

William Domnarski on “Lawyers and Literature”

In legal scholarly writing there is no scarcity of efforts to describe the “law and literature” movement that evolved in a school of contemporary jurisprudence. When students appear in my “lawyers and literature” course they may assume that they have signed up for a “law and literature” course. I try to explain early on that the course is called “lawyers and literature” for a reason and that the course has an entirely different focus than a traditional “law and literature” course. William Domnarski, in an essay titled, ironically, “Law and Literature,” makes the rare effort to explain the lawyer focus in a “lawyers and literature” course [William Domnarski, “Law and Literature,” 27 *Legal Stud. F.* 109 (2003)]:

In contrast to [the] conventional approaches to law and literature, I sought to explore with students the various ways a lawyer's life might be understood from the way it is described in the fiction about lawyers written by lawyers. . . . My law and literature teaching was geared to a special audience—law students—and to the unique professional problems they would encounter as members of the legal profession. While a law student's education may have taught them something about the state of the law, and its application to specific legal problems, I assumed that they had learned far less about lawyering and how it might affect a person's life. Learning to think like a lawyer—whatever that turns out to mean—is not the same as working as a lawyer and living a lawyer's life. Lawyering is the only professional calling that is adversarial in nature. It is adversarial in that lawyers find themselves pitted not only against each other, each side zealously representing a client, but lawyers often find themselves pitted against themselves in that the position of their client (which they are paid to represent) might not be their own. The result, for any person of substance, is an ongoing conflict between the lawyer with an independent intellectual (and a regard for the truth) and his role as advocate (for clients who may not share his intellectual concerns, nor his regard for the truth). Basically, law school doesn't help students recognize, explore, or deal with this problem of immersing oneself in an adversarial existence and being in conflict with one's self. [110]

Domnarski goes on to observe about this role-identity problem that:

What we find, in law and literature as I conceive it, is that the relationship between the professional's personal and work life lies at the heart of our best lawyer stories, our best legal fiction. A professional commits himself, through training and dedication to the profession, to a life that will be shaped by work. Physicians, scientists, and scholars, to name three, are all shaped, personally, by committed relationships with their disciplines. Science, judging from the autobiographical

literature of its practitioners, teaches a patience and respect for a world larger than that of the individual scientist, a world to be appreciated for its great beauty.

With the unique nature of the legal professional's obligations—to the client, rather than to the system of law—the lawyer often conducts his professional life as if were literally dictated by some system (as if that system had a tyrannical god). By way of lawyer fiction, the lawyer might discover himself, fully adapted to a role, adhering to the demands of clients, losing touch with his ability to relate to others and to experience the relationship of his acts to their consequences, leading a professional life that has devoured his identity as a whole person.

Paradoxically, as the lawyer, in his professional life gains control (and enjoys an ever greater level of success), he is in danger of losing control of his personal life, and finding that he faces the greatest of all failures, the lose of his own soul. With the lose of soul, the lawyer becomes Orwell's tyrant, the man who cannot remove his professional mask. [*Id.* at 127-128]

Domnarski offers an instructive comment on the law student as reader of lawyer stories:

[T]o learn from fiction students must know how, or be willing to learn how, to read well. They need to be sensitive to tone, voice, point of view, and character development, a way of reading that is unlikely to be taught or encouraged in most law school courses. The challenges to good reading are of two kinds. First, the students must be willing to have their fundamental notions of what being a lawyer is about challenged. They must be willing to explore the consequences of the choices they make when their professional responsibilities as lawyers conflict with their own individual, intellectual responsibilities. We could have subtitled the course: Lawyers and the Abdication of Professional and Individual Intellectual Responsibility. The second challenge to reading lawyer fiction is to be able to make sense of what the authors and the characters in the fiction often themselves do not purport to understand. I wanted to make the students sufficiently self-aware of themselves as lawyers that they would be more attentive to the self-awareness issue as it appears so frequently in lawyer fiction and to recognize the effects of a lawyer's failure to be attentive to his intellectual and moral life. Consequently, lawyer fiction of the kind I prescribed for students, requires an inquiry into the nature of the lawyer's professional and individual identity. Our reading, and the exploration it demands, was informed by Orwell's dictum in "Shooting an Elephant" in which the tyrant wears a mask and his face grows to fit it. To understand how this relates to lawyers, is to understand why law students need to study literature and how they can use literature to better understand the nature of the lawyer's life. [*Id.* at 111]

We must become better readers, the kind of readers who come to text (and a story)

with an open-mind, curious as to what can be learned, evolving strategies that allow us to give the text meaning, and hold open the possibility that the meaning we find in the text is one that we can (by adept strategies) incorporate into our own lives.

Reading lawyers in literature raises questions about our status as readers. [*Id.* at 128]