

Literature and the Human Substance of Law

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ABSTRACT

Law is a specialized intellectual system and a special social system. But lying beyond such systems is the human substance of suffering, desire, and compassion. Literature may move us with its insights into the personal life hidden behind the abstract theory and the impersonal procedures of law. This comparative study of four short stories explores how the literary art draws forth our poignant encounter with the humanity underlying law. This raises questions for the philosophy of law as well focuses attention upon aesthetic powers. The works studied are by Louis Auchincloss (United States), Margaret Atwood (Canada, writing in English), Franz Kafka (Czechoslovakia, writing in German), and Graham Greene (England).

KEY WORDS

absurdity	aesthetics
Allende, Isabel	Atwood, Margaret
Auchincloss, Louis	business
Cvapek, Karel	culture
Easmon, R. Sarif	Gardner, Erle Stanley
gender	genre
Gordimer, Nadine	Greene, Graham
journalism	justice
Kafka, Franz	Lampedusa, Giuseppe di
law	lawyer

legal procedure
murder
philosophy
professionalism
Simpson, O. J.
television
trials
video
woman

Mortimer, John
O'Connor, Frank
profession
Ryūnosuke, Akutagawa
Singer, Isaac Bashevis
theory
value judgment
Wishingrad, Jay

As a philosopher, I work in the field of philosophy of law, especially in those areas where human needs are not well served by law. I also work in the field of aesthetics, especially where the powers of imagination lead to new and valuable experience. Thus, I am passionately interested in the subject of our quadrennial conference, "Literature and the Law."

"Law and Literature" in legal and literary studies is an exciting and rapidly expanding field. The law is being studied in literary terms such as narrative and intertextuality, while legal themes are being appreciated as the core of an extensive body of international literature. I turn to such literary works for their double value: (1) They may probe the problematics of law, poignantly bringing forth the human suffering and dissatisfaction that too often slip through the nets of our legal theories. (2) They may offer aesthetic delights as they apply the artistic resources of narrative, character, action, form, and style to the experience of human beings with law. Literary works on legal themes may thus both disturb and please us. They are works of art that gratify the aesthetic sensibility, while they may also be provocations that upset our thinking about law and require us to struggle with new understanding.

To illustrate such values in literature, I wish to discuss and compare four short stories for you, drawn from the exemplary anthology edited by the late Jay Wishingrad, *Legal Fictions: Short Stories about Lawyers and the Law*.¹ The short story is convenient not only for the anthologist but also for the speaker at our comparative conference.

Wishingrad has chosen as appropriate opener of his volume a tale by Louis Auchincloss, and I will follow his lead in this presentation. Auchincloss is a prolific contemporary American author as well as a practicing lawyer. "The Tender Offer" (1983) centers on a cultured and experienced lawyer, Valerian Shaw, who is approaching retirement as member of a New York legal firm. He feels out of place in that firm which follows an impersonal business view of law. His senior partner--and former classmate--follows that technical, business-like approach, but still values Val: "In your case, Val, there are qualities of experience and wisdom and compassion and integrity--yes, sir, good old-fashioned integrity--that are indispensable to a firm like ours" (p. 5).

The firm is facilitating a corporate takeover of a publishing company: rather cold-blooded business that may cost people their careers, though we are told that nothing is illegal or unethical about the practice. This kind of legal business that may cost people their careers, though we are told that nothing is illegal or unethical about the practice. This kind of legal business is distasteful to our old-fashioned hero: "Even the vocabulary gets me down. Terms like 'bear hug' and 'blitzkrieg' and 'shark repellent'!" (p. 5) The publisher is an old friend of Valerian; they lunch together regularly; they share an interest in publishing historical documents about New York.

Practicing professional restraint as well as personal self-control, Valerian avoids further social meetings with his friend the publisher, but they bump into one another at the club and sit down to lunch, that quintessential event where big business is mixed with small talk. Moved by a sense of fairness, by respect for his friend, as well as by his own interest in the publishing project, Valerian tips off the target of the takeover.

It is not easy. Our hero has to help himself to extra drinks before making the noble gesture. While Valerian is acting

partly to protect his own interest, we readers feel that his gesture is the right thing to do. It is a break of professional confidentiality but in the interests of decency, caring, and culture. The lawyer, we sense, is justifiably overstepping professional rules in the admirable effort to see that good people are not hurt and good projects are not aborted. Given his integrity, experience, and humane outlook, this small indiscretion is a benevolent corrective to the uncaring legal system.

"Of course," confesses Valerian to the publisher he has saved, "you realize I've put my professional life in your hands" (p. 10). This willingness to frankly stake his professional life on such a gesture increases our respect for the hero. Here is someone who does good, at his own risk, by going beyond the professionalism of law; thereby he rises to a new height of genuine professionalism. This is the crowning moment of his career.

But the leaked information is put to uses that prove costly to the firm, the leak becomes known to the senior partner, the publisher denounces the violation of professionalism by Valerian and insists that he be fired. The hero is forced to resign in disgrace.

The painful revelation of Auchincloss's story is that a gap exists between the profession of law on one hand and on the other hand the human concern, the moral values, and the personal virtues that we treasure in life. The goodwilled act which the kindly and cultivated lawyer wishes to stand up for decency despite cold legal calculation backfires as he is victimized through legal manoeuvres by the very person he had helped. The law gets even with the lawyer who tried to rise above it. In a terrible irony, strict adherence to the uncaring formalism of the law would have been in the best interest of all the parties.

The hero who would do better than the law becomes a despicable villain. The mighty reversal which spells the failure

of decency and the collapse of a noble career occurs in the brief scope of the short story, whose economy, simplicity, and clarity make the totally unexpected outcome stunning. The elegance of Auchincloss's artistry in composing the story, with its formal perfection and effective concentration, contrasts with the heart-breaking substance of the tale. The content is deeply disturbing, while the form and the execution are aesthetically enjoyable. The story has a professional polish as writing, though its hero fails utterly as a professional in law. But that is not due to a flaw in his character or a lack of experience in law. What proves most troubling to the reader is that the grave breach of canons occurs due to the admirable character and wide experience of the hero. Because he is so humane, and so wise in the matter of law, he ruins himself thoroughly.

"How could you betray a client? How could you violate the most sacred of the canons of ethics? What are the younger men [note the gender] to think of us?" (p. 12), asks the senior partner, and now the former friend, of our tarnished hero in their final dreadful interview. Valerian (the name is that of a Roman emperor whose end was unhappy), has been obliged to resign, and he may lose his pension. He can only reply, "Why don't you just tell them you've gotten rid of a rotten egg?" (p. 12). The lawyer who earlier was praised for integrity now slinks off as a self-confessed scoundrel. Short story : huge reversal.

At the beginning, Valerian was the center of narrative concern. Though the story is written in the third person, we see things as he does. But at the end, we have no access to his feelings or thoughts; we only see him going to the door to leave the firm, the profession, and the story. The narrative becomes closed to him just as the profession is now closed to him. And we are rendered closed to him. He has been cut off. We cannot read any further.

We want to re-read the story to see if we missed something

that would justify the outcome, if the hero should have changed his action at some point, or if the author used some trick to make this twist in the story. The story rewards such re-reading. We latch on to more details that increase our sympathy for Valerian. We find no authorial tricks. Auchincloss has taken special care in the crucial lunch scene to nuance the concerns of our hero by introducing the prospect of his doing a book for this very publisher. It would be too easy for the story if Valerian had no personal interest at stake in the corporate takeover. But his interest, we also see, is not the main reason for his act. That act is not for personal gain but for the well-being of another and rectification of the workings of the law.

The business of the drinks is also handled with care by Auchincloss. Valerian reaches over to finish the drink of the publisher. The breach of professional ethics is not an indiscretion caused by drinking alcohol; the drinking follows from Valerian's will to take a decent step against professional ethics. As readers, and re-readers, we cannot find the point at which we might tap the hero on the shoulder and whisper, "You are making a mistake, the mistake of a lifetime!" As we see it, he is not making a mistake.

Auchincloss has masterfully constructed this tale so that we can't tear it apart and dispose of it. The unity stands firm. The writing resists being labeled as faulty, even upon re-reading. This is an artistic achievement of considerable skill; it is a work with long-lasting effect. We can't get over what happened to Valerian.

The intellectual difficulty brought forth by Auchincloss should continue to trouble us. For the truth is that the formal procedures of law are uncaring and often are used to hurt decent people. But we are reminded of the additional truth that violation of the formal procedures, even with the best of intentions, instead of being a corrective to law may become an even more harmful abuse of it. The lesson, then, is that rather

than breach the canons for humanitarian reasons, all practitioners of law should abide by the formal procedures, uncaring though they be, because in the long run this is the way to be fairest to all parties. The problem remains that if we don't do anything above the law, if we don't give someone a needed tip, then we allow decent people to get hurt. If we have difficulty in facing these alternatives and their consequences, so does the hero of the story, a man of integrity who has practiced law for decades.

These questions are especially troubling to the American legal system which places so much weight on legal procedures as neutral instruments to be used by adversaries. When I went to law school, hoping to learn more about justice, the first thing I was told is: "You are here to learn how to win cases." A week later I dropped out of law school in order to continue my work as philosopher of law.

Such a legal system has its shortcomings. Justice may not be well served by it. But the alternatives may have greater shortcomings while not serving justice as well. American college students and the general public have difficulty understanding a system that insists a lawyer be conscientious in trying to get the client, who may be a murderer, off the hook, while also permitting a lawyer to make legal deals, such as corporate takeovers, that reduce decent people to poverty. Something sounds wrong in both cases. But I am not convinced that abandoning legal formalism and the adversarial system is the right answer.

When such a system is the operative rule of law, the corrective cannot be a breach of the rules. It is painful to recognize that. More widespread recognition of that is needed. Auchincloss, while not giving us a didactic piece, upsets our attitudes so that we have to come round to face these problems.

If the failing of American law is its lack of caring, then the genius of American law is also its formalizing of procedure

("due process") so that everyone in principle has access to the same instruments with which to pursue their divergent ends. Though justice might not be done in the outcome, justice is done in the doing by adhering to the procedure.

Margaret Atwood, the great contemporary Canadian author, who one day will be a candidate for the Nobel Prize, is represented in Wishingrad's anthology by her story, "Weight" (1990), told from the first-person point of view by a former lawyer, now in business. The central character is intensely conscious of her womanhood, as she engages in a business lunch with a man. "I am gaining weight" (p. 70), opens the story, echoing the self-deprecating worry that besets many professional women in North America. So we have the undertones and the undertow in the role-playing between man and woman engaged in a professional yet social relationship. It is all about sex, self, power, and money.

Atwood's story goes deeper to a story beneath this story. The purpose of the lunch is to explore the man's funding of "a shelter for battered women. Molly's Place, it's called. It's named after a lawyer who was murdered by her husband, with a claw hammer" (p. 70). Our hero (I use the term without gender implication because if we continue to call women heroines then women can never be thought of as heroes) has a double consciousness. (1) She recollects her classmate Molly's life, especially Molly's relationships to men. (2) She mulls over the present encounter with this man whose company may provide the charitable funding to protect women like Molly. The hero, who remains unnamed, though we are present in her world of thought, memory, and emotion, must go through the second level of experience if she is to be true to the woman she knew and remembers in the first level. So the story has more weight than simply being about the mundane matter of a business lunch. It is a probing into a sensitive professional woman's experience of what being a woman, especially a woman with legal training, means in a man's world. Molly was

killed by that world; her lawyer husband struck the fatal blow. Other women need shelter from that world. Our hero, who once had a husband of her own, sizes up her lunch partner as potential lover as well as murderer.

What is "the bottom line" of the transaction at lunch? This is a professional notion that the hero must face to get somewhere in her worthy project. "The bottom line is that cash is cash, and it puts food on the table" (p. 81), she imagines reporting to Molly. "*Bottom line*, she will answer. What you hit when you get as far down as you're going. After that you stay there. Or else you go up" (p. 81). Our hero believes that she can go up. By putting up with the sexual and professional role-playing and game-playing, she can make a contribution to women and perhaps to the legal profession.

But this is no joyous commitment, no uplifting experience, no happy ending. Atwood's shaping of the story makes each moment uncomfortable, unsure, unsettling. We are caught up in the fundamental malaise of being a professional woman. Every recollection, every observation speaks of sadness and pain, though occasionally also of hope. Atwood's artistic mastery consists in making us participants in the complex and profound experience, while the story bears the superficially simple form of a lunch meeting.

Three sets of action are involved in this work. (1) The lunch begins and ends. (2) Molly's life flourished and ended violently. (3) The hero has struggled with the meaning of her own professional life during the lunch. She retains her dignity and her commitment.

Atwood has explored the gap between personal life and professional persona. She opens our experience to what legal careers do to women as well as to what women may do. The terrible irony is that the lawyer, Molly, has been cruelly killed by her lawyer husband. Yet only by competing for money can women receive the security and protection they deserve. In such competition women run the risk of the very victimization

they would prevent. Vicious circle.

The business lunch is only partially about business; it is also about gender relationships of men and women. Atwood has memorably shown us the gendered power structure of law and business. The power is in men's hands. Money is the key to power. Women need to get hold of it. It is all a matter of business. Our hero has had to get into that field, leaving beyond law, whereas the woman who remained in law, Molly, was murdered. If women are to protect themselves and have a decent chance at lives and careers of their own, then they must play the professional games that bring them a share of power through money.

Atwood's hero, like Auchincloss's hero, is making a step-during lunch-in the name of benevolent action, something decent called for in the face of the shortcomings of law. But whereas Valerian acts as lawyer to go beyond the legal rules as they involve business deals, Molly's friend has put aside law to work within the bigger game of business, a game, like everything else in life, that is thoroughly gendered. The heroes of both stories are heroic, not just as the central sympathetic characters. Each makes a difficult yet committed act on behalf of what is right. Valerian's failure is total. Atwood's character has not yet triumphed, yet even so, you might think that what is to be gained is minor. Not so. To gain funds for one project is an advance for womanhood. At the close of the story, the hero imagines visiting Molly's cemetery to explain the lunch activity. "I will lay a wreath of invisible money on her grave" (p. 81).

Atwood has crafted a superb work of art than on the surface is a small slice of conventional business life. Lunch, which was the central scene in Auchincloss's tale, becomes the entire scene in Atwood's piece. Her work thus has an easy unity and completeness. The wonderful things that go on beneath the surface hold our attention and move us around in woman's consciousness. We bob up and down in that

consciousness between the levels of remembered murder, hope for reform, and present worry about how attractive we are. The in-depth story is open-ended; it does not neatly conclude within the scope of the surface story. We cheer on the hero of whose infinite possibilities for life we are now aware.

Atwood has opened our experience in astonishing ways. Rereading this story, we are eager to pinpoint where and how Atwood conjoins our consciousness with that of the hero. In its delicate pacing and telling detail, the writing is convincing and decisive. For instance, of her lunch partner, the hero says, "This man has a name, of course. His name is Charles" (p. 71). She then imagines variations on his name. But her name remains naturally out of her thought. Hence, we think with her about him and not about her. She is the subject we have entered, not the object.

Here is another instance from the hero's reflection: "It props me up; a career like an under-wired brassiere" (p. 76). Only a woman can think of her career in those terms. Notice that the career is something taken up and put on. It is a show for others, such as Charles. While uplifting, it can also be annoying. "Some days I hate it" (p. 76).

Franz Kafka, one of the great writers of German literature, a Jew who lived in Czechoslovakia until his death in 1924, penned the remarkable tale, "Before the Law," which has been translated into English by Willa Muir and Edwin Muir. In it, a man comes to the gate of the law and seeks admittance. The doorkeeper refuses him entry. The rest of his life, the unnamed hero tries to enter, but he is always put off.

Finally, at the end of his life, the hero's curiosity leads him to ask, "Everyone strives to reach the Law;...so how does it happen that for all these many years no one but myself has ever begged for admittance?" (p. 286). The doorkeeper shouts to the dying man: "No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it" (p. 286). End of story.

We reel back from this tale dazed as if the door to law had just been slammed in our face. In the shortest of space (one paragraph), Kafka plunges the reader through several layers of anguish. First is the frustration of limited access; the law is guarded. Second is what Hamlet spoke of as "the law's delay": we are made to waste time waiting. Kafka's third layer plunges to what surely must be its final depth: we waste not only our time but our lives waiting for the law. Law appears as not meant for us at all.

But a fourth layer sinks us yet deeper in an astonishing turn: the law really is meant for us as individuals. In that case, it makes sense for us to seek the law. But since it is not made available to us while we are alive, it also makes no sense. Absurdity!

With amazing power, Kafka takes us even beyond this layer to the fifth stage: since during our lives we fail to reach the law which has been meant for us, it is closed down as no longer meant for us. How unfair! How maddening! How nightmarish!

I have spoken of "we" as plummeting through these successive experiences toward madness. Kafka has been writing about one man. But the suffering is not reserved for that anonymous individual. The hero brings us into the same situation by his question concerning others. We may infer that other gates to the law have been reserved to us, so that when we seek entrance the same meaninglessness will be experienced. For every person in the world a personally reserved entrance to the law may exist--through which that person is not allowed to enter.

Our hero had thought that the law "should surely be accessible at all times and to everyone" (p. 285), but the bottom line, to use Atwood's phrase, is that the law is closed to everyone. The edifice of the law may be infinitely large to serve all people, but it is absolutely inaccessible to any of them. Some people, you might contend, do manage to get

through the door, as does Atwood's hero, but the gatekeeper in Kafka's story informs the applicant that his is only the first of the doors to be entered. "I am powerful. And I am only the least of the doorkeepers. From hall to hall there is one doorkeeper after another, each more powerful than the last" (p. 285). Molly, the friend of Atwood's narrator, had passed through a few gates of the legal profession only to be beaten to death by her lawyer husband.

Kafka's parable is perfect in form and flawless in wording. It is an aesthetic bubble: Free-floating, seamless, self-contained. The beauty of the work is fascinating, while its multiple-layered depths draw us to the very limits of human meaning. It defies logic. However we might try to argue for access to the law within the framework of the story, our objections and our questions are shut out. Reasoning is ineffectual in the Kafkaesque realm of law. As human beings we cannot make our case.

The work is so brief and our experience of it so vertiginous that we are not inclined to re-read it. It makes all its effects at first reading. It sticks with us for a lifetime. You might be tempted to look back into it for more specifications--Who is the hero? What is his case? To what city does he come and in what country?--but we know that no hints are given to any such questions. They are all insignificant, though to the hero-victim they are crucial. The big questions that we would like to ask--what happens in the inner chambers of the law? Who is there? How can we get in?--are rendered unanswerable by the story. Like the hero, we are stuck on the outside. The story, no matter how closely we read it, cannot get us inside. It seems not a story crafted by a human artist, but a reality given to us.

Kafka's superlative artistry leaves us with one of the most disturbing experiences of law: our sense of total exclusion from it. The law, which is intended for us as human beings, is out of the reach of humanity. In your experience of law, you

may have gotten through some doors and found some help. But in the process did you not also experience the overwhelming dread that you would never get to the legal service meant for you? For over a decade, I represented myself in a case against one of the most powerful public institutions in the state of Pennsylvania. You can imagine how I felt during the years of silence that were the answer to some of my inquiries or protests. Perhaps absurdity, nightmare, and insanity are at the core of any person's experience of law. Kafka makes us face the likelihood with unforgettable *Angst*.

As the final story in this comparative study, I want to introduce a work entitled "The Case for the Defence" (1939), by the great English author, Graham Greene. It is couched as a first-person report of a trial and it follows journalistic conventions. "It was the strangest murder trial I ever attended" (p. 353), opens the piece to whet our appetite as readers of the sensational. Greene's unnamed narrator gives the factual account, including names and addresses, presented at the trial of the hammer murder of a woman. It appears to be an open and shut case against the accused, a brutal chap, who was seen at the murder site by several witnesses. "It was all over, you would have said, but the hanging" (p. 354) (capital punishment was then in force). Yet our reporter signals to us that the chief witness, Mrs. Salmon, "went in fear herself" "after the astonishing verdict" (p. 354). So we are alerted to a strange twist to come.

That twist comes as the counsel for the defense defeats the testimony of the star witness by producing in the courtroom the identical twin of the man on trial. Get it? "What we saw then," says the experienced reporter-narrator, "Was the end of the case" (p. 355). None of the witnesses can be sure which of the twins they had seen leaving the murder scene, and each of the twins offers the alibi of being with his wife at the time of the murder. In sum, a perfect defense. The reversal has been sudden and complete.

But the story is not over. The murderer, whichever one it is, has been acquitted, yet in exiting the crowded court house, "somehow one of the twins got pushed on to the road right in front of a bus" (p. 356). Another quick reversal. The perfect murder receives capital punishment after all. "Divine vengeance?", asks our observer, puzzling over the startling outcome, as if Greene is trying to divert our attention from his authorial act of poetic justice. The death, which occurs by a smashing in of the skull, just as was the case of the original victim, is meant to appear as a remarkable fact rather than as a literary contrivance.

Greene gives the story yet another twist since his narrator and even the star witness cannot tell whether the brother who has just died was the murderer. "But if you were Mrs Salmon, could you sleep at night?" (p. 356). Presumably, Mrs. Salmon is in danger if the surviving twin was the murderer, since he may seek vengeance upon her for her testimony. Even if the survivor was not the murderer, he too may seek vengeance upon Mrs. Salmon, as he is likely to be as murderous as his brother. Greene's closing words, an interrogative addressed to us as readers, sows the fear that we too are potential murder victims, for the case demonstrates that even the most substantial evidence against a murderer may not suffice to keep the killer off the streets. We are meant to feel a thrilling chill at the conclusion of the tale, as is traditional in murder stories. The case is ostensibly about someone else, but then we are made to wonder if given such a case we can sleep at night.

Greene's artistry consists in making several reversals and twists within the short compass of this form of popular literature. I cannot say that he reaches any depths of insight about human experience or the nature of law, or even that his artistry is successful. At the end, we are not as worried about our safety as Greene might wish. Nor should Mrs. Salmon be as fearful for her safety as the narrator suggests, for if the surviving twin attacks her he cannot profit from the same

defense used in this case. But the weakest link in Greene's chain of events is the accidental death of one of the twins. The more we ask of that twist, "Why does it happen?" the more we are inclined to answer, "Because the author would not have had enough of a story without it!" The implausibility in the action is too noticeable as an artistic contrivance.

If this fictional piece by an outstanding writer is second-rate, it is nonetheless instructive as an example of the genre of murder trial fiction whether in written or video format. The text would make an excellent source for a 50-minute television murder mystery (it may have been so used). The high dramatic point when the twin stands up in the courtroom would be a splendid visual moment (Zoom In; Crescendo; Prolonged Close-Up). That the pushing of the crowd following the acquittal causes the accidental death of one brother could be made more plausible by visual means than it is by description (Crowd Scene; Blurred Focus; Hubbub; Accident). Finally, the threat in the eyes of the survivor could be seen by we the viewers as well as by Mrs. Salmon (Extreme Close-Up; Silence; Slow Fade-Out). The video version would not need a narrator, though intercut shots of newspaper headlines might help us grasp the case as well as give the journalistic flavor to the events. In 1995, I can't help but read Greene's fictional piece of more than half a century ago in video terms.

In any case, Greene's story illustrates the construction of a clever tale around a courtroom scene. It is a quick-moving, easily read piece, with violence, frightfulness, sharp changes, and unexpected outcome. Fiction, video, and cinema thrive on this fascination with the courtroom theatrics of murder trials. Erle Stanley Gardner's Perry Mason and John Mortimer's Rumpole of the Bailey are stars in this tradition (one of Mortimer's tales is included in Wishingrad's collection). Why, even real murder trials have this interest, as is attested by the recent world-wide television coverage of the trial of O.J.

Simpson. That trial is presented to the world not so much for its legal significance as for its entertainment value. All the participants in it seem to be subjects who have stepped out of television soap operas.

Mostly, however, criminal trials, even for murder, are dull affairs. They are not as exciting and dramatic as we want them to be. Occasionally, as in the Simpson case, life imitates art, and lawyers conduct the proceedings as a series of dramatic stagings.

Underlying the trial genre of fiction is a thirst by the public for sensationalism as well as our preference for imaginative patterns as shaping legal proceedings. We learn from serious study of this genre that although the law does not usually work this way, our imagination prefers to see it as working this way: the gap between legal procedure and imaginative drama. When we are called to serve as jurors in real cases, we bring with us these patterns of imaginary legal experience, since we have become accustomed to the artistic genre.

What Greene is doing in this wisp of a story, which does not invite re-reading, or bear up well under it, satisfies a popular taste. It is a fictionalization of law that sounds realistic and that is agreeable to the imagination at the very moment that it also meant to frighten us a bit. We can sleep well after reading Greene's story or others like it or seeing films and television programs in this genre. They are entertainments, usually light, sometimes clever, a little frightening, but not really threatening.

Kafka's story is far from entertaining or satisfying. It keeps us awake. The law, as Kafka makes us experience it, is not amenable to shaping by imagination into manageable patterns. It is beyond us. We are closed off from it. We never get into the heart of the action, as in Greene's courtroom. The law is alienating, crushing, inhuman, senseless. In Greene's world, justice gets done, even when it seems to be defeated.

Things work out, more or less. But that does not mean that murders will cease: we continue to live in a world of murderers. In Kafka's world, we continue to live--and then die--without benefit of the law.

In Atwood's world, we may make positive steps to prevent murder and extend legal protections, though these steps are small and painful and risky and grubby. In Auchincloss' world, the positive steps taken by even benevolent and knowing legal practitioners may lead to failure, harm, and dishonor. Unlike Kafka's hero, Auchincloss' hero has passed successfully through all the gates of the law. He is an insider. He seeks to redeem his profession by a moral act that bypasses professional restraints. He does the right thing. We are on his side on his decision. But it is, alas, the wrong thing, and we realize that we have been wrong.

Atwood's hero has given up the legal profession for business. She can better serve the goals of law, such as human protection, by raising money. Her lawyer friend, Molly, could not survive in her profession. You can get killed even if you are a lawyer and if you are a woman. The hammer murder of Molly is the troubling, recurrent, driving force in the consciousness of Atwood's hero. The woman-to-woman relationship is the compelling interest as the business woman faces her male lunch partner. Atwood's world is inescapably gendered.

The old woman who is the victim of hammer murder in Greene's story is invisible. Though given a name and address, she has no substance. The alleged murderer, described in vivid detail, is the strong presence in the tale. The woman is merely the victim. The man and his brother are caricatured as brutes. The chief witness, another woman, clearly delineated as a character, is left as a possible future victim. But Greene does not tell the story from Mrs. Salmon's point of view, as might Atwood. The woman-to-woman relationship of the neighbors is not present in Greene's account. While the gender of his

narrator is not indicated, we are inclined to accept the point of view and the voice as that of a male. This is the standard operative unquestioned point of view on the world.

Greene's narrator is necessary to giving the story, while Atwood's narrator is the very world of the story. Consequently, we are within the character or the woman, privy to her feelings, memories, thoughts, and hopes. Greene's characters appear like cutouts seen from the outside. The chief character in Kafka's tale seems to dissolve before our eyes as we take his place. The antagonist, the only other character in Kafka's story, remains forbidding and incomprehensible, like one of those giant monsters that guard the gates of temples. Three characters are present in Auchincloss's story: (1) the senior partner, whose decency is doubtful in his professionalism, but who turns out to be the defender of righteousness; (2) the publisher, who though humane and a friend of the hero, betrays him; and (3) poor Valerian, the man of integrity who has to denounce himself as a rotten egg.

Atwood's story in character, narrative, action, and language is all about gender. Greene has used stereotypical gender differences (woman=victim; man=brute) to fit the pattern of a murder trial, but he does not place us within self-conscious maleness. Gender does not matter in Kafka's sketch of his hero. It could as well be a woman. The story might even be better if it were a woman who has been closed out of the institutions of power. The maleness of the gatekeeper does add to his formidable power.

No women appear in Auchincloss's world. They are not present at the law firm, they are absent from the club, they are not thought of by Valerian. We may speculate on how much more effective the story would have been if the publisher were a woman, or if the senior partner were a woman. Yet that Valerian is a man seems quite appropriate. Otherwise, readers might be inclined to attribute the hero's mistake to womanly compassion. Valerian's compassion as a man might still be

labelled womanly, either in a pejorative or an honorific sense, but in any event he is not concerned with his gender or those of others. Gendered issues do not exist in the all male world at the top of the legal profession in Auchincloss's version.

Faced with the frustrations of the legal system, Auchincloss shows us that our humane gestures fail. Atwood shows us that they may succeed, though on a small scale. Kafka shows us that we can do nothing. Greene shows us that whatever we might try to do, things happen beyond our control. The law is cleverly defeated in Greene's courtroom, but then justice is rendered outside of it by extra-legal events. Extra-legal efforts to correct the law are defeated in Auchincloss's story, and the professional justice that is meted out stings with its unfairness. Law is defeated by murder in Atwood's tale, but a little justice may yet be done through the money-raising activities of business. Law, shows Kafka with sweeping finality, defeats justice.

The four authors bring us sharp insights in confronting the gaps between law and justice, between the impersonal formalism of law and the caring sense of fairness, between the legal profession and the money-making business world, between legal systems and individual human beings. They give us much to think about ! The imaginative ways in which they provoke such thought require us to ponder over the difficulties and not easily dismiss them with an application of theory. These works of literature are Socratic gadflies to any theory. Though you might argue that my study should be re-titled "Literature and the Inhuman Substance of Law," the literature has drawn my attention to what needs to be understood or corrected in the law as a human creation. I am always drawn to the presence of inhumanity, for that is where I must work for humanity. Literary creativity invites us to become better philosophers of law. Perhaps we cannot find satisfactory solutions for some of these problems, especially the dissatisfaction with the uncaring neutrality of procedure,

but it would be good nonetheless if we came to understand our limitations.

One of the traditional concerns of comparative literature is with the cultural context of literary works. Thus, we could analyze Auchincloss's story as a characteristically American work that dwells upon the behind-the-scenes life in the sophisticated Manhattan world of law and business. We are admitted to the private conversations between the men who make things happen. And things do happen this way, as we learn from scandals and confessions reported in the news. The secrets of the club and the office remain a field of exploration by popular American fiction as well as by television.

Kafka's work may be seen in the context of central European existential unrest, and it might well be related to Jewish traditions in storytelling. Greene's piece is closely related to English journalism and the continuing public interest in reading about trials. How Atwood's story represents, expresses, or typifies Anglophone Canadian experience is beyond my comprehension. We might best appreciate this work as creating rather than emerging from a specifically Canadian culture.

Literary scholars must take care not to reduce works to their cultural settings. Works of art have the power to rise up out of their origin and context so as to be accessible internationally. This is due to universal aesthetic powers of imagination and to problems and experiences that we all have as human beings. The present study is offered as evidence of that. We must always go beyond the question of what literary works contribute to their local culture or national literature to the question of what they might be contributing to humanity. If we comparatists do not ask those questions of the works we study, who will? Comparative literature celebrates the richness of cultural diversity, but it should be wary of parochialism, and it should ever be willing to work globally.

I have brought into discussion only four stories. Adding

one or two others would geometrically increase the number of comparisons possible. Literary works invite comparison. They are not created in a vacuum. They presuppose readers who have read other works. Often works of fiction follow conventions, forms, and genres common to other works. That is clearest in Greene's story. Sometimes authors delight in pushing aside intertextual relationships to create new modes of expression. That is clearest in Atwood's story. Comparison of even unrelated literary works may highlight their distinctive literary qualities. We see better how narrative is used, or character created, or form shaped by one author if we bring onto the same table works by other authors. All literary works, then, become comparable in terms of aesthetic possibilities. And when the same themes are treated, we are treated to revealing variations in the perception, expression, and resolution of such matters.

I would have liked to add to the comparative study other stories in Wishingrad's anthology that round out the contributions of Anglophone authors, including the Irish master, Frank O'Connor's lilting and amusing "Legal Aid"; the Nobel Prize-winner from South Africa, Nadine Gordimer's difficult "Crimes of Conscience"; and the talented Sierra Leonian writer, R. Sarif Easmon's chilling juju tale, "Heart of a Judge." In addition, I would expand the international discussion with examination of the outstanding Chilean author, Isabel Allende's strangely twisting "The Judge's Wife"; the great Czech writer, Karel Čapek's oddly amusing "The Clairvoyant"; the noted Italian author, Giuseppe di Lampedusa's touching "Joy and the Law"; and the Yiddish Nobel Prize-winner, Isaac Bashevis Singer's wildly eccentric "The Litigants."

Rich as it is, Wishingrad's anthology contains no stories from Asia or the Pacific. From Japan, I miss Akutagawa Ryunosuke's "In a Grove" (*Yabu no Naka*); from China, the Celebrated Cases of Judge Dee (Dee Goong An); and from the

Arabic, stories from *The Arabian Nights*. Participants in this conference are invited to edit an Asian and Pacific Anthology of Legal Fictions.

Throughout this study, I have exercised critical judgment when discussing literary works, legal problems, and human crises. I believe that a scholar in the humanities is obliged to evaluate what she or he studies. Even the effort to refrain from exercising value judgments carries with it value judgments--dubious ones, I contend. What we study has value to who we are as human beings. So humanistic scholarship does not merely increase information about texts and events. It expands self-understanding and poses problems for our resolution. To judge aesthetic efforts, provocative ideas, and human problems is risky business, but it is the business of scholars.

In making judgments, we invite readers and colleagues to join in appreciation and in further evaluation. Though we offer evidence and reasons for our judgments, they are subject to correction and supplementation. My responsibility to you has been to address the themes and the achievements critically, using what evidence and reasons I can muster to construct a case rather than a report, an essay rather than a paper. The humanities are open-ended as forms of learning. Comparative literature should not remain a passive reporting of what has been written or done. It is an active discipline of doing-by study, reflection, judgment, writing, and, again, reading. Your responsibilities as reader do not end as you complete the reading of a study; they have only now begun.

Notes

² Jay Wishingrad, ed. *Legal Fictions: Short Stories about Lawyers and the Law* (Woodstock, N.Y.: Overlook Press, 1992). Page references to this book will be cited parenthetically in my text.