

Directions and Dead Ends in the ‘Law & Literature’ Movement
Ruth and Mark Phillips Professor Seminar
Institute for Comparative Studies in Literature, Art, and Culture

Course description

This MA / PhD seminar critically analyzes themes, approaches, and debates in the ‘Law and Literature’ movement and the related field of ‘Law, Culture, and the Humanities’ (‘LCH’). The first half of the course begins by tracing the formation of the ‘Law and Literature’ movement from c. 1965 to the present day, paying particular attention to its goals, situation, theoretical investments, and ideological thrust. Observing the movement’s Eurocentrism, the tendency of scholars working in the field to reference only an attenuated corpus of literary and cultural materials, and its indebtedness, on the one hand, to liberal humanism, and, on the other, to post-structuralism, we will assess the productive capacities and critical limitations of the field as it is presently constituted.

Having established a working knowledge of the field in theoretical and historical terms, as well as the tendencies of its purview, we will move to consider: (1) the critical traditions of cultural materialism and Marxist cultural studies, the major thinkers of which are conspicuous by their absence – or extreme scarcity – within Law and Literature scholarship, and (2) recent debates within world literary studies which have sought to elaborate world literature’s relation to the modern capitalist world-system. In opposition to the predominant approaches, we will consider the potential usefulness of these alternative approaches to a reconstructed and reoriented ‘Law and Literature’ movement.

In the second half of the course, we will undertake a series of experimental readings of primary materials: poetry, novels, case law, constitutional law, and visual materials including films and fine art. These will be drawn from both ‘core’ and ‘peripheral’ global locations in an effort to develop a *materialist* and *worldly* approach to ‘Law and Literature’ / LCH. The interpretations that we will collectively strive to generate will draw on a variety of secondary readings and will be considered in relation to other approaches that have gained currency in ‘Law and Literature’.

Schedule

Week 1, Introduction

No assigned reading other than the course outline

Part I: Directions and Dead Ends in the ‘Law and Literature’ Movement

Week 2, The History, Theory, and Praxis of ‘Law & Literature’

Pedagogical objective: To introduce the field and its origins; to consider the field’s formation, its goals, situation, theoretical investments, and ideological thrust. To ask the question: Of what is

'Law and Literature', in its present formation, an instance? To consider tensions in the politics and ideological thrust of the field, in particular its indebtedness, on the one hand, to liberal humanism, and, on the other, to post-structuralism which by the mid- to late-1980s had risen to a position of dominance. This context will inform our reading of Richard Posner's anti-theoretical backlash that has been both influential in the field and fiercely contested. We will aim to draw some preliminary conclusions as to the productive capacities and critical limitations of the field as it is presently constituted.

Required reading:

Benjamin N. Cardozo, "Law and Literature," *Yale Review*, Vol. 14, 1925, pp. 699–718.

Charles A. Reich, "Toward the Humanistic Study of Law," *Yale Law Journal*, Vol. 74, No. 8, 1965, pp. 1402–1408.

James Boyd White, "The Cultural Background of *The Legal Imagination*," in *Teaching Law and Literature*, edited by Austin Sarat, Catherine O. Frank, and Matthew Anderson, New York: Modern Language Association of America, 2011, pp. 29–39.

Richard Posner, "Critical Introduction" and "Law and Literature: A Manifesto," *Law and Literature*, 3rd edition, Harvard University Press, 2009, pp. 1–17, 545–550.

Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA*, Vol. 120, No. 2, 2005, pp. 442–453.

Further reading:

Austin Sarat, Matthew Anderson, Catherine O. Frank, "Introduction: On the Origins and Prospects of the Humanistic Study of Law," *Law and the Humanities: An Introduction*, Cambridge: Cambridge University Press, 2009, pp. 1–46.

Richard Weisberg, "What Remains "Real" About the Law and Literature Movement?: A Global Appraisal," *Journal of Legal Education* Vol. 66, No. 1, 2016, pp. 37–43

Guyora Binder and Robert Weisberg, *Literary Criticisms of Law*, Princeton University Press, 2000.

Kieran Dolin, *A Critical Introduction to Law and Literature*, Cambridge University Press, 2007.

Ian Ward, "Law and literature: a continuing debate," *Law and Literature: Possibilities and Perspectives*, Cambridge University Press, 1995, pp. 3–27.

Richard Weisberg, *The Failure of the Word*, Yale University Press, 1984.

Richard Weisberg, *Poethics and Other Strategies of Law and Literature*, Columbia University Press, 1992.

Robin West, "Communities, Texts, and Law: Reflections on the Law and Literature Movement," *Yale Journal of Law and the Humanities*, Vol. 1, 1988, pp. 129–156.

Robin West, “Law, Literature, and the Celebration of Authority,” [Review of the first edition of Posner’s *Law and Literature*], *Northwestern University Law Review*, Vol. 83, 1989, pp. 977–1011.

James Boyd White, *The Legal Imagination: Abridged Edition*, 1973, rpt. University of Chicago Press, 1985.

James Boyd White, “What Can a Lawyer Learn From Literature?” [Review of the first edition of Posner’s *Law and Literature*], *Harvard Law Review* No. 102, 1989, pp. 2014–47.

Week 3, For a Materialist Reconstruction and Reorientation of the Law and Literature Movement

Pedagogical objective: To provide an overview of the materialist critical traditions of cultural materialism and cultural Marxism, the major thinkers of which are conspicuous by their absence – or extreme scarcity – within law and literature scholarship; to consider the potential usefulness of cultural materialism and cultural Marxism to a reconstructed and reoriented ‘Law and Literature’.

Required reading (read in the order listed below):

Karl Marx, “Preface to *A Critique of Political Economy*,” 1859, *Karl Marx: Selected Writings*, ed. David McLellan, Oxford University Press, 2000, pp. 424–428.

Raymond Williams, “Base and Superstructure in Marxist Cultural Theory,” *New Left Review*, Vol. 1, No. 82, Nov/Dec, 1973, pp. 3–16.

Fredric Jameson, “Reification and Utopia in Mass Culture.” *Social Text*, Vol. 1, No. 1, 1979, pp. 130-148.

Further reading:

Theodor Adorno and Max Horkheimer, “The Culture Industry: Enlightenment as Mass Deception,” 1944, abridged version in: *The Cultural Studies Reader*, edited by Simon During, New York, Routledge, 1999, pp. 31–41.

Louis Althusser, “Contradiction and Overdetermination,” 1965 in: Louis Althusser, *For Marx*, trans. Ben Brewster, London: Verso, 2007, pp. 87–128.

Peter Barry, *Beginning Theory: An Introduction to Literary and Cultural Theory*, Manchester University Press, 4th ed. 2017, pp. 159–174, 184–193. [Chapter on Marxism and section on Cultural Materialism.]

Pierre Bourdieu, “Distinction and the Aristocracy of Culture,” 1984, abridged version in: *Cultural Theory and Popular Culture: A Reader*, 3rd ed., edited by John Storey, Harlow, Pearson International Limited, 2006, pp. 466–476.

William C. Dowling, *Jameson, Althusser, Marx: An Introduction to The Political Unconscious*, Ithaca, New York: Cornell University Press, 1984.

Terry Eagleton, *Marxism and Literary Criticism*, Routledge, 2002.

Antonio Gramsci, "Hegemony, Intellectuals, and the State," abridged version in: *Cultural Theory and Popular Culture: A Reader*, 3rd ed., edited by John Storey, Harlow, Pearson International Limited, 2006, pp. 85–91.

Fredric Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act*, Ithaca, New York: Cornell University Press, 1981. [Chapter 1 is the key chapter; it is however undoubtedly challenging reading; I recommend approaching it via Dowling's introduction, listed above.]

Week 4, 'Worlding' Law and Literature / LCH after the disciplinary critiques of Eurocentrism / Applying the theory of Uneven and Combined Development to Law and Literature

Pedagogical objective: To introduce briefly recent models of comparativism in the materialist tradition that we can harness to the task of imagining and theorizing a reconstructed and reoriented Law and Literature that is "at home in the world."

Required reading:

Fredric Jameson, "Third-World Literature in the Era of Multinational Capitalism," *Social Text*, No. 15, 1986, pp. 65–88.

WReC: Warwick Research Collective, *Combined and Uneven Development: Towards a New Theory of World-Literature*, Liverpool University Press, 2015, pp. 1–80.

Auritro Majumder, *Insurgent Imaginations: World Literature and the Periphery*, Cambridge University Press, 2020, pp. 1–46.

Further reading:

Timothy Brennan, *At Home in the World: Cosmopolitanism Now*, Harvard University Press, 1997.

Neil Lazarus, "Fredric Jameson on Third-World Literature: A Defence," *The Postcolonial Unconscious*, Cambridge University Press, 2011, pp. 89–113.

Franco Moretti, "Conjectures on World Literature," *New Left Review*, 1, 2000, pp. 54–68.

Edward W. Said, "The Politics of Knowledge," *Raritan: A Quarterly Review*, Vol. 11, No. 1 1991, rpt. in Edward W. Said, *Reflections on Exile and other literary and cultural essays*, London: Granta, 2000, pp. 372–385.

Sandeep Banerjee, et al. "Book Forum on Auritro Majumder's *Inusurgent Imaginations*," *The Cambridge Journal of Postcolonial Literary Inquiry*, vol. 9 no. 3, 2022, pp. 399–430.

Barbara Harlow, et al. "First Responses," *Comparative Literature Studies*, vol. 53 no. 3, 2016, pp. 505–534.

WReC: Warwick Research Collective, "WReC's Reply," *Comparative Literature Studies*, vol. 53 no. 3, 2016, pp. 535–550.

Joseph Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law*, Fordham University Press, 2007.

Week 5, Pashukanis: Guest seminar: Professor Stacy Douglas

Required reading:

Evgeny Pashukanis, *General Theory of Law and Marxism*, 1929, rpt. London, Pluto Press, 1987, pp. 65–133. (Chapters 1–4). Also available at: www.marxists.org/archive/pashukanis/1924/law/.

Week 6, A Part of the Problem or a Part of the Solution? Marxist Considerations of Law After Pashukanis

Required reading:

E.P. Thompson, "The Rule of Law," *Whigs and Hunters: The Origin of the Black Act*, 1975, rpt. London, Breviary Stuff Publications, pp. 202–210.

China Miéville, "Imperialism, Sovereignty and International Law," *Between Equal Rights: A Marxist Theory of International Law*, 2005, rpt. London: Pluto Press, 2006, pp. 225–293.

China Miéville, "Multilateralism as Terror: International Law, Haiti and Imperialism," *Finnish Yearbook of International Law*, No. 19, 2008, pp. 63–92.

Umut Özsu, "Revolutions Are Not Made by Laws: On Marx, Marxism, and International Law: An Interview with Umut Özsu, Part I," <https://voelkerrechtsblog.org/on-marx-marxism-and-international-law/>, June 9, 2022.

Further reading:

Honor Brabazon, "Nomocratic social change: Reassessing the transformative potential of law in neoliberal times," *Research Handbook on Law and Marxism*, eds. Paul O'Connell and Umut Özsu, Edward Elgar, 2021, pp. 477–495.

Paul O'Connell and Umut Özsu (eds.), *Research Handbook on Law and Marxism*, Edward Elgar, 2021.

Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law*, Cambridge University Press, 2020.

Part II: Experimental Readings in ‘Law and Literature’

Pedagogical objective: In Part II of the course, the goal throughout is to actuate a materialist Law and Literature. The method takes the form of a series of experiments in the study of cultural dynamics arranged via the assigned readings. This pedagogical goal requires as a contingent, prior step the development of a self-critical awareness that makes visible, as objects or obstacles, the interpretative schemes that we ordinarily and unconsciously bring to our reading of cultural and scholarly materials. Further, while the primary materials assigned in Part II include legal texts, creative responses to legal texts, and other materials that are transparently “about law,” many of the assigned materials are not in fact about law on the surface. However, these materials enable consideration of how law can be rendered ideologically invisible, exists in the substratum of the cultural imaginary, and can either foster or constrain our ability to envision emancipatory horizons. Our interpretative method will therefore test the value of a surface/depth mode of critique (a quintessential characteristic of Marxian – and psychoanalytic – modes of interpretation). The materialist interpretations that we will strive to collectively generate will draw on a variety of secondary readings and will be considered in relation to other approaches that have gained currency in the field of Law and Literature.

Week 7, The Cultural Afterlives of the Zong Massacre

Required reading / viewing:

M. NourbeSe Philip, *Zong!* Wesleyan University Press, 2008.

Gregson v Gilbert, 1783, 3 Doug. KB 232.

J.M.W. Turner, “Slavers throwing overboard the Dead and Dying, Typhon coming on.” (“The Slave Ship”.) 1840. Oil on canvas. Museum of Fine Arts, Boston.

Marcus Wood, *Blind Memory: Visual Representations of slavery in England and America 1780–1865*, Manchester University Press, 2000, pp. 41-77

Week 8, The Haitian Constitution of 1805, Law’s Transformative Potential, and the Contradictions of Modernity

Required reading:

The 1805 Imperial Constitution of Haiti in: Laurent Dubois & John D. Garrigus, *Slave Revolution in the Caribbean, 1789–1804: A Brief History with Documents*, Boston & New York: Bedford-St. Martin’s, 2006, pp. 191–96.

[The 1805 Imperial Constitution of Haiti is available in the original French in *Documents constitutionnels d’Haïti, 1790–1860* edited by Laurent Dubois, Julia Gaffield, and Michel Acacia, (Berlin / Boston: De Gruyter, 2013), pp. 63–69. It is also available online:

https://haitidoi.com/constitutions/1805-2/#_ednref1]

Philip Kaisary, “The Haitian Constitution of 1805, Law’s Transformative Potential, and the Contradictions of Modernity.” PDF to be provided.

Required viewing:

Sujewa Ekanayake (dir.) *Egalité for All: Toussaint Louverture and the Haitian Revolution*, PBS, 2009.

Further reading:

Sibylle Fischer, “Foundational Fictions: Postrevolutionary Constitutions I” and “Liberty and Reason of State: Postrevolutionary Constitutions II” in: *Modernity Disavowed: Haiti and the Cultures of Slavery*, (Duke University Press, 2004, pp. 227–244, 260–271.

C.L.R. James, *The Black Jacobins*, 1938, 2nd ed. rev. 1963, rpt. New York: Vintage, 1989.

Week 9, Jacques Roumain, *Masters of the Dew* + Tomás Gutiérrez Alea’s *Cumbite*

Required reading / viewing:

Jacques Roumain, *Masters of the Dew*, 1944, trans. Langston Hughes and John Mercer 1947, rpt. Oxford: Heinemann, 1978.

Tomás Gutiérrez Alea, dir. *Cumbite*, 1964, Cuba, Instituto Cubano del Arte e Industria Cinematográficos.

Week 10, *Bamako*: Global Capitalism on Trial

Required reading / viewing:

Abderrahmane Sissako, dir. *Bamako*, 2006, Mali, France, United States.

Hugh Charles O’Connell, “‘Can we imagine a world without funds or Banks?’ Abderrahmane Sissako’s *Bamako* as African-Utopian Speculative Fiction,” *Articulating Race and Utopia*, special issue of *Utopian Studies*, edited by Edward Chan and Patricia Ventura, vol. 30, no. 1, 2019, pp. 67–86.

Week 11, Dystopia / Sci-Fi Jurisprudence: *Do Androids Dream of Electric Sheep?* and *Bladerunner*

Required reading / viewing:

Philip K. Dick, *Do Androids Dream of Electric Sheep?* 1968, rpt. New York: Del Rey, 1996.

Ridley Scott (dir.), *Blade Runner: The Final Cut*, 2007, United States.

Wae Chee Dimock, “Science Fiction As A World Tribunal,” in *Law and Popular Culture: Current Legal Issues: Volume 7*, edited by Michael Freeman, Oxford: Oxford University Press, 2004, pp. 520–533.

Further reading:

Scott Bukatman, *Blade Runner*, 2nd ed., London: BFI / Palgrave Macmillan, 2012.

Peter J. Hutchings, "From Offworld Colonies to Migration Zones: *Blade Runner* and the Fractured Subject of Jurisprudence," *Law, Culture and the Humanities*, Vol. 3, No. 3, 2007, pp. 381–397.

Judith B. Kerman, "Technology and Politics in the *Blade Runner* dystopia," in *Retrofitting Blade Runner: Issues in Ridley Scott's Blade Runner and Philip K. Dick's Do Androids Dream of Electric Sheep*, edited by Judith B. Kerman, Bowling Green University Press, 1997, pp. 16–24.

Tama Leaver, "Post-Humanism and Ecocide in William Gibson's *Neuromancer* and Ridley Scott's *Blade Runner*," *The Cyberpunk Project* (1997).
http://cyberpunk.asia/cp_project.php?txt=180

Week 12, Conclusions