interest of the profession as a whole.

All these laudable achievements have been highlighted by a further indication of the development of this embryonic subject –

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1. *Law and the Humanities*, 29 RUTGERS L. REV. 223 (1976); *Law and Literature*, 32 RUTGERS L. REV. 603 (1979).

2. *Terror in the Modern Age*, 5 HUMAN RIGHTS Q. 113 (1983).

3. *Law and Literature*, 60 TEX. L. REV. 373 (1982).

4. H. Suretsky, *Search for a Theory: An Annotated Bibliography on the Relation of Law to Literature and the Humanities*, 32 RUTGERS L. REV. 727 (1979).

5. D. Papke, *Law and Literature: A Comment and Bibliography of Secondary Works*, 73 LAW LIBRARY J. 421 (1980).

the appearance of treatises dealing with law and literature. Putting aside such occasional exceptions as the 1907 work of John Henry Wigmore[6] and Ephraim London's prestigious collection, *The World of Law,*[7] the modern movement began in 1973. It was in that year that James Boyd White published *The Legal Imagination,* a book that represents an intellectual adventure and that presents to the legal profession an astringent proposal for the study of selected literature as an aid in the solution of legal problems. We now have Professor White's second book, *When Words Lose Their Meaning,*[8] as well as Milner S. Ball's *The Promise of American Law,*[9] Richard H. Weisberg's *The Failure of the Word,*[10] and Robert Ferguson's *Law and Letters in American Culture.*[11] These works invite others; we welcome the continued appearance of treatises, as well as essays, to aid in the evolution of our field of study. As Francois Mauriac is reputed to have stated, "An essay is a window; a beautiful book, a house."

This richness of endeavor indicates that law and literature is here to stay as an integral part of both the legal profession and the law school curriculum. Nevertheless, as Harold Suretsky pointed out, "[t]here is as yet no cohesive theory of law and literature."[12] Toward this theoretical development, some progress has been made. The scholars have eliminated concerns of adornment; the effete and the annecdotal are not within the discipline. We are not here concerned with literature as a refining instrument, useful in the training of rhetoric. Rather, the coherent theme of all the writers is that law and literature is part of jurisprudence. It is, as Professors Page and Weisberg have described it, "the study of values and human rights from literary perspectives."[13] It is a reach for the moral decision with the aid of literature as authority in the decision-making process.

The relationships between our conditioning, our perceptions, and our decisions have often been noted. Professor Roberto Unger, echoing the philosopher David Hume, describes reason as a slave to passion, a tool of desire.[14] Harold Lasswell has made that point germane by his observation that it is literature which conditions

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6. J. Wigmore, *List of Legal Novels,* 2 ILL. L. REV. 574 (1907).
7. E. LONDON, THE WORLD OF LAW (1960).
8. J. WHITE, WHEN WORDS LOSE THEIR MEANING (1984).
9. M. BALL, THE PROMISE OF AMERICAN LAW (1981).
10. R. WEISBERG, THE FAILURE OF THE WORD (1984).
11. R. FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE (1984).
12. H. Suretsky, *supra* note 4, at 730.
13. W. Page and R. Weisberg, *Foreword: The Law and Southern Literature,* 4 MISS. C. L. REV. 165 (1984).
14. R. UNGER, KNOWLEDGE AND POLITICS 38-55 *passim* (1975).

the feelings.[15] It may be observed that, through such conditioning, literature aims at framing the ethical and religious standards for what is usually called the policy part of a judicial opinion.[16]

There is in the legal profession a large reservoir of literary interest, concern, and talent. If this literary ability can be harnessed and brought into play as part of the moral underpinnings of the judicial process, we can expect genuine ethical rejuvenation. More often than not, literary studies are abandoned after graduation. This cannot remain the case if we are to make the link between law and literature a reflection of reality – that literature is a part of jurisprudence and an integral part of the decision-making process.

15. For example, in *Resurrection* Tolstoy depicts a society that is unable to handle the problems of poverty, class divisions, crime, and lust. Parts of the novel are so gripping that the reader receives an understanding of the malaise that permeated pre-revolutionary Russia. From the best parts of this uneven novel, Tolstoy gives to the reader a depiction of many of the phases of the life of a nineteenth-century Russian and explains, through a melding of reason and feeling, why the society was headed toward collapse.

16. The case of Pharr v. Mississippi, 465 So. 2d 294 (Miss. 1984) provides an example. Writing for the court, Justice Robertson uses multiple references to the works of William Faulkner (and coins the word "snopesean") to denounce the behavior of a nocturnal poacher. Milton Pharr was convicted of eight violations relating to "headlighting" deer, a practice by which a bright light is used to stun or stupify deer at night. The startled animals are then still and easy prey. In rejecting Pharr's appeal, the supreme court makes its abhorence of Pharr's acts eminently clear, principally by reference to the novel, *Go Down, Moses.* Justice Robertson begins with the premise that "law is the witness and external deposit of the values and culture of our society." He subsequently refers to Faulkner's writings to illustrate the ethics of the hunt, ethics which may or may not be embodied in the positive law.