

ADVANCED READING

PASSAGE 1

The law-and-literature movement claims to have introduced a valuable pedagogical innovation into legal study: instructing students in techniques of literary analysis for the purpose of interpreting laws and in the reciprocal use of legal analysis for the purpose of interpreting literary texts. The results, according to advocates, are not only conceptual breakthroughs in both law and literature but also more sensitive and humane lawyers. Whatever the truth of this last claim, there can be no doubt that the movement is a success: law-and-literature is an accepted subject in law journals and in leading law schools. Indeed, one indication of the movement's strength is the fact that its most distinguished critic, Richard A. Posner, paradoxically ends up expressing qualified support for the movement in a recent study in which he systematically refutes the writings of its leading legal scholars and cooperating literary critics. Critiquing the movement's assumption that lawyers can offer special insights into literature that deals with legal matters, Posner points out that writers of literature use the law loosely to convey a particular idea or as a metaphor for the workings of the society envisioned in their fiction. Legal questions per se, about which a lawyer might instruct readers, are seldom at issue in literature. This is why practitioners of law-and-literature end up discussing the law itself far less than one might suppose. Movement leader James White, for example, in his discussion of arguments in the Iliad, barely touches on law, and then so generally as to render himself vulnerable to Posner's devastating remark that "any argument can be analogized to a legal dispute." Similarly, the notion that literary criticism can be helpful in interpreting law is problematic. Posner argues that literary criticism in general aims at exploring richness and variety of meaning in texts, whereas legal interpretation aims at discovering a single meaning. A literary approach can thus only confuse the task of interpreting the law, especially if one adopts current fashions like deconstruction, which holds that all texts are inherently uninterpretable. Nevertheless, Posner writes that law-and-literature is a field with "promise". Why? Perhaps, recognizing the success of a movement that, in the past, has singled him out for abuse, he is attempting to appease his detractors, paying obeisance to the movement's institutional success by declaring that it "deserves a place in legal research" while leaving it to others to draw the conclusion from his cogent analysis that it is an entirely factitious undertaking, deserving of no intellectual respect whatsoever. As a result, his work stands both as a rebuttal of law-and-literature and as a tribute to the power it has come to exercise in academic circles.

PASSAGE 2

A recent generation of historians of science, far from portraying accepted scientific views as objectively accurate reflections of a natural world, explain the acceptance of such views in terms of the ideological biases of certain influential scientists or the institutional and rhetorical power such scientists wield. As an example of ideological bias, it has been argued that Pasteur rejected the theory of spontaneous generation not because of experimental evidence but because he rejected the materialist ideology implicit in that doctrine. These historians seem to find allies in certain philosophers of science who argue that scientific views are not imposed by reality but are free inventions of creative minds and that scientific claims are never more than brave conjectures, always subject to inevitable future falsification. While these philosophers of science themselves would not be likely to have much truck with the recent historians, it is an easy step from their views to the extremism of the historians. While this rejection of the traditional belief that scientific views are objective reflections of the world may be fashionable, it is deeply implausible. We now know, for example, that water is made of hydrogen and oxygen and that parents each contribute one-half of their children's complement of genes. I do not believe any serious-minded and informed person can claim that these statements are not factual descriptions of the world or that they will inevitably be falsified. However, science's accumulation of lasting truths about the world is not by any means a straightforward matter. We certainly need to get beyond the naive view that the truth will automatically reveal itself to any scientist who looks in the right direction; most often, in fact, a whole series of prior discoveries is needed to tease reality's truths from experiments and observation. And the philosophers of science mentioned above are quite right to argue that new scientific ideas often correct old ones by indicating errors and imprecision (as, say, Newton's ideas did to Kepler's). Nor would I deny that there are interesting questions to be answered about the social processes in which scientific activity is embedded. The persuasive processes by which particular scientific groups establish their experimental results as authoritative are themselves social activities and can be rewardingly studied as such. Indeed, much of the new work in the history of science has been extremely revealing about the institutional interactions and rhetorical devices that help determine whose results achieve prominence. But one can accept all this without accepting the thesis that natural reality never plays any part at all in determining what scientists believe. What the new historians ought to be showing us is how those doctrines that do in fact fit reality work their way through the complex social processes of scientific activity to eventually receive general scientific acceptance.

PASSAGE 3

Until recently, it was thought that the Cherokee, a Native American tribe, were compelled to assimilate Euro-American culture during the 1820s. During that decade, it was supposed, White missionaries arrived and, together with their part-Cherokee intermediaries, imposed the benefits of “civilization” on Cherokee tribes while the United States government actively promoted acculturation by encouraging the Cherokee to switch from hunting to settled agriculture. This view was based on the assumption that the end of a Native American group’s economic and political autonomy would automatically mean the end of its cultural autonomy as well. William G. McLaughlin has recently argued that not only did Cherokee culture flourish during and after the 1820s, but the Cherokee themselves actively and continually reshaped their culture. Missionaries did have a decisive impact during these years, he argues, but that impact was far from what it was intended to be. The missionaries’ tendency to cater to the interests of an acculturating part-Cherokee elite (who comprised the bulk of their converts) at the expense of the more traditionalist full-Cherokee majority created great intratribal tensions. As the elite initiated reforms designed to legitimize their own and the Cherokee Nation’s place in the new republic of the United States, antimission Cherokee reacted by fostering revivals of traditional religious beliefs and practices. However, these revivals did not, according to McLaughlin, undermine the elitist reforms, but supplemented them with popular traditionalist counterparts. Traditionalist Cherokee did not reject the elitist reforms outright, McLaughlin argues, simply because they recognized that there was more than one way to use the skills the missionaries could provide them. As he quotes one group as saying, “We want our children to learn English so that the White man cannot cheat us.” Many traditionalists Cherokee welcomed the missionaries for another reason: they perceived that it would be useful to have White allies. In the end, McLaughlin asserts, most members of the Cherokee council, including traditionalists, supported a move which preserved many of the reforms of the part-Cherokee elite but limited the activities and influence of the missionaries and other White settlers. According to McLaughlin, the identity and culture that resulted were distinctively Cherokee, yet reflected the larger political and social setting in which they flourished. Because his work concentrates on the nineteenth century, McLaughlin, unfortunately, overlooks earlier sources of influence, such as eighteenth-century White resident traders and neighbours, thus obscuring the relative impact of the missionaries of the 1820s in contributing to both acculturation and resistance to it among the Cherokee. However, McLaughlin is undoubtedly correct in recognizing that culture is an ongoing process rather than a static entity, and he has made a significant contribution to our understanding of how Cherokee culture changed while retaining its essential identity after confronting the missionaries.

PASSAGE 4

In the history of nineteenth-century landscape painting in the United States, the Luminists are distinguished by their focus on atmosphere and light. The accepted view of Luminist paintings is that they are basically spiritual and imply a tranquil mysticism that contrasts with earlier American artists' concept of nature as dynamic and energetic. According to this view, the Luminist atmosphere, characterized by "pure and constant light," guides the onlooker toward a lucid transcendentalism, an idealized vision of the world. What this view fails to do is to identify the true significance of this transcendental atmosphere in Luminist paintings. The prosaic factors that are revealed by a closer examination of these works suggest that the glowing appearance of nature in Luminism is actually a sign of nature's domestication, its adaptation to human use. The idealized Luminist atmosphere thus seems to convey, not an intensification of human responses to nature, but rather a muting of those emotions, like awe and fear, which untamed nature elicits. One critic, in describing the spiritual quality of harbour scenes by Fitz Hugh Lane, an important Luminist, carefully notes that "at the peak of Luminist development in the 1850s and 1860s, spiritualism in America was extremely widespread." It is also true, however, that the 1850s and 1860s were a time of trade expansion. From 1848 until his death in 1865, Lane lived in a house with a view of the harbour of Gloucester, Massachusetts, and he made short trips to Maine, New York, Baltimore, and probably Puerto Rico. In all of these places, he painted the harbours with their ships—the instruments of expanding trade. Lane usually depicts places like New York Harbor, with ships at anchor, but even when he depicts more remote, less commercially active harbours, nature appears pastoral and domesticated rather than primitive or unexplored. The ships, rather than the surrounding landscapes—including the sea—are generally the active element in his pictures. For Lane, the sea is, in effect, a canal or a trade route for commercial activity, not a free powerful element, as it is in the early pictures of his predecessor, Cole. For Lane nature is subdued, even when storms are approaching; thus, the sea is always a viable highway for the transport of goods. In sum, I consider Lane's sea simply an environment for human activity—nature no longer inviolate. The luminescence that Lane paints symbolize nature's humbled state, for the light itself is as docile as the Luminist sea, and its tranquillity in a sense signifies no more than good conditions on the highway to progress. Progress, probably even more than transcendence, is the secret message of Luminism. In a sense, Luminist pictures are an ideological justification of the atmosphere necessary for business, if also an exaggerated, idealistic rendering of that atmosphere.