BOOK REVIEW: THE MARKETING OF LAW AND LITERATURE

A Vision of American Law: Judging Law, Literature, and the Stories We Tell

By Barry R. Schaller.*

Reviewed by Timothy Hoff**

I was visiting the historic town of Gainesville, Alabama, many years ago when one of the resident widows asked me if I would like to see her home. When I entered I was surprised to see every wall in the house jammed with books. "Oh," she said, "yes the books. You see my husband was a lawyer." He was a lawyer from a time and circumstance quite alien to the hectic lives of today's practitioners. I suspected he might have looked and acted like Atticus Finch, Harper Lee's fictional lawyer from south Alabama and a time when people moved slowly.¹

Lawyers today are highly educated but lack the time to read extensively. I have taught a course in Law in Literature for many years, over which time countless lawyers have asked me for a reading list, in the hopes of finding time enough to read the very best literature that informs their vocation. In A Vision of American Law: Judging Law, Literature, and the Stories We Tell² Barry Schaller has given us a useful guidebook for this subject. There are many other recently published books on law and literature,³ and quite a few that deserve to be called classics,⁴ but

* Judge, Connecticut Appellate Court, sometime Guggenheim Fellow and Lecturer, Yale Law School.
⁴ Among what have become standard critical analyses are: Robert A.
most of these are highly specialized academic works that demand far more of the reader than most lawyer-readers would find useful. A Vision of American Law bears the marks of scholarship, but it brings with it the virtues of brevity and readability. It is also a good apologia for the interdisciplinary study of law and literature. The classic defense of the subject is that of John Henry Wigmore, who decades ago reminded us that "[t]he living side of the rules of law is often to be found in fiction alone." It is a defense, Schaller reminds us, that would not have had to be made in antebellum America, when law was "a unifying cultural and political force".

Schaller's book focuses in particular on twenty-one works of literature and organizes his reflections in terms of six themes. The first theme is that of the individual in society. Here he chooses to analyze James Fenimore Cooper's The Pioneers and Ralph Ellison's Invisible Man. Schaller's reflections are set against First and Fourth Amendment cases.


5 There are plenty of footnotes for those who feel lost without them, but they are placed at the end of the book. There is also a good bibliography, but it curiously omits mention of the important works of Richard Weisberg and James Boyd White mentioned in the immediately preceding footnote. The best and most complete bibliography available is PAUL J. HEALD, A GUIDE TO LAW AND LITERATURE FOR TEACHERS, STUDENTS, AND RESEARCHERS (1998). More useful for most readers is ELIZABETH VILLIERS GEMMETTE, ED., LAW IN LITERATURE: AN ANNOTATED BIBLIOGRAPHY OF LAW-RELATED WORKS (1998).


7 SCHALLER, supra note 4, at 80.

8 Many more are mentioned briefly. Most of the works Schaller considers are novels. For an excellent collection of shorter fiction, British as well as American, including some excerpts from novels, see FRED R. SHAPIRO AND JANE GARRY, EDs., TRIAL AND ERROR: AN OXFORD ANTHOLOGY OF LEGAL STORIES (1998).

9 SCHALLER, supra note 4, at 26-28.
As we shall see, Schaller focuses on three of Cooper's novels, and for this he is apparently indebted to the pioneering work of Robert A. Ferguson, whom he quotes at some length.

The tension between private codes of conduct and generally applicable law is Schaller's second theme. Here he discusses several works by William Faulkner, Nathaniel Hawthorne's *Scarlet Letter*, Owen Wister's *The Virginian*, Richard Price's *Clockers*, and Russell Banks' *Rule of the Bone*. These works are discussed in light of cases dealing with a mother's refusal of medical treatment for her daughter on religious grounds, and criminal prosecutions of members of a gang with their own private codes of conduct.

The roots of violence is the third grand theme. Here Schaller looks at Cooper's *The Last of the Mohicans* and Robert Penn Warren's *Night Rider*, as well as some other works of fiction, and discusses them in the context of cases dealing with spouse abuse and firearms control.

Cooper's *The Ways of the Hour* and Theodore Dreiser's *An American Tragedy* provide focus for Schaller's fourth chapter, dealing with the problem of legal authority. A judge himself, Schaller points out that there is a lot that judges can do to enhance the authority and legitimacy of the judicial system, including expediting cases, demanding competence of court personnel, and suggesting the use of alternative dispute resolution mechanisms.

Optimism and the belief in progress are a fifth theme, under which Schaller looks at Frank Norris' *The Octopus*, Stephen Crane's *Maggie: A Girl of the Streets*, John Dos Passos' *The Big Money*, Nathaniel West's *The Day of the Locust*, and F. Scott Fitzgerald's *The Great Gatsby*. In

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11 Schaller, supra note 4, at 80.
16 Schaller, supra note 4, at 96. See also Barry R. Schaller, Managerial Judging: A Principled Approach to Complex Cases in State Court, 68 Conn. B.J. 77 (1994).
connection with these literary works Schaller posits "the American idea— the dream of justice,"\textsuperscript{17} and finds this dream undergirded by the work of Chief Justice John Marshall and his Supreme Court.\textsuperscript{18}

Finally Schaller reflects on how individuals respond to economic, legal, and social change. He focuses on Mark Twain's \textit{Huckleberry Finn}, John Steinbeck's \textit{Grapes of Wrath}, Wendell Berry's \textit{A Place on Earth}, and Russell Banks' \textit{The Sweet Hereafter}, "all of which serve as examples of individual responses to change."\textsuperscript{19} He analyzes Saul Bellow's \textit{Herzog} for its exploration of effective judicial response to social change and conflict.\textsuperscript{20}

One might take issue with Schaller's failure to mention some classics of the law and literature canon, most notably Herman Melville's \textit{Billy Budd}.\textsuperscript{21} But Schaller is nonetheless an experienced and great teacher with his own distinctive and compelling vision. He has covered much of the literature, perhaps even too much for such a short book. But brevity is one of this book's virtues, its other assets being that it organizes a substantially large canon of works in a coherent scheme and amply justifies the law and literature enterprise. Most importantly \textit{A Vision of American Law} makes the reader excited about reading more; it is a delightful literary appetizer.

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\textsuperscript{17} Schaller, supra note 4, at 101.  
\textsuperscript{18} Schaller, supra note 4, at 100.  
\textsuperscript{19} Schaller, supra note 4, at 120.  
\textsuperscript{20} Schaller, supra note 4, at 132-37.  
\textsuperscript{21} Ten years ago it was "safe to say that Billy Budd is an obsession in legal academia." Judith Schenck Koffler, The Feminine Presence in \textit{Billy Budd}, 1 Cardozo Studies in L. & Literature 1 (1989).
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