Lawyer's Learning to Love Fiction

Chris Kelsey

Follow this and additional works at: http://digitalcommons.law.utulsa.edu/tlr

Part of the Law Commons

Recommended Citation

Available at: http://digitalcommons.law.utulsa.edu/tlr/vol37/iss2/8

This Book Review is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact daniel-bell@utulsa.edu.
BOOK REVIEW

LAWYERS LEARNING TO LOVE A FICTION

Chris Kelsey*


Wallace Stevens remains somewhat notorious for the separation of his workaday life as an insurance company lawyer from his poetry. 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 and Ronald Dworkin's Law's Empire. Crotty finds the "boundedness of law—its autonomy and separation from morals" to be a shared aspect of the thinking of Rawls and Dworkin, an aspect derived in part from the

* Chris Kelsey is a Kansas Bar member currently writing a law and literature dissertation to complete his Ph.D. in English. He taught Law and Literature and Legal Writing at The University of Tulsa College of Law from 1999-2001.

1. Associate Professor of Classics at Washington and Lee University.


5. Kevin M. Crotty, Law's Interior: Legal and Literary Constructions of the Self 26
earlier jurisprudential theory of H. L. A. Hart and John Austin. 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." Additionally, while Dworkin inadequately accounts for the role of coercion or force in law's authoritativeness, 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."

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." "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)." Hence, Crotty's explicit statement of purpose:

I want, on the one hand, to correct for what I take to be the excessive optimism 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.

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

---


8. Crotty, _supra_ n. 5, at 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.
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. 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. 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. As
perhaps the prototypical poet of opposites 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, Brown v.
Board of Education, and Roe v. Wade 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.

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

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.

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.\(^ {28}\)

\(^{23}\) *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.