

LAW AND LITERATURE: ALLIES—NOT ADVERSARIES

by

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ABSTRACT

This thesis will explore the topics of law and literature through the scope of James Baldwin's *The Fire Next Time*. In doing this, I will begin by introducing two perspectives of law and literature, one by Ian Ward and the other by Richard Posner. It should be noted that these two perspectives should not be viewed as opposites to one another. Law and literature is an area of inquiry like how Chemistry is. One cannot be for or against Chemistry, but instead, people have different views on Chemistry that can be either right or wrong. Likewise, law and literature is a similar field. Ward introduces a perspective that advocates viewing legal texts as literature, and therefore, using literary techniques such as metaphor, narrative, and style as legitimate means for arriving to a specific legal conclusion. Posner takes the perspective that metaphor, narrative, and style are to be understood fundamentally different from law and literature, and he illustrates this point by offering up objections in defense of the view he outlines. From there, the discussion will turn to presenting a third way of viewing law and literature, a way which is more middle-ground and aims to take parts from both of these perspectives in an attempt to make a more complete perspective. This will be labeled the third way theory, and in it I will talk of how theory and application play a critical role in understanding literature. The thesis will view theory and application like how it views law and literature—together rather than separate, and stronger in unison than divided. Once the discussion of these terms are finished, we will turn to Baldwin's work. Moreover, the paper will take the three theories espoused by Baldwin in his work: love, acceptance, and integration. Using these three theories, I will show how Baldwin transmits these ideas from his head, into his novel, and then into society. Once the ideas catch on with society, their application can be seen through demonstrations such as the March on Washington for Jobs and Freedom, cases in the Supreme Court which still have relevance today, and of course—impacting the history of the civil rights movement. Baldwin's work shows how law and literature are allies rather than adversaries.

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Glossary

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Law as Literature: Ian Ward View

There are several approaches to take in the law and literature discussion. One of these approaches, outlined and posited by Ian Ward in his book *Law and Literature*, is fairly common amongst academics of this field. In this view, Ward discusses one way of viewing law and literature together—law as literature. By law, I mean everything falling under the term “law”: policy, court cases, legal articles, legal theory, arguments for one law or another, and, of course, law itself. When I discuss the word “literature”, I refer to any written works, but especially those that have been long lasting and carry artistic merit. This view of law as literature is an alternative direction to both the view I am presenting, and the view opposite of mine.

Law as literature is an attempt to decide which literary texts are appropriate for legal study. Ward explains that law as literature “. . . examines the possible relevance of literary texts, particularly those which present themselves as telling a story, as texts appropriate for study by legal scholars” (3). In other words, can a book such as Plato’s *Republic* tell or teach us anything about law? Further, does this fictitious book or novel carry with it truths or explanations about how the law does and/or should work?

On one hand, this approach seems strange at first glance, but on the other, this practice is alive and well amongst scholars and writers. In fact, many authors use fiction as a medium to get across one point or another. One reason law and literature can work together so well is because of the emphasis each places on narrative, metaphor, and history, and as Ward outlines, each of the three is critical for understanding the view of law as literature (4). Ward further outlines these terms when he writes:

. . . substantively metaphor and narrative are simply variants of the same thing ‘storytelling’. . . The characteristic of storytelling is history; if a text seeks to

present sequence and context then it is a 'story', and metaphors and narratives are defined by this attempt. If legal scholarship attempts to present such context, then . . . legal text is, in literary terms, indistinguishable from metaphor and narrative (4).

In other words, what Ward is saying here, is that legal texts, like literary ones, are innately tied to the concepts of metaphor and narrative because of a the texts history, and therefore storytelling. Legal texts cannot be separated from metaphor and narrative, and the legal text should be read using these literary techniques, according to Ward.

The advantage of viewing law as literature is twofold: for legal scholars, it allows them to apply these principles of narrative, metaphor, and history, which primarily find themselves solely in creative works as a way to solve several epistemic issues in the law. While several problems in the law have been longstanding, allowing for new techniques from the field of literature may yield new solutions. For scholars of literature, adopting the "law as literature" approach allows literary critics to study literature as a method in addition to being studied as a work as a whole. By this, I mean that academics who work with literature can view their field as being theory based in addition to seeing the real-life application each collective work has to offer.

For further elaboration, consider this. In the field of academics, and especially fields such as the liberal arts, professors and researches write a lot about their work. When discussing something such as literature, much of the discussion tends to be theory based. This is because much of the work centers on fictitious characters that express certain truisms. Although there is indeed discussion amongst these academics regarding real world application of these truisms, the law itself provides the perfect medium for these scholars to discuss, debate, and deliberate both the theoretical and application parts of the law in unison with literature. Essentially, in adopting this approach posited by Ward, both disciplines have more to gain than they do to lose. The idea

of bringing over solutions from other disciplines to solve problems in another field should be viewed favorably by both scholars of law and literature.

The first principle discussed in literary works and the role it plays is narrative and specifically narrative. Narrative is a tool used by authors to convey a story's metaphors and other forms and styles. Narrative keeps a reader hooked on what they are reading and leaves them on the edge of their seat. The same is true for legal texts as well. For authors in the legal field, a good collective work of legal narrative has the same effect as one reading a renowned novel. Whether one is reading Ernest Hemingway or John Locke, the narrative employed by the author gives the reader that feeling of satisfaction we all long for when we read. Narrative in legal texts (what I call textual narrative) is crucial for all parties involved. The reason it is important has to do with the people who read these judicial critiques. A person may be a brilliant legal mind, but if they cannot articulate their points in an accessible and interesting format, then their readers will not only be unable to grasp the purpose of the writing, but lose interest altogether.

Narrative also has its uses outside of pure text. In addition to textual narrative, oral narrative makes up a large portion of the law. This specific narrative plays the largest part in how laws come into existence. A prime example of this has to do with the highest court in the United States—The Supreme Court. Oral narrative works its way into Supreme Court arguments every day, and since the lawyers presenting the cases use the skill of narrative to convince the Justices of their side, it shows how important narrative is in both the legal and literary fields. Although some methods or ways of presentation may differ, the purpose of oral narrative is the same as textual narrative—to convince your listener/reader of your point and do so in such a way as to keep them interested.

Metaphor, like narrative, carries an integral part in the concept of “law as literature” of understanding the importance of creative works in the legal field. Legal and philosophy scholar Richard Rorty, states that if we are to understand the legal problems of the twentieth century, then we must read novels along with legal texts (4). This is because “[t]he characteristic of critical scholarship, legal or otherwise, is, according to Rorty, its appreciation of the creative possibilities of metaphor as a constituent of any text, together with its willingness to supplement established theoretical texts with narrative fiction” (4). This quote means two things. First, people use metaphor as a way to make sense of such abstract concepts. For example, the idea of justice is both broad and confusing, but authors who write of it in creative formats, like Plato, use narrative text to show metaphors of what justice really means and is in real-time examples. This process of making abstract concepts concrete realities assists legal professionals in deciding how to execute and decide on legal cases. Second, in using metaphor, otherwise confusing legal jargon becomes accessible and understandable to people outside of the legal world. Even Richard Posner, the person who denies that legal narrative can have any use in law whatsoever, accepts the premise that metaphor can be used to enhance judicial style (4). The reason why many people flock to fiction is often because the texts read easily and people generally enjoy reading the stories they convey, likewise, with the use of metaphor in narrative, this concept makes legal texts less dense more friendly to reader who desire, but are unable to read them.

The most important concept to draw from Ward’s idea of “law as literature” is the emphasis it puts on history. This concept brings together the aforementioned narrative and metaphors in one swoon. To clarify, history allows for both narrative and metaphor to take place because it acts as the stage for the actors to perform. In the case of legal texts, the use of precedent serves as history, and helps to convey to an audience why one judge ruled on a legal

case in one way or another. Each precedent carries with it a story of why and how it became the decision it is. In this way, the use of history as storytelling is inseparable from narrative and metaphor, and finds itself amongst legal texts of all varieties. Ward quotes Paul Ricoeur to explain, “The characteristic of ‘storytelling’ is history; if a text seeks to present sequence and context then it is a ‘story’, and metaphors and narratives are defined by this attempt” (4).

According to this view, if correct, then in literary terms, legal text is “in distinguishable from metaphor and narrative” and it is precisely because legal texts (like precedent) use the history of a case as a story, and that story carries with it narrative and metaphor (4). This is why the most pressing example of storytelling in the law is precedent. The Supreme Court (and all courts in general) use precedent in deciding current cases. The reasoning behind this is that prior cases that have been decided in a similar manner or carry with it similar problems of the current case can be used to reason that a current case being argued should be decided in the same way as well.

The underpinning of precedent is this: the past case tells a story—a legal narrative if you will. This story about how and why a case should be decided, and that previous case already decided often has metaphors or hypotheticals about what would or would not happen if the case (either current or past) was not ruled in the said manner of which it was ruled. As shown above, Ian Ward is the example of a person who looks upon the mixing of law and literature with positivity, and welcomes the blending of these two studies with open arms. This positive view of blending law and literature is not universally shared, as there exists a viewpoint in academics that views the relationship of law and literature with suspicion. Lead law and literature scholar Richard Posner heads this group.

Law or Literature: Richard Posner View

Although Ward tends to view the synthetization of law and literature as a positive relationship, one prominent academic individual has a viewpoint that differs—Richard Posner. Posner, in his book *Law and Literature*, lists several concerns with attempting to foster a working relationship between literary texts and legal texts. Some of the issues Posner raises are legitimate concerns that need answers. I will elaborate on what are his most convincing points later on in this portion of the thesis.

In the beginning of his book, Posner starts with the question of “what is literature?” (20). The question opens the door for both many answers and many problems. Posner goes on to state that there is no perfect or precise critical or definitional procedure for deciding whether a comic strip, newspaper, or inaugural address is literature (20). As Posner further says, “Literature is a label that we give to texts, of whatever character or provenance, that are meaningful for readers who were not in the writer’s contemplation” (20). Since there is such an ambiguity that comes with people and their personal preference, there cannot be a universal agreement about what constitutes a literary text and what does not. In this picture, it must be possible then for any person to use any piece of work they deem as literature to make its mark on the legal system if a person tries hard enough.

Another issue lurks in this objection. If all works classify as literature, and literature shapes, changes, or manifests our understanding of the law, then what texts could leak into changing our legal system? The texts I have in mind are religious texts such as the Bible, Qur’an, and other influential religious documents. With law in the United States, we have a purposeful separation between our church and between our states. Although if we take the Ward view into practice, it

would seem as though this separation dissolves. The alternative to this would be for the state to decide which forms of literature are deemed appropriate for criticizing and critiquing the law, but this seems controversial at best and impossible to enforce at worst.

The second objection raised by Posner is this: how can literature, which rests on uncertainty, tell us anything certain about law? In other words, if one is to look at literature for certain truths, then they are out of luck. This is because often times, the author of the text is ambiguous about what they wish to convey and believe. Posner writes about this using Shakespeare as his model:

Little is known about Shakespeare's personal life and nothing of his private opinions. There is no authoritative text of the plays. None of the original manuscripts, that is, Shakespeare's autograph texts, survives. The copies from which printers worked were probably inaccurate, and the printers made many errors. IT is not even clear that any of the plays ever *had* a single, definitive text. . . The quest for authorial intentions is defeated by these textual uncertainties (17).

As the aforementioned quote shows, even attempting to find certainty from text, even from the author, will often times prove fruitless. What is devastating about this objection by Posner in particular is that the example he gives just so happens to be of arguably the greatest poet and playwright in history. If one were to view law and literature from Ward's perspective, it is likely they would use Shakespeare at some point in their study of law and literature in unison. However, with the objection, one finds them self with little choice but to see the flaws of trying to pull certainty from uncertainty. The problems of reading Shakespeare together with law yields yet another issue. If one cannot find certainty from the (arguably) greatest poet and playwright in history, is it even worth trying to blend law and literature together? More clearly, if scholars of literature have just lost Shakespeare, have we also lost everyone else? Shakespeare's influence is

massive, and if we cannot count on one of the greatest writers in history to assist us in making legal decisions, then how can we possibly trust authors of lesser influence?

The author's vision for their work is an issue worth discerning since often times society compromises or changes this vision. By this, I mean that the intended purpose of a literary work by an author may not end up as the result for what society sees for it. One example is *Alice in Wonderland* by C.S. Lewis, who originally wrote this work for children, but instead the books find their way into the arms of adults of higher academic pedigree for critique and analysis and enjoyment rather than reads by children (20). A more relevant example is the Bible and Qur'an itself. Although some the original writers such as Jesus, Mohammed, and people like St. Paul and St. Mark intended (or so we think, again, finding certainty is a problem) for these collective religious works to be used to help advance and set society straight, people have wide-disagreement about how these texts are to be applied and understood. Even different authors in the Bible have conflicting tones. Writings in the Old Testament seems more vicious and dark than the tone of God in the New Testament and passages in the Qur'an seem brutish and barbaric than other passages of peace and love. How can we make sense of an author's vision when it seems as though they did not have a clear vision itself? According to Posner, we cannot, which is why he claims writers of the Bible and other forms of literature "did not think they would be writing for readers of the future of literature" (20).

Posner tackles more than just the idea of literature in his book. In a later section, he discusses the implications of a judge or person employed by the law using the techniques from literature such as narrative, metaphor, and history, which Posner deems as "meaning, style, and rhetoric" (255). In this chapter, he warns of the grave implications that come from using these techniques and writes that their use in applying the law does more harm than good. Rhetoric, as

Posner puts it, is the “subset of stylistic devices that is used to persuade readers or listeners to believe or do something” (255). For legal scholars, they take this definition even further and include a term of high admiration, which is inseparable from morality over the rationality of analysis done by social science. In Posner’s view, this blend of content and style place an important role, but is not categorically imperative in judicial decisions. In literature, the rhetoric is necessary for both the author and reader. For the author, it allows them to convey a point in a certain tone or manner, and for the reader, the choice of rhetoric plays the deciding role of whether or not they should continue reading. In other words, the literature we cherish and consider the apex of its kind, all have some form of rhetoric that we enjoy and find appealing. This is not the case for judicial decisions.

Although rhetoric plays an important role for judges and trial attorneys, it does not play as *the* role. The best way to think of it is icing on the cake rather than the cake itself. Two competing lawyers, one with persuasive and powerful rhetoric, and the other with a bland presentation, should play (in theory) no outcome on the decision of a judge. While Posner acknowledges that powerful rhetoric can help an attorney, it cannot be his only weapon, because although he may be a more gifted speaker, if his lesser-spoken opponent is equipped with the judicial knowledge to win the case—then the judge will rule in his favor. Posner elaborates that:

One judicial opinion might be better than another not because the argument was more persuasive but because by candidly disclosing the facts and authorities tugging against its result, by being tentative and concessive in tone, even by confessing doubt about the soundness of its result, it was a more credible, a more impressive judicial document, though not a more convincing defense of the outcome (256).

As shown above, judges consider more than just rhetoric (that is not to say that authors take only rhetoric into account, only that they place more emphasis on it). For these reasons, Posner views

the different emphasis placed on rhetoric by scholars of literature and law as one reason as to why legal text should not be read like literature (257).

Rhetoric, as Posner views it, is a subset of the larger concept of style. There are many different ways of viewing style. The scholar of literature uses style in referring to an author's specific way of presenting the novel read by their audience. This style could be that of long and elaborate, or short and to-the-point. Style, too, is an important part of the legal field, where it can refer to (like the literary author) a person's authorship of a concurring or dissenting opinion about a specific issue, or finds place in regards to a vocal style (259). This is important for judges, literary critics, and scholars of the law, which is what influences Posner to realize just that: "The effect of style on portability is a factor in judicial reputations. . . Two writer's styles can resemble one another yet one will be better because the writer has avoided the pitfalls against which the handbooks warn . . ." (258). In other words, style matters in both the law and literature. Oddly enough, Posner seems more considerate and open to the idea of law and literature sharing a mutual appreciation for style. This makes sense, as for both the author and advocate; the style helps to maintain their identity. We can recognize certain author's and specific judges based on how their style is.

Although Posner does not directly state how style can be dangerous, he does give some indirect direction towards this point. Further, Posner writes of how style can lead to negative results. More specifically, using the literary skills espoused by writers and academics of literature may not be the wisest of ideas. This is because ones choice of words have social and political consequences and as Posner says, "an impoverished vocabulary can impoverish thought" (297). In the end of this section, the fourth objection, will give an illustrated example of how style can convolute the meaning of the sentence.

All written before leads to this objection, where Posner clearly gives us an example of the dangers of reading legal texts as literature. If a judge were to decide a ruling using these literary tactics along with interpreting a provision of the Constitution, it could lead to a result like the following: Take for example the provision listed in Article II of the Constitution which states that one must be at least 35 years-old to run for president of the United States. Now, under the traditional legal application, this case is as straightforward as it can be. Simply, if you are not 35 years of age, you cannot run, but under literary terms and methods, something as simple as this provision becomes convoluted and controversial. The judge who follows a view that Posner writes against may instead say that the wording of being 35 years of age actually means something completely different. Posner explains, “He [the judge] might argue that the provision in Article II . . . could mean merely that you must have the maturity of the average 35-year-old” (217). Posner goes on to say that this interpretation is ultimately incorrect and horribly misguided. This is because, for Posner, words have meaning based only on their location in a sentence, other verbal structure, or place in a social practice (220). I do not see it in the way Posner does for several reasons. First, the meaning behind the blending of law and literature is to assist legal scholars who have trouble with interpreting one phrase or another, but there is nothing controversial or even open for discussion with the age clause of the Constitution. Literary techniques would be reserved for more convoluted arguments with little to no agreement. I believe Posner would be hard-pressed to find an individual who takes aim at this age clause. With this objection, Posner seems to make a big deal out of a little situation, and despite the astute analysis he provides, there is no worry here that a judge or lawyer would attempt to attack and change this rule based on metaphor, narrative or another literary scheme. Moreover, even if one did, it seems even less likely that a judge would find this convincing and

throw out a precedent that has lasted for hundreds of years. As one can see, the meaning of a seemingly straightforward sentence becomes complicated when the literary scholar views it.

The previous quote shows one of Posner's many issues with viewing law as literature—the very structure of the legal language becomes compromised, and the soundness of law becomes unbundled. Like with the Shakespeare example, if we cannot even use application techniques such as narrative, metaphor, style, or meaning to make sense of a constitutional provision as simple as how old one must be to run, then how can one expect to understand under legal provisions as well? Further, as any scholar of law knows, the law itself takes solace in finding and dealing with real-world applications and predicting how a decision will affect people in real-time. It leaves room to worry about what the consequences would be of introducing fiction to a field like law that deals specifically with non-fiction. Attaching oneself away from reality could cause the person stay suspended in a world of fiction, and for the judge, this would be a nightmare of enormous proportion. Before moving on further, the worries he discusses in his book must be reconciled. In addition to the first objection answered above, five more strong objections need answers in order for the positive view of law and literature to affirm itself. Five of these objections come from Posner himself, and the other comes from myself in anticipation of critics of my view.

The first objection comes from the beginning of Posner's book. He argues throughout the pages that there is no universal consensus to what we ascribe the label of "literature" to (20). More specifically, it follows from this logic that since we cannot differentiate one text from the other as classifying as literature, then all texts must gain entry into the discussion, and this includes texts such as the Bible and Qur'an. The first part of his objection regarding the ambiguity of the term "literature" is not necessarily a weakness of viewing law and literature as compatible as much as it is a strength. This is for several reasons. First, to assume one piece of

literature is worthy or not worthy enough to enter the discussion about issues in the law in is presumptuous and misguided. Since there exist many problems in the law about how to interpret one sentence from another meaning, it makes sense that a judge should consider all possibilities that come to him. Of course, it would seem highly unlikely that a random book written by an obscure author would have any relevance to the discussion at hand, but it does not seem impossible, and therefore the door should at least remain open that an author, regardless of notoriety, could have some helpful insight one way or another. Further to the point, an important note is that scholars of law and literature, and even Posner himself, write primarily on famous texts that have survived centuries as possible answers to legal problems. In my study of this thesis and of law and literature in general, I have not read of an author even posit an argument forth that included more unknown forms of literature such as the comic strips Posner writes of.

Although this portion of his objection is not so much a problem, the possibility of unwanted texts, such as the Bible and Qur'an, seeping its way into the legal framework seems both unwanted and burdensome. Despite the dangerous consequences if this were to happen, the possibility is so unlikely that it seems near impossible, and even if it did happen, the judge should intervene to say it is inappropriate. First, high standing legal battles, like those that take place in upper levels of government and the Supreme Court, never hear testimonies from lawyers who quote the Bible as a persuasive way of interpreting a text one way or the other. I do concede to Posner that although laws may make it hard for judges to use religious texts for their argument, it is undeniable that judges will rule one way or the other due to their deeply held religious belief. However, this is an issue outside the scope of law and literature. I will say that if a religious text such as the Bible or Qur'an can tell a legal scholar more about the Constitution's

nature, then one scholar or the other should study that text. Again, the strength of keeping the possibility open for all texts is so we can reward the profession with numerous answers.

Posner's second objection asks how literature can tell us anything about the law (17). In other words, how can literature, which rests on uncertainty and interpretation, tell us anything about law, which also rests on uncertainty and interpretation? In answering this objection, I say: knowledge of the better does not require knowledge of the best. Or, to put in more applicable terms, one does not need to have absolute certainty to know one thing is more certain than the other. It makes sense from Posner's standpoint to question the effectiveness of disciplines that rest on much individual interpretation, but many novels have a consensus on what it is exactly the theme the author tries to push. There are certainly some novels that may be denser and more difficult to interpret than others, but the problems are the same in law—and yet ironically Posner, as a lawyer, does not stop trying to interpret the textual language that sits in front of him on a daily basis.

The third objection is byproduct of the previous one: what is the author's original meaning? Posner uses the example of Shakespeare as to why an author's purpose and meaning get lost in translation or study (17). Posner states that we know almost nothing of Shakespeare's personal life, and any attempt to read his work from that perspective is all but lost. This is true, however, this analysis by Posner is not sufficient for viewing law and literature as an incompatible perspective. Although personal background of an author may provide some context for the direction of a novel or literary work, it is not necessary or imperative that we have full and complete details on someone's life (which is impossible anyways). One can deliberate the meaning of a work and how one should apply it or how it can assist the law and do so without the author's original intention. Like the example Posner gives with C.S. Lewis' work (20). He

writes of how Lewis originally made his work for children, but the themes throughout the novels became an interest of study for scholars. So, too, could this be the case for authors of collective fiction; although they may have an original goal or purpose with the thematic content of their novels, it could very well be the case that their novel is used and interpreted in ways that they never could have imagined, and some of these ways could be beneficial. Some of the greatest ended up being viewed and used in a way the author did not originally plan. Trying to constrain and interpret a novel solely through an author's intended purpose is restrictive and disallows for helpful interpretation.

The fourth objection comes when Posner, in a follow up reissue to his book in later years called *Law and Literature: A Relation Reargued*, questions the significance and necessity of law and literature. In this re-print with further updates on his views, Posner still maintains his hardline stance regarding the relationship of law and literature. He states explicitly that fiction is divorced from reality “written in an unconscious blur” and “read for pleasure and to a lesser extent for instruction” (74). Clearly, his opinions have not changed with the times. Despite Posner's strong-willed efforts to defend his perspective of how law and literature should remain separated, Nouri Gana writes a powerful response to him. He writes:

. . . Posner's argument proves untenable once it is established that the relationship between law and literature is based upon the resemblance between the judge's and the literary critic's tasks rather than those of the jurist and the reader as Posner took it to be. (322)

What Gana says here is that Posner fails to understand that it is the literary critic and judge, not reader or attorney, who will make the decisions regarding applying literature to law. More specifically, a reader can interpret, but that does not make them an interpreter. Gana continues, “Would that [mistake] be a result of confusing *reading*—as a willing suspension of disbelief—

with *interpreting*, as a deliberate and conscious subsequent act? Most likely” (322-323). The literary critic’s job, for Gana, is to act as an intermediary between the fictitious world and the real world (323). Whereas Posner views the literary critic as an obstructor who attempts to dismantle jurisprudence, in reality, the literary critic branches together both worlds, and adds rather than obstructs.

The last objection does not deal with Posner, but instead legal techniques used to interpret and carry out law. Here I am discussing specifically broad and strict constitutionalism. There is a potential worry that one of these techniques would not allow for literary techniques to come into the law. Although broad constitutionalism makes an exception for allowing literary scholars to aid in judicial process, it is less clear that strict constitutionalism would allow for the same result. The reason is that strict constitutionalism, as a judicial philosophy, looks at the text at hand and infers only what the text allows. Nowhere in any document will there be clauses justifying the use of novels or other literary works in law and legal decisions. However, I am not convinced that this is the case. Although, even if it is, it still allows one judicial philosophy to embrace a new technique that would otherwise benefit law greatly. Instead, people who espouse strict constitutionalism as a legal philosophy could take part in the third way theory and others like it by attempting to infer from a novel only what the author writes (like how they do the constitution). In addition, one could try to interpret the novel from the way in which the author of the book would have wanted. If something cannot be justified through the text or fall in line with the original writer’s intention, then that claim would be out and have no place in the courtroom from the side of the strict constitutionalist. What this does is allow both judicial ideologies to make use of, rather than waste of, a practice that could aid in decoding potentially longstanding issues in the law.

A differing way from Ward on how to view law and literature is Posner, who views the law and literature as separate. Whereas law is literature to Ward, Posner takes the angle as each only convoluting the other, and acting as a product of regress rather than a precursor to progress. At this point, I will take this paper into a similar, but different direction. Now that we have seen two perspectives on law and literature—one from Ward and the other from Posner I want to introduce a theory that acts as the glue for the both of these conflicting and often polarizing views.

The Third Way: A Compromise for Law and Literature.

The two views just discussed bring up several questions about where law and literature should go from this point forward. Upon reflection, it seems as though law and literature have, at best, a complicated, and at worst, an unamicable relationship. In reading and writing of these two perspectives, I have made several observations of the views, and they are as follows.

First, as one can notice from reading both Ward and Posner, these two views serve as two ways of looking at the same problem. By this, I mean that when one reads of both law and literature from the positive and negative viewpoints of the two authors, Ward and Posner, it gives off a differing, but not contradictory impression. How can these the two disciplines of law and literature give and take from one another and advance their own field while simultaneously assisting the other in their own pursuits? From just the two views discussed so far, that desire seems to exist as an intangible theory.

Second, both of the two views of Ward and Posner bring valid points of consideration for each other and for the other. It is certainly true that both of these views exist as different angles of looking at the same problem of law and literature. Also true is the notion that one carries with them good reasons to prefer one view in favor of the other, as each side posits viewpoints favorable in some way or another.

The pros and cons of each view lead us into the third observation, which serves as an important portion of the essay: that there is a third way. This third way acts as a means to adopt the parts from the two views of Ward and Posner discussed and take advantage of using methods of literature in the law while attempting to avoid the pitfalls that Posner articulates in his book. The reason for needing a perspective other than the two previously mentioned is that the two

options, without the presence of third and consequently more moderate angle, unfairly catches the reader in the fallacy of believing there are only two options (or at least very few, with many tending to say the same thing) in which an individual can subscribe to and use, but this is most certainly not the case. The view that will be discussed here will act as a blend of both these perspectives on law and literature outlined by Ward and Posner. I will take the stance that literature does have much to offer the field of law and vice versa, but also not every word in legal texts must be scrutinized using metaphor, narrative, etc.

In response to Posner, scholars of both practices should view law and literature as a favorable relationship. The perspective of conjoining law and literature as a tool for solving issues in the fields of law and literature best presents itself by the following illustration: imagine looking at an object dense in both height and width. In looking at this object, you are able to see it only from one angle. Would one be able to see clearly what this object is? I believe not, and this example shows us why seeing something from multiple angles, perspectives, and opinions makes a difference in how we approach problems. Concurrently, what Posner paints as a border between the two subjects, I believe it better to view the coming of law and literature as a bridge instead. This bridge plays several roles, one of which is that of offering more perspectives in the two fields of law and literature.

This idea of a bridge is multifaceted. One of these roles is that of connecting a theory to application, or, to put in more lament terms, connecting hopes, dreams, and desires with reality. In order to have this discussion, we must uncover what exactly one means by the words “theory” or “desires” and “application” or “reality.”

The word theory covers many facets, especially in the realms of law and literature. By theory, I mean to include a way that allows for one to theorize a dream or desire in real time with the hope of seeing said theory becoming realities. Theories carry with them a plethora of main ideas. Theories range from something as broad as love, justice, and equality, to something more stringent and focused, like a theory of evolution. In literature, a theory is often the undertone of a novel or the indirectly discussed topic the author wishes to address. The topic of theory can be an underlining principle such as “all people are equal.” A theory occurs first in one’s mind, is materialized by the individual, facilitates its way in their head until it is carved, then (if the person wishes) that being can take the necessary steps of ensuring their theory comes out of their head and into the real-world. Historically speaking, literature has been a great source of encapsulating an author’s theory, and then relating that same idea to the public at large through the means of some sort of writing such as novels.

Likewise, law has its own theories as well. This typically takes the form of what a government, law office, or governing body should look like. Examples of this include inferring how a judge should interpret a specific legal text, or rule on a particular issue. Two important theories in the law that affect highly of how a judge will rule on a particular case is that of strict and broad interpretation of the constitution (I will say more of this later). Both of these theories will play a large role in the objection portion of the thesis. Strict interpretation of the constitution best aligns with a conservative legal philosophy. This method means that a person, more specifically a judge, should rule on constitutional issues based only from what they can infer from the text of the Constitution from the perspective of the framers. So for example, the second amendment discusses gun rights. A person espousing a conservative legal philosophy would articulate that a judge who wishes to rule in the way of the conservative legal theory should rule

in favor of gun rights and against the person attempting to limit them. This is because (as a conservative would say) the Constitution prohibits the government from infringing on this right since it exists as an inalienable right in the document.

On the contrary, a broad interpretation of the Constitution, which is popular amongst liberal legal scholars and judges, is the judicial philosophy that advocates viewing a specific part of the Constitution as how one can apply it for today—not hundreds of years ago. So for example, in regards to the second amendment, a judge who falls in line with a broad constitutionalist philosophy would say the strict constitutionalist is mistaken in their reasoning. This is because the founders of the constitution could not have imagined a world where we would have automatic weapons or at least guns more potent than the muskets of the 1700s. Our technology on guns is vastly different from the muskets the framers were considering when drafting the Constitution. Since the framers cannot and could not have foreseen this, it then follows that a judge should have every right of restricting one citizen's access to a certain gun, and this would not violate their constitutional right.

Theories allow us to discuss how something should be or what something should look like, even if that theory may not carry over perfectly when it is applied. As has been alluded in this essay, theory makes up only part of my “third-way approach.” Here is where the second part needs discussion, and that part is application of law and literature and its theories.

Application, then, is the facilitation of one's idea into reality. This is where the inclusion of allowing the words “dream” and “reality” into my definition of theory reveals itself. Application finds itself completed by those who wish to see a theory become more than just a thought or idea, but instead also a practice and/ or truism. In other words, application of a theory

goes from one's head, to one's society, and the results become no longer immaterial, but instead exist as a tangible reality.

In law and literature, the application tends to catch way in a similar manner. In literature, if a reader agrees with the theory an author is writing of, such as a theory of equality, they may change their own life and other's lives to follow suit in the name of such equality. In law, if a judge believes in one judicial philosophy over the other, then that judge will turn the theory into application by ruling in a specific way, and allowing for the said ruling to take effect and materialize itself. Therefore, the application for literature, then, is when a person who reads the novel attempts to make society reflect what is being espoused in the novel. Application for law, likewise, carries itself out when a judge makes a ruling. The ruling itself becoming reality as opposed to solely juxtaposition serves as the application.

Although a framework for theory and application are elaborated on, there is still something missing from the analysis. It follows that the application comes from the theory and one crafts theory in their head, but what has not been answered so far is how the theory and application connect. By this, I meant literally, how is it that a theory actually becomes application? We know what theory and application is, but not of how they mold themselves together. In my reading and studying of both Ward and Posner, both authors failed to substantiate or even deliberate this claim in detail, and I believe it is an imperative case to explore.

Since we have a firmer grasp of theory and application, the discussion must turn to how theory and application come together. After all, theories carry themselves out through some form of application, so what connects the two? So far I have written of literature specifically in a

broad sense, but now, when I refer to literature, I will also use it to describe certain literary pieces that help to understand and unpack both theory and application and, by design, both law and literature. The reason is that if we as scholars of law and literature can understand what connects the theory and application, then I believe it (more) possible to understand the complex relationship between law and literature. The next few paragraphs will explore this relationship and offer a more complete view of the “third way theory” I hope to expose here in this thesis.

The best way to understand how a theory literally becomes application is to look at literature in a more focused sense: books, writings, articles, documents, papers. The best way to understand theory and application is for one to see the relationship between the two through the context of literature.

Through literature, a theory becomes application in the broadest sense. This is because a book, novel, or writing of any sort allows an author to put grounding upon his or her often-hypothesized ideas. In other words, usually for a theory to become application, it needs a person to carry it out, but in using fiction as a vessel, the author can successfully transfer a theory from their heads and into the real world through their novel. This newly grounded theory binds itself in the pages and transitions from becoming an abstract ideal to a concrete example. The third way I am suggesting, then, considers a theory in the beginning stages of application when it reaches the pages of a book, but instead the theory becomes applied in a primitive sort of sense. Moreover, I am substantiating that the novel or written work itself is a form of application, or at least the seedlings of it.

There are several reasons why a book can act as a vessel and therefore a primitive sort of state for an author’s theory. First, since a theory is, by definition, abstract and lacking in

definitive characteristics, the use of literature to ground the theory in a tangible way allows for the application of theories to exist. The pages, covers, and words are they themselves material, which gives way for a theory becoming tangible. Second, when an author pens their thoughts to paper, it allows them to make their thoughts readily available to the public. People can then delve themselves into what the theory entails, and further apply an author's principle to their very own lives. As previously mentioned, the book serves as the seedlings, but the people serve as the nurturement of the seeds, which allow for blossoming into a more complete application. This takes a theory from the primitive state of application to a more complete transfiguration. Finally, and most importantly, when a theory makes itself available for others to read, it can begin to work in real time. As we shall see later on in the thesis, when one reads information about an author's theory in books and other mediums, and where the theory is read by others and implemented by society, real change begins to take place. Nevertheless, it is important to note that often times, when we see and analyze important social movements in history, we often write of the finished product rather than realizing and understanding the seeds planted which allowed the movement to happen in the first place. By this, I mean that the societies tend to focus and hone in on the finished product of a social movement rather than the seeds that allowed for it to occur in the first place.

The numerous benefits to adopting the third-way theory outweigh the setbacks. First, in adopting the third-way hypothesis, we keep an open mind on law and literature working in unison. Even if one found every argument given in this essay unconvincing, there may be some possibility of each discipline working in favor of the other somewhere down the line in the future. Being open about this possibility gives way to more positives than does viewing law and literature from Posner's perspective. Having an open-mind about the possibility of a working

relationship between law and literature can lead into something like the next point, which is the second benefit of the third –way theory: it allows literature to use its literary skills to come up with new answers to old legal issues. Take, for example, the following quote regarding judges and literary critics written by Nouri Gana in her article *Beyond the Pale: TOWARD AN EXEMPLARY RELATIONSHIP BETWEEN THE JUDGE AND THE LITERARY CRITIC*:

Unlike the judge, who is required from the outset to end up with a single interpretation, the literary critic is asked to come up with a new one . . . While the judge may find the right interpretation of legal propositions in precedent, the literary critic would find in precedent a store of different interpretations that should enrich rather than hamstring his or her activities. (321)

There is a lot of important discussion going on in Gana's analysis. First, he astutely points out through this example that both professions—that of the literature scholar and that of the legal academic—can be mutually benefited through the application of each other's techniques of analyzing text. Second, whereas a judge prides themselves in remaining objective and finding one answer through an assortment of text and legal opinion, the literary critique prides themselves in finding many possible answers throughout several competing texts. This change of approach can benefit law because it would allow for scholars of law to give equal weight to several conflicting views—many of which may have previously been ignored by judges. This allows for judges to entertain multiple ways to rule on an issue as opposed one. The use of literary techniques like metaphor benefits literary analysts because, according to Gana, it would enrich, rather than hinder their activities, and therefore make their time worth investing (321). Further, the different approaches used by critics of literature who delve into law would include literary techniques such as metaphor, narrative, and history, and judges and legal experts should warmly receive these techniques.

Gana's analysis of cross-discipline approaches to law do not stop here. Moreover, he writes more extensively on the benefits that come with valuing the techniques used by the scholar of literature, such as their ability to evaluate a text from multiple perspectives and angles:

The literary critic offers a very pervasive paradigm for the judge since he does not only relate the work of fiction to its historical context—that is, to its “historical horizon”—but also to reality in general. If the judge is to mediate between two realities—historical reality and present reality—the literary critic is supposed not only to do that, but also to mediate between fiction and reality. (324)

What Gana is trying to convey here with his quote is that the literary critic has a broader scope and ability than the judge to carve out meanings from texts. Due to the literary critic's ability to do this, and the judge's inability to mimic the literary scholar, the judge could learn much from the scholar of literature. Gana's thoughts here are plausible, and the reason is because one who studies law (like a judge), should always continue to find new and creative ways to aid themselves in the pursuit of what it is the framers meant to say, or how one paragraph should be understood and ruled on over another perspective. In a field like law, where disputes over the simplest of words can carry the biggest weight, it is critical that the legal fields do all they can to find ways to interpret the muddled and convoluted writings of our ancestors. The ways to do just this exist most prominently in adopting a page from the literary critic. Despite being interested in the field of law and literature, I can say from personal experience that I have never heard a lawyer argue in front of a judge that a certain part of the Constitution ought to be interpreted through the scope of metaphor, narrative, or something else. This is both narrow-minded and an injustice to the original framers of the Constitution. Since many of the people who wrote, drafted, and deliberated the Constitution were scholars of literature themselves, it makes sense to try and at least tackle the Constitution from the perspective of literature. Not doing so only sets one up for failure and continues to promise further convoluted interpretations of an otherwise

vast and complicated document. Adopting the skills from the profession of literature allows the judge to carry another arrow in their quiver, and allows the profession of literature to delve into the waters of unsolved legal disputes.

Although the reasons Gana and I outline for looking favorably upon the relationship between law and literature may seem plausible, there are still issues lurking in the background—particularly from people such as Richard Posner, who raise controversial, but important objections nonetheless.

What is important to note here about the discussion of law and literature is this: law and literature using one another for assistance acts as a weapon for the judge, but not as the sole weapon. Throughout Posner's analysis, he indirectly assumes that if we chose to adopt literature as a means to understand textual issues in law, then we must analyze every bit of text ever to come to the court in this way. He alludes to this with his example of age requirement to be president of the United States, but this reasoning is not true (217). One part from this essay that needs further discussion is the articulation Posner wrote of in his first book. He stated that if two lawyers were to compete against one another, then the one with the most credible judicial argument would win, even if the other were more versed in rhetoric and literature (256). To elaborate, courts are not going to change their structure or rule one way because lawyers change their arguments or adopt the help of the literary critic. It will continue to be the lawyer with the most impressive legal (not literary) argument who wins, regardless of whether they choose to adopt the literary scholar's style or not. In essence, a complete overhaul of the judicial system is not the necessary condition for adopting a literary viewpoint in interpreting the Constitution.

With the talk of objections and clarification about what the third-way theory is, the discussion can now turn to the effect of law and literature has on our society. With the emersion of law and literature as one, it is important to know that this new conjoined practice carries with it a few features. First, one important feature is that the blending of these two disciplines also blends theory and application through the medium of text, books, or a novel. Within these novels and behind the theories exist calls for subjects such as social justice, equality, and other themes we hold dear. This complex feature that rests within law and literature has the ability to change people's minds and hearts in ways that few to no other mediums can. There is something unique and special about a book. Inside the covers exist the text that people examine and find themselves immersed in. The people who read the themes that are in the books then come together and start social movements, and from there they carry with them the ability to change the society and the course of history, and that is truly a powerful tool that rests within a text.

This idea is romantic to us as readers and authors. Many people would even say that this presentation is too romantic and therefore unrealistic fantasy—just like the novels and literary works Posner discussed. Despite our initial suspicious to see this way of thinking as too idealistic, it is far from intangible idealism and there exist examples in history of people who changed and altered their societies because of a theory they wrote in literary works that then became applied by their fellow citizens.

The individual I have in mind is James Baldwin, and the themes I write of are that of racial equality and justice for blacks in America during the twentieth century. James Baldwin and his work serve as the apex of theory, application, law, and literature. Baldwin and his work acted as the bridge for blacks and racial equality and justice, and although that bridge has yet to be crossed in its entirety, the bridge could not exist at all without his work throughout the course

of his long and illustrious life. Baldwin is the person who changed the world because Baldwin successfully took the theories of love, acceptance, and integration and turned it into application in the form of the civil rights movement. This blueprint for the civil rights movement came in the form of his novel—*The Fire Next Time*.

Keeping in line with what I have previously mentioned about theory and application, Baldwin's specific role in elaborating on this theory is this: by writing of a theory of acceptance, white consciousness, and integration through love, Baldwin puts his theory unto paper, allowing for readers of his audience to use what he had written as a blueprint for their application of such teachings. Specifically, the type of integration James Baldwin advocates in his work is different than the one taught of and used in the civil rights movement prior to his writing. Baldwin states that in his integration, whites must stop thinking of said integration as solely a 'black' problem and, instead, whites must become cognizant of the fact that they are part of the problem with integration and racial inequality, and his book allows us to break these barriers of racial dissonance. These teachings complicated the conventional understanding of the civil rights movement in the United States and then helped to formulate what we now come to recognize today as the civil rights movement, and none of this would have proven possible without the works of Baldwin. The lessons he provides are apparent in his most widely-recognized work—*The Fire Next Time*.

One of the theories Baldwin posits is acceptance, and this particular part of his theory is often left out or lacking in elaboration from many scholars of Baldwin, despite playing a critical role in unpacking Baldwin's views of integration and equality for black Americans. In this portion of his novel, Baldwin states that his young nephew must take the high road when attempting to achieve equality, more specifically, Baldwin instructs his nephew to accept whites, despite their gross mistreatment to him and black people. Baldwin asks for his nephew to undergo this difficult task because, in Baldwin's eyes, whites in this era face a trial of their own suffering. Baldwin instructs that “. . . *you* [his nephew, but also the reader] must accept them.

And I mean that seriously. You must accept them and accept them with love. For these innocent people have no hope” (8).

This phrasing by Baldwin is a break from other civil rights activists and a point of contention, but it is a critical point nonetheless that Baldwin uses the word “innocence” to describe his white audience. This idea of associating the racist acts of white America with a sense of innocence seems counterintuitive, but Baldwin elaborates further on in the same paragraph when he articulates that the same people who hate blacks are trapped in a history they do not understand. This history is one that oppresses whites in the same way history has oppressed blacks (9). Baldwin beautifully writes to his nephew that this common theme of oppression between two otherwise vastly different races is something both parties can attest to, and find ground in. Baldwin sates, “Perhaps we were, all of us—pimps, whores, racketeers, church members, and children—bound together by the nature of our oppression” (41). In asking his nephew to accept racist whites, Baldwin gives this relatable example to him. One who has lived through and experienced longstanding, intentional oppressive racism can surely identify with whites who, as Baldwin claims, have experienced something similar. This rhetorical theory is important for several reasons. First, in writing and publishing this, Baldwin turns away from several prominent civil rights leaders, like Malcom X, who intrinsically see the white neighbor as an enemy rather than an ally. This break from traditional civil rights activists is the first example we have in the novel of Baldwin offering an alternative viewpoint for his fellow readers. Second, framing the civil rights debate as one that preaches acceptance rather than vengeance allows for a peaceful undertone not found in the likes of people like Malcolm X. Third, in delving into this idea of oppression, Baldwin explores a topic that is often left alone or ignored. Not addressing the oppression forces one to continue living through its vicious cycle without knowledge of what

the cycle is, or, for those who do recognize their oppression, they do not know how to accept and deal with it. One scholar, John Henrik Clarke, the late professor of Cornell's Africana studies program and ignitor of African studies worldwide, writes about this oppression in detail:

Racism in the United States has forced every Negro into a prolonged and pathetic war. He is either at war against his oppression or against the weakness within himself that frustrates his ability to participate in this war effectively. The saddest participants in this war for mental and physical survival and basic human dignity are those Negroes who think that they are removed from it—those who live with the illusion that they have been integrated. The limitation and uniqueness of Baldwin's vantage point is that he is addressing his audience from the war zone.

To elaborate on what Baldwin stated, what professor Clarke adds also that the worst type of oppression is the black who wrongly believes they are integrated and not oppressed. Like the other reasons Baldwin lists, this reason, too, gives way for Baldwin mentioning oppression in the scope of acceptance.

Likewise, the white equivalent of oppression are whites who are “trapped in history” as one scholar and professor of English at University of Illinois states. The scholar's name is Christopher Freeburg, and he writes in his essay, “James Baldwin and the Unhistoric Life of Race” that the United States cannot end racial inequality while its white citizens are trapped (221). This ensnarement, claims Freeburg, has allowed for whites to segregate themselves into a false world—a world that openly allows for hatred and discrimination of blacks while falsely continuing the narrative of whites being superior (221). This is exactly why Baldwin writes forgivingly to his nephew and urges him to reciprocate his tone to his white brethren. *The Fire Next Time* does more than destroy walls of racial segregation, it also destroys this world whites find themselves in, a world that seems safe, happy, and real. This arrival back to reality will not be pretty for his white audience. In fact, it will be harsh and disheartening, but Baldwin insists it must happen anyways. This article perfectly encapsulates why Baldwin asks for this forgiveness

to whites while whites free the chains of their own from their ankles and awaken from their dogmatic slumber.

Fourth, and most importantly, in describing whites this way, Baldwin shows he is sensitive and knowledgeable about who his audience is. He knows both whites and blacks anxiously will read his novels, and in extending the olive branch rather than the sword in their direction, he gives an invitation to help not only blacks, but whites liberate themselves as well from the oppressive history that has haunted both races.

This oppression whites have stems from the fear that they will lose their identity, and as a defense mechanism, they strip blacks of their own as a defense. This misguided anger of the behalf of whites is what leads Baldwin to his point of stating whites are innocent, not in what they do, but in what they believe. Upon seeing this exposition, it no longer seems so counterintuitive on Baldwin's end to ascribe this idea of innocence to his white brethren.

Moreover, in addition to stating that his nephew and audience must accept whites, he also states that whites must also accept themselves. This personal idea of acceptance is stated indirectly in his writing. As Baldwin sees it, how can one accept others without accepting themselves? I believe this idea has two important components that accompany it. First, in calling for a personal self-acceptance, Baldwin asks his readers to acknowledge their wrongdoings and the wrongdoings they have done to each other—and forgive these wrongdoings on each side. Second, this acceptance completes his theory of acceptance, reveals to us his first theory, and leads us now to another critical concept of *The Fire Next Time*: white consciousness, and integration through love.

As previously stated, Baldwin directs his *The Fire Next Time* to all audiences—black and white. This is evident throughout his essays, but one spot in particular where it stands out is when Baldwin writes of blacks and whites standing in unison to end the nightmare of racial injustice: “. . . to end the racial nightmare, and achieve *our* [emphasis mine] country, and change the history of the world” (105). The strong point in this quote is the word “our,” which Baldwin purposely uses to speak to both his white and black readers. One prominent academic from King’s College in London, James Miller, agrees and states the following, “The inclusive pronoun ‘our’ signifies this transformation, drawing author and audience, black and white, together in a post-racial society where all forms of difference, ‘the consciousness of the others’ can be celebrated in America . . .” (“Integration” 260).

Here, Baldwin’s rhetoric serves as an example of how he challenges, and attempts to change, the social and political dynamics of society and also shows him penning his theory to become application. With this quote, he contests these social and political constructs in three ways. First, by broadening the discussion of not just acceptance, but integration for his audience from blacks, to blacks and whites, he shifts from writing to a specific group, to integrating both groups into one collective essay in *The Fire Next Time*. Second, since segregation was still the favored policy despite the *Brown v. Board of Education* ruling, Baldwin puts himself at great risk by taking a stance against a racially biased system that still ensnared many African-Americans at this time. His risk is also heightened since he himself is a black novelist. Third, and most importantly, by using the word ‘our,’ Baldwin dismisses the notion that integration and the pursuit for civil rights is solely a black problem. This transformation that Miller and Baldwin speak of is not only a radical change for seeing blacks as equals, but seeing that whites and the

collective white consciousness—not just blacks—complicates the problem for integration and must be done away with by whites in order to move closer towards equality.

The author tackles the issue of white consciousness further in his novel while simultaneously addressing both whites and blacks. Despite the powerful emotive invocation of the word ‘our’ to discuss moving forward with civil rights, many whites, and some blacks, remain unconvinced that white consciousness served at the heart of the matter. In order to bring this proof into the light, Baldwin underscores the example of the disillusioned war veteran who comes to grasp with the reality that his service to his country via his life and health is not even worth the reciprocity of citizenship and equality:

You must put yourself in the skin of a man who is wearing the uniform of his country, is a candidate for death in its defense, and who is called a “nigger” by his comrades-in-arms and his officers . . . who knows the G.I. has informed the Europeans that he is subhuman . . . who watches German prisoners of war being treated by Americans with more human dignity . . . Imagine yourself being told to ‘wait.’ And all this is happening in the richest and freest country in the world, and in the middle of the twentieth century (54-55).

In order to tackle the issue of whites’ obliviousness and their important role in integration, Baldwin addresses them in this passage with the word ‘you.’ He paints a devastating picture of the hypocrisy of the American dream and system, and urges whites to look at it from a new perspective while pondering the causal role they have in allowing such a system to continue. Baldwin demands that white readers put themselves in the shoes of blacks. This demand is crucial because of the ‘must’ claim he makes, showing that whites can no longer ignore their fault and importance in achieving integration. This passage shows, no, proves, that whites, and the political and social systems in place, have caused grave implications. In an ironic sense, blacks are considered citizens only to serve in a war likely to either end or cause severe harm to their lives. On the battle fields blacks serve boldly, bravely, and beautifully, yet, when they

return beaten, battered, and bruised from war, they are again at war with a system that never cared and will continue to not care for them unless whites change their own perspectives of integration. This passage also serves as a chance for Baldwin's white readers to accept blacks and for blacks to forgive whites. In doing this, Baldwin further drives the theory of acceptance and integration home.

Further alluding to the hypocrisy of the American social and political systems, Baldwin continues critiquing the outlook of white America through the example of the battlefield. He attacks the social and political structures of America further with his sarcastic undertone of the phrase "richest and freest country in the world." America brags of its abundance of wealth and opportunity—for whites. Conceptually speaking, African-Americans are told of this wealth and opportunity, fed lies, like the lies of freedom through service, because in reality, there is no place engraved on the Statue of Liberty, written in the Constitution, or burned into the hearts of fellow white Americans for blacks to achieve hope or equality. The most powerful part of this passionate passage is the word 'wait.' James Miller explains, "The final, bitter injunction, 'wait' brings the momentum of the passage to a sudden end. Baldwin leaves his reader to 'imagine' how it must feel to be told to 'wait' after enduring such sacrifice and injustice" (250). Miller simultaneously alludes to Baldwin's rebellion on the social and political norms of society. This passage presents a full view of the effects of racial injustice, from the Second World War to the family. More so, Baldwin states directly how ideals of 'freedom' and 'democracy' are comprehended through experience, not conception. Also, this passage shows that America, as it stands, is neither a nation worth serving nor a nation fighting to protect blacks (250). Finally, this example shows that the current cultural climate is one that can neither introduce nor sustain acceptance and integration unless drastic changes in favor of equality for blacks are made. With

these three theories, Baldwin lays a blueprint for his readers to follow and achieve the results desired. This begins the seeding of application of the civil rights movement.

Baldwin's call for expanded integration is clear, but how can the nation move forward with this policy? What is the key? Baldwin states explicitly in his text that the answer is none other than love. Early on his book, he expounds, "And if the word integration means anything, this is what it means; that we, with love, shall force our brothers to see themselves as they are, to cease fleeing from reality and begin to change it" (10). Love is the cornerstone for how Baldwin envisions integration taking place in society. To him, love addresses and solves the complications of racial injustice while simultaneously allowing his white audience to reconsider their ethical and epistemic views of integration as solely a 'negro problem.' In order for one to love, whether it be the Negro soldier, the Negro neighbor, or fellow human being, one must see, according to Baldwin, the error of thinking of integration as solely a Negro problem. Baldwin sees and comprehends the complications of understanding the civil rights as solely one race's struggle. When there is a problem plaguing America, it becomes America's problem—white and black.

This recognition discussed by Baldwin is all encompassing—of whites, blacks, and America. Love is inclusive and inviting. It always searches for the selfless motive, and Baldwin does that here. Like the example with the Negro soldier, Baldwin extends his hand to whites, and the hand of the African community despite being turned away by whites and white America. Miller beautifully categorizes Baldwin's perception of love as:

. . . seek[ing] recognition, reciprocity, acknowledgment: he wants the white American to 'become black' and, in a spiritual and existential sense, grow up and allow the African-American a place within the wider historical narrative of America: 'we, the white and the black, deeply need each other here if we are

really to become a nation – if we are really, that is, to achieve our identity, our maturity, as men and women (259).

This insight contrasts stereotypical views whites held of integration, specifically, forcing whites to lose their identities (9). Baldwin believes that integration helps whites to *find*, not forget, their identities. This love, like love in general, aims to make friends and enemies better people. In the case of love and racial servitude, Baldwin asks his black readers to do all in their power to help and assist whites in their struggle for what they do not see—that integration is just as much a white issue as it is a black one. The duty of Baldwin then, as the artist and writer, is to play the role of the lover and show blacks what he means by integration being a biracial struggle, so that they in turn can show whites the errors of their ways.

This concept of love gives way to the greatest social and political shakeup yet for Baldwin. Love, then, becomes the way in which to reconcile the social and political forces in conflict between whites and blacks. Being used as a medium, love helps each of the black and white parties to recognize the humanity of one another—and accept each for who they are—brothers and sisters in pursuit of the same goals and aspirations. It is for this same reason, according to Miller, that “Baldwin concludes his essay with an appeal to ‘the relatively conscious whites and the relatively conscious blacks, who must, like lovers, insist on, or create, the consciousness of the others’” (105). Either love will change and reshape America, or hate will serve as the thorn in the side of a nation who, otherwise, would have been among the greatest of all time. Love or hate, united or divided, life or death, to Baldwin’s audience, it is up to them to change and alter the course of history.

And change the course of history they did—Baldwin and his audience that is. The timing of Baldwin’s essays in *The Fire Next Time* could not have been more appropriate. Before the

publishing of what would become *The Fire Next Time*, Baldwin published one of the essays in the New Yorker magazine in 1962. Around this time, and during the course of his writing and publication of the essays, Baldwin and his supporters marched alongside Dr. Martin Luther King and others starting in 1957 and leading up to the apex of the civil rights movement later in the sixties. As Public Broadcasting Service (PBS) details in their film, *The Price of the Ticket* in 2013, *The Fire Next Time* played a huge part in the March on Washington and the civil rights era, particularly with the mobilization of black leaders and supporters, the changing of the mission from Afrocentrism to unity and integration, and extending the olive branch to whites.

The most famous phrase of the civil right movement often come from Dr. Martin Luther King Jr., who uttered the most famous words in history during the twentieth century: “I have a dream.” What is often lost in this magnificent speech is the resemblance to Baldwin’s call for integration and unity of whites and blacks rather than further segregation between the two races. In the same speech King states that “. . . the Negro community must not lead us to distrust white people. . . [because by] their presence here today, [whites] have come to realize that their destiny is tied up with our destiny” (3). These words spoken by Dr. King are nearly the same as the ones Baldwin wrote less than a year ago in his essays in *The Fire Next Time*. The similarities make sense, as shown in the *The Price of the Ticket*, the two prolific authors were nearly inseparable during their early runs together in the sixties. Photos of Baldwin and King together are dense and plentiful, with many of the photos depicting smiles and laughter. Despite the apparent similarities between the speech and the essay, it should come as a surprise to academics why Baldwin is not given more credit for helping to mobilize and harmonize blacks and whites during the March on Washington. The March on Washington in particular shows the application of

Baldwin's theories of acceptance, integration, and love. Literally all three of these elements were present when Dr. King gave his now-infamous speech to the diverse crowd.

The March on Washington illustrates the dichotomy of law, literature, theory, and application into practice. With the march, we are shown visible evidence of how an author like Baldwin penned his theories unto paper, which were subsequently read by millions, and then, the theories were adopted by the civil rights movement and executed in detail upon arriving at Washington. As we shall see, this march launched legislation into action which assisted in partly ensuring equality and integration for black Americans during Baldwin's time frame, but first what needs to be discussed is James Baldwin's complex views on law and race.

James Baldwin sensed the urgency of America's crisis with race in regards to the law. Specifically, Baldwin is concerned with the effect behind the law with its effects on racial power. This inquiry is present throughout the entirety of *The Fire Next Time*, but one scholar in particular, D. Quentin Miller, points to this questioning as a thorough critique of America's law through the streets (such as police officers) to the national stage (like the Supreme Court) (80). Miller's exposition correlates with theory and application in regards to Baldwin's thoughts on the law because, to Miller, critiquing the law in this sort of way by Baldwin distinguishes between the law in theory and in practice. Miller writes:

Baldwin's essay [*The Fire Next Time*] asks this question: if the law can supposedly change racial discrimination, then why is the law the very force that seems to harass, subordinate, and torment the victims of such discrimination. To question the law in this way is to reveal a disjunction between law in theory and in practice, and to show how the disempowered are not necessarily empowered by the legal decisions that supposedly affect the course of history (81).

Miller's, and Baldwin's point is this: it seems to be the case that our nation believes the high court holds the magical ability to change minds, hearts, and attitudes with the stroke of the pen,

but this wishful thinking is not true in the slightest. Although legal decisions can help to speed the process of integration along, without the support of white Americans, the support of nine judges on the Supreme Court does little to none to change society's attitudes on blacks.

Examples of this unchanging attitude are explicit in Miller's text, with an example being that despite rulings like the *Brown v. Board of Education*, there still exists racial segregation in schools then and now, it is just the case that in today's day and age this sort of segregation is more hidden and better executed than was the educational segregation of the past. Examples like the more hidden segregation of today help to explain why Baldwin chose to direct his *The Fire Next Time* to audiences both white and black. For although the courts can rule in favor of integrationist activists all day, true progress will not be made until all parties stand in unison against injustice. Miller explains this point further, when he writes of how the Supreme Court can both "giveth and taketh away" the rights of African Americans (as it has already done so) (81).

It makes sense, then, that the latter part of *The Fire Next Time* reads like an argumentative case being delivered in front of the Supreme Court (Miller 93). Baldwin sees and understands that the people opposed to his views of love, acceptance, and integration believe power to be superior to love, acceptance, and integration. Power, in our society, can be attributed to the Supreme Court and the wide array of power it possesses in affirming or declining legislation. In writing in such a way, Baldwin exemplifies his power, and more specifically, affirms the power of love, acceptance, and integration in his essay. Miller espouses that "There is finally legal affirmation in the essay that love can triumph over power, even legal power, even criminal power" (94). *The Fire Next Time* proves to be the first—and arguably best—case for love, acceptance, and integration as a superior and preferred social foundation over power—

which all too often, in the eyes of Baldwin, seeks to corrupt and cripple rather than empower and enlist American blacks.

The power of love, acceptance and integration as a theory and application for American society also helped to produce two key legal decisions that assisted in affirming the rights of blacks in America. The first is the Civil Rights Act of 1964. The March on Washington acted as an enzyme and catalyst for the attendees, and the people's congregating aided in seeing the Civil Rights Act of 1964 passed through Congress. This piece of legislation, according to the Public Broadcasting Service (PBS), barred discrimination based on race, color, religion, and national origin (*Eyes on the Prize*). Alan Jenkins of *The Hill* writes that the passage of this bill helped to bring equality and opportunity to both African-Americans and white Americans, and has incredibly strengthened our nation (*An Important Goal*). The second legal decision coming from the March on Washington that adopted Baldwin's principles of love, acceptance, and integration, was the Voting Rights Act of 1965. This act is seen as the most effective civil rights legislation ever in the country's history. With the passage of the Voting Rights Act of 1964, the United States saw African-Americans register more in coveted jurisdictions than ever before, with the percentage climbing significantly from twenty-nine percent to just over fifty-two percent (*The New Vote Denial*).

What is particularly interesting about these specific pieces of legislation in general, is that when analyzed, one can see empirically Baldwin's thesis of love, acceptance, and integration at work. One of the most democratic and integrative ways for a society to function is with the power of voting. Malcolm X once referred to voting as more powerful than a bullet, and it is hard to disagree with him. Here, African-Americans are given a form of power that they have been denied for so many years alongside their voice. For the first time in American history, African-

Americans had a say in the direction their country goes, and they finally could state that direction in the form of the ballot.

Baldwin's effect on the courts and public life did not stop in 1965. In 1968 James Baldwin also took his theories of love, acceptance, and integration to committees in congress to discuss further study on African-American problems and history. His efforts were met with the drafting of a house resolution. This resolution, labelled H.R. 12962, stated its purpose to create “. . . a Commission which would study all aspects of the problems of preserving, collecting, and integrating evidence of the Negro past into the mainstream of American education” (1). In effect, the resolution would allow for the Commission to enhance and promulgate a more full understanding of Negro contributions in American culture and history (1). Baldwin is quoted on record with saying that without the formation of this Commission, every black child in America will continue to not believe the Pledge of Allegiance. How could a race pledge themselves to a country that has begotten them and neglected their ancestors and accomplishments from the books of history? (2). What is fascinating about this resolution is that it continues where the civil rights movement left off. By this, I mean that the leaders in 1968 are still trying to implement love, acceptance, and integration into the public. In the mid-sixties, they focused their efforts on integrating society, but here, in the late-sixties, civil rights advocates have taken aim at integrating history. Although these leaders made ground in further integrating society, their efforts will be for naught if the leaders cannot integrate black history with the white-dominated history known at the time.

These reasons are what cause Baldwin to speak up on this particular bill. Teaching children, both black and white, the history we have now: one that is bias, white-dominated, and printed with a racist agenda—subconsciously teaches children of all races that blacks contribute

nothing to society, have contributed nothing to society, and will continue to not contribute anything. This false mentality is serves as reinforcement for segregation between whites and a mythical less successful race. Upon this reflection, it makes sense that civil rights leaders turned to pushing for the government to study, realize, and integrate black accomplishments alongside accomplishments of other races. To do otherwise is antithetical towards the goals and missions outlined by James Baldwin in *The Fire Next Time* and civil rights leaders like Martin Luther King Jr.

Today, James Baldwin is gone, but his impact and vision still remain at the forefront of social movements. In addition, although he is no longer around to fight alongside other leaders to further integrate society, his theories are still studied and applied today. This impact includes being relevant in both the social and political level.

Just this year in 2017, a movie by the name of “I Am Not Your Negro” hit the screens and sent critics in a frenzy (a good one) for its adaptation and explanation of Baldwin’s life and impact. “I Am Not Your Negro” helps to encapsulate Baldwin’s impact not just in the sixties, but today as well. As A. O. Scott, a critic for the New York Times puts it:

Baldwin could not have known about Ferguson and Black Lives Matter, about the presidency of Barack Obama and the recrudescence of white nationalism in its wake, but in a sense he explained it all in advance. He understood the deep, contradictory patterns of our history, and articulated, with a passion and clarity that few others have matched, the psychological dimensions of racial conflict (I Am Not Your Negro).

Scott, with his review of the movie, illustrates a point all too often forgotten about Baldwin: he is not just an author or advocate, but a prophet. Baldwin is a prophet because he predicted what was yet to occur—police brutality, diminishing concerns for black lives, racial injustice—and also because he acted as a voice for black people. Like a prophet Baldwin, along with other civil

rights leaders, led his people into the promise land and out of modern-day slavery. It is not an exaggeration to say that James Baldwin is the greatest black advocate we have ever had—maybe even more so than King, because without Baldwin’s collective works, and especially *The Fire Next Time*, the civil rights movement loses its unity, effectiveness, and most of all—its purpose.

At the political level, Baldwin is still held in high discussions amongst legal scholars. One such example came early last year at the highest level of judicial authority—the Supreme Court of the United States. In *Utah v. Strieff*, the Supreme Court took up the issue of illegal stops and how it primarily affects black youth. Unfortunately the court ruled in favor of permitting illegal stops if there is probable reason for doing so. However, Sonia Sotomayor, in her blithering dissent, cited James Baldwin’s *The Fire Next Time* and Ta-Nehisi Coates’ *Between the World and Me* as two authors who serve as prime examples of African-Americans who have experienced racial discrimination of any kind, but especially with the police. She states:

For generations, Black and Brown parents have given their children "the talk"—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them. See, e.g., W. E. B. Du Bois, "The Souls of Black Folk" (1903); J. Baldwin, "The Fire Next Time" (1963); T. Coates, "Between the World and Me" (2015). (12).

This quote connects nicely with the A.O. Scott quote about Baldwin: the novelist had an eerily prophetic vibe in his work. Fifty years ago Baldwin discussed this very notion of police brutality and being treated as an individual who is seen as less than their white brethren. This “talk” Sotomayor speaks of is one that is written of in Baldwin’s book. Sotomayor continues later in her dissent to write of how this incident with the police is not one isolated occurrence, but instead an epidemic that threatens to further strain the already shaky relationship that exists between blacks and the police.

This dissent from Sotomayor also gives scholars of literature and law exactly what it is they are looking for. For one of the first times in judicial history (and certainly first time regarding civil rights), we have an example that serves as the apex for law and literature interceding one another. Here, at the highest court in all the land, *The Fire Next Time* shines through as the prime example of how theories in literature can be applied through protests and other demonstrations, then find themselves into the law shaping the very opinions that effect every citizen in the United States. Although the court ultimately sided against Sotomayor and African-Americans, the fact that Baldwin and other prominent black authors are quoted in today's day and age—years removed from the start of the movement serves as proof that the message and theories these prominent authors write of in their novels are working and seeping into the judicial system each author desires to change. One can only go onward from this point forward regarding law and literature.

In going forward, the discussion of the civil rights, and law and literature is still relevant. Many of the problems Baldwin tackled still pop up and persist in society—some the same and others in different forms. The discussion of love, acceptance, and integration in regard to law and literature continues today, despite Baldwin no longer serving physically on the forefront of the movement. In the next section, we will take a look at who will carry the torch in Baldwin's absence.

The discussion of law, literature, and civil rights brings us to an important point. With James Baldwin deceased, who can be expected to take the reins and fight back against the continued injustice against African-Americans during the twentieth century? From the past we got Baldwin and into the present we have Ta-Nehisi Coates. Although the author has changed, many of the same problems tackled by Baldwin still persist and linger. Coates writes on white consciousness and what it means to be black in a white world, and in the beginning of his novel, *Between the World and Me*, he explains it in this context, “. . . being white was not achieved through wine tastings and ice-cream socials, but rather through pillaging of life, liberty, labor, and land” (3). Here, Coates links himself with Baldwin, and, in essence, the past with the present. Coates reminds his audience of what happens when this white consciousness is ignored by whites. Fifty years removed from Baldwin, and the fight for integration and acceptance still dawdles.

Coates continues his critique of the white consciousness by invoking what he calls “[w]hite America”. He writes of how “White America” serves as a collective to dominate and control the autonomy of blacks. This white consciousness exists as the opposite to the love Baldwin speaks of. Instead, white consciousness is both semantically and diametrically opposed to the very nature—of love, equality, and of humans. Allowing oneself to be engulfed in hatred, to be lambasted by societal pressures, and to consent to defeat contributes to the destruction of blacks. Admittedly, this seems like hyperbole and personification at first glance, but Coates is spot on with his critique and history backs him up. From slavery, to segregation, to the battle for civil rights, to the police brutalities of today, hate divides our people and distances us from our common goal of equality.

As shown previously, Coates already is proving himself to be the rightful heir of Baldwin's message. Like Baldwin, Coates is one of the three authors Sotomayor invokes in her dissent. In his book, *Between the World and Me*, Coates writes similarly to how Baldwin did in *The Fire Next Time*. Influenced heavily by Baldwin's novel, Coates became inspired to write in the same tone as Baldwin did. This pattern of similarity to Baldwin is evident most clearly in Coates' writing prose and dedication of the novel to a family member. Like *The Fire Next Time*, Coates' writing is personal, raw, and alludes as to what it is like embodying a black body. Coates writes of his struggles as a child and as an adult. One such struggle is becoming comfortable with his body. This struggle of being black in a white world includes being stopped illegally by police (75) and by being seen as a beast for standing up for his young son after he is pushed by a white woman (94).

Also, the way in which Coates dedicates his novel is identical to the way in which Baldwin dedicated his. Coates, like Baldwin, dedicates his book to a close family member. For Baldwin that was his nephew and for Coates it is his son. In addition to this dedication by both authors, Coates also writes his novel in such a way as to invite the reader, especially the white reader, to experience what it is like being black in America. It is for reasons such as these that Coates will exist as the bearer of arms regarding civil rights and black liberation. He is a natural fit to replace Baldwin. Toni Morrison, arguably the most important black female literature novelist in recent memory, writes in support of Coates as the heir to Baldwin as a testimony to the strength of Coates' book: "I've been wondering who might fill the intellectual void that plagued me after James Baldwin died. Clearly it is Ta-Nehisi Coates." We shall be seeing much more of Coates in the future as he carries the torch Baldwin lit. Hopefully, the future is bright and allows for love, acceptance, and integration to prosper.

This thesis explored the relationship between law and literature. Specifically, the thesis explores whether or not one can use the principles learned in literature as a way to assist legal scholars in decoding and understanding the law as it was meant to be interpreted. This theory is shown through the author's Ian Ward, who carries one perspective of law and literature intersecting, and Richard Posner, who carries another, and believes law would succumb to great travesty should it be aided by principles in literature. As an alternative, I offered the third way theory as a means of reconciling these differing perspectives of law and literature. Then, James Baldwin was introduced as an author whose novel, *The Fire Next Time*, is a book that carries with it the theories of love, acceptance, and integration. The theories are then applied and carried out through the means of the civil rights movement, and then these movements paved the way for the legal system to draft and pass law consistent with the principles Baldwin advocates for in *The Fire Next Time*. This shows how law and literature, can work in unison to accomplish a goal one cannot do without the other. Towards the end of the thesis, I allude to Ta-Nehisi Coates, whom I strongly believe will be the leader in the twenty-first century of the movement James Baldwin dedicated his life to start and advance. The struggle for the principles of love, acceptance, and equality never end. Unfortunately where there is justice, there exists also the threat of injustice, and as long as decisions like that of the Supreme Courts in *Utah v. Strieff* exist, we must always fight back.

Baldwin and Coates' novels are a call for help. They aim to address both blacks and whites to gather in unison and fight the injustice that harms one race and threatens another. This thesis may carry the tone that black people are the forefront of the movement—and they certainly are, but our black brethren need our assistance. They need people of all race and genders to assist them in achieving greater equality. Until whites assist in removing the burden

they have helped to create, the ideas held dearly by Baldwin, Coates, and societies that advocate love, acceptance, and integration will remain stagnant. First civil rights leaders moved to integrate society, then history, and today, we must integrate movements that advocate equal treatment of all people—black and white. We can do just that, and with law and literature working in unison with blacks and whites, our journey will be that much easier.

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