the changing profession

Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion

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I BEGIN WITH A STORY: SOME NEVER-TO-BE-UNTANGLED AMALGAMATION OF HISTORY, CARICATURE, AND THE TRUER THAN TRUE THAT IS

fiction. A little over a decade ago, at a great and august university, a group of professors met to talk about law and literature. Most of the literature professors had been Vietnam War protesters, staged sit-ins, marched on Washington. Some of the law professors had spent time in Paris listening to Derrida and smoking Gauloises by the Seine. They had all watched the birth and death of deconstruction, critical legal studies, new historicism, various feminisms (though they weren't positively sure all these were dead). The law professors had been reading Adorno and Althusser; Barthes, Benjamin, and Butler; Deleuze and Derrida. The literature professors had been reading the *Critical Legal Studies Reader* and Amnesty International reports. The law professors were worried that narratology and postcolonial theory might already be passé. The literature professors were concerned, as a matter of principle.

The professors went around the room identifying themselves and their hopes for the seminar. "My project involves *thinking* the law via Althusser," said the first literature professor, a specialist in European aesthetics, "—thinking its logic of determinacy in the twilight of late capitalism."

Next, a law professor who taught civil procedure said, "I'm working on Joyce and Proust as legal visionaries, using Foucault, Barthes, and Derrida to unpack the metaphorics of evidence in their work, in order to show them implicitly proposing, *avant la lettre*, every single doctrinal innovation in trial law of the postwar era."

"My project," said a family law professor, "is to recognize the power of legal narrative as a tool of liberation for women and people of color, because listening, *really* listening, to them telling their *own* stories in the courtroom might just allow us to begin the transformation we so urgently need, from an ethic of justice to an ethic of care."

After everyone else had spoken, it was finally the turn of the famous Shakespeare specialist who had initiated the seminar. "I'd like to use law to end poverty, racism, and war," he exclaimed. "I'd

like all you lawyers to help me bring a case that would get them declared illegal by the Supreme Court!" A great roar of applause arose from the literature professors. "That's ridiculous," blurted out the famous constitutional law expert who was the seminar's cohost. "You want to turn our analytic work into a first-year student's idea of revolution? That's the most reductive and naive idea of law I've ever heard." There was a brief silence in the room. "Well," said the literature professor, his face turning purple, "we clearly have the wrong kind of lawyers!" And he stormed out of the room.

The law professors were gravely disappointed. Why did the literature professors have such a reductive idea of the law—in their eyes, that monolithic, hegemonic monster at the gates, rather than, well, boring, ornate, often funny, sometimes tragic, and more? Why did they think that to call legal rules indeterminate was to get halfway to revolution, when any two-bit lawyer knew, for better or worse, that you could argue a legal point any way you wanted? And why, at the same time, did they seem to leave their poststructuralist insights at the door when they took up the law as a cudgel? What was this compulsion to pursue some vague, naive, and undertheorized notion of justice? It was clear that the literature professors needed to go to law school.

The literature professors were also gravely disappointed. Why weren't the law professors interested in using law as that great tool of revolutionary power it had the potential to be? Why bother with literature if all one wanted to do was turn complex texts into a ham-handed set of doctrinal compendiums? And as for that family law professor, what was this business of stories as somehow truer than law, as if once you called something a story, it was exempt from ideology critique, as if narrative was ever free from the coercions of generic convention, the feints of rhetoric, its own multiplicity and contradictoriness? It was clear that the law professors needed to go to grad school.

The Project of Law and Literature

Calling on Benjamin Cardozo's 1925 essay "Law and Literature," scholars writing in postwar academia periodically attempted to outline a program for the study of law as a rhetorical and literary art (e.g., London; Reich). But not until the 1970s did the conjunction of law and literature become institutionalized, producing conferences, special sessions at annual meetings, bibliographies, course rubrics, institutes—becoming, that is, a distinct subdisciplinary formation.[1] In 1980 Kenneth Abraham could still refer to law and literature as "an unlikely pair" (676). But by the mid-1980s, the study of law and literature had become a "movement."

The rise of the law-and-literature movement was connected with residual institutional anxieties and disciplinary shifts in both literary and legal studies. A partial list of these in literary studies might include the accession to tenured positions of the civil-rights- and Vietnam-era generations, inspired by the memory of civil rights battles won in the courts; the political frustrations of high theory and the felt need to inject the metaphysical politics of deconstruction with more concrete institutional politics; the perceived failure of the shrinking Marxist project as a mode of political criticism and a turn toward the insider politics of law. A parallel list of shifts in legal studies might include the shrinking of the humanities academic job market in the 1970s, leading humanities PhDs toward legal academia;[2] the slow deprofessionalization of legal study, from the 1970s on, in the attempt to establish law as an academic field comparable to other fields;[3] the demand for sophisticated theories of constitutional interpretation to sustain the achievements of the civil rights movement;[4] the felt need for a humanist counterforce to law and economics and to the textual conservatism of the Reagan-era Supreme Court. At the same time, however, taking a broader

view, one might understand the field of law and literature as the expression of more general anxieties about the nature and value of the organization of academic study into disciplines and about the function and meaning of the humanities and human sciences in the last quarter of the twentieth century. In this, law and literature might be thought of as an exemplary case of the interdisciplinary struggles of the past few decades.

While law and literature has sometimes been considered an incoherent catchall, one might heuristically identify in it three major projects: humanism (dominant in the 1970s and early 1980s and focusing largely on literary texts), hermeneutics (dominant throughout the 1980s and focusing largely on literary theory), and narrative (dominant in the late 1980s and 1990s and focusing largely on legal cases).[5] Each of these projects used different kinds of texts, had different kinds of goals, and worked toward these goals with different kinds of interpretive strategies. Despite these differences, however, one might trace, if not an entirely coherent program of action, at least a set of shared preoccupations and a set of recurrent aspirations emerging from the struggles of the last quarter of the twentieth century.

Humanism

The defining feature of law and literature in its earliest formal incarnations was its commitment to the human as an ethical corrective to the scientific and technocratic visions of law that had dominated most of the twentieth century. As J. Allen Smith wrote in "The Coming Renaissance in Law and Literature" (1977), "Fundamentally, our problem arises from our failure to . . . ground ourselves securely on the humanistic tradition, of which literature is a chief expression and from which the profession should draw nourishment and direction" (85). The work that came to be seen as the founding scripture of law and literature as a joint disciplinary project was James Boyd White's textbook *The Legal Imagination* (1973), intended to give law students a literary and rhetorical education that would stave off the administrative statism of the bureaucratic 1970s. In *The Legal Imagination*, White invited law students to "imagine as fully as possible how it might be said that law is not a science—at least not the 'social science' some would call it—but an art" (xxxiv–xxxv). Literature, as the most human of the humane arts, could teach the law "humanistic judgment" (Weisberg and Barricelli 150). First, it could remind us of the rich humanity that lay behind case reports and judicial decisions, thus serving to chasten the mechanistic rigor of the law. Second, it could offer reflections—brought vividly to life through narrative—on the human meaning of concepts central to law: criminality, punishment, justice. Third, it could offer models of rhetorical excellence, reuniting legal practice with the great tradition of forensic oratory, turning law students into rhetorical artists, and promoting connoisseurship of the legal opinion as masterpiece.

At the center of this humanist vision was the notion that literature could somehow bring the real to law. If earlier in the century legal realism had attempted, with the help of the social sciences, to bring social reality to law as an antidote to legal formalism, the humanist realism of law and literature was to serve as an antidote to the sterile technicality of the social sciences. The renaissance in law and literature that Smith announced could (he explained) redress the "cleavage between law and reality" (85). As Richard Weisberg argued (using the example of *The Brothers Karamazov*), literature could offer "a critique par excellence of the way the law twists reality into a false codified form" (Rev. 330). Weisberg, probably the person most responsible for galvanizing law and literature as a subdiscipline from the late 1970s on, would later complain of the way in which "postmodernist criticism and 'free market' microeconomics" had "attracted masses of [legal] practitioners

away from . . . the passions, the hopes, the reality of the world around them" (*Poethics* xiv). Literature had offered from the outset to reclaim that reality for law and, out of it, to forge a new legal ethics, what Weisberg came to call "poethics": the use of literature to fill "the ethical void in which legal thought and practice now exist" (4).

In the process, literature, through its affiliation with law, was also to attain a new reality. Scholars could discard the "elitist, superficial view of literature as essentially a civilizing influence to render lawyers fit for life in polite society," explained Harold Suretsky in 1979. Literature could instead be seen as "a source of truth which can help to analyze and criticize the law" (728). Humanistic discussion of the law constituted (as Peter d'Errico explained in a 1975 essay) "a search which is a praxis," in which "reflection is merged with activity so that we are neither academics separated from the 'real' world, nor 'activists' cut off from the process of inquiry and education" (58). Literature could save law from itself by reminding it of its lost humanity, infusing it with the human in order to grant it a new reality. At the same time, speaking truth to power, literature could at last do something real.

Hermeneutics

While legal humanism seemed a powerful antidote to the bureaucratic state in the 1970s, it seemed out of alignment with the theoretical debates at the center of literary study in the late 1970s and early 1980s. Literary theory was, if anything, preoccupied with challenges to the identity of the human subject presumed by traditional humanism and to the identity of the humanist text as the central agent of human meaning. When the very concept of the author was pronounced dead by French theory and the text pronounced dizzyingly indeterminate, to seek ethical reality in authors and texts seemed a naively idealist enterprise. As important for legal scholars looking across disciplines, the genteel liberal humanism that lay behind law and literature in the 1970s seemed an inadequate response to the overwhelming victory of the right in 1980 and the newfound power of what was to become the Rehnquist court. If literature had something to offer law, it was not a return to an outmoded humanism but a set of radical challenges to the originalist and textualist theories of interpretation sustaining the rulings of an increasingly reactionary court.

Literary hermeneutics seemed, then, to promise liberation of the law from its bondage to an archaic text and to the dead white men who continued to haunt it. But literary hermeneutics also threatened to unmoor law from its traditional interpretive bases. Responding to this threat, the constitutional scholar Owen Fiss, in "Objectivity and Interpretation" (1982), offered an impassioned outcry against literary deconstruction, which he characterized as "the new nihilism" (740–41): "This nihilism . . . threatens our social existence and the nature of public life as we know it in America; and it demeans our lives. It is the deepest and darkest of all nihilisms. It must be combated and can be, though perhaps only by affirming the truth of that which is being denied" (763). Literary theory threatened nothing less than truth, objectivity, and reality itself: "the reality of the object being studied" by the law (as Fiss put it [740]), "the reality of the objects, texts, and facts from which the central tenets of the discipline seem to be derived" (Abraham 694). While this threat created such right-wing backlash texts as Judge Richard Posner's 1988 anti-law-and-literature diatribe (*Law and Literature*), left-leaning proponents of law and literature were responding to more free-floating postmodern anxieties. One felt, explained Sanford Levinson in "Law as Literature" (1982), "a pervasive anxiety generated by . . . 'the loss of the sense of doing and speaking in the name of someone or something recognizable and unquestionably valid,'" a loss that "undercuts

the confidence in one's ability to ground description or analysis in a purported reality" (377; quoting Robertson 180). If, however, literary hermeneutics could produce fears about the accessibility of the real, it could also offer models for salvaging it. "Lawyers would do well to study literary . . . interpretation," wrote Ronald Dworkin in 1982, explaining that the plethora of interpretive options offered by literary criticism could show law the way through poststructuralist uncertainty to a more realist legal hermeneutics (182). Stanley Fish's notion of "interpretive communities" (elaborated in *Is There a Text in This Class?* [1980]) became a touchstone for the discussion, cited by critics right, left, and center (and debated most energetically by Fish himself [see *Doing* throughout]), standing for the proposition that, as Kenneth Abraham put it,

> the objects, texts, and facts with which this and every other enterprise works are real in the only way that anything is real. And the knowledge that we possess is therefore secure in the way that all knowledge is secure, by virtue of its acceptance within a community of interpretation whose existence is a prerequisite to the production of knowledge itself. (694)

Thus, the "hermeneutic turn" in law was at once an attack on foundationalist interpretation, with its reactionary consequences, and a reconstructive enterprise—an attempt to shore up the stability of law against its ruin. Law, in exchange, provided a response to literature's own sense of destabilization. If literature had lost its role as the agent of a humanist ethics or a source of truth, the role of the literary critic was unclear. This sense of the erosion of literature's mission was powerfully evoked at a 1981 conference, The Politics of Interpretation, which generated many of the debates about the uses of literary hermeneutics for law. In his introduction to the collection emerging from the conference, W. J. T. Mitchell spoke of the intensified longing that literature as a discipline, deprived of its traditional humanist and interpretive authority, seemed to feel for "the 'real world' of social and institutional power," the world of "state power and real social change" (iv–v). At once a diagnosis and a confession of this longing, Edward Said's contribution to the collection repeatedly invoked the opposition between the ideal world of literature and philosophy and the real world of law and politics. Literary criticism, and in particular literary Marxism, wrote Said, exists in "cloistral seclusion from the inhospitable world of real politics. [Real] politics is mainly what the literary critic talks about longingly and hopelessly" (16).[6] Law offered literary theorists a way out of longing and hopelessness through what appeared to be a concrete role in legal politics. In the wake of the hermeneutic debates, literary critics could attempt to do "real politics" through constitutional interpretation: the kind of virtuoso interpretation performed, for instance, by Elaine Scarry's lengthy law review article ("War and the Social Contract") arguing that the Second Amendment prohibits nuclear stockpiling. As Peter Brooks explained (with a shade of autobiographical irony), law presented itself to literary critics as the site of "an exceptional intersection of textuality and social power": "Literary critics—who often harbor a bad conscience about their profession—have displayed a desire to break out of the realm of fictions, to engage large cultural issues: to make their interpretive techniques work on something closer to 'reality'" (15).

Narrative

The interpretive framework that seemed best-suited to join the legal vision of the truth of literature to the literary vision of the reality of law in the late 1980s was feminist theory. As the feminist literary scholar Carolyn Heilbrun and the feminist legal scholar Judith Resnik explained, feminist scholarship was

dedicated to uncovering "the actual experiences of women, . . . the realities of women's lives" through the recovery of women's "long unheard voices," "their own language and their own narratives" (1919, 1931, 1934). For Heilbrun, bringing "the realities of women's lives" into the reality of the legal arena seemed to offer a cure for what Said and Brooks had characterized as the literary critic's desire, longing, and hopelessness. "Like many of those in departments of literature," wrote Heilbrun, "I sometimes felt that we were just talking to ourselves." Asked to deliver a paper at a law school workshop, "with that suddenness that we think of as connected only with falling in love, but which equally marks intellectual passions," she instantly realized that "here was a context in which real changes in the language and stories of women might be enacted" (Heilbrun and Resnik 1920).

One of the things that emerged in conjunction with the entry of feminist theory into the legal realm was a notion of the centrality of narrative that seemed to have two kinds of critical force: (1) if law was violence driven by master narratives, the revelation of the nature, origin, and structure of these narratives might redirect the force of law;[7] (2) if master narratives controlled both legal stories in the courtroom and the judicial decisions that resulted from them, one had to make oppositional narratives—the stories of those regularly excluded from legal power—newly audible. The second proposition—that listening to oppositional stories could revolutionize the law—became the center of what came to be known as narrative jurisprudence or (in its more folksy moments) the legal storytelling movement. Narrative jurisprudence was influenced by several concurrent institutional formations that mingled psychotherapeutic claims for the healing power of telling one's story with political claims for the transformative power of narratives of oppression: feminist and critical race theory, *testimonio* as a critical field (eventually emerging as trauma studies and other subdisciplines), and the establishment of truth commissions where victims of atrocity might tell their stories. Narrative jurisprudence had a definite political program that took arguments for the humanizing effect of literature and translated them into the sphere of radical critical legal thought. In a 1988 letter that became the inspiration for one of the first major conferences on legal storytelling, Richard Delgado, one of its leading proponents, proclaimed:

> The main cause of Black and brown subordination is not so much poorly crafted or enforced laws or judicial decisions. Rather, it is the prevailing mindset through which members of the majority race justify the world as it is. . . . The cure is storytelling, . . . counterhegemonic [storytelling to] quicken and engage conscience. (qtd. in Scheppele 2075)

If narrative was cure, it was cure through its access to a previously inaccessible reality, which oppositional storytelling would uncover. "The use of stories in judicial opinions [offers] a way of uniquely bridging the gap between law and reality," wrote Robert Hayman and Nancy Levit in a review of Delgado's work. "Stories . . . are 'real' whether they are offered as fact or fantasy, myth or matter of fact; they describe places and events in realistic terms and in real time. [They] are populated by real people" (399, 436). As a result, "the narrative form of critique offers greater epistemological accuracy than formal, syllogistic doctrinal analysis" (398). With this new "epistemological accuracy," founded on the "plural truths of lived experience" rather than "objective" reality (398–99), narrative jurisprudence could reclaim a kind of postcritical real as a viable basis for legal ethics.

Many legal and literary scholars writing about narrative jurisprudence were critical of presuppositions about the inherent truth, exemplarity, or ethics of stories.[8] But legal storytelling appealingly clothed its truth claims in a revived humanist rhetoric rendered palatable

through a transfer to the sphere of oppositional politics and the psychology of oppression. In Delgado's words, the ultimate goal of narrative jurisprudence's brand of "counterreality" was to "humanize us" (2412, 2440). It was no longer Shakespeare who would be the guide to ethical value or Cicero who would serve as a model humanist rhetorician but the marginalized, victimized, voiceless "Other." Narrative jurisprudence could thus show law a way out of its poststructuralist impasses by offering a postcritical return not simply to the real but to the humanist real. We must ask ourselves, wrote Robin West in 1993, "whether . . . the laws we enact . . . serve our best understanding of our *true* human needs, our true human aspirations, or our true social and individual potential, as gleaned from the stories we tell about ourselves and each other" (7). Habitually fixated on "economic man," alienated from "literary woman," law could reclaim real human feeling through a return to empathy, love, and (in West's pervasive metonymy) the heart. Adjudicatory acts, explained West, should "originat[e] in the heart, . . . prompted by our sympathy for the needs of others, and empathy for their situation."

> *Brown v. Board of Education*, for example, is a good opinion, because it is a sympathetic rather than cynical response to a cry of pain. . . . [T]he opinion speaks to our real need for fraternity rather than our expressed xenophobia; it taps our real potential for an enlarged community and an enlarged conception of self rather than our expressed fear of differences. (175–76)

The xenophobia and fear that the law expressed were somehow untrue to our nature. The virtues embodied by the literary were what, in the end, was most real in us.

The Disciplinary Hall of Mirrors

This skewed and partial history leaves out too much of the richly varied work on law and literature even to attempt a list. But what it is meant to reveal is the particular conglomeration of disciplinary projections that arose from the emergence of law and literature as a self-conscious field of study in the last quarter of the twentieth century—that is, not so much the shared content of law and literature as its shared longing. And (autobiographically speaking, as one inevitably is) this history is the one to which those of us who have written about both domains belong, however distant from the interdisciplinary phantasms of the past three decades our work may seem.

All interdisciplinarity, one might argue, is disciplinary symptom: somatization, in the disciplinary body, of some invisible pain, thwarted desire being acted out as neurosis. Interdisciplinarity might be thought of as hysteria, in the ancient Greek sense, in which the wandering of the uterus from its proper home was thought to produce histrionic symptoms in the patient, publicly theatricalizing an interior dislocation. In this sense, law and literature might be seen as having symptomatized each discipline's secret interior wound: literature's wounded sense of its insignificance, its inability to achieve some ever-imagined but ever-receding praxis; law's wounded sense of estrangement from a kind of critical humanism that might stand up to the bureaucratic state apparatus, its fear that to do law is always already to be complicit, its alienation from alienation itself. Each in some way fantasized its union with the other: law would give literature praxis; literature would give law humanity and critical edge. Behind both these instantiations of "discipline envy" (in Marjorie Garber's phrase [53–96]) lay a view of the other discipline as somehow possessing the real. Law seemed, to the literary scholar longing for the political real, a sphere in which language really made things happen. Literature seemed, to the legal scholar longing for the critical-humanist real, a sphere in which language could stand outside the oppressive state apparatus, speaking truth to the law's obfuscations and subterfuges.

As in all interdisciplinary adventures, these hypostatized versions of the disciplinary other spoke to preexisting disciplinary identities. Literature had become itself—a separate aesthetic field in the late eighteenth century and a discipline in the nineteenth century—precisely because of its claim on the humanist tradition in the face of utilitarianism and academic scientism, developing its identity as, inherently, Romantic oppositionism, incarnated in the figure of the Romantic artist.[9] The separation of aesthetics from politics often identified with the late eighteenth century and (eventually) the separation of literature from law might be seen not only as attempts to free the aesthetic sphere from the utilitarian world of the industrial revolution (as, most notably, Terry Eagleton has argued in *The Ideology of the Aesthetic*) but also as attempts to rationalize the legal sphere by ridding it of the critical natural-law and customary-law traditions. The marriage of law and literature might have seemed a form of resistance to both the ideology of the apolitical aesthetic and the ideology of law as science: politics and aesthetics, law and literature could be reunited to grant power to art and meaning to power. But law and literature as a subdiscipline in some sense reproduced the separation of the spheres through the splitting and transfer of disciplinary desire: to project the humanist real onto literature was implicitly to accept the law as a system of utilitarian calculus; to project the political real onto law was implicitly to acknowledge the inconsequence of the aesthetic.

Thus, interdisciplinarity here tended to exaggerate disciplinarity, caricaturing disciplinary difference through each discipline's longing for something it imagined the other to possess. From the interstices of crossed desire arose a kind of Cain-and-Abel splitting, in which literature was cast as good twin, law as evil twin. As Jane Baron puts it, the law-and-literature movement "defined out of the category 'law' almost everything worth having; beauty, sensitivity, emotions, moral lessons—all these and so much more [were] the province of literature. The province of law [was] barren of everything but rules, an empty domain of raw power" ("Interdisciplinary Legal Scholarship" 45; see, similarly, Sharpe 91; Binder 68). Literature was offered as cure for law; sadly, law was incurable. At the same time, literature was disabled by its virtue: law (masculine, powerful, nasty) could do things; literature (feminine, weak, sensitive) was helpless.

In this sense, the interdisciplinarity of law and literature enacted a double movement that ran counter to its own project. It sought to break down disciplinary boundaries, but, through the imaginary projection by each discipline of the other's difference, it exaggerated the very disciplinary boundaries it sought to dissolve. Moreover, each projection became assimilated by the discipline on which it was projected. That is, while seeking the political real through the study of law, literary scholars simultaneously embraced their own reflection in the mirror of the law, coming to desire not just law but law's account of literary study. While seeking the humanist real through the study of literature, legal scholars simultaneously embraced their own reflection in the mirror of literary study, coming to desire not just literature but literature's account of the law. In effect, through this double desire—for the other and for the other's projection of the self—each discipline came to desire in itself what the other discipline had put there. In the disciplinary hall of mirrors, they met in the shared space of mutual projection, in work that acted out both sets of anxieties while repressing some of the most important insights of each discipline.

This disciplinary acting out produced a set of characteristic contradictions. Law became a great political redeemer, realizing through the courts the political dreams of a more revolutionary moment. At the same time, law (abstracted from particular cases) became a univocally ugly hegemon, a force of monolithic evil, an immovable power against which

the Cassandra-like voice of literature would eternally, but with tragic futility, assert the value of the human spirit. Literature as a field attempted to preserve its hermeneutics of suspicion (in Paul Ricoeur's famous formulation [e.g., 32–36]), in which literary works were to be read as documents not of the human spirit but of barbarism, ultimately and tragically expressions of false consciousness. At the same time, it attempted to embrace the vision of law and literature, in which literature (abstracted from particular works) had become the voice of truth, an abiding ethical guide.

The Always Already Real and the End of Interdisciplinarity

The persistent (if sometimes embarrassed) vision of the real at the center of each of law and literature's major projects—a real aspiring to ethical authenticity, ontological certainty, narrative honesty—emerged from the center of postmodern skepticism as a kind of return of the repressed. Clothed in scare quotes, enveloped in equivocation, the real signaled a yearning that, in ordinary critical discourse, dared not speak its name, a desire all the more powerful for its repression. As law and literature became a movement, the real came to stand in for the political and ethical aspirations that its achievement would supposedly bring to pass. While the language of the real tended to emerge unconsciously or apologetically, the claims for the eventual good that would emerge from ultimate access to it were brazen: revolutionize the law with literature; make the literary life one worth living. As the object of a "movement," the real became a surrogate for the good and was made to bear the weight of its demands.

While this was, perhaps, too much to ask, one might nonetheless see in the search for the ever-receding real a productive force, necessary to the tremendous disciplinary changes that both law and literature as fields underwent during the last quarter of the twentieth century. Literature came to embrace cultural studies as an essential part of a discipline whose interpretive techniques could now be applied legitimately to the great array of social texts. Law became something like a full-fledged academic field, not merely a professional training ground but a discipline whose object of study—law as a historical, social, and linguistic entity—was subject to the analytic techniques of the humanities and social sciences. Insofar as we take law and literature to exemplify the broader disciplinary restlessness of the late twentieth century, to recognize the value of its search for the real is to recognize more generally the value of the illusions about authenticity that may have lain beneath the past few decades' interdisciplinary adventures.

In an evocative essay, "The Made-Up and the Made-Real," Elaine Scarry offers an analysis of the particularly late modern form of skepticism in which anxieties about the solidity of the real came into being: the modern breakdown of the analytic separation between the made up (aesthetic objects that retain their fictional quality) and the made real (human creations such as law, science, gender, and childhood that inhabit the world without bearing the marker of their creation). She asks why this breakdown, enacted in our persistently hostile challenges to things made real as nasty delusions (the oppressive product of "sinister plots and 'hegemonic' enactments" [216]), should have contributed to a loss in prestige for both classes of things. Why should exposure of the fact that things were once created necessarily mean that their authority should be downgraded? Why should the realization that aesthetic things have something in common with other created things lessen the prestige of the aesthetic generally? Scarry suggests that the future of the humanities lies in a redirection of our energies: from the attack on things for feigning realness to the "generation of accurate descriptions" (215), which will tell us something about how things became real and what their realness consists in.

As we seem more settled in our willingness to embrace the fact that the made real is, after all, really real, claims for the revolutionary power of the ever-receding real seem to have disappeared. We seem to recognize (consciously or unconsciously) that the demand that the real revolutionize the law or make the literary life worth living was a demand for something that was, after all, always already there. That is, the demand for the real was superfluous. But at the same time, it was insufficient to the claims of revolution or meaningfulness. With perhaps not so much the resolution as the exhaustion of questions about the real—the exhaustion of crisis and doubt, for a time at least—we have come to realize that to expose the made-upness of a thing is not necessarily to dim its prestige, let alone to do away with it. Conversely, to say that the made real is really real is not to say that it can't be changed. With the receding of postmodern epistemological and ontological questions may come an end to the hermeneutics of suspicion proudly (if not arrogantly) embraced in the last quarter of the twentieth century. Perhaps we are beginning to move from disenchantment to reenchantment (always underrated), unhobbled by fears of enchantment's irreality or by fantasies of some ever-receding real on the other side of (disciplinary) paradise.

Arguably, law and literature as such depended on its own antidisciplinarity. If law and literature as a subdiscipline helped each field to work through its fantasies about the other, to some extent those fantasies could no longer survive in disciplines that had naturalized them instead of viewing them as foreign imports—that is, in disciplines that had come to seem always already interdisciplinary. Even as a journal like *Law and Literature* became an independent entity (liberated, in 2002, from its affiliation with Cardozo Law School), its title began to seem vaguely quaint, its contents overflowing its narrow dual disciplinary signifiers. The proliferation of essays over the past five years or so looking back at law and literature as a phenomenon might be taken as a sign that we are moving beyond it as a cognizable interdisciplinary formation: millennialism, perhaps, but also signifying law and literature's transformation into something bigger and necessarily more amorphous.[10] That Guyora Binder and Robert Weisberg's exhaustive *Literary Criticisms of Law* (2000), offering a 544-page assessment of the past thirty years of work, ultimately rejects the critical modes most closely associated with literature and ends with a celebration of "cultural criticisms of law" (462–539) may indicate something of the future of law and literature. Like literature itself as a discipline, embarrassed by too narrow an association with the strictly literary, law and literature is beginning to shed its second term and to meld into "law, culture, and the humanities" (the title of the scholarly organization that seems now to serve as home for the discipline-formerly-known-as-law-and-literature), erasing "literature" with a new lexicon ("culture," "the humanities") that raises a new set of anxieties for a (still) new millennium.

One of the sleights of hand of interdisciplinarity is that it deludes us into the belief that we've escaped our disciplinary boundaries. But that delusion also allows us freedom from interdisciplinary longing. Such freedom and our now more comfortable habitation in disciplinary mobility are well suited to the spatial and geographic paradigms we currently inhabit. We think of ourselves as global: rather than defy boundaries, we leap over them, less disciplined, perhaps, but also less frustrated by imaginary constraints. Worrying less about how to find something real on the other side of the disciplinary divide, we have more room to think about the consequences of disciplinary tourism, to ponder the new terms we've erected as touchstones of our common project, and to offer richer readings of those real (and sometimes hyperreal) objects of our study. If law and literature per se does not survive the assimilation of disciplinary multiplicity as an

inherent part of its disciplines, in its end may be its beginning.

Notes

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[1] The first MLA special session on law and literature took place in 1976, and sessions on the topic followed regularly thereafter. On law-and-literature courses in the 1970s, see Smith, "Coming Renaissance" 91. On the field generally during this period, see Danzig and Weisberg; Kretschman and Weisberg; Smith, "Aspects"; and Suretsky.

[2] For contemporary testimony on this change, see Smith, "Coming Renaissance" 88; Suretsky 727.

[3] For debate on this transformation, see Edwards; Posner, "Deprofessionalization."

[4] See Binder and Weisberg for an argument that the field of law and literature arose principally from the interpretive crises produced by civil-rights-era constitutional jurisprudence (generally, 28–111).

[5] I follow here Jane Baron's taxonomy ("Law" 1063–66). For alternative taxonomies, see Binder and Weisberg; Julius.

[6] Said's specific object here is American literary Marxism, particularly as exemplified in Fredric Jameson's *The Political Unconscious*, but his comments apply to the profession more generally.

[7] This notion is usually associated with the work of Robert Cover (in particular, his influential "Nomos and Narrative" [1983] and "Violence and the Word" [1986]) and more generally with the attempt to recuperate the political potential of poststructuralist theories of culture (e.g., Carlson, Cornell, and Rosenfeld, a collection emerging from the conference "Deconstruction and the Possibility of Justice," at Cardozo Law School in 1991).

[8] For the best-known critiques of the legal storytelling movement, see Coughlin; Farber and Sherry. See also Brooks 16; Gates 37, 47.

[9] On literature as a separate aesthetic field, see Williams, *Marxism* 45–54 and *Keywords* 183–88. On the rise of English vernacular literary study, see Court.

[10] For recent historical assessments of law and literature, see most notably Binder and Weisberg; also Freeman and Lewis, esp. Julius's introduction and Weisberg's contribution ("Literature's Twenty-Year Crossing").

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