Course offerings in law and literature have become increasingly popular over the last two decades, but the premises and goals of this fusion vary widely depending on where the courses are housed. In English departments, the syllabus is likely to place conventionally literary materials next to legal opinions. Generally, these courses treat legal and literary writings as mutually constitutive productions of a particular historical period or, less frequently, as modes of engagement with psychic and social problems such as trauma and revenge, which may or may not be treated as historically specific. In either case, the concern is primarily with representation. For example, students might read Mark Twain’s *Pudd’nhead Wilson* and *Plessy v. Ferguson* as parallel texts, looking at their metaphors of racial and political disenfranchisement, their ways of speaking about intention, and their use of the language of hypothesis at certain-narrative cruxes. By putting the two texts in dialogue, students may also see how they contributed to a larger conversation in which the terms of representation were open to revision.

In law schools, on the other hand, law and literature classes are most commonly treated as an opportunity for moral education, by means of a syllabus that relies primarily, and often exclusively, on literary readings, par-

ticularly fiction and drama. Students are encouraged to focus on details that provide a richer and more detailed rendering of the human problems that legal decisions are seen as resolving after the manner of bloodless technocrats. Given the primacy of ethical questions in these classes, the text’s language will likely be viewed as offering relatively transparent access to the story’s action, with the discussion centering on the morality of the characters’ behavior.

What explains these divergent approaches to law and literature? Professors on both faculties are notorious—perhaps the most notorious in the whole academy—for their tendency to poach on other fields, enthusiastically selecting the material that seems to support their agenda and not much caring about debates in the other discipline that ought to qualify that enthusiasm. Among law professors, this habit may be explained by reference to the concept of institutional competence, promulgated by the legal-process scholars of the 1950s and 1960s. The legal system structures its rules of scrutiny and deference to take account of the different decision-making processes and kinds of expertise of courts, legislators, and administrative agencies, leaving each one in charge of the functions that it can best control. It is hardly controversial to suggest that academic specialists have—and seek to retain—their own expertise over particular subjects and methods. What comes of the interdisciplinary effort, however, depends on what competence is ascribed to the external field. In the case of law and literature, law professors evidently are in search of a humanistic balm and regard literature as its source and essence. On that view, it is emphatically the province of the literary to say what human nature is and how it should be portrayed. It does not matter what other skills English professors might claim for themselves, because the humanizing touch is the only one that answers a felt need. That is their competence, and that is what motivates the importation of literature in the first place.

For English professors, the disciplinary imperialism that prompts the turn to law comes out of the idea that all discursive practices generate their own texts. Law is seen not as the bearer of certain values or skills that cannot be had elsewhere but as one more cultural site for the production of meaning—although perhaps an especially inviting site because of the very public disputes that it manages and because its productions abound in literary features that are much more sparsely distributed in spheres such as medicine and architecture. Law professors might protest that this fixation on language ignores the many other considerations that inform legal analysis and scholarship—such as legitimacy, transparency, and jurisdictional
authority—but unless these concerns are explicitly articulated or can be derived from a verbal formula, they hold much less interest for scholars who go to law in search of new vocabularies to amplify familiar texts.

These two approaches to law and literature may appear so divergent as to define two separate enterprises that only by happenstance share the same name. The differences between law schools and English departments are vast, but a course in law and literature offers some opportunities to close the distance instead of preserving it. In this essay, I describe more fully what goes on in each area and then suggest some ways of helping students in both fields understand each other’s methods. Promoting cross-disciplinary discussion in this way may help develop a more truly interdisciplinary body of scholarship.

In law schools, courses in law and literature are often presented—sometimes in expressly spiritual terms—as an antidote to the barren, ossified, regimented, hidebound abstractions of doctrinal analysis, with its balancing tests, burdens of proof, inventories of elements, and unblinking hostility toward imprecision. Reading novels and plays about accusation and revenge, watching movies about trials, learning the backstory about the passions and struggles animating the parties in a famous case—all these activities are exulted as ways of reminding students to think about the place of justice in the legal system. If that lesson risks sounding too abstract, there is a second, more practical benefit that flows from luxuriating in narrative detail and reflecting on the ambiguity of human motivation: these opportunities help students to develop a keener awareness of the subtleties and muted inflections in the stories that clients tell and to cultivate a capacity for empathy that keeps zealous advocacy from turning into inflated or demeaning caricature.

Both of these goals are concerned with tempering the instinct to shunt people and their actions into doctrinal boxes, so that students may develop lawyering skills that reflect the importance of accommodating individual needs, emotions, and idiosyncrasy. When taken up in this way as an object of legal study, literary works may be appreciated for their intricate plots and their floating, hazy explorations of consciousness, but ultimately—like the appellate decisions that fill the casebooks—they are mined for their propositional content. How should Captain Vere have acted? What does Portia’s performance in court tell us about the role of the advocate?

By the second year of law school, students have learned how to read an opinion strategically, extracting its holding and ratio decidendi, and they are encouraged to apply a similar protocol to literary works, with the difference that novels earn their place on the syllabus by virtue of their ability to deliver a moral lesson instead of setting out a legal rule. This is not to say that the lesson must announce itself explicitly—after all, students can hardly be expected to sharpen their sensitivities unless they get to test their peripheral hearing. But even if the readings require forms of attention and interpretive skills that are different from the ones on display in the Socratic classroom, the goal of the exercise remains similar in nature. The syllabus may consist of novels and plays, but students are still probing the text with an eye for normative conclusions.

That effect is apparent from the tendency, in law schools, to offer theme-based courses in law and literature. The common thread connecting the readings, and highlighted in the course’s name, is usually a topic such as personal responsibility, access to justice, or the obligations of advocacy—topics that invite students to evaluate the moral status of actors and the legal system. The thematic approach focuses on how the readings advance certain values or promote reflection on certain dilemmas. All the participants may then take it for granted that discussion will proceed by looking at how the text defends or criticizes the positions of various characters. Details that cannot be made to yield such conclusions are understood to be irrelevant. That the discussion will be framed in this way is so intuitively obvious, by virtue of the thematic focus, that no one even needs to be told about the evidentiary rules, the rules of admissibility, that determine what will count as a contribution.

Questions about tradition, convention, allusion, literary movements, and generic form—questions that might take up most of the discussion in an English seminar—are unlikely to surface here except when they can readily be turned toward the normative ends that the discussion solicits. Any of those questions might carry a significant moral valence when the text is read as an allegory or as a means of tracing the fault lines of a contemporaneous debate, but such readings would require more immersion in literary and historical context than the class usually affords. Similarly, while the characters’ and narrator’s language may receive close attention, the conditions of representation are rarely scrutinized. Hence there is little time for questions such as why certain events are mentioned after the fact but not portrayed, or why a text struggles to enlist the reader’s sympathy in some places but forgoes the effort in others. Even when the class includes students who were used to that kind of analysis in college, they generally accept that for present purposes, the focus is on making character and action directly legible in moral terms. Because of this focus, law
professors often assign works that rarely appear on English syllabi, such as Harper Lee’s *To Kill a Mockingbird* and Scott Turow’s *Presumed Innocent*. Paradoxically (at least to the mind of an English professor), the concern to encourage subtlety and nuance extends only to a single dimension, attending to the fine-grained details of character and motive but generally accepting a very truncated view of the cultural framework embedding those details and ignoring the literary framework altogether.

If literary narratives provide the legal academy with the means of living up an unremitting diet of doctrinal gruel, in English departments the law is often a singularly appealing object of analysis because of its ready exercise of power and its manipulation of the tools of social control. These operations are fascinating enough when performed unabashedly, but are all the more intriguing when done by sleight of hand. Where law professors generally mean to add narrative (and not, for example, lyric poetry) when they teach law and literature, for English professors the foreign part of the conjunction almost invariably refers to opinions (not statutes, regulations, rules, or pleadings). The reasons for that choice have partly to do with the comparative salience and legibility of opinions, partly with their use of narrative.

The prominence of opinions like *Brown v. Board* and *Roe v. Wade* leads nonlawyers to think immediately of that category when considering what counts as legal writing. The Racketeer Influenced and Corrupt Organizations Act and the Environmental Protection Act may be just as well known, but fewer have read any part of these statutes, and few who have dipped into them would relish the thought of assigning more of the same in an English course. Rules and pleadings are even less likely to engage the interest of anyone who is not professionally required to read them. Further, anyone who has read an opinion might at least entertain the illusion that the document is legible as an independent piece of writing, whereas rules and statutes are usually hard to understand when taken in isolation.

To place them in a larger scheme requires not only more reading but also the ability to know where to look and where to draw the line in adding more material. Perhaps most important, opinions have the virtue of being packed with narrative. They include factual narratives of the events leading up to the dispute—sometimes even dueling factual narratives when there is a dissent—and they also conduct an analysis that takes a narrative form itself as it applies the law and reasons its way to a conclusion. Thus students may look not only at how the court wields its authority in managing the dispute but also at how the court uses narrative form to shape the reader’s perceptions and to command assent.

When legal opinions and novels are read as mutually illuminating efforts to exercise power through the operations of rhetoric and narrative, the resulting discussion will be very different from the one that occurs in the law school classroom. English professors often assign opinions that have no place in the law school curriculum. Where the law side favors novels like *To Kill a Mockingbird*, the English side traffics in eighteenth-century slavery decisions and Victorian divorce cases that few law students, or even law professors, have ever heard of. And just as those in the literary academy may be nonplussed by the moral-propositional approach often used by law professors, the law professors would be nonplussed by many of the readings produced in English departments. Only rarely do law students read an opinion in its entirety; the casebooks include only those parts deemed relevant by the editors. Such a cavalier attitude toward the text would be unthinkable in an English department, and it signals a very different view of the object of study. During their first year, law students learn that some of the most important questions have nothing to do with the language of the text. Movies about the rigors of law school frequently make this point by showing a professor badgering a student about the court’s jurisdiction, the procedural status of the case, the way in which the cause of action has been framed, or the decision’s place in a chain of precedent. While students in the English classroom are carefully parsing an opinion’s rhetorical and narrative structures and inquiring into the cultural logic entailed, there is usually little understanding of issues that would be fundamental to any legal discussion. A critique that fails to engage them risks misunderstanding the opinion’s legal significance, even if the analysis provides a sophisticated understanding of the cultural and intellectual energies at work.

So far my comparison has brought out several asymmetries. Whereas law professors usually rely entirely on readings imported as a corrective to the students’ standard fare, English professors usually combine legal and literary materials and see few differences between the two forms of writing. For law students, the turn to literature is often prompted by a sense that their doctrinal classes are missing an essential ingredient, whereas students of literature generally read legal opinions not to quench a thirst for logic, rigor, or consequentialist analysis but to find coercion and power displayed in an unusually pure form. The material imported as fodder for the course is often peripheral to the interests of scholars in the other field. Nevertheless, courses in both venues turn out to share much the same view of what counts as law and literature—namely, opinions and narratives—even if the rationale for that focus differs according to the field. In both venues,
the imported texts typically are read according to the protocols of the home discipline.

These observations may seem to lead to an impasse. The agenda on each side presupposes that something is gained by blending the two fields, but the approaches themselves appear to be immiscible. While much would be gained by helping students on each side understand the methods and habits of mind cultivated in the other discipline, a course in law and literature cannot and should not present itself as an opportunity to master a new field in one semester. One way to bridge the gap, and to give students a basic understanding of the tools and styles of analysis used in the other discipline, is to rely on tools internal to each discipline.

On the law side, students' training in evidence may help them learn to think in a more sophisticated way about strategies of representation. Law students are used to thinking about what makes evidence admissible — indeed, this is one of the first things they learn in the Socratic classroom, where some previously acceptable forms of evidence turn out to be illegitimate and new ones must be acquired. Perhaps the most frequently rehearsed insight among scholars of law and narrative is that a trial involves two competing stories and the victor is the one who can tell the more persuasive story. Conversely, we might say that every story is told from a situated perspective aimed at eliciting a certain response from the reader. Though admittedly reductive, this characterization may prod students to examine their reactions to characters, events, and narrative styles instead of simply taking those reactions for granted and relying on them as the basis for moral judgments. Once students are asked to defend their responses on evidentiary grounds, they may start to see how the text withholds information, lavish its attention on certain characters, and shifts rhetorical gears at certain key moments.

This point may be developed not only by using classroom discussion to focus more attention on the question of evidence but also by assigning scholarly work in law and literature that shows how representation depends on forensic strategies. For example, in Strong Representations Alexander Welsh argues that Henry Fielding’s narrator in Tom Jones constantly doles out or conceals evidence about Tom’s character, all the while purporting to interpret the evidence or tacitly leading the reader to make questionable inferences. The narrator, Welsh explains, “is not an eyewitness but a manager of the evidence, analogous to a prosecutor or a judge and later to defense attorneys in a trial” (58). That is, the narrator manages the evidence from opposite sides — and while he may seem to be a special case because he is so present throughout the novel, the point can be developed with subtler examples once it has been made with the aid of such an intrusive figure.

As it turns out, there is a long and respectable genealogy for the idea that novels may contribute to our understanding of law of evidence and vice versa. James Ram, in one of the major nineteenth-century contributions to evidence law, A Treatise on Facts as Subjects of Inquiry by a Jury, relied heavily on literary examples — including more than thirty references to Shakespeare and more than twenty to Sir Walter Scott.1 Ram uses these writers to illustrate evidentiary principles — for example, he draws on a scene from Ivanhoe to show that hearsay is a poor source of information, because a witness’s faith in his memory is no measure of his accuracy (191). As in Tom Jones, one may take the example a step further to ask why Scott arranges matters in this fashion, opting for questionable hearsay evidence rather than describing the event directly. Charles C. Moore followed Ram’s example a generation later in another leading study of evidence, A Treatise on Facts; or, The Weight and Value of Evidence, which draws on a wide array of writers including not only Shakespeare and Scott but also American authors such as Washington Irving and Edgar Allan Poe.2 For these commentators, it was quite obvious that literary works abound in the same evidentiary problems that are more conventionally illustrated through the use of legal opinions. One of the pedagogical virtues of Ram’s and Moore’s treatises is that, in a form already familiar to law students, they make the art of novelistic representation seem a perfectly unremarkable subject for the analysis of evidence.

It may seem less plausible, on the English side, that familiar literary texts can help students appreciate the concerns of legal scholarship. However, the objection most frequently leveled at literary critical discussions of law — namely, that cases are read in isolation and hence out of doctrinal context — also touches on questions associated with the study of narrative. Ronald Dworkin offers a useful heuristic for exploring the analogy when he considers the chain novel as a model for the application of a precedent over time, as successive judges build on and modify the original judgment (Law’s Empire 228–38). The narrative arc of a chain novel, in which each successive chapter is written by a new author, could be seen as involving a similar process of modification. Dworkin’s analogy has been heavily criticized and may even reflect a misperception of how chain novels work, but it depends fundamentally on the idea of an unfolding narrative whose conclusion is neither predetermined nor unconstrained. Dworkin emphasizes
the concept of narrative development to describe a line of cases instead of treating a single decision as an example of narrative, but at the same time, his analogy also raises questions about narrative closure in the individual instance. If we use his discussion to develop a pedagogical strategy, then, we see that it counsels in favor of teaching cases in sets, working to establish the legal context as well as the historical and discursive context of the readings.

Reading cases as part of a larger body of related decisions—as law students do—ensures that idiosyncrasies are not mistaken for paradigmatic indexes of the legal culture more generally, and conversely, it helps to bring out patterns of thought and analysis that might be missed or misunderstood when cases are read in isolation. Reading the cases individually and collectively with respect to the question of narrative closure helps students see how an opinion’s persuasiveness in legal terms is bound up with its narrative structure. In addition to its factual narrative, any opinion must seek to provide a legally satisfying resolution to the doctrinal considerations it engages, including implicit or explicit concerns about its own future application. What is perhaps most significant about this connection between doctrinal analysis and narrative form is that the latter can be shown to entail concrete commitments with effects in the world. The study of opinions as narrative thus becomes a study of how aesthetic forms can have social consequences.

The legal question of evidence and the literary question of closure converge as aspects of legal aesthetics. To the legal mind, a successful conclusion is one properly supported by competent evidence; to the literary mind, closure can be analyzed by examining the narrative strategies that produce it. By presenting students with a basic understanding of these concepts as understood in their home disciplines, a class in law and literature can give students a more sophisticated interdisciplinary understanding of both narratives and legal opinions.

**Notes**

1. See his table of authors quoted (xi-xii) and table of works quoted (xii-xv). Among Shakespeare’s plays, *Romeo and Juliet* proves to be Ram’s favorite, with seven quotations, and among Scott’s writings, *Rokeby* and *The Heart of Midlothian* receive the most citations—four and three, respectively.

2. See especially C. Moore’s “table of non-legal authors and works cited” (xlvi-xlviii).