

1-1-1994

Symposium On Law, Literature, And The Humanities. Introduction: Conducting Our Educations In Public

Thomas D. Eisele

University of Cincinnati College of Law, thomas.eisele@uc.edu

Follow this and additional works at: http://scholarship.law.uc.edu/fac_pubs



Part of the [Jurisprudence Commons](#), and the [Legal Education Commons](#)

Recommended Citation

Eisele, Thomas D., "Symposium On Law, Literature, And The Humanities. Introduction: Conducting Our Educations In Public" (1994). *Faculty Articles and Other Publications*. Paper 35.
http://scholarship.law.uc.edu/fac_pubs/35

This Article is brought to you for free and open access by the Faculty Scholarship at University of Cincinnati College of Law Scholarship and Publications. It has been accepted for inclusion in Faculty Articles and Other Publications by an authorized administrator of University of Cincinnati College of Law Scholarship and Publications. For more information, please contact ken.hirsh@uc.edu.

SYMPOSIUM ON LAW, LITERATURE, AND THE HUMANITIES

INTRODUCTION: CONDUCTING OUR EDUCATIONS IN PUBLIC

*Thomas D. Eisele**

One definition of the critic—it must be one of the most popular ever arrived at . . . —is that he is a man who conducts his education in public.¹

This symposium grew out of James Boyd White's Marx Lecture, given April 21, 1994, at the University of Cincinnati, and this issue owes its existence to some happy coincidences with that event. One coincidence was the idea occurring to a number of us that, as nice as it would be to publish Professor White's thoughts on the *Crito* in these pages of the *Law Review*, how much nicer still it would be to surround those thoughts, or to follow them, with the thoughts of other scholars in the field, showing how these others responded to the text discussed by White or to similar texts. The editors of the *Law Review* having endorsed this idea, we invited a number of other scholars to share with us their thoughts on any related text or topic that happened to be presently engaging their attention (after advising them only in a general way about the gist of White's remarks on Plato's work). Our initial symposium proposal was, then, that our intellectual exchange would not take place during the actual event of White's lecture, but rather would amount to a published epilogue to the delivery of his lecture. We were pleasantly surprised by the overwhelming positive response that our invitations to this "paper" symposium received.

A second coincidence followed the first, however, and it led to a more true symposium's being held. A number of already committed symposium participants said that they wished to attend Jim White's Marx Lecture, and they further suggested that the College of Law might support and coordinate such a gathering. Dean Joseph Tomain, Associate Dean Barbara Watts, and Professor John Applegate (the faculty advisor to the *Law Review*) enthusiastically welcomed this suggestion, seeing it as an opportunity to make what had begun as a "pa-

* Professor of Law, University of Cincinnati.

1. MORTON DAUWEN ZABEL, CRAFT AND CHARACTER[:] TEXTS, METHOD, AND VOCATION IN MODERN FICTION at x (1957).

per” symposium into a more lively gathering. Here was the chance to get law teachers together with students, all of whom were intent upon discussing how law, literature, and the humanities might be taught productively or otherwise brought together. With this institutional underwriting in place, members of the *Law Review* editorial board and staff then managed, tirelessly and selflessly, to turn this opportunity into an actuality.

Given the time of year and the press of other commitments, it was foreseen (and it happened) that some of the people writing for the symposium issue would not be able to attend the Marx Lecture and its associated activities. But other of the symposiasts did manage to rearrange their schedules so as to attend the Lecture. One of the results of this unexpected turn of events is reproduced here in the form of a roundtable discussion that took place the morning after Professor White’s Marx Lecture. This roundtable was unrehearsed and unscripted, and we hope that the spontaneity of our exchanges is captured to some extent in the transcription published here. Indeed, this hope for preserving some of the vitality of our gathering pervades the entire symposium, which took on a life and a shape all its own. Its vitality emanates centrifugally from the lives and the forcefulness of those who participated in the symposium, but it is equally shaped, I think, by the centripetal force-fields generated by the texts and topics that we discussed. At least, this is how I conceive what took place at the College of Law this past April as well as what takes place in the writing published here.²

We gathered as the result of several felicitous coincidences, then, in a way that was not fully planned or calculated; what issued was a set of conversations and texts indicative of the variety of ways that we responded to the evocations and provocations provided to us by Professor White and each other’s company. I would like to think that this seemingly haphazard process and the ensuing cacophony of voices characterize some of the strengths of interdisciplinary work in the law. These strengths include the following: the willingness to allow a person to discover and pursue his or her own way through the field, responding to what he or she finds most relevant or pressing; the encouragement to entertain thoughts and possibilities about law (to say

2. Whether these critical terms of characterization, using figures drawn from physics and physical theories of attraction and divergence, help to capture the forces of attraction and divergence at work in the writings that follow, I cannot know. But I do wish to acknowledge here the influence of Northrop Frye’s book on the theory of literary criticism, *Anatomy of Criticism*, which uses the terms “centrifugal” and “centripetal” in its attempt to discuss certain movements in various literary works, genres, and structures. See, e.g., NORTHROP FRYE, *ANATOMY OF CRITICISM*[:] *FOUR ESSAYS* 75, 341 (1957).

nothing of life more generally conceived or articulated) that may have been unanticipated when one began his or her inquiries (whatever they may be); and the penchant for putting things together with law that may, at first (or at last), appear to be inapplicable or inapposite, and yet that illuminate some aspect or omission of the law by comparison or contrast. These are only a few of the attributes of writing in the "law and . . ." field, but I hope that they are sufficient to suggest that interdisciplinary work cultivates in its practitioners a willingness to seriously entertain various unanticipated insights or juxtapositions. In this regard, interdisciplinary work in law may be said to be work that is consciously unplanned or underdetermined, even serendipitous. One works in uncontrolled conditions, hoping for unanticipated gains. So, work in this field is, in the best sense, opportunistic. And are good lawyers not the same? Is this not a capacity that we wish to train our students to develop: how to spot opportunities that the facts or the words of the law provide and how to make the most of them?

If interdisciplinary writers are—or must be—opportunistic, seeing possible ways to be negotiated where others see blind alleys, seeing connections where others see divisions (and so forth), then such writers also must be exploratory or experimental.³ They must be willing to take a chance, to risk a metaphor or to propose a reading that might not pan out, that might prove to be unhelpful, misleading, or empty. Such risks must be run if we are ever to discover what can be made from the materials of the law and the other disciplines with which it is mixed and matched. And the best way to illustrate this necessity (and to reveal it as a necessary condition of our work) is to take some chances, to propose some contestable readings, to pursue some intimations. This we have done here.

Professor James Boyd White begins the series of readings and pro-

3. Cynthia Ozick, in her second collection of essays, suggests that, in this respect, the writer of critical essays operates in the same mode as does the writer of short stories. Essays are, she says, more ad hoc, more provisional or conditional, than we may be willing or inclined to grant.

An essay is rarely seen to be a bewitched contraption in the way of a story. An essayist is generally assumed to be a reliable witness, sermonizer, lecturer, polemicist, persuader, historian, advocate: a committed intelligence, a single-minded truth-speaker.

. . . [E]ssays are expected to take a "position," to show a consistency of temperament, a stability of viewpoint. Essays are expected to make the writer's case. Sometimes, of course, they do . . . Yet most essays, like stories, are not designed to stand still in this way. A story is a hypothesis, a tryout of human nature under the impingement of certain given materials; so is an essay. After which, the mind moves on. Nearly every essay, like every story, is an experiment, not a credo.

CYNTHIA OZICK, *METAPHOR AND MEMORY: ESSAYS* at ix-x (1980).

posals by suggesting a new way to read Plato's *Crito*. For White, the traditional reading of this dialogue treats it as a disguised philosophical treatise on the authority of law, replete with a set of arguments made by the Athenian laws themselves (the *Nomoi*) meant to convince Socrates that, despite the urging of his student-friend Crito, Socrates should not try to escape the death sentence given him by his Athenian jurors. But, in White's view, this reading ignores almost everything else about the dialogue, other than the central set of speeches by the *Nomoi*, as though everything leading up to and away from these speeches is mere dramatic window-dressing, a kind of frivolous froth meant by Plato to prepare our palates for the hard-to-digest philosophical argumentation on the authority of law. In contrast, Professor White suggests that we take seriously the dialogue as a whole, as a composition, all of the parts of which are meant by Plato to have meaning or effect. For example, White asks that we take seriously the setting where the dialogue takes place, the relationship enacted and imagined between Socrates and Crito, and Socrates' report of a strange dream that he has had just before Crito visits him in his jail-cell (and so on). White's point might be explained like this: we cannot understand the speeches of the *Nomoi* without understanding their place within the dialogue as a whole. And when this placement is attempted, according to White's reading, we discover that (as Plato has composed his dialogue) Socrates is less interested in refuting the speeches of the *Nomoi* (although they may be vulnerable to refutation philosophically) than he is in exemplifying his life's lessons by once more showing a student-friend how a life of integrity might be lived to the end.

Professor Peter Teachout offers us a carefully considered response to White's lecture, one that accepts the general ways of reading recommended by Professor White, yet rejects the specific conclusions that White draws from his way of reading the *Crito*. For Teachout, as useful an antidote as White's way of reading this dialogue may be to the traditional analytical-philosophical reading, the result simply is not convincing. Teachout argues, while citing details from both the *Crito* and other Platonic dialogues to support his reading, that White fails to paint a portrait of Socrates that is consistent with Socrates' commitment to a "well-governed" life, both private and public. Professor Teachout has a different way of taking the central speeches of the *Nomoi*, which allows him to paint a portrait of a Socrates less despairing and impoverished than the one portrayed by White in his lecture.

So here we have two readers of the same text, both imploring us to read the text in context, but each proposing a slightly different context in which to place the relevant text and each finding a rather distinctive and different pattern emerging from the Platonic puzzle. And we read-

ers are asked to assess these two readings, to learn what they can mean to us. While Professors White and Teachout are conducting their educations in public, we are meant to continue ours in the privacy of our experience of reading them reading Plato.

From these competing readings of the *Crito*, we proceed in alphabetical order through the contributors to this issue.

Professor Nancy Cook studies the benefits that might accrue to legal studies if we find it possible to include works of fiction and poetry within the canon of legal scholarship. The call here (as I hear it) is for us to recognize that explicitly literary works may allow us to investigate and test legal forms, legal genres, legal concepts, and legal rules (et cetera) in ways that nonliterary works do not permit. In particular, she claims that gender or racial assumptions embedded in the law could become more available to comprehension and criticism if we used the critical resources made available to us through fiction and poetry. This is a proposal that Professor Cook advances, not based on a claim to infallibility, obviousness, or inevitability, but rather as a friendly suggestion from someone who works in both legal and literary fields. It is an invitation to experiment with various genres of writing in the hope that they may yield insight into the law (what it is, and what it may leave out).

Professor Judy Cornett offers us a reading of Richardson's *Clarissa*, tying its themes to certain aspects of eighteenth-century epistemology and the English rules of evidence. On Cornett's reading, the heroine of Richardson's novel is systematically deceived by the apparent evidence of her senses. This result indicts various epistemological principles made famous by Locke, to be sure, but it also indicates certain weaknesses or omissions in traditional English rules of evidence. Cornett finds this parallel to exist in part because both Locke's epistemological principles and the eighteenth-century English rules of evidence are products of male-dominated thought, which assumes a male's prerogatives and powers as they then stood and which, thereby, leaves females and their "experience" out of the picture. She leaves us with the suggestion that, to the extent that principles or rules (epistemological or legal) are designed for a specific gender, they may prove unreliable or unworkable when applied to or exercised by the omitted gender.

Professor Clark Cunningham offers us something different than the reading of a specific text. Rather, he suggests that one of the values of interdisciplinary studies of law taught in law school is the ability of such studies to engage law students in bringing together various aspects of their lives and experiences. Interestingly enough, Cunningham illustrates this point in a Socratic way, by offering us several samples from his students' papers in his seminar entitled, "Law as Language,

Law as Literature.” He allows the students to speak for themselves through their papers, and the suggestion is that the act of witnessing their own process of education will itself help to educate us about what law is or what it can be and about what legal education is or what it can be.

My own contribution to this symposium is a reading of the *Meno* in the context of thinking about the extent to which we truly and fairly can say that, at least some of the time, we law teachers use the Socratic method. While I am among those who wish to make such a claim, and who continue to value this way of teaching, it has bothered me that we seem to share a very thinly described version, or vision, of Socrates’ teaching. I do not pretend that we can gain a perspicuous view of it by examining a single dialogue; rather, my essay is offered as a beginning serious step toward a more adequate description of how Socrates taught (at a certain time, in a certain place, given certain questions and interlocutors). Anything more general or global will have to come later, I think, and will have to build upon such efforts to understand specific instances of Socratic teaching (as well as instances of other types or styles of teaching). For my part, I find in the *Meno* a style of teaching that begins with a goal of disillusioning the student, but that ends with a more positive goal (what Plato called “recollection”). How the negative and positive sides of such teaching can be made consistent with one another and whether they can be managed without extraordinary dissonance are, to my mind, among the continuing mysteries of Socrates’ example and of the craft of teaching. I am sure that I do not know their answer.

Professor Amy Kastely begins her essay with a reference to opera, implicitly reminding us that there is no apparent limit (beyond our resourcefulness) to our ability to illuminate the law by calling upon the resources of other disciplines. Kastely first shares with us her experience of reading Toni Morrison’s short story, “*Recitatif*,” in which she finds herself wanting to know the racial identity of two friends talking in the story, and yet in which she also asks herself why this piece of information matters (or should matter) to her—as a woman, as a white person, as a reader. (And do we find ourselves wanting to know the same thing in our experience of reading either this short story or any other piece of non-legal or legal literature? If so, then why does or why should it matter to us? What is it that we wish to know, or expect to learn, from such information? How do we intend to use this information?) Professor Kastely suggests that her experience is indicative of what she calls an assumption of “the white norm and the black Other,” both in literature and in law. To bolster this thought, Kastely then proceeds to read some judicial opinions and some contract theory

in which she finds the same subtle, yet quite fundamental, assumption being expressed or implied (often in the statement of the facts, but also sometimes in the law's response). She leaves us with the question whether interdisciplinary studies of the law might help to bring us to a consciousness of such troubling assumptions and, thus, to make us more ready to confront them.

Professor L.H. LaRue offers us a reading of Plato's *Gorgias*. The challenges that Socrates and Plato bring against rhetoricians (and, hence, lawyers) are real, according to LaRue, and he wants his students to face them openly. Do we have any adequate response to the charges that our profession sells itself to the highest bidder, that we try to make the weaker argument seem to be the stronger, and so on? If we do not, then Professor LaRue wants us to *realize* that we do not have an adequate response and to think about what that fact means for us and for our profession. But he equally wants us to grapple with the text of the *Gorgias*, which is problematic both in terms of what it means (Plato and Socrates do not manage much crystal clarity in their argumentation, story-telling, and hypothetical conjecturing) and in terms of whether or not its claims against rhetoric and its practitioners are true.

Professor David Papke takes a different tack, returning us to the theme of the authority of the law, this time placing it not in ancient Greece but in turn-of-the-century America, and finding the question posed not by a text but by the figure of socialist Eugene Debs. Papke argues that Debs began with a traditional American faith in the law and its justice, but that he came to be converted from that position to a far more radical faith by his union-organizing activities and his professed socialism. Where (if anywhere) did Debs locate the authority of the law, or its potential authority over us, and how did Debs come to see the law as not being its own guarantor of its authority or legitimacy? These are Papke's basic questions, and he pursues them with a wealth of detail that one might hope for from a scholar with a Ph.D. in American Studies. It is another example of how interdisciplinary work may be able to illuminate issues of legality (philosophical, social, or otherwise).

Professor Teresa Godwin Phelps deals with Jane Austen's *Persuasion*, as another way of investigating where authority over ourselves comes from. In particular, she asks (because Austen's novel asks): What is a code—legal, moral, or social—such that we feel bound to obey it? And why might we find ourselves justified in obeying (or disobeying) such a code? Since the dominant picture of law that we have inherited from the dominant Anglo-American legal philosophy (legal positivism) is that of law as a system or set of rules—a code, I think

that Professor Phelps is exactly right to suggest that *Persuasion* is a book that bears reading in law school. She offers us the view that the authority of a legal code depends not only on its status or position (as positivism has insisted since its inception) but also on its reception by its subjects, whose character is thereby tested and put into question. (Have they responded fairly to the demands or advice of the law? Has the law responded fairly to them, to their needs and concerns?) This is not a vision of the law either easy to identify or easy to articulate, because it requires us to examine, in detail, the reasons and emotions suffusing our responses to the law, and these are hardly less difficult or complex than the legal codes and systems of authority themselves. Then criticism of literature and of law ends up imitating the complexity of its subjects. This strikes me as a fair bargain: fairly given, fairly gained. Do we accept it?

I conclude with the thought that what we are witnessing here (in the field of law, literature, and the humanities), and what some of us are participating in, is less a movement and more a process of mutual edification.⁴ And it is this thought that guided me in taking as my prefatory tag Morton Zabel's remark about critics' conducting their education in public. Our symposium issue offers to its readers a number of critics (of literature and of the law, as well as of other things) conducting their educations in public. Is this a useful way to conduct ourselves?

Zabel, in the remark with which I began, goes on to say the following:

Leaving aside the possibility that there are worse things being conducted in public these days than an education; leaving aside also the likelihood that if the serious pursuit of literature is anything it is an education, one may say that the nature of the critic's work makes this [conducting one's education in public] inevitable. If he is qualified by any degree of serious enthusiasm for his task, he is not content to remain a silent reader. He commits himself to print; he neglects to wait until full maturity, infallibility, or final judgments are arrived at.⁵

Put aside Zabel's exclusively masculine inflection of his maxim, and think about what it suggests for any woman or man who wishes to comment on a text or a topic. I understand it this way: Criticism is inevitably tentative and exploratory, because it is an offering of one's views about something or someone. These views can change as the

4. I am not the first to say or suggest this. See James Boyd White, *Law and Literature: "No Manifesto"*, 39 *MERCER L. REV.* 739 (1988).

5. ZABEL, *supra* note 1, at x.

processes of reading, writing, criticizing, arguing, sharing, comparing, and judging (et cetera) proceed; they transform our understanding.

As Zabel goes on to suggest, critics seem compelled, in their "serious enthusiasm" for their critical task, to share their views with others, with anyone who will listen or pay attention. Criticism becomes, then, a matter of exposing to public scrutiny, and possibly to public rejection, the self's readings, views, interpretations, and reactions. As tentative and contestable as these may be, they constitute an attempt to discover or create a shared reality with others, one that becomes shareable, perhaps, because we come to share a way of looking and seeing, a way of thinking, or a way of expressing ourselves and conducting our educations in public. (This seems to me to be a part of what Socratic teaching is meant to do: both to encourage such performances of self-exposure and criticism, and to make them inescapable aspects of one's education.)

If I begin by observing that what counts most in such critical activity is having or gaining the knack of being able to generate such offerings from the self, I find that I want immediately to juxtapose with this claim the paradox that these performances are not meant or intended solely, or even primarily, for the benefit of the self. This is why critics (including those of the law) conduct their educations *in public*. These performances are available to others, and they are an attempt to invite others to contribute their own critical performances. I take such efforts of solicitation to reveal—however partial or inchoate the revelation may be—that it is the *sharing* of reality (or of the world) that makes it a reality (or a world) in the first place, including the reality and the world of the law.

