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**PART I:**  
**(RE)THINKING LAW THROUGH**  
**LITERATURE**

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7 **LAW’S GUILT ABOUT LITERATURE**

9  
11 Jane B. Baron

13 **ABSTRACT**

15 *This essay addresses the theme of guilt in law and literature from the law*  
17 *side. It argues that the legal academy’s flirtation with literature reflects*  
19 *two forms of guilty uneasiness. The first relates to the question whether*  
21 *lawyers should be reading literature at all. This is a methodological anx-*  
23 *iety. It presumes a distinctly legal method of analyzing legal issues, in*  
25 *which literature does not have a truly legitimate role. The second anxiety*  
27 *is substantive. It presumes that law has an identifiable content, one that*  
29 *excludes much that appears in literature. Both presumptions are, I argue,*  
31 *questionable and make sense only if law is viewed as primarily doctrinal.*  
*Fundamentally, these varieties of uneasiness have their roots in the still*  
*unresolved conceptual challenge of figuring precisely what is “interdis-*  
*ciplinary” about the law and literature enterprise. Developing an honest*  
*form of “interdisciplinarity” will be difficult if not impossible because it*  
*requires an examination of usually unstated assumptions about the*  
*uniqueness of law.*

33 **INTRODUCTION**

35 Building on earlier work (Baron, 1999a, b), this essay addresses the theme of  
37 guilt in law and literature from the law side. It argues that the legal acad-

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emy's flirtation with literature reflects two forms of guilty uneasiness. The first relates to the question whether lawyers should be reading literature at all. There was a heady period in the late 1980s and early 1990s during which literature was seen as a promising source of moral guidance and supplementation for law, and thus law and lit pieces peppered the major law reviews. In contrast, one rarely sees much discussion of literature in legal periodicals at all these days. If lawyers are reading literature now, they seem to be doing it very quietly. One hypothesis might be that, especially following Posner's critique of the law and literature movement in his perhaps overly influential book on the subject, (Posner, 1998)<sup>1</sup> legal scholars have lost their certainty about the real applicability of literature to law.

The second form of uneasiness relates to what literature is said to show when it is read. Here the claim, again much more muted today than 10 years ago, is that literature reveals law's moral emptiness and inability to deal with human complexity. The anxiety here is not about the methodological legitimacy of reading literature; rather, it is a substantive anxiety about the adequacy of law, i.e. law's content.

Both forms of uneasiness stem from unarticulated and unexplored notions of what "law" really is. The methodological anxiety presumes a distinctly legal method of analyzing legal issues, in which literature does not have a truly legitimate role. The substantive anxiety presumes that law has an identifiable content, one that excludes much that appears in literature. Both presumptions are, I argue, questionable and make sense only if law is viewed as primarily doctrinal.

Fundamentally, these varieties of uneasiness have their roots in the still unresolved conceptual challenge of figuring precisely what is "interdisciplinary" about the law and literature enterprise. In one version of "interdisciplinarity," law and literature are depicted as basically separate and distinct realms, and "interdisciplinary" work is work that crosses the border between the two realms. If what is inside one of the realms were already inside the other, there would be nothing "interdisciplinarity" could do. In a different version of "interdisciplinarity," literature is used as a mirror that shows law to itself somehow more clearly. This is a selfish "interdisciplinarity," interested in literature only insofar as it has lessons and insights for law. A third, more conventional "interdisciplinarity," which examines law in literature, inverts the second form, scavenging both literary and legal materials for new themes to be run through the mill of conventional literary criticism.<sup>2</sup> Developing an honest form of "interdisciplinarity" will be difficult if not impossible because it requires an examination of usually unstated assumptions about the uniqueness of law.

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5 **LAW'S FLIRTATION WITH LITERATURE: ONE  
DISCIPLINE OR TWO?**

7 If one were simply to track the titles of articles in leading law reviews over  
9 the past 25 years, one would barely suspect that anyone had ever been  
11 seriously interested in the connection between law and literature. With just a  
13 few exceptions,<sup>3</sup> the articles seem preoccupied with law – tort liability, class  
15 actions, patents, constitutional law, family law, and so forth. What this title  
17 survey shows (if anything) is that legal academics mostly like to think about  
19 legal doctrine. No surprise there. The question is really *how* they think about  
21 legal doctrine, and whether works in the law and lit genre influenced that  
23 sort of thinking. Article titles and topics will not be an accurate measure of  
25 influence if, as many people believe, the goal of the law and literature  
27 movement, within law anyway, is not so much to change what is written  
29 *about* as it is to change the quality of the discussion.

19 A credible argument could be made that, for a while at least, law-and-lit  
21 *did* have a noticeable influence within the legal academy. Legal scholars  
23 increasingly began to attend not just to the outcomes of cases, but also to  
25 the way in which judges reasoned to those outcomes. Generalizations about  
27 scholarly trends are always dangerous, but representative concerns included  
29 the presence or absence of “empathy” in judicial decision making (e.g.  
31 Henderson, 1987), the level of abstraction as opposed to particularity on  
33 which judges approached cases (e.g. Minow & Spelman, 1990; Menkel-  
35 Meadow, 1985), and the extent to which judges explicitly addressed their  
37 differences from and connections to the parties whose cases came before  
them (e.g. Karst, 1988; Resnik, 1988).

31 Now in one sense this concern for the quality of legal reasoning was  
33 nothing new, for legal scholars have always cared about the rationales as  
35 well as the results of cases. But “quality” in legal reasoning used to be, in  
37 what I will call the “before” period (before, say, *Heracles' Bow* or *Poethics*  
or *Poetic Justice*) measured by fidelity to the internal conventions of law  
consistency with prior precedent, careful distinction between like and unlike  
factual scenarios, adroit analogies, and so forth.<sup>4</sup>

37 *After*, during what I think of as the height of the influence of law-and-lit,  
39 quality in legal reasoning came to be assessed differently. Scholars began to  
41 examine the degree, to which judges recognized that their acts of interpretation  
took place within a community of meaning, and both reflected and participated  
in the constitution of that community.<sup>5</sup> Language mattered, because it could include and exclude (who, James Boyd White (1984) fa-

mously asked, is the “we” who are the constitution’s people?). Sensitivity to context mattered because, in attending (or failing to attend) to particulars, courts were recognizing (or failing to recognize) the real constraints that bear on individuals’ acts and decisions, and these constraints are relevant to the accurate and fair assessment of blameworthiness (e.g. Scheppele, 1989). Law, in short, was understood to be cultural. Thus, legal decisions could and should be judged by the way in which they both commented on and enhanced the quality of our cultural life.

Note that, in this formulation, law and literature are importantly alike, for each is equally a cultural activity, an instance of collective meaning-making.<sup>6</sup> Law and literature are not, in this view, actually separate disciplines at all, but rather just two different ways of doing the same thing. And if they are just two ways of doing the same thing, then law and literature can, and possibly should, be subject to the same evaluative criteria and will reflect the same methodological debates.

Looking backward, one can easily find traces of disciplinary blending between literature and law. For a while, for example, there was talk of legal opinions – not to mention contracts and wills – as texts, texts subject to all the interpretive problems and possibilities to which literary texts are subject (e.g. Kingwell, 1994, p. 351). Some of the interpretive debates within literary theory – about the relevance of authorial intent, the importance of reader response, the possibility of “objectivity,” and the dangers of “subjectivity” – were imported directly into legal scholarship, especially regarding constitutional interpretation.<sup>7</sup>

But a complete blending of law and literature as disciplines is and has always been problematic. For one thing, there is the pesky issue of power – the fact that in the real-world legal language does things, sometimes scary things like sending people to jail or even to death (e.g. Cover, 1987, p. 1601; West, 1993, pp. 89–176). For another thing, a lot of work in the law/literature vein has sought to enlist literature in the aid of law – to make law more literary, more moral and more attentive to the diversity of human character and motivation (e.g. Nussbaum, 1995; Hirshman, 1988). If literature and law are in some meaningful sense “the same,” then how can one be used to enlighten the other?

To speak plainly, the law/literature enterprise – or at least that part of it that focused on what literature could add to law – works best where it is least self-conscious of the way in which it implicitly defines the boundaries of each discipline.<sup>8</sup> In this way, law can be like literature for the purpose, say, of its role in constituting modern social and political culture, but unlike literature in respect, say, to its technical conventions and its moral content.

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**THE RULE OF LAW AS THE LAW OF RULES**

7 The failure to come to terms with this question of disciplinary boundaries  
9 reflects a deep ambivalence about law.<sup>9</sup> This ambivalence has both a meth-  
11 odological and a substantive dimension. Methodologically, the question is  
13 whether “doing” law is a specialized, distinct activity. What if those “in-  
15 ternal” conventions I mentioned earlier – following precedent, distinguish-  
ing and harmonizing factual scenarios, drawing analogies – what if these  
conventions in some sense *define* the practice of law?<sup>10</sup> If they do, lawyers  
might still wish to read Charlotte Bronte, Richard Wright, or (for that  
matter) Franz Kafka, but when they do so, they should not understand  
themselves in any meaningful sense to be doing “law.”<sup>11</sup>

17 Substantively, the question raised by the law/lit enterprise concerns the  
19 “content,” if you will, of law. Why might law need the moral uplift that  
21 literature is said to provide? Why does it need lessons in the complexity of  
23 human nature, the diversity of human experience? Presumably it needs these  
things because it suffers from a lack, a deficit – it is not, alone, sufficiently  
moral; it is not, itself, capable of dealing with human beings in their concrete  
particulars. This is not an especially attractive picture, and one could pardon  
lawyers – and especially legal academics – if they did not want to have  
their noses rubbed in it.

25 Now neither the methodological or substantive anxiety is self-evidently  
27 correct. Methodologically, let us assume (and it is a big assumption) that  
29 there are truly distinct techniques associated with legal reasoning. Appellate  
briefs, after all, do not read like newspaper articles, and judicial opinions do  
not read like New Yorker short stories. It does not follow, however, that  
these specialized techniques exhaust the field of legal thought. More im-  
31 portantly, it does not follow that lawyers and judges who resort to other  
33 techniques or sources, including literature, are somehow *not* doing law. It is  
35 in fact rare to find a contemporary judicial opinion, particularly in a po-  
37 litically or socially contested area of the law, that does not reach beyond  
technical principles such as *stare decisis* or “law of the case” to, for example,  
social science data or explicit instrumentalist visions of the social good  
(Posner, 1997). If we can look to psychological studies or economic analysis  
and still be doing law, why cannot we be doing law when we read Shake-  
39 speare?

41 The same skepticism applies on the substantive side. It simply defies im-  
agination that a legal system could survive, let alone be constitutive of our  
culture, if it had no moral basis or were completely insensitive to human

complexity. It is true that sometimes courts recognize a gap between what the law permits and what seems moral or right under the circumstances. But it is also true that sometimes courts reject legal rules precisely for the reason that they are of questionable morality. Just as not every work of literature is morally uplifting, not every legal opinion is morally bankrupt.

How could we have gotten to this point, where the “law” of law and lit is a mere caricature of itself? The answer, I submit, lies partly in the not-always-articulated vision of law as composed of and constituted by rules. Austin Sarat and Nasser Hussein’s (2004) recent study of the “lawful lawlessness” of Illinois Governor George Ryan’s decision in 2003 to grant clemency to all those then on death row throws this vision of law into sharp relief. Clemency, Sarat and Hussein argue, “is best understood as a form of ‘legally sanctioned a legality,’” (p. 1313) a power that is “lawless” because it is inherently discretionary and “by its very nature unbound by rules” (p. 1314). In this formulation “lawlessness” and “alegality” are functional opposites of “rule-governed,” and presumably “lawful” and “legal” would be defined as “rule-bound.” As Sarat and Hussain note, this vision of law-as-rules connects powerfully to the aspirations of the rule of law to establish “a government of laws not of men” (p. 1330).

In actuality, of course, “law” is not reducible to rules, as Sarat and Hussein know well. Clemency may be a form of “alegality” or of “lawlessness,” but it is not wholly “lawless” or “alegal;” it is “*lawful*” lawlessness, “*legally sanctioned*” alegality. That is, clemency is itself a part of the law that it stands above, “a rule breaker which serves to improve the law” (Sarat & Hussein, p. 1321). Sarat and Hussain thus conclude by noting that “if Ryan’s pardon was an ‘injury to law itself,’ it is an injury that the law authorizes and requires, a form of lawful lawlessness without which the law would indeed be rendered meaningless” (p. 1343).

Despite the sophistication and subtlety of Sarat and Hussein’s understanding of clemency’s challenge to law, the very project of analyzing Ryan’s decision and its announced rationale would be incomprehensible without a vision of law as fundamentally composed of rules. Only this vision enables Sarat and Hussein to describe clemency as “essentially lawless” (p. 1319). The idea of the rule of law as a law of rules resonates powerfully with the Langdellian idea of law as distinct science, independent and specialized.<sup>12</sup> It also resonates powerfully with visions of law as a professional craft, rather than an academic discipline (Balkin, 1996). Finally, a vision of law as fundamentally doctrinal resonates powerfully with many practitioners’ perceptions of what they actually do, i.e. manipulate rules for the benefit of clients, and with the idea that that is what they should do (Edwards, 1992).

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**ILLUSORY INTERDISCIPLINARITY**

7 The idea that law is a realm of rules has affected the way in which the  
9 enterprise of “interdisciplinarity” has been carried out with respect to law  
11 and literature. Oversimplifying just a bit, one important analytical mode of  
13 law and literature, at least on the law side, has been the compare-and-  
15 contrast. Work in this vein argues as follows: “Here is the rich, textured,  
17 nuanced picture of human nature in *Great Expectations* (or the novel, play  
19 or poem of your own personal choosing), and here is the desiccated, ster-  
eotyped, abstract picture offered in *Smith v. Jones*.”<sup>13</sup> The smaller the gap  
between the proffered works, in terms of emotional richness, moral com-  
plexity, or general sophistication, the less literature has to offer law and the  
less law needs whatever edification literature offers. Thus, this version of  
“interdisciplinary” work constructs law as a relatively empty domain of dry  
technical rules, and literature as a relatively rich domain full of emotion and  
insight, even as it purports to describe these two fields.

21 “Interdisciplinarity,” in this formulation, is a matter of making compar-  
23 isons and drawing into one realm what is found in the other. “Here is what  
25 law is like, there is what literature is like, let us examine the differences.”  
27 One field is composed of, say, Xs, and the other of Os. “Interdisciplinary”  
work imports some of the Os into the land of the Xs, enabling a game that  
could not be played were the fields kept apart. All this only works, obvi-  
ously, if the fields really are different, if law is truly a land of Xs with no Os  
(and, it would seem to follow, literature is a land of Os with no Xs).

29 But the “really”/“truly” in the preceding sentence is seriously problem-  
31 atic. To see why, let us return to the “lawful lawlessness” of clemency. The  
33 “lawlessness” part, we saw, stemmed from the essentially discretionary, ad  
35 hoc, unruliness of the clemency power. If clemency were “total lawlessness,”  
37 we could say that law, to be law, requires rules and nothing but rules, and  
39 thus that metaphorically speaking law is a land of Xs. But as Sarat and  
Hussein note, clemency is *not* total lawlessness, but rather is itself required  
by law. Thus law, to be law, requires rules and also at least some power not  
governed by rules. Law, then, is a land of both Xs and Os. But if law already  
is a land of Xs and Os or, to skip the metaphor, if law is not really different  
from literature, then “interdisciplinarity,” defined as drawing contrasts and  
bringing into one realm what is found only in the other, becomes impossible.

41 Fortunately, the compare-and-contrast does not exhaust the “interdisci-  
plinary” efforts of law and literature. An almost opposite approach focuses  
not on the differences but on the parallels between literature and law. Con-

sider the following paragraph, which opens a recent article by Rosanna Cavallaro (2004) on the lessons of *Pride and Prejudice* for the “policies, perceptions, and principles that underlie [the] rules of proof” under the Federal Rules of Evidence.

Among the many intersections between law and literature is this: just as the legal process is concerned with the accurate and orderly evaluation of disputed facts and past events, and the parts played by people in those events, so, too, many works of fiction concern themselves with identical inquiries. What makes a good or great novel is, to some degree, measured by the novelist’s skill in rendering characters and events for the reader’s evaluation, through dialogue and other descriptive narrative. In addition, just as the legal process asks judge or jury to evaluate a variety of proofs in order to allocate criminal blame or civil liability, novels invite the reader to exercise her judgment about individuals and events, to determine, by the novel’s end, the truth of those events. Finally, where the legal system has constructed rules of evidence to shape the body of proof that may be used to determine facts, writers of fiction offer the reader a variety of “proofs” by which she may judge the truth of their works (pp. 697–700).

Law and literature, in this view, are importantly alike rather than different; there is a “correspondence” between the two fields (Cavallaro, 2004, p. 699). Thus, “although when she wrote *Pride and Prejudice*, [Jane] Austen was not at all concerned with the legal system or its procedures for determining disputed facts, the novel’s examination of the kinds of proof that form the basis of quotidian personal judgments offers fertile ground for evaluating modes of judicial proof” (Cavallaro, 2004, p. 700).

In this version, “interdisciplinarity” functions by reflection, as a mirror. We look into another field and in it we see beamed back toward us the aspects of our own field. Something about the change in context, from jury box to novel, enables us to see our shared conventions (of judgment, fact-finding, etc.) more clearly.

How exactly this contextual change works to bring insight is, alas, a bit unclear. But beyond or apart from this methodological difficulty lies another set of questions about the “interdisciplinarity” of using literature as a mirror of law. We are not interested in literature, in this view, because it is literature. Cavallaro makes this point herself in acknowledging what she calls “a vulnerability of this genre of scholarship,” namely that one must simply accept (on faith?) that the “insights” of *Pride and Prejudice* “have some worth beyond mere entertainment.” “I contend,” she continues, “that like all great literature, Austen’s novel captures a kind of truth that amplifies and enriches the truth of our own [legal] experience and therefore can offer meaning beyond the aesthetic” (Cavallaro, 2004, p. 701).

Now I do not want to be understood to be arguing here that to be interested in literature qua literature one must limit one’s attention solely to

3 “the aesthetic.” Such an argument would essentialize literature in exactly the  
5 way that the law-is-rules argument essentializes law. What I do want to  
7 suggest, however, is that insofar as its interest is pretty much solely law,  
9 “interdisciplinarity-as-mirror” does not seem very, er, “interdisciplinary.”  
11 Or, perhaps more accurately, “interdisciplinarity” in this view operates as a  
13 kind of scavenger hunt, seeking in literature (and presumably other disci-  
plines, such as the pictorial arts or in science<sup>14</sup>) nuggets useful to the im-  
provement of law. This is a fairly “law-centric” form of  
“interdisciplinarity,” and to the extent that its ultimate object is the reform  
of legal doctrine, one wonders in what way it is “interdisciplinary” at all.

Beyond the compare-and-contrast and mirror forms of allegedly “inter-  
disciplinary” work are others, which in the past went by the names of “law  
in literature” and “law as literature.” The former studies explicitly legal  
themes and plotlines in literary works such as *Antigone* (Gewirtz, 1988) or  
*Billy Budd* (Weisberg, 1984, pp. 131–176). The latter studies the extent and  
ways in which literary style is manifest in judicial opinions (Weisberg, 1982,  
p. 1; 1992, pp. 10–34). These endeavors have been on going for some time,  
and no little ink has been spilled on the issue of whether they are (or should  
be) at the core of the law/literature enterprise. For my purposes, the ques-  
tion is less about the centrality of these projects to law and literature than it  
is about the sense in which the projects are “interdisciplinary.”

25 Again generalizations are dangerous. But let us try a thought experiment.  
Imagine that a graduate student or professor in an English or Comparative  
27 Literature department were to examine themes of love, or of loyalty, or of  
friendship, or of kinship (etc.) in *Antigone* or *Billy Budd* (or, to repeat a  
29 phrase, the novel, play, or poem of your own personal choosing). While I  
am not positive, I think that such an examination would fit, conceptually,  
31 exactly in the middle of what a person in literary studies is expected to do in  
the ordinary course of his or her professional life. That is, a study of love or  
33 kinship themes in a famous play, novel, or poem would be thought of as  
central to the discipline of English or Comparative Literature.

35 What, then, changes if the scholar examines themes of law rather than  
love in the works in question? Does the work become “interdisciplinary”  
37 simply because the themes being examined are legal? “Interdisciplinary” in  
what sense?

39 There is no reason to suppose that the work would become “more inter-  
disciplinary” if the scholar were to examine the way that the law is treated,  
41 not in a play or novel, but in a complex or contested judicial opinion such as  
*Lawrence v. Texas* (539 US 558 (2003)), the recent case holding it uncon-  
stitutional to criminalize intimate sexual relations between homosexuals, or

3  
5 Grutter v. Bollinger (539 US 306 (2003)), upholding the constitutionality of  
7 certain affirmative action programs. There is a lot to say about the way the  
9 law in general is treated in these cases, both of which overruled existing  
11 precedents. That is, putting the outcomes to one side, much can be said  
13 about the concept of law implicit in these opinions, as there is much to be  
15 said about the concept of law articulated by the various characters in the  
literary works with which this thought experiment began. But examinations  
of legal themes, whether in literary works or legal works, by people who  
study literature are not *per se* “interdisciplinary” unless we give that term  
the very thinnest meaning of the study of anything legal by one who is not a  
lawyer.<sup>15</sup>

## 17 AN HONEST INTERDISCIPLINARITY?

19 The careful and perhaps even the not so careful reader will have noticed my  
21 use of quotation marks around the words “interdisciplinary” and “inter-  
23 disciplinary” in the preceding section. Is there some true or honest form of  
25 interdisciplinary endeavor that could evade those cynical inverted commas?  
Answering this question is much harder than demonstrating the ways in  
which much of the current law and literature work seems to rely on sleight  
of hand.

As a start, let me suggest one possible source of the problem. On the one  
hand, lawyers and legal academics are as invested as any other professionals  
(including, by the way, English and Comparative Literature professors) in  
the idea that their field is indeed a distinct discipline, one with specialized  
rules and conventions. This leads to an emphasis on the technical aspects of  
law, and particularly on legal doctrine.<sup>16</sup> For those taking this view, there is  
something special, and quite different, about “professional” fields. Thus  
Jack Balkin writes: “Legal knowledge is professional knowledge. The study  
of law is part of a professional practice, a set of professional skills that are  
taught to new professionals in professional schools.” (Balkin, 1996, p. 966)

At the same time, however, even those who emphasize law’s distinct dis-  
ciplinary identity wants to think of this discipline as totally rule-oriented  
and technical, as completely excluding emotion, morality, concern for con-  
text and so forth. Yet the more these qualities are permitted “inside” law’s  
domain, the less distinct law looks. This is bad for those seeking to found  
their identity on law, but also for those who are now making their careers by  
trying to define, from outside law – from comparative literature and English  
departments, for example – what the domain of law is. In the end, thinking

3 about where the boundary lines lie, who is drawing them and for what  
5 reason is hard. So it simply is not being done.

7 Very intuitively, interdisciplinarity might be thought of as simply the  
9 blending of two (or more) disciplines. Before we could effectuate such a  
11 blending or evaluate its effects, we would have to define what each discipline  
13 *is*. But we exist in an intellectual environment in which the entire concept of  
15 a “discipline” is highly contested; all of us contributing papers to this col-  
17 lection are well enough versed in social construction theory to understand  
19 how problematic it is to posit a “real” legal (or literary) realm. We construct  
21 law’s (and literature’s) domain for our own purposes, and the forms of  
23 interdisciplinarity in which we engage will reflect our agendas as well. Con-  
25 sider, in this regard, Julie Stone Peters’ suggestion (unpublished manuscript)  
27 that “law-and-literature at its emergence was symptomatic of a set of mutual  
29 disciplinary desires: literature’s desire for the political ‘real’; law’s desire for  
31 the critical-humanist ‘real’” (p. 19). Stone Peters may not have the desires  
just right (though I suspect she does), but the force of her observation lies in  
the perception that any attempt at interdisciplinarity must arise out of a  
“desire” of some sort. And, as Stone Peters further notes, these desires must  
speak to “pre-existing disciplinary identities” (p. 19). Lawyers are deeply  
invested in a notion of law as unique; why else would we write incessantly of  
our ritual initiation through legal education into the arcane world of “legal  
analysis” (Turow, 1977) or of the surreal pressures to which practicing  
lawyers are subject? (Joseph, 1997). An honest interdisciplinarity will, at a  
minimum, need to confront this particular investment in disciplinary iden-  
tity.<sup>17</sup> Self-examination is painful, and professional self-redefinition even  
more painful, and therefore I suspect this confrontation is unlikely to hap-  
pen soon.

## 33 **UNCITED REFERENCES**

35 Hart, Henry Sacks, & Albert (Tentative Edition 1958).

## 37 **NOTES**

39 1. The first edition, entitled *Law and literature: A misunderstood relation*, was  
41 published in 1988. Surveys reveal that Posner’s book is assigned more often than any  
other in law and literature courses. Resnik (1999, p. 721).

2. Some of the same questions arise with respect to other “law-and-” such as law and history or law and philosophy. See Baron (1999a). Only law and economics have gained wide, mainstream acceptance within the legal academy. Why this is so is a question well beyond the scope of this essay.

3. See the intriguingly titled *Habermas@discourse.net: Toward a critical theory of cyberspace*, by Michael Froomkin. Froomkin (2003, p. 749).

4. For examples of such approaches, see Hart and Sacks (Tentative Edition 1958); Cappalli (1997).

5. Among the most influential works in this vein are Cover (1983, p. 4) and White (1985).

6. This is most explicitly James Boyd White’s view.

7. For examples, see the essays collected in Levinson and Mailloux (1988).

8. For further elaboration of this point, see Baron (1999a, b).

9. This heading owes something to Scalia (1989).

10. In a recent article, Douglas Vick suggests that “doctrinalism” is the “shared core that defines the legal discipline.” (Vick, 2004, p. 188). Relatedly, some have suggested that the distinctive methodology of legal scholarship is the framing of prescriptive recommendations to legal decision makers (Rubin, 1997).

11. This is to some extent the position of Judge Posner. See Posner (1998).

12. On the development of the Langdellian ideal, see Tomlins (2000), Ferguson (1984) and Stevens (1983).

13. This depiction is meant to be a caricature. For example that, at least when read uncharitably, come close, see Nussbaum (1995, pp. 79–121) and Heald (1998, p. 55).

14. On law-and-science, see Caudill (2002–2003).

15. In this thin view of “interdisciplinarity,” lawyers who study works of literature would be doing “interdisciplinary” work simply by virtue of the fact that they focus on something other than cases, statutes, contracts, or other texts conventionally considered “legal.”

16. As Vick (2004) puts it: “The grip that doctrinal thinking has on the discipline of law is tighter than is often imagined” (p. 191).

17. Consider in this regard Christopher Tomlins’ observation (2000) that: Law has shown less interest in encounters that intrude methodologically or ideologically upon its deployment of determinative power and authority, for here its disciplinary self-sufficiency is clearer, its methodological capacities more secure, its conversation more conveniently closed. Law’s future disciplinary encounters might simply reproduce this pattern, in which case the agenda would continue to be law’s, as it has in the past ... (p. 967).

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