Introduction

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The law underwent significant developments in eighteenth-century Britain as jurists and legislators adapted older doctrines to fit the needs of an increasingly commercial, industrial, and imperial society. These developments at once shaped and were shaped by the period's imaginative writing. In an era when disciplinary boundaries had not yet hardened, some men trained for the law or worked in the political arena before turning to literature; others continued to work as magistrates or MPs while pursuing careers as writers. As scholars have noted, the legal and political experiences of authors including Daniel Defoe, Samuel Richardson, Henry Fielding, and Sir Walter Scott played an important role in the development of prose fiction.[1] But legal questions also permeated the broader culture. Criminal biographies, execution broadsides, and trial narratives received wide dissemination, and parliamentary speeches – themselves highly rhetorical in nature – were routinely reported and discussed in the popular press. The growth of literacy and the expansion of the print public sphere contributed to the diffusion of legal concerns, enabling those without formal training or professional connections to weigh in on legal matters in novels, poems, plays, autobiographies, and essays throughout this period.[2]

[1] See Lance Bertelsen, *Henry Fielding at Work: Magistrate, Businessman, Writer* (New York: Palgrave, 2000); Kieran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999), 45–70; Hal Gladfelder, *Criminality and Narrative in Eighteenth-Century England: Beyond the Law* (Baltimore: Johns Hopkins University Press, 2001); and Tom Keymer, *Richardson's "Clarissa" and the Eighteenth-Century Reader* (Cambridge: Cambridge University Press, 1992).

[2] See Lincoln B. Faller, *Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge: Cambridge University Press, 1987); David Lemmings, ed., *Crime, Courtrooms and the Public Sphere in Britain, 1700–1850* (Farnham: Ashgate, 2012); and Christopher Reid, *Imprison'd Wranglers: The Rhetorical Culture of the House of Commons, 1760–1800* (Oxford: Oxford University Press, 2012). On the expansion of the reading public, see Richard D. Altick, *The English Common Reader: A Social History of the Mass Reading Public, 1800–1900*, 2nd ed. (1957; Columbus: Ohio State University Press, 1998), 30–77. On the

The connections between law and literature in eighteenth-century Britain have attracted a great deal of attention. We have illuminating studies of writers' engagements with developments in areas such as copyright and libel law, criminal law, property law, tort law, and marriage and family law, as well as studies that consider the aesthetic and rhetorical dimensions of law and legal texts.[3] Scholars have also published a number of introductions to and overviews of law and literature, some of which touch upon the eighteenth century.[4] However, we lack a volume that

emergence of the bourgeois public sphere, see Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger with Frederick Lawrence (1989; Cambridge, MA: MIT Press, 1998).

[3] The scholarship in this area is extensive. A partial list, with an emphasis on works published in the past twenty-five years, includes: John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987); Andrew Benjamin Bricker, *Libel and Lampoon: Satire in the Courts, 1670–1792* (Oxford: Oxford University Press, 2022); John Bugg, *Five Long Winters: The Trials of British Romanticism* (Stanford, CA: Stanford University Press, 2014); Mark Canuel, *The Shadow of Death: Literature, Romanticism, and the Subject of Punishment* (Princeton, NJ: Princeton University Press, 2007); Stephanie DeGooyer, *Before Borders: A Legal and Literary History of Naturalization* (Baltimore: Johns Hopkins University Press, 2022); Erin Drew, *The Usufructuary Ethos: Power, Politics, and Environment in the Long Eighteenth Century* (Charlottesville: University of Virginia Press, 2021); Melissa J. Ganz, *Public Vows: Fictions of Marriage in the English Enlightenment* (Charlottesville: University of Virginia Press, 2019); Gladfelder, *Criminality and Narrative*; Susan Paterson Glover, *Engendering Legitimacy: Law, Property, and Early Eighteenth-Century Fiction* (Lewisburg, PA: Bucknell University Press, 2006); Jody Greene, *The Trouble with Ownership: Literary Property and Authorial Liability in England, 1660–1730* (Philadelphia: University of Pennsylvania Press, 2005); Nancy E. Johnson, ed., *Impassioned Jurisprudence: Law, Literature, and Emotion, 1760–1848* (Lewisburg, PA: Bucknell University Press, 2015); Thomas Keymer, *Poetics of the Pillory: English Literature and Seditious Libel, 1660–1820* (Oxford: Oxford University Press, 2019); Sandra Macpherson, *Harm's Way: Tragic Responsibility and the Novel Form* (Baltimore: Johns Hopkins University Press, 2010); Sal Nicolazzo, *Vagrant Figures: Law, Literature, and the Origins of the Police* (New Haven, CT: Yale University Press, 2021); Cheryl L. Nixon, *The Orphan in Eighteenth-Century Law and Literature: Estate, Blood, and Body* (Farnham: Ashgate, 2011); Trevor Ross, *Writing in Public: Literature and the Liberty of the Press in Eighteenth-Century Britain* (Baltimore: Johns Hopkins University Press, 2018); Wolfram Schmidgen, *Eighteenth-Century Fiction and the Law of Property* (Cambridge: Cambridge University Press, 2002); Daniel M. Stout, *Corporate Romanticism: Liberalism, Justice, and the Novel* (New York: Fordham University Press, 2017); Kathryn D. Temple, *Loving Justice: Legal Emotions in William Blackstone's England* (New York: New York University Press, 2019); Kathryn Temple, *Scandal Nation: Law and Authorship in Britain, 1750–1832* (Ithaca, NY: Cornell University Press, 2003); Jane Wessel, *Owning Performance / Performing Ownership: Literary Property and the Eighteenth-Century British Stage* (Ann Arbor: University of Michigan Press, 2022); and Nicole Mansfield Wright, *Defending Privilege: Rights, Status, and Legal Peril in the British Novel* (Baltimore: Johns Hopkins University Press, 2020).

[4] See Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007), 96–119; Susan Sage Heinzelman, "Imagining the Law: The Novel," in *Law and the Humanities: An Introduction*, ed. Austin Sarat, Matthew Anderson, and Cathrine O. Frank (Cambridge: Cambridge University Press, 2010), 213–40; Bridget M. Marshall, "Romanticism, Gothic, and the Law," in *Law and Literature*, ed. Kieran Dolin (Cambridge: Cambridge University Press, 2018), 142–56; and Cheryl Nixon, "Gender, Law, and the Birth of Bourgeois Civil Society," in Dolin, *Law and Literature*, 124–41.

reflects broadly on the interplay between legal and literary developments in Britain from the Restoration to the Romantic era as well as on the place of law in eighteenth-century studies. *British Law and Literature in the Long Eighteenth Century* aims to provide such an account. Examining a range of genres and both canonical and lesser-known texts, the volume explores literary engagements with libel law, plague law, marriage and property law, naturalization law, the poor laws, the law of slavery and abolition, the theory and practice of common-law decision-making, and the evolution of the legal profession. The volume considers, too, the language and form of legal treatises and judicial decisions, as well as the role of eighteenth-century literature in the transmission of legal norms today. In doing so, the volume seeks to expand and deepen our knowledge of law and literature's mutual entanglements during a formative period of development while showing how eighteenth-century studies has contributed to and been shaped by the law-and-literature enterprise.

Law and Literature: History and Approaches

Before we consider the connections between British law and literature in the long eighteenth century, we need to examine the history and goals of the law-and-literature enterprise. As conceived by scholars in the American legal academy in the 1970s and 1980s and subsequently developed in law schools, the study of law and literature has been comprised of diverse methods and aims. Scholars early on divided the field into two main strands consisting of the study of law *in* literature and the study of law *as* literature. Where the study of law in literature focused on depictions of legal themes and characters in canonical literary texts, the study of law as literature attended to the uses of rhetoric, narrative, and interpretation in law. Like other left-leaning interdisciplinary legal movements of the late twentieth century, law and literature sought to counter the growing influence of social-scientific – especially economic – approaches to law. Proponents sought variously to instill humanistic values in lawyers, to cultivate the art of persuasion, to expose contradictions and biases in the legal system, and to advocate for justice for racial and other "outsiders."[5] Although these diverse approaches and goals generated great excitement in

[5] For early formulations of the movement and its different strands, see Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton, NJ: Princeton University Press, 2000); Peter Brooks and Paul Gewirtz, eds., *Law's Stories: Narrative and Rhetoric in the Law* (New Haven, CT: Yale University Press, 1996); Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's End* (New York: New York University Press, 1995), 149–66; and Robert Weisberg,

the legal academy in the 1980s and 1990s, the movement soon gave rise to a number of critiques as scholars began to question proponents' often reductive conceptions of "law" and "literature." Renewed attention to both literary form and legal history over the past twenty-five years has revitalized the enterprise and created distinct opportunities for scholars working in eighteenth-century studies.

Scholars have long recognized James Boyd White's *The Legal Imagination* (1973) as inaugurating the study of law and literature. In his ground-breaking book, White challenged conventional views of law as a system of rules and principles and a set of policy choices. White argued that we should instead think of law as a language – a "rich and complicated system of thought and expression" – and should recognize the work of the lawyer as "an enterprise of the imagination."[6] Reading literary texts and criticism, in his view, was vital to the training of legal professionals. Conceived as a casebook for law students, *The Legal Imagination* presents thematically organized selections from classical and modern literature as well as legal, philosophical, and historical texts, along with reading and writing prompts that seek to guide readers' reflections on the value and limits of legal language and the law's conception of human nature. Responding to the ascendancy of social-scientific approaches to law, especially law and economics, White looked to literature and rhetoric to humanize legal study and practice. The underlying premise of this book as well as White's many subsequent monographs is that reading and writing about literature and attending to the rhetorical dimensions of legal

"The Law-Literature Enterprise," *Yale Journal of Law and the Humanities* 1, no. 1 (December 1988): 1–67. For more recent discussions, see Elizabeth S. Anker and Bernadette Meyler, introduction to *New Directions in Law and Literature*, ed. Elizabeth S. Anker and Bernadette Meyler (New York: Oxford University Press, 2017), 1–30; Austin Sarat, "From Charisma to Routinization and Beyond: Speculations on the Future of the Study of Law and Literature," in Anker and Meyler, *New Directions*, 59–66; and Klaus Stierstorfer, "The Revival of Legal Humanism," in Dolin, *Law and Literature*, 9–25. Some scholars considered the legal regulation of literature via libel, obscenity, and copyright laws to comprise a third strand. But the distinction between law *in* literature and law *as* literature remained central to most accounts.

[6] James Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*, 45th anniversary ed. (1973; New York: Wolters Kluwer, 2018), xxii, xxvi. Reflections on and overlaps between law and literature, of course, appeared long before the 1970s. Jane B. Baron suggests that John H. Wigmore's "A List of Legal Novels" (1908) could be said to have inaugurated the modern law-and-literature enterprise. As J. M. Balkin and others have noted, the study and practice of law as a rhetorical art, in fact, extends back to ancient Greece. See Baron, "Law, Literature, and the Problems of Interdisciplinarity," *Yale Law Journal* 108, no. 5 (March 1999): 1059–85, at 1060n4; Balkin, "A Night in the Topics: The Reason of Legal Rhetoric and the Rhetoric of Legal Reason," in Brooks and Gewirtz, *Law's Stories*, 211–24.

texts constitute essential legal training, enabling students to become ethical and empathic advocates.[7]

This approach to law and legal education prompted a flurry of work over the next two decades. Scholars took White's insights in several directions. Scholars like Richard H. Weisberg, Robin West, and Martha C. Nussbaum advocated studying depictions of law and lawyers in literary texts to enhance understandings of the value and limits of legal processes and institutions. In their view, literary texts provided a much-needed supplement and corrective to the technical, analytical, rule-bound approach that formed the mainstay of law and legal education. For Weisberg, literature added a crucial ethical dimension to legal study, exposing the limits of law and legal language.[8] In a similar vein, West maintained that storytelling in general, and fiction in particular, facilitates an "empathic knowledge of others": "the narrative voice," she explained, "can convey the subjective feel of experiences in a way that triggers understanding of others and an empathic response to their plight, thereby changing our moral beliefs and our moral assessment of law."[9] Nussbaum likewise claimed that literature "is in league with the emotions."[10] By "promot[ing] identification and sympathy in the reader," she argued, realist novels provide a "bridge both to a vision of justice and to the social enactment of that vision."[11] For Weisberg, West, and Nussbaum, as for White, reading literature served not only to humanize the law but also to open it up to critique.

Other scholars developed methods to read law *as* literature. This strand of the law and literature enterprise took several different forms. Some scholars, like Robert Cover, emphasized the rhetorical underpinning of law. In his

[7] See White, *Legal Imagination*; James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago: University of Chicago Press, 1984); James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison: University of Wisconsin Press, 1985); James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1990); James Boyd White, *Acts of Hope: Creating Authority in Literature, Law, and Politics* (Chicago: University of Chicago Press, 1994); and James Boyd White, *From Expectation to Experience: Essays on Law and Legal Education* (Ann Arbor: University of Michigan Press, 1999). For discussions of White's work, see Stierstorfer, "Revival of Legal Humanism," 13–16; and David Gurnham et al., "Forty-Five Years of Law and Literature: Reflections on James Boyd White's *The Legal Imagination* and Its Impact on Law and Humanities Scholarship," *Law and Humanities* 13, no. 1 (2019): 95–141.

[8] See Richard H. Weisberg, *The Failure of the Word: The Protagonist as Lawyer in Modern Fiction* (New Haven, CT: Yale University Press, 1984); and Richard Weisberg, *Poethics and Other Strategies of Law and Literature* (New York: Columbia University Press, 1992).

[9] Robin West, *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1993), 10, 11; see also Robin West, *Caring for Justice* (New York: New York University Press, 1997).

[10] Martha C. Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon Press, 1995), 53.

[11] Nussbaum, *Poetic Justice*, 5, 12.

influential 1983 essay "Nomos and Narrative," Cover argued that law is part of a *nomos*, or normative universe, itself constituted by narratives. "For every constitution there is an epic," he explained, "for each decalogue a scripture. . . . Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live."[12] Law, in this view, is questioned, contested, shaped, and refined in the domain of culture. Prompted by such insights, scholars began applying the methods of literary analysis to judicial opinions, trial narratives, and victim impact statements, examining the rhetorical features of legal texts and the relationship between legal discourse and broader cultural narratives.[13]

Feminist and critical race theorists took this approach a step further, calling for lawyers and scholars to embrace legal storytelling, or "narrative jurisprudence" as it came to be known. Scholars like Kathryn Abrams, Derrick Bell, Richard Delgado, and Patricia J. Williams maintained that far from meting out impartial justice, the legal system elevated certain stories and perspectives over others, suppressing the voices of subordinated groups. Too often, they argued, judges applied seemingly neutral and abstract rules in ways that erased the particularities of human experience. In their view, crafting and recounting "oppositional narratives" – stories by and about those excluded from legal power – had the potential to revolutionize the law. Such a strategy, they maintained, would subvert the law's claims to impartiality and destabilize the idea of a single, objective "truth" while advancing the interests of marginalized groups.[14] Taken in this direction, rhetorical approaches to law ended up reifying distinctions between law and narrative, and between reason and emotion.

[12] Robert Cover, "Nomos and Narrative," in *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: University of Michigan Press, 1995), 95–172, at 96.

[13] See, e.g., Brooks and Gewirtz, *Law's Stories*; and Austin Sarat and Thomas B. Kearns, eds., *The Rhetoric of Law* (Ann Arbor: University of Michigan Press, 1994). For more recent examples of this approach, see Michael Hanne and Robert Weisberg, eds., *Narrative and Metaphor in the Law* (Cambridge: Cambridge University Press, 2018); and Peter Brooks, "Narrative Transactions – Does the Law Need a Narratology?," *Yale Journal of Law and the Humanities* 18, no. 1 (Winter 2006): 1–28. For an overview and history of rhetorical approaches to law, see Binder and Weisberg, *Literary Criticisms of Law*, 292–377.

[14] See Kathryn Abrams, "Hearing the Call of Stories," *California Law Review* 79, no. 4 (July 1991): 971–1052; Derrick Bell, "The Supreme Court, 1984 Term – Foreword: The Civil Rights Chronicles," *Harvard Law Review* 99, no. 1 (November 1985): 4–83; Richard Delgado, "Storytelling for Oppositionists and Others: A Plea for Narrative," *Michigan Law Review* 87, no. 8 (August 1989): 2411–41; Kim Lane Scheppele, "Foreword: Telling Stories," *Michigan Law Review* 87, no. 8 (August 1989): 2073–98; and Patricia J. Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge, MA: Harvard University Press, 1991). For an overview and assessment of this approach, see Binder and Weisberg, *Literary Criticisms of Law*, 201–09, 232–60.

In the 1980s, another group of scholars began exploring a different aspect of the legal-literary nexus, focusing on the implications of literary theory for legal interpretation. The ascendancy of post-structuralism, deconstruction, and reader-response theory in literary studies led to heated debates about the meaning and authority of legal texts and the possibility of objectivity in contractual, statutory, and constitutional interpretation. Clare Dalton used the methods of deconstruction to reveal the arbitrariness of classic contract doctrine, while Sanford Levinson highlighted the multiplicity of meanings in legal texts and the role of politics in adjudication.[15] Other scholars, by contrast, sought to defend legal interpretation from the threat of nihilism. Owen M. Fiss maintained that professional standards constrained judicial discretion and enabled the objective interpretation and application of legal rules, while Ronald Dworkin likened judges to writers of chain novels working within established conventions, an analogy challenged by Stanley Fish, who nonetheless insisted on the restraining power of context.[16]

Although scholars took the law-and-literature enterprise in very different directions, they tended to agree that literature, broadly conceived, had great value for the study and practice of law. Whether to humanize the law, to cultivate rhetorical skills, to instill professional ethics, to expose contradictions and biases in the legal system, to foster empathy and respect for human difference, to advocate for legal change, or to aid in the interpretation of legal texts, scholars began to embrace the call of stories. Various incarnations of law-and-literature courses proliferated in law schools in the early to mid 1990s, and scholars produced a steady stream of books, articles, symposia, anthologies, and journal issues devoted to the field.[17]

[15] See Clare Dalton, "An Essay in the Deconstruction of Contract Doctrine," in *Interpreting Law and Literature: A Hermeneutic Reader*, ed. Sanford Levinson and Stephen Mailloux (Evanston, IL: Northwestern University Press, 1988), 285–318; and Sanford Levinson, "Law as Literature," in Levinson and Mailloux, *Interpreting Law and Literature*, 155–73.

[16] See Owen M. Fiss, "Objectivity and Interpretation," in Levinson and Mailloux, *Interpreting Law and Literature*, 229–49; Ronald Dworkin, "Law as Interpretation," in *The Politics of Interpretation*, ed. W. J. T. Mitchell (Chicago: University of Chicago Press, 1983), 249–70; Stanley Fish, "Working on the Chain Gang: Interpretation in the Law and in Literary Criticism," in Mitchell, *Politics of Interpretation*, 271–86; and Stanley Fish, "*Fish v. Fiss*," in Levinson and Mailloux, *Interpreting Law and Literature*, 251–68. For an overview of these debates, see Binder and Weisberg, *Literary Criticisms of Law*, 112–200; and Peter Leman, "Law Meets Critical Theory," in Dolin, *Law and Literature*, 26–41.

[17] Elizabeth Villiers Gemmette found that 84 law schools (80 in the United States and 4 in Canada) out of 199 schools listed in *The Association of American Law Schools Directory of Law Teachers* reported offering a law-and-literature course in the 1993–94 academic year. For an overview of these courses, see "Law and Literature: Joining the Class Action," *Valparaiso University Law Review*

The growth of law and literature, however, soon prompted a number of critiques. In the first issue of the *Yale Journal of Law and the Humanities* in December 1988, Robert Weisberg lamented the lack of sophistication in both strands of the movement; in his view, the scholarship tended to combine "overly conventional readings of literature with a complacent understanding of law" while relying upon "fuzzy grand generalities."[18] Weisberg also questioned the usefulness of the distinction between law *in* and law *as* literature, suggesting that the "best works on the two sides of the line tend[ed] to converge" and that they captured "the best insights about the relationship between the aesthetic and the political-ethical visions and forces in society."[19] A decade later, critics continued to highlight the reductive conceptions of "law" and "literature" embraced by many of the movement's proponents. Jane B. Baron, for example, argued in a 1999 essay in *The Yale Law Journal* that the movement had "failed to generate the excitement that it [was] capable of generating within the American legal academy" because it had not been sufficiently thoughtful about interdisciplinarity.[20] In particular, Baron complained, scholars depicted law as "a more or less empty," technical, and rational domain while holding up literature as a vital source of feeling and values. In doing so, scholars treated "law" and "literature" as bounded entities without considering how the boundaries were drawn.[21]

Julie Stone Peters identified similar problems in a provocative 2005 essay in *PMLA*. Literary and legal scholars ostensibly committed to bridging disciplinary divides, she argued, had instead exaggerated the differences between the disciplines. Where literary scholars yearned for "the political

29, no. 2 (1995): 665–859. For a sample of the symposia and conferences devoted to law and literature, see Baron, "Law, Literature, and the Problems of Interdisciplinarity," 1060n6, 1060n8.

[18] Weisberg, "Law-Literature Enterprise," 2–3, 19.

[19] Weisberg, "Law-Literature Enterprise," 5. Richard A. Posner, a conservative judge and proponent of law and economics, offered a more skeptical view of the law-and-literature enterprise in *Law and Literature: A Misunderstood Relation* (Cambridge, MA: Harvard University Press, 1988). Although Posner was receptive to the idea of applying literary insights to judicial opinions, he claimed that "the legal matter in most literature on legal themes [was] peripheral to the meaning and significance of the literature" and that "legal knowledge [was] often irrelevant to the understanding and enjoyment of literature on legal themes" (15). In the third edition of his book, he conceded that reading literature could "provid[e] jurisprudential insights, rhetorical techniques, an understanding of legal regulation of literature, and insights into social practices that law encounters," but he continued to resist the idea that literature could humanize legal professionals or provide moral instruction. See Posner, *Law and Literature*, 3rd ed. (Cambridge, MA: Harvard University Press, 2009), 7; see also 456–93.

[20] Baron, "Law, Literature, and the Problems of Interdisciplinarity," 1060–61.

[21] Baron, "Law, Literature, and the Problems of Interdisciplinarity," 1061, 1078–79. For a similar critique, see Binder and Weisberg's 2000 book *Literary Criticisms of Law*, a significant development and expansion of Weisberg's earlier article.

real" of law, legal scholars pined for the humanizing potential of literature. The result was a "caricatur[e] [of] disciplinary difference through each discipline's longing for something it imagined the other to possess."[22] Peters suggested, however, that scholars had finally begun to relinquish these fantasies, and that the law-and-literature movement was transforming into "something bigger and necessarily more amorphous."[23] As she saw it, the movement had started "to shed its second term and to meld into" the broader field of "law, culture, and the humanities" – the title, she noted, of "the scholarly organization that seems now to serve as home for the discipline-formerly-known-as-law-and-literature." In this way, she suggested, the movement was "erasing [and replacing] 'literature' with a new lexicon ('culture,' 'the humanities')."[24] Peters viewed this transformation as a positive development and the beginning of more genuinely interdisciplinary scholarship.

Although Peters astutely diagnosed the central problems with the law-and-literature enterprise as it had come to be theorized and taught by legal scholars, she overlooked an important development. In the late 1990s, the study of law and literature began to move beyond the institutional space of law schools. In the hands of professional literary critics, the enterprise began to take new directions. Where law and literature's earliest proponents emphasized practical dimensions of literary study for law students and lawyers, scholars in English departments, influenced by the rise of historicist approaches to literary interpretation, began to explore historically specific connections between legal and literary developments. Where legal scholars like White and Richard H. Weisberg focused on well-known texts by authors such as William Shakespeare, Charles Dickens, and Herman Melville, moreover, literary critics helped broaden the focus of inquiry. As these scholars turned their attention to legal matters, they brought the insights and methods of literary studies and legal history to bear on a wide range of texts, challenging the perceived oppositions between law and literature while moving beyond the familiar distinction between law *in*

[22] Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA* 120, no. 2 (March 2005): 442–53, at 449.
[23] Peters, "Law, Literature, and the Vanishing Real," 451.
[24] Peters, "Law, Literature, and the Vanishing Real," 451. For responses and critiques, see Peter Brooks, letter to the editor, *PMLA* 120, no. 5 (October 2005): 1645–46; and Richard H. Weisberg, letter to the editor, *PMLA* 121, no. 2 (March 2006): 546–47. Jack M. Balkin and Sanford Levinson were more skeptical about the influence of the humanities on legal education and practice, highlighting institutional and professional constraints that limited law's ability to draw from humanistic disciplines. See "Law and the Humanities: An Uneasy Relationship," *Yale Journal of Law and the Humanities* 18, no. 2 (Summer 2006): 155–87.

and law *as* literature.[25] A growing interest in interdisciplinary inquiry, combined with the contraction of the academic job market in the humanities, contributed to the cross-pollination of ideas and methods as students of literature increasingly turned to law and legal academia, fostering more nuanced, formally sophisticated, and historically grounded law-and-literature scholarship. Such work has proliferated over the past twenty-five years. Shaped by a renewed attention to both literary form and legal history, this work offers fresh interpretations of legal and literary texts as well as new accounts of legal and literary developments while shedding light on questions that remain of concern to this day. This scholarship, moreover, has given rise to new pedagogical approaches, especially in the undergraduate liberal-arts curriculum.[26] Far from becoming subsumed by the study of "law, culture, and the humanities," law and literature has emerged as a rich and vibrant field in its own right.[27]

Reading Eighteenth-Century British Law and Literature

Scholars of eighteenth-century British literature and culture have played an important role in the evolution of the law-and-literature enterprise. Over the past twenty-five years, scholars have examined many connections between the period's legal and literary discourses. They have approached law in the long eighteenth century not as a timeless system of rules and principles but as a set of discursive practices embedded in culture – a

[25] For discussions of these developments, see Bernadette Meyler, "Law, Literature, and History: The Love Triangle," in Anker and Meyler, *New Directions*, 160–75; and Simon Stern, "Literary Analysis of Law: Reorienting the Connections between Law and Literature," *Critical Analysis of Law* 5, no. 2 (2018): 1–8. I am sketching broad trajectories here; there are notable exceptions. Robert A. Ferguson's *Law and Letters in American Culture* (Cambridge, MA: Harvard University Press, 1984) and Alexander Welsh's *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992), for example, anticipated the shift in methodology by several decades.

[26] For a sampling of such courses, see Austin Sarat, Cathrine O. Frank, and Matthew Anderson, eds., *Teaching Law and Literature* (New York: Modern Language Association of America, 2011).

[27] Alongside the evolution of law and literature, a rich field of law and humanities has developed, which brings legal studies into dialogue with a wide range of interpretive disciplines and includes readings of cultural texts such as films, dramatic and musical performances, visual art, material artifacts, comic books, and social media. Some of the work in this broader field, including Peters's own scholarship, has embraced the turn to history. For examples and discussions of such work, see Julie Stone Peters, *Law as Performance: Theatricality, Spectatorship, and the Making of Law in Ancient, Medieval, and Early Modern Europe* (Oxford: Oxford University Press, 2022); Greta Olson, *From Law and Literature to Legality and Affect* (Oxford: Oxford University Press, 2022); Simon Stern, Maksymilian Del Mar, and Bernadette Meyler, eds., *The Oxford Handbook of Law and Humanities* (New York: Oxford University Press, 2020); and Sarat, Anderson, and Frank, *Law and the Humanities*.