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Lawyer's Learning to Love Fiction

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BOOK REVIEW

LAWYERS LEARNING TO LOVE A FICTION

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Law's Interior: Legal and Literary Constructions of the Self. By Kevin M. Crotty.[1] Cornell U. Press, 2001. Pp. 231. $32.50.

Wallace Stevens remains somewhat notorious for the separation of his workaday life as an insurance company lawyer from his poetry.[2] Thus, Stevens seems at first an odd choice as the linchpin in an argument stressing affinities between law and poetry, but Stevens becomes exactly that in Kevin M. Crotty's unique and ambitious book *Law's Interior: Legal and Literary Constructions of the Self.* Crotty seeks to expose the features in contemporary legal theory that oversimplify the relations between individuals and law; and he counterposes models and explanations for law, the self, and the relations between the two drawn from specific literary works as better expressing the more complex, conflicted, and fluid realities.

In assessing what he sees as the current state of legal theory, Crotty critiques most prominently John Rawls' *Political Liberalism*[3] and Ronald Dworkin's *Law's Empire.*[4] Crotty finds the "boundedness of law—its autonomy and separation from morals" to be a shared aspect of the thinking of Rawls and Dworkin,[5] an aspect derived in part from the

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2. Though "[t]he renowned separation of vocation and avocation that lent such a mystery to the early discussions of Stevens's poetry is no longer the cliché about which biography turns," Joseph N. Riddel, *Wallace Stevens* in *Sixteen Modern American Authors, Volume 2: A Survey of Research and Criticism Since 1972*, 623-74, 626 (Jackson R. Bryer ed., Duke U. Press 1990), David Perkins' point that Stevens' "professional work seems not to have entered into his poetry" appears unchallengeable. David Perkins, *A History of Modern Poetry: Modernism and After*, 277 (Belknap Press 1987).

3. John Rawls, *Political Liberalism* (Colum. U. Press 1993).

4. Ronald Dworkin, *Law's Empire* (Harv. U. Press 1986).

5. Kevin M. Crotty, *Law's Interior: Legal and Literary Constructions of the Self* 26

earlier jurisprudential theory of H. L. A. Hart[6] and John Austin.[7] Both Dworkin and Rawls are "hobbled" by their continued insistence on the separation between law and morality, which Crotty finds "psychologically unpersuasive" and which he claims "fails to do justice to the more wrenching legal issues courts have had to address in the last fifty years."[8] Additionally, while Dworkin inadequately accounts for the role of coercion or force in law's authoritativeness,[9] Rawls account of law demands too much sophistication from citizens, who are asked to recognize as reasonable "comprehensive world-visions incompatible with their own" and to argue solely "on grounds that others could reasonably be expected to accept."[10]

For Crotty, legal theory must account for the way in which "the commitments and values that constitute people's deepest sense of their identity," though perhaps not easily recognizable in law's own discourse, "continue to press on law."[11] "Law, on this view, is caught in a bind between two imperatives: to simplify (in the interests of efficiency, clarity, order), and to make more complex (in the interests of fairness, equity)."[12] Hence, Crotty's explicit statement of purpose:

> I want, on the one hand, to correct for what I take to be the excessive optimism[13] of Dworkin's and Rawls's pictures of law, and their assumption that a stable boundary can be maintained between citizens' sense of their public and private selves. On the other hand, I will also want to show . . . that this tension in law does not reduce it to incoherence, a charge that has been made against it.[14]

To his own aid and that of legal theory, Crotty calls an unlikely trio: Aeschylus, St. Augustine, and Wallace Stevens. Crotty draws upon Aeschylus' dramatic trilogy *Oresteia* for a more realistic view of the

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(Cornell U. Press 2001).

6. *See* H. L. A. Hart, *The Concept of Law* (Oxford U. Press 1961).
7. *See* John Austin, *The Province of Jurisprudence Determined* (Noonday Press 1954).
8. Crotty, *supra* n. 5, at 28.
9. *Id.* at 27-28.
10. *Id.* at 28.
11. *Id.*
12. *Id.*
13. Optimism here reflects a curiously insistent word choice for Crotty, usually related to criticism of any view of individuals as rationale and autonomous. The examples are many: legal positivism consists of an "implausibly optimistic" vision, Crotty, *supra* n. 5, at 4; Aeschylus, Augustine, and Stevens show a concern for evil that "corrects for" the "excessive optimism of much recent legal theory," *id.* at 19; relegating a portion of ourselves to a "public zone . . . once and for all seems unduly optimistic," *id.* at 30; the "communitarian account of litigation affords too optimistic a reading," *id.* at 84; "excessive optimism marks" Jurgen Habermas' jurisprudence, *id.* at 147; case law concepts of rights are "too idealized and optimistic," *id.* at 191; etc. The word choice seems particularly odd for an author who clearly shares the vision he finds in Augustine as to the autonomous self: "For Augustine, this sense of the self as a neatly bounded entity is not at all a lofty conception, but an unexamined and misleading one: just what we tend (wrongly) to think about ourselves." *Id.* at 115.
14. Crotty, *supra* n. 5, at 29.

necessary arbitrariness in legally-imposed stasis or order and to dramatize the tensions remaining between legal system results and unsatisfied competing individual desires for justice.[15] St. Augustine's *Confessions* and *City of God* aid with compelling models of psychologically-conflicted citizenry and with theories of citizen accountability—even to a necessarily flawed legal system.[16] The poetry and prose of Wallace Stevens in turn keys Crotty's argument that exposing law as a non-autonomous, human creation, and recognizing its fictive and evolving nature, need not diminish our respect for it.[17] As perhaps the prototypical poet of opposites[18] and paradox, Stevens also provides encouragement for dealing with the shifting boundaries Crotty identifies between individual and state, public self and private self, and the paradoxical legal goals of simplicity and complexity. Crotty points in particular to the watershed cases of *Miranda v. Arizona*,[19] *Brown v. Board of Education*,[20] and *Roe v. Wade*[21] as perhaps better explainable by resorting to the writings of these three literary figures than to the writings of contemporary legal theorists or, in fact, to the court opinions themselves.[22]

While the Greek dramatist, turn-of-the-fifth-century Christian philosopher/autobiographer and modern American poet are centerpieces, Crotty's range is even more expansive. He effectively combines his extensive knowledge of classical Greek and Roman writings with wide-ranging research in historical and contemporary jurisprudence, philosophy, and psychology. What results is an often cogent and always thought-provoking argument for a reconsideration of

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15. *Id.* at 37-89.
16. *Id.* at 90-144.
17. *Id.* at 145-228.
18. Among the many opposites Stevens considers in his poetry are day/night, summer/winter, good/evil, pleasure/pain, death/life, order/chaos, and, most insistently, imagination/reality. *See* Wallace Stevens, *The Collected Poems of Wallace Stevens* (Vintage 1990). The imagination for Stevens seems finally to encompass or substitute for the self, almost without recognition of the self's own physical aspects. Stevens' poetic speakers seldom describe *doing* much of anything at all, beyond contemplating. Thus, David Perkins finds that for "relishers of character and action" Stevens' poems seem like "glassy glitters of a kaleidoscope." Perkins, *supra* n. 2, at 280. Roy Harvey Pearce describes this feature of Stevens' poetry with characteristic acuity:

> The greater paradox is this: that Stevens' quest for the ultimate humanism (for that surely is what it is) leads him toward a curious dehumanization. It urges (or forces) him in the end to purify his poems until they are hardly the poems of a man who lives, loves, hates, creates, dies. Rather they are the poems of a man who does nothing but make poems; who "abstracts" living, loving, hating, creating, dying from his poems, in the hope that what will be left will be not so much poetry but the possibility of poetry.

Roy Harvey Pearce, *The Continuity of American Poetry* 413 (Wesleyan U. Press 1987).
19. 384 U.S. 436 (1966).
20. 347 U.S. 483 (1954).
21. 410 U.S. 113 (1973).
22. *See* Crotty, *supra* n. 5, at 96-124, 206-18.

law's theoretical structure that digs to bedrock legal principles with no foundational stone left unexamined. Borrowing from Stevens' views of the individual in relation to tradition,[23] neither is any stone to be discarded without close inspection for its value in a new or altered construction.

Law's Interior has its limits, however. For the most part, Crotty leaves it to another who might agree with his assessment of the unaccounted for sense of fluidity and continuum in law to create a more inclusive theoretical model. Also, Crotty's conception that courts do and must take into account changing relations between citizens and the Constitution (even as the courts interpret that document) is intuitively attractive, but he gives very little support for his persistent claim that courts should look to legislative enactments as the best guides to these changing relations.[24] Such support seems particularly necessary since in two of the cases Crotty praises—at least for their results—*Roe* and *Brown*, the Supreme Court struck down legislative enactments.

Crotty is not always consistent, as when he identifies evil in Stevens' poetry first as "finitude, contingency, partialness: in a word, mortality," second as standing for "the continuing pertinence, even in a 'postmetaphysical' age, of the transcendent as an object of desire," and third as representing "the ineluctable complexity of the world" within the space of a few pages.[25] To the extent the inconsistency is Stevens', Crotty might still be questioned for his reliance on Stevens' ideas in this area.

Perhaps understandably, Crotty does not attempt to define literature, though he gives several statements defending literature's relevance to law.[26] Still, in a book that can be read as a 231 page attempt to define what law is, a reader might expect some recognition that defining what literature is can be an equally dicey proposition.[27]

Finally, *Law's Interior* itself provides Crotty's best justification for the study of law in relation to literature. The canonical classics he considers prove a fresh and provocative critical lens through which to examine "law's interior," and Crotty's conclusion that the legal system features a "rationality strikingly *fictive* in conception—not false or deluded, but an admittedly non-demonstrable, idealizing self-description" is powerful.[28]

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23. *Id.* at 187-88.
24. *See e.g. id.* at 10, 205-06, 227.
25. *Id.* at 174, 183.
26. *See e.g. id.* at 12, 224.
27. Book-length examples of the diverse discussion of possible definitions include: Peter Widdowson, *Literature* (Routledge 1999); *What is Literature?* (Paul Hernadi ed, Ind. U. Press 1978).
28. Crotty, *supra* n. 5, at 153.