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Legal Fictions: Short Stories about Lawyers and the Law

Edited by Jay Wishingrad

Woodstock, N.Y.: Overlook Press, 1992, 402 pp.

Reviewed by Judith MacFarlane[†]

In this anthology, editor Jay Wishingrad has collected works from the four corners of the literary world. What links the stories is some connection with lawyers and the law. As Wishingrad's introduction explains, "all the stories have at least two things in common: They are all about law or lawyers or both, and, equally importantly, they all illuminate more than just lawyers and the law. Taken together, these fictions are compelling documentary evidence . . . of the interrelations of lawyers, the law and literature."¹

Certainly the study of law and literature is a growing field, and many texts are available on interpretation and theory. *Legal Fictions* however, is unique in two ways.

First of all, the book deals entirely with the short story genre. This literary model is appropriately metaphoric, as Wishingrad lays out in the introduction, given that the short story has many elements reminiscent of the lawyer's task at trial. Like the lawyer, the short story author has a limited amount of time in which to introduce the characters and explain their circumstances. To engage the reader, the author often seeks to win sympathy for the plight of his or her characters. Similarly, as Wishingrad aptly notes, lawyers routinely engage in the process of creating a compelling "story" that the judge or jury will accept. Lawyers essentially create "competing fictions," one of which will be stamped as truth.² All this must be done with brevity and skill, whether by the author of a short story, or a by a lawyer.

Secondly, apart from a brief introduction, the editor does not comment on or interpret the literary selections, beyond merely presenting them for the reader's consideration. It is essentially a col-

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¹ Jay Wishingrad, ed., *Legal Fictions* (Woodstock, N.Y.: Overlook Press, 1992) at ix.

² *Ibid.* at xv.

lection of fiction that stands alone as such, rather than as a theoretical work concerned with attributing particular meanings or interpretations. However, through these stories the reader is exposed, whether wittingly or unwittingly, to an analysis of the ways in which law intersects with history, gender and race issues, as well as questions of personal morality.

The first three groupings of stories are arranged chronologically: *Lawyers and the Law: Here and Now*; *Lawyers and the Law: 1900–1950*; *Lawyers and the Law 1850–1900*. On the most uncomplicated level, the reader is exposed to the historical development of the lawyer's world. This development can be traced from what *Wishingrad* calls the “gentlemanly” world of the turn of the century Wall Street firm described by Herman Melville in “Bartley the Scrivner” through the development of the mega-firm with its strict bottom line. The latter, and the accompanying pitfall of cutthroat business ethics is examined in Louis Auchincloss's “The Tender Offer.”

The status of the Legal system as a confusing labyrinth is well established. Different works in the collection explore this theme from a position within the system, as well as from outside.

Thomas Wolfe's “Justice is Blind” comments ironically on one of the “legal fictions” that lawyers' come to view as part of their everyday lives. That is, that the law may often have little to do with what seems fair to the average citizen. As Mr. Paget, a venerable Wall Street lawyer, informs a client who is shocked at an unfair law suit against him, “from this time on, sir, I want you to bear this fact in mind and never to forget it for a moment because it may save you much useless astonishment and chagrin as you go on through life. . . . Anybody can sue anybody about anything!”³ In answer to the fact that the whole situation seem particularly unjust, the sage Mr. Paget responds “Ah Justice That's quite another matter. But we're not talking of Justice. We're talking of the Law—which brings us to this case of yours.”⁴

Franz Kafka's “Before the Law” provides what may be the most accurate and insightful view of the law to the outsider, the innocent and uninitiated member of the public. In two short pages of text, Kafka constructs a terrifying parable about the power and destructiveness of law. To the individual, for whom obtaining justice is the

³ *Ibid.* at 183.

⁴ *Ibid.* at 184.

very reason for existence, the law is an uncaring and unmerciful gatekeeper that will never permit him to enter that domain.

In several stories, lawyers deal with the foibles common to everyday practice, as well as the more difficult questions of personal morality that are raised in the profession of law.

In "The Most Outrageous Consequences," James Reid Parker captures brilliantly and concisely the dilemma only a lawyer could have: enlightening a valuable business client as to the inescapable conclusion that his case cannot succeed while at once assuring the client that it is not the lawyer's fault. The story finds attorney Mr. Devore, who, as the reader is told, "almost never lost a client except through the regrettable but inescapable eventuality . . . of death,"⁵ faced with the challenge of answering a very important client who asks the question that Mr. Devore "least want[s] to hear," namely "Well, what chance have we got?"⁶ Although the ultimate answer is "none at all," Parker brings his protagonist to that result with skill and careful crafting. By the conclusion of the meeting, Mr. Devore is confident that if the client "entertained any feeling toward him, it was sympathetic feeling that the same malign forces [the U.S. Supreme Court] were in league against them both."⁷

In "Witness," Madison Smart Bell's arresting suspense story, an attorney faces the moral dilemma of traversing the role between advocate and protector. The story opens with the lawyer learning that the dangerous ex-husband of a client has been recently released from a mental institution. Throughout the divorce proceedings in which he had acted for the woman, the lawyer had become acutely aware of the man's violent and psychotic threats towards his family. The author brilliantly draws out the suspense as the lawyer grapples with questions concerning his role in protecting his client when the state fails to do so. The gradual development of the protagonist's understanding of his moral responsibility to the woman is juxtaposed against the escalating tension of the knowledge that a madman is loose and is stalking his targets. Ultimately, the author makes a sombre statement about how both lawyers, and the legal system, fail to properly protect innocents while obsessing over form, procedure and technicality.

⁵ *Ibid.* at 155.

⁶ *Ibid.* at 156.

⁷ *Ibid.* at 161.

Several of the authors create women narrators who lend a distinctly different voice to the mix. Followers of Margaret Atwood may already be familiar with her powerful work "Weight." As always, Atwood's mastery of the short story form is in evidence. In "Weight," she tells the story of two women, inseparable friends, whose shared sense of humour helps to keep them sane throughout the often sexist and disempowering world of law school. The story traces the vastly different paths that their lives take, as one of the women, Molly, ends up in an abusive marriage, trapped by a husband who is threatened by her success as a lawyer. The narration is humorous and conversational—vintage Atwood—leaving the reader almost defenceless against the tragedy of the conclusion.

Similarly, several stories are from a perspective of racial and cultural diversity. "The Web of Circumstances" by Charles W. Chestnutt is particularly compelling. Set in the Southern United States in the early 1900s, it is a terrifying look at the mockery of justice that passed as a legal system for Black Americans. Perhaps the most interesting aspect of the work is its authenticity. Rather than as modern writer constructing a setting, Charles Chestnutt writes from his own experiences. Born in 1859, in addition to being an author, Chestnutt was one of the first Black attorneys in the United States.

Jay Wishingrad has collected many excellent pieces that exemplify the best elements of the short story. In doing so, he explores the work of some lesser known authors while avoiding more obvious works such as Melville's much-analyzed "Billy Budd the Sailor." At the same time, what is astonishing about the collection is the sheer variety and number of renowned authors who have turned their attention to the topic. As well as those previously mentioned, contributors include Isabel Allende, Graham Greene, B. S. Johnson, Irwin Shaw, and Isaac Singer. In addition to the U.S., Canada, and Great Britain, the authors hail from Czechoslovakia, Sierra Leone, Chile, South Africa, Italy, France, and Poland. Clearly, the fact that this topic has cut across lines of culture, artistic style and history speaks to the important place of law not just in the literary canon, but in society's collective consciousness.

Whether approached analytically as a commentary on law and society, or enjoyed purely as brilliant literary works, this collection provides the reader with significant food for thought. In doing so, its "hands off" approach to theory is refreshing, and encourages the

reader to contemplate the possibilities of the intersection between law and literature in a way that heavy-handed theory never could. As Wishingrad concludes in his introduction: "This collection is for reading. However, if the stories stimulate readers to consider the interrelations of law and literature, or the myriad roles of lawyers and the law in literature and in our public and private cultures, so much the better."⁸

⁸ *Ibid.* at xvii .