



OSCAR WILDE famously remarked that “there is no such thing as a moral or an immoral book. Books are well written, or badly written. That is all.” He was echoed by Auden, who said in his poem in memory of William Butler Yeats that poetry makes nothing happen (though the poem as a whole qualifies this overstatement), by Croce, and by formalist critics such as Cleanth Brooks, a doyen of the New Critics, who insisted that edification was the function of religion but not of poetry.¹ George Orwell, though himself a didactic novelist, was of this view as well,² and it is one that most critics adopt when the issue is censorship. I accept Wilde’s thesis—the creed of aestheticism, of art for art’s sake—if understood to mean that the moral content and consequences of a work of literature are irrelevant to its value as literature; or as the critic Helen Vendler has put it, that “treating fictions as moral pep-pills or moral emetics is repugnant to anyone who realizes the complex psychological and moral motives of a work of art.”³ This is not to deny that reading can have consequences, including moral and political ones. Information affects people’s outlook and behavior, and reading is a source of information. Imaginative literature conveys ideas, opinions, and information, often with great power. Think of the role that novels by Turgenev (*Fathers and Sons*), Dostoevsky (*The Possessed*), Conrad (*The Secret Agent, Under Western Eyes*), Koestler (*Darkness at Noon*), Orwell (*Animal Farm, Nineteen Eighty-Four*), and, of course, Solzhenitsyn played in exposing the horrors of anarchism and communism. Of *A Passage to India* it has been said that “as an account of the social conditions of British India it was powerful enough to have influenced events.”⁴ Upton Sinclair’s novel *The Jungle* is thought to have incited federal regulation of food processing; and few doubt the effect of *Uncle Tom’s Cabin* (1852) on the abolitionist cause.

PHILOSOPHY AND LITERATURE, © 1997, 21: 1–27

At the core of the aesthetic tradition, which I shall be defending in this essay particularly against its opponents in the “law and literature” movement, are three theses. First, immersion in literature does not make us better citizens or better people. One might be able to pick out some works of literature that would have such an effect because of the information they convey or the emotional state they induce, but they would constitute a skewed sample of literary works. Second, we should not be put off by morally offensive views encountered in literature even when the author appears to share them. A work of literature is not to be considered maimed or even marred by expressing unacceptable moral views; by the same token, a mediocre work of literature is not redeemed by expressing moral views of which we approve. The proper criteria for evaluating literature are aesthetic rather than ethical. Third, authors’ moral qualities or opinions should not affect our valuations of their works.

The insistence, in short, is on the separation of the moral from the aesthetic—but with two qualifications. Some literature has little interest or value apart from the didactic and for it the proper criticism is didactic. And the separation of moral from aesthetic values is not a rejection of the former. The aesthetic outlook is a moral outlook, one that stresses the values of openness, detachment, hedonism, curiosity, tolerance, the cultivation of the self, and the preservation of a private sphere—in short, the values of liberal individualism.

The counter tradition in literary criticism to the aesthetic originates with Plato and insists upon the importance, in some versions to the near or even total exclusion of anything else, of the ethical or political content and effects of works of literature, and less commonly of the author’s own morality. Martha Nussbaum, for example, deems Greek tragedies and Anglo-American realistic novels a part of moral philosophy.⁵ Reading novels, she argues, “develops moral capacities without which citizens will not succeed in making reality out of the normative conclusions of any moral or political theory, however excellent.”⁶ Wayne Booth, disagreeing with his illustrious predecessor in the edifying school, Tolstoy, asks: doesn’t *King Lear* “depend upon *and reinforce*, among other fixed norms, the enormous value of simple kindness and the awfulness of gratuitous cruelty?”⁷ Booth explains that he does not enjoy Rabelais as much as he used to, having been awakened by feminism to Rabelais’s misogyny.⁸

The counter-tradition that I am describing harbors a considerable diversity of views, and not merely about specific works. Plato, Tolstoy,

Bentham, and the Puritans, among others, were deeply suspicious of literature and the arts, and unwilling to grant any value to literature that contains immoral ideas. Devotees of the “naked truth,” whether religious, philosophical, or scientific, these eminences despised surface and figuration.⁹ At the opposite extreme, Nussbaum thinks moral philosophy incomplete without literature. She does not deny the importance of aesthetic values, but she is prepared to trade them off against the moral, so that the morality of the work affects its final evaluation of a work as literature. Booth, the professional literary critic, being more systematic and wide-ranging in his ethical criticism, is also more censorious. He discusses works that do not meet his high standards for ethical literature as well as ones that do. Nussbaum confines herself to the latter.

Some ethical critics want a work of literature to have a tidy moral, as in Aesop’s fables, while others think the moral value of literature lies in a more diffuse influence on thinking and action. Booth and Nussbaum liken the reading of imaginative literature to friendship and emphasize that the effect of a friendship on one’s character and outlook is complex and uncertain, yet surely not unimportant. But they do not want to stop with this observation. They want to extract, albeit by consideration of the form as well as the paraphrasable content of the work, a moral lesson.

One can easily imagine critics in the moralistic or didactic tradition preparing lists of edifying works of literature for judges to read. If poets are the unacknowledged legislators of the world, should not judges, above all others, pay attention to the moral lessons in poetry? Should they not look to them for guidance in deciding cases in the open area where precedent and other conventional sources of legal authority run out? Might not *Buck v. Bell*—Holmes’s notorious opinion upholding compulsory sterilization on the ground that “three generations of imbeciles are enough”—have been decided differently had Holmes been steeped in William Blake and Jane Austen instead of Charles Darwin? In short, and quite apart from issues of craft, shouldn’t lawyers have a literary education before, or in, or, if need be, after they attend law school? Was not the great legal scholar Wigmore on the right track, therefore, when in 1913 he compiled a list of great books for lawyers to read?¹⁰

That the edifying school has struck a responsive chord with legal scholars of literary bent is no surprise. The ratio of normative to positive scholarship is higher in law than in most other fields. Law is not

a contemplative discipline and the aesthetic outlook does not come easily to its disciples. If they bring literature into law it is to contribute to what they conceive to be the normative mission of legal scholarship. Thus Robin West:

The human capacities to which study of the humanities gives rise might constitute a set of moral capacities, and hence a sphere of consciousness, sufficiently removed from the influence of law to serve as a vehicle for moral criticism of it. . . . A tremendous amount of canonical literature is highly critical of law, and of the arguments typically put forward to support its moral authority. . . . Literature helps us understand others. Literature helps us sympathize with their pain, it helps us share their sorrow, and it helps us celebrate their joy. It makes us more moral. It makes us better people.¹¹

And on a less exalted plane, "Lawyers can learn how to represent lesbian clients better by studying books with lesbian characters," specifically novels "argumentatively engaged in portraying, explaining, justifying, and apologizing for the lesbian" (Goldstein, p. 358).¹² Richard Weisberg interprets the novels that he discusses as bulwarks against another Holocaust. Most of James Boyd White's essays are concerned with works of literature that have no legal theme, his goal being to impart a certain kind of literary education to lawyers and judges so that they will be better lawyers and judges. *Morally* better, as well as professionally abler. His aspiration for the law and literature movement is "the perpetual affirmation of the individual mind as it seeks community with others."¹³

When Wilde penned the aphorism with which I began, in the preface to his shocking (though, ironically, highly moralistic) novel *The Picture of Dorian Gray*, he was challenging the conventional wisdom of his time. Almost every right-thinking person would have said then that immersion in the monuments of Western civilization makes one a better person. This now strikes many people as just another exploded Victorian piety. One reason is the twentieth-century behavior of Germany, often described as the world's most cultured nation, and certainly a nation in contrast to which the United States is, or at least was at the relevant times, philistine. Germany's vaunted culture did not inoculate it against Kaiser or Führer. Cultured Germans willingly and often enthusiastically served these regimes along with *hoi polloi*. Thomas Mann, Germany's greatest novelist, was an outspoken supporter of Imperial Germany during World War I. Culture was actually a tool of

these regimes. As Geoffrey Hartman explains, "National Socialism used aesthetic pleasure to gild aggressive and transgressive ambitions," and he concludes that "there is no hard evidence that the altruistic personality is enhanced by exposure to higher education or 'culture.'" ¹⁴

One doesn't have to raise the ghosts of Wagner, Céline, Pound, Heidegger, and de Man to be skeptical about the edifying effect of high culture in general and of literature in particular. "Despite their familiarity with the classics, professors of literature do not appear to lead better lives than other people, and frequently display unbecoming virulence on the subject of one another's shortcomings." ¹⁵ Cultured people are not on the whole morally superior to philistines. Immersion in literature and art can breed rancorous and destructive feelings of personal superiority, alienation, and resentment. Holmes, come to think of it, was probably the best read—and I mean best read in the literary and philosophical monuments of Western civilization—judge in the history of the Supreme Court; ¹⁶ and yet his numerous critics think *Buck v. Bell* typical of his outlook on life.

What holds for professors of literature holds also for the classics that they teach and write about. I do not mean by "classics" the authors, for no one can believe any more that great authors are more likely than nonliterary people to be fine human beings. I mean their books. The classics are full of moral atrocities—as they appear to us today, and sometimes as they appeared to the more enlightened members of the author's own society—that the author apparently approved of. Rape, pillage, murder, human and animal sacrifice, concubinage, and slavery in the *Iliad*; misogyny in the *Oresteia* and countless other works; blood-curdling vengeance; anti-Semitism in more works of literature than one can count, including works by Shakespeare and Dickens; racism and sexism likewise; homophobia (think only of Shakespeare's *Troilus and Cressida* and Mann's "Death in Venice"); monarchism, aristocracy, caste systems and other illegitimate (as they seem to us) forms of hierarchy; colonialism, imperialism, religious obscurantism, militarism, gratuitous violence, torture (as of Iago in *Othello*), and criminality; alcoholism and drug addiction; relentless stereotyping; sadism; pornography; machismo; cruelty to animals (bullfighting, for example); snobbism; praise for fascism and communism, and for idleness; contempt for the poor, the frail, the elderly, the deformed, and the unsophisticated, for people who work for a living, for the law-abiding, and for democratic processes. The world of literature is a moral anarchy.

Nussbaum argues that "inegalitarianism is in a degree of tension with

the structure of the genre [the novel], which invites concern and respect for any story to which it directs the reader's attention" (*PJ*, p. 129 n. 34).¹⁷ Yet probably a majority of the best English, French, Russian, German, and American novels fall into one of several nonegalitarian classes: novels preoccupied with private themes (as they now strike us) often archaically conceived, such as adultery and manliness (for example, Lawrence, Hemingway, Ford Madox Ford, and Joyce); adventure novels (a class that overlaps the first); novels that despite surface appearances are disengaged from any serious interest in the social or political arrangements of society (which I believe, though cannot take the time here to argue, is true even of Kafka and Camus); novels that disparage the modern project of liberty and equality (for example, Dumas, Scott, Dostoevsky, Waugh, at times Conrad); novels that presuppose an organization of society in which a leisured, titled, or educated upper crust lives off the sweat of the brow of a mass of toilers at whose existence the novelist barely hints (for example, Austen, James, Wharton, Proust, Fitzgerald); novels preoccupied with issues more metaphysical than social (Beckett, Hesse, and much of Melville, Tolstoy, and Mann); novels that defend bourgeois values (Defoe, Galsworthy, Trollope); novels that deal with public themes yet whose "take" on those themes is equivocal or inscrutable (Twain and Faulkner); novels that deal with both social and private themes, yet in which the latter predominate (Stendhal, Flaubert, Bulgakov). Some of the works of these novelists do not fit my classifications—for example, Wharton's best novel, *The House of Mirth*, has pointed criticisms of snobbery and wealth. And many novelists of distinction have had just the kind of social conscience that Nussbaum admires. But the possession of such a conscience does not define the genre.

The novel is certainly a more bourgeois medium than Greek, Elizabethan, or French tragedy, genres preoccupied with the activities and sensibilities of kings and aristocrats. The rise of the novel coincided with the rise of the bourgeoisie, the expansion of literacy, and the growth of science and philosophical realism—developments that stimulated demand for a form of literature that would depict realistically the activities and experiences of ordinary life.¹⁸ But bourgeois and egalitarian are not synonyms.

The prestige of a work of literature generally is little damaged by the discovery that the work condones a morality that later readers find monstrous, though radicals are trying to change this. Edifying works seem not even to have much advantage in the struggle for canonical

status. Yet only the most disciplined, self-denying reader deliberately ignores the moral dimensions of what he reads. Great literature must somehow cause the reader to suspend moral judgments. How can that be? I think the answer is that the moral content of a work of literature is merely the writer's raw material. It is something he works up into a form to which morality is no more relevant than the value of the sculptor's clay as a building material is relevant to the artistic value of the completed sculpture. Do we stalk out of *Hamlet* at the end of the first scene, when we discover that there is a *ghost* in an ostensibly adult play? Why then should we stalk out of *Othello* when we discover that it depicts racially mixed marriage as possibly unnatural? Or out of *The Merchant of Venice* when we discover that it traffics in ugly stereotypes of Jewish greed and blood lust? Or slam *Oliver Twist* shut when we encounter Fagan? Or *Huckleberry Finn* or *Sartoris* when we encounter the word "nigger" used without any sense of its vileness? Most readers accept the presence of obsolete ethics in literature with the same equanimity that they accept the presence of obsolete military technology or antiquated diction or customs in literature, as things both inevitable, given the antiquity of so much literature, and incidental to the purpose for which we read literature.

The moral content of a work of literature is likely to be obsolete whether or not it conforms to our current moral views. No reader of *The Red and the Black* is apt to take up cudgels on behalf of the monarchists and clerics whom Stendhal attacks; the sociological issues that preoccupied him in what has been called the first great novel of social and political criticism¹⁹ are outmoded. *The Red and the Black* survives because, over and above its social and political themes, it is a great novel about love, ambition, and living an authentic life. It is a great *realist* novel still, but the realism that we now value it for is realism about human character rather than about conditions in Restoration France. *Uncle Tom's Cabin* has not survived as literature—the only interest that it holds for us is historical—even though its author's opposition to slavery now commands universal assent.

Yet by the Left we are told that "the ideology which saturates [Shakespeare's] texts, and their location in history, are the most interesting things about them,"²⁰ and by the Right "that Jane Austen is a greater novelist than Proust or Joyce" and "T. S. Eliot's later, Christian poetry is much superior to his earlier."²¹ The first statement is bizarre in its subordination of aesthetic to political values in evaluating the greatest poet and playwright in history. But the second is unacceptable

too. And not only because the effort to rank Austen against such different writers as Proust and Joyce—a true example of incommensurability—is misguided, or because “The Waste Land” is the summit of Eliot’s art. To devalue a work of literature because of its implicit or explicit politics, morality, or religion is to cut off one’s nose to spite one’s face. It is intolerant, philistine, puritanical, illiberal (most didactic or moralistic literary critics have been antiliberals), and, when it expresses itself in an assumption of moral superiority to our predecessors, complacently ethnocentric. It is the form of obnoxious political correctness that Stephen Holmes has felicitously named “temporal parochialism.” People obsessed by politics, religion, or morality may be incapable of an aesthetic response to literature. But I do not think that such obsessions are healthy.

Believers in a minimal state should be especially wary about subjecting literature to tests of political orthodoxy. The separation of culture and the state, of what is properly private and what is properly public, is menaced by the didactic school. By assigning to literature the function of promoting sound moral (including political) values, it associates literature with public functions, such as the inculcation of civic virtue. By doing this it makes literature an inviting candidate for public regulation and thus contracts the private sphere. It goes far toward accepting the radicals’ claim that everything is politics.

The question whether immersion in literature is likely to make a person more ethical is distinct—except for those who, following Socrates, believe that immoral behavior is the product of ignorance of the good—from whether it is likely to make a person wiser. Here is the philosopher Hilary Putnam commenting on Bentham’s statement that there is no difference in value between poetry and the child’s game of pushpin:

We find it virtually impossible to imagine that someone who really appreciates poetry, someone who is capable of distinguishing real poetry from mere verse, capable of responding to great poetry, *should* prefer a childish game to arts which enrich our lives as poetry and music do. We *have* a reason for preferring poetry to pushpin, and that reason lies in the felt experience of great poetry, and of the after effects of great poetry—the enlargement of our repertoire of images and metaphors, and the integration of poetic images with mundane perceptions and attitudes that takes place when a poem has lived in us for a number of years. These experiences too are *prima facie* good—and not just good, but ennobling [*sic*], to use an old-fashioned word.²²

Two separate ideas are merged in this passage. The first, which is unexceptionable, is that people steeped in literature tend to compare their day-to-day experiences with the literary counterparts of those experiences and to derive some of their expectations concerning other people's behavior from the behavior of characters in literature. They use literature as a template for life. This is consistent with Aristotle's contrast between literature and history, the former being concerned with probabilities rather than actualities—with, as one might say, building models of human behavior rather than with merely describing behavior. Imaginative literature contains wisdom and psychological insights, which can't be said for pushpin. A lawyer open to the appeal of literature might characterize a career spent working for a legal-aid or public defender's office in these lines from Yeats's poem "Easter 1916": "Too long a sacrifice / Can make a stone of the heart." A lawyer slaving away as an associate at a large law firm might ponder instead Yeats's claim in "The Choice" that "The intellect of man is forced to choose / Perfection of the life, or of the work, / And if it choose the second must refuse / A heavenly mansion, raging in the dark." You might worry about committing Lear's mistake of trying to separate power from perquisites, or be sensitized to the kind of no-win situations that Agamemnon kept stumbling into. You might ponder in light of *Doctor Faustus* and *Macbeth* the maxim that the worst thing that can happen to one is to have all one's wishes granted. Jon Elster's well-known book of social theory, *Ulysses and the Sirens*, finds in the story of Ulysses' instructing his crew to tie him to the mast when he came within earshot of the Sirens the prototypical case of self-commitment. Sometimes, when my judicial colleagues and I become restive as a long-winded lawyer talks into our lunch hour, I think of the following lines from *The Rape of the Lock* (III.19–22):

Mean while declining from the Noon of Day,
The Sun obliquely shoots his burning Ray;
The hungry Judges soon the Sentence sign,
And Wretches hang that Jury-men may Dine.

The implications for law are obscure. It does not follow that because some people use literature as a source of insight into human nature and social interactions, other people, for example judges who are not already lovers of literature, should be encouraged to do so. There is neither evidence nor a theoretical reason for a belief that literature

provides a straighter path to knowledge about man and society than other sources of such knowledge, including writings in other fields, such as history and science, and interactions with real people. Some people *prefer* to get their knowledge of human nature from novels, but it doesn't follow that novels are a superior source of such knowledge to life and to the various genres of nonfiction. I am not persuaded by White's claim that "the information [conveyed by findings in the natural or social sciences] may shift the sufficiency of the information I already have, but I do not expect it to change *me*" (White, p. 742). More people have been changed by natural science (think only of Darwin) and social science—a body of research and writing that includes the works of Adam Smith, Marx, Freud, Keynes, Kinsey, and Hayek, among many others—than by literature. White may be inoculated against this entire body of writings, but if so it is an idiosyncrasy rather than a characteristic of educated people in general.

And we should be skeptical about any claim that readers can extract from works of imaginative literature practical lessons for living. Do you think *King Lear* teaches that you shouldn't put yourself in your children's power? Think again. People who try to retain personal control of their property in their dotage are the natural prey of con men, of dishonest personal attendants and financial advisors, of grasping physicians, and of gigolos and gold diggers. Better to be dependent on your family and hope that it doesn't harbor a Regan or a Goneril.

Putnam's second claim, that making the sorts of connections that come naturally to persons of literary sensitivity is ennobling, is neither explained (what exactly does he *mean* by "ennobling"?) nor defended. Nussbaum makes the claim more concrete by arguing that literature can enlarge our empathetic awareness of injustice, and of moral issues generally. I agree that literature is one path, though not the only path, to a better understanding of the needs, problems, and point of view of human types that we are unlikely to encounter at first hand. But I do not think that a better understanding of people makes a person better or more just. Great demagogues understand people all too well. Nussbaum is echoing Socrates' unsubstantiated claim that people do wrong only out of ignorance of what is right.

Her method is illustrated by the essays in *Love's Knowledge* on Henry James's novel *The Golden Bowl*. Maggie, a very rich young American woman, marries a penniless Italian prince who, unbeknownst to her, is in love with Charlotte, a penniless American woman who happens to be

Maggie's best friend. Maggie discovers that her husband is committing adultery with Charlotte, and manages deftly to reclaim him and send Charlotte packing. Nussbaum argues that the novel is "about the development of a woman. To be a woman, to give herself to her husband, Maggie will need to come to see herself as something cracked, imperfect, unsafe, a vessel with a hole through which water may pass, a steamer compartment no longer tightly sealed" (*LK*, pp. 134–35).²³

This is *one* of the things *The Golden Bowl* is about. Loss of innocence has been a literary theme since the *Iliad*, and it is a recurrent theme in James's novels. I also accept Nussbaum's further point that moral dilemmas are more vividly rendered in works of imaginative literature than in books about ethics, which tend to be pious, predictable, humorless, and dull, Nietzsche's ethical writings being a stupendous exception. But I disagree that *The Golden Bowl* can help us navigate the moral dilemmas in our own lives; that "in the war against moral obtuseness, the artist is our fellow fighter, frequently our guide" (*LK*, p. 164). What moral guidance does *The Golden Bowl* offer its readers? It seems to invite a variety of incompatible moral responses. One can side with the adulterers, finding Maggie the insufferable rich girl from start to finish²⁴ and thinking it wrong that Charlotte should lose out to her merely because Maggie is rich and Charlotte poor. One can look upon the prince as a golddigger (for it is plain that he married Maggie for her money, his excuse being that his aristocratic status obligates him to support his relatives in Italy) and think Maggie poor-spirited both for marrying him in the first place and for condoning his adultery. It is possible to be made uncomfortable by the intimacy between Maggie and her father, so much greater than their intimacy with their spouses, and to detest their condescension, as rich people, to the Prince and Charlotte, the hustlers.

The novel may be saying that it is a mistake for women to make marriage their whole career, that men and women alike should work rather than live off inherited wealth like Maggie and her prince. It may be presenting a "grim parody" of the marital ideals of nineteenth-century England and America and of the capitalistic system in which those ideals are embedded and which they reflect.²⁵ (Nussbaum and Brudney, the moral philosophers, are oddly insensitive to the moral dubiety of Maggie and of the marriage system of which she is the upholder.) There is even merit in the suggestion that "James seems to be trying . . . as he does so often in the book to weave a web of fine,

life-moral significance around characters, actions, and situations that are either dramatically too thin or morally too dubious to manifest it in themselves."²⁶

The different "takes" on the novel can coexist quite happily. *The Golden Bowl* is richly ambiguous, and exerts no pressure on the reader to select the one "right" reading. Ethical readings of works of literature tend to be reductive—and digressive. To focus on the moral issues in *The Golden Bowl* is to risk losing sight of the prurient and Gothic vein of James's imagination—his fascination with the lurid, the unnatural, the quasi-incestuous (Hamlet would have considered sex between the Prince and Charlotte, after she becomes the Prince's stepmother-in-law, incestuous), and the voyeuristic: the wife committing adultery with her stepson-in-law, the daughter condoning her husband's adultery with her stepmother, the husband committing adultery with his stepmother-in-law, the father and daughter aware of and managing the adultery, the whole weird ménage seen through the eyes of the shocked and fascinated squares (the Assinghams). I don't think James was a moralist. I think he was something a good deal stranger.

Maybe Nussbaum can be taken as arguing merely (or mainly) that *discussion* of the moral dilemmas dramatized in *The Golden Bowl*, as distinct from the dramatization itself, will make us more moral by improving our skill in ethical analysis. This approach, which reflects the revival of interest in casuistic argumentation, shifts the burden of edification from literature to literary criticism and instruction. It is not a burden likely to be carried. Literary critics have rarely achieved the status of moral leaders; the moral dilemmas depicted in canonical literature are for the most part remote from current ethical concerns; above all, there is no evidence that talking about ethical issues improves ethical performance. This is not the place to expound and test a theory of how people become moral. Genes, parental upbringing, interactions with peers, and religion must all play a role. That casuistic analysis stimulated by works of imaginative literature also plays a role is unproven and implausible. Moral philosophers, their students, literary critics, and English majors are no more moral in attitude or behavior than their peers in other fields.

Now that few people in our society consider adultery a matter suitable for public regulation, the edifying force if any (I think none) of a novel like *The Golden Bowl* is, except for those readers who find in that novel politically useful insights into marriage under capitalism, limited to the sphere of personal relationships. For examples of how the

literary imagination can affect our thinking about public life Nussbaum turns to social novels, three in particular—Dickens's *Hard Times*, E. M. Forster's *Maurice*, and Richard Wright's *Native Son*. From the first she asks us to learn that the instrumental rationality celebrated in economic theory is incomplete and from the second and third that closeted homosexuals and inner-city blacks deserve our sympathy. The three books are questionable candidates for a questionable role. *Hard Times* is a fine novel, because it is Dickens and has Mr. Bounderby; but regarded as a tract against economic thinking, it is shallow and easily refuted. Gradgrind, the butt of the satire, comes to grief by treating everyone he deals with, including the members of his own family, on the model of persons whom one buys from or sells to on an impersonal, arm's-length, spot-market basis, banishing every element of love and trust from both personal and commercial relations. Insofar as Gradgrind is a stand-in for Bentham, the satire may have a point. Confusion of the different spheres of human activity was a feature of Bentham's thought, though as he himself never married we do not know how far he would have carried this confusion into his own personal life. It has been many years since any responsible social scientist has been confused in that way, so that to preach against Gradgrind has about as much point as preaching against slavery (the safest of targets, since it has no advocates). There are homologies between firms and families, and they are stressed by economists and other social scientists in quest of general theories of social behavior. But these social scientists do not recommend that family members as it were incorporate and conduct themselves as if they were shareholders. Market relations are substitutes for the affective ties of the family in activities conducted among strangers. The affective ties are not market relations; the usages, the vocabulary, and the moral values of the market are not designed for the governance of relations within the family. At the same time, efficient market relations are not always impersonal. Market relations within close-knit groups are different from spot markets. Between repetitively transacting partners trust plays a vital role in supplementing or even supplanting legal remedies. That is what Gradgrind fails to see. No economist today fails to see it.

Nussbaum claims that "Dickens's economic opponent [in *Hard Times*] is not a straw man: it is a conception that even now dominates much of our public life, in a form not very different from the form presented in this novel" (*PJ*, p. 18). But she cites no public policy advocated by economists that is flawed by Gradgrindian thinking. Most

public policies supported by economists, such as free trade, or the deregulation of the formerly regulated industries, or legal recognition (in tax law, tort law, and domestic-relations law) of the economic value of housework, or competition in the professions, are not heartless. Some policy positions of economists seem heartless to people who lack economic training—examples are the opposition of many economists to the minimum wage and to rent controls—only because such people do not understand the adverse effects of these policies on the worst-off members of society or are repelled by the vocabulary of economics, which is highly impersonal and unemotional. The most heartless policies, such as the savage punishment of drug offenders in contemporary American law or the public redistribution of wealth from poor to rich, are motivated by noneconomic concerns, opposed by most economists, or both.

Nussbaum has stronger grounds for her belief that many heterosexuals lack an empathetic awareness of the problems, or even the humanity, of homosexuals and that many whites lack an empathetic awareness of the problems, or, again, even the humanity, of the poorest black men and boys in our cities. Because homosexuality and race have become foci of legal controversy, there is an argument for trying to make lawyers and judges aware of the challenges, achievements, history, and outlook of these groups. The question is the means. I do not think that literature is an apt means. One reason is that the fictional depiction of a social problem can easily be dismissed as exaggerated or inaccurate—in short, as being a fiction. Another reason—the reason we do not expect to find *The Golden Bowl*, or even *The Merchant of Venice* (with its female lawyer role model, Portia) featured in courses on feminism, except those that take an adversary stance toward literature, which is not Nussbaum's proposal—is that the portrayal of traditionally subordinated or marginalized groups, not only blacks and other nonwhites, and homosexuals, but also Jews, women, and people afflicted with physical or mental disorders or insufficiencies, is largely negative, reflecting the cultures in which the works were written. There are exceptions, such as Alan Paton's famous novel about South Africa under apartheid, *Cry the Beloved Country*. But as a generalization it will hold. Almost all works of literature accepted as such are at least a few decades old, and most are far older. The sensitivities that have impelled efforts to develop in the legal profession a greater awareness of the problems of discrimination against traditionally subordinated or disadvantaged groups are recent. Because of this temporal mismatch, it is

difficult to find literary exemplars of Nussbaum's concerns. Forster was a novelist of great distinction, but *Maurice* is his weakest novel, with all the earmarks of special pleading,²⁷ and it is made esoteric by the author's preoccupation with competing and now-forgotten schools of Edwardian homosexual thought. As a tract on homosexuality, it is as dated as *Hard Times* viewed as a tract on economics. Now that apartheid has been abolished, even Paton's novel does not speak to contemporary problems.

Native Son (1940) is a landmark in the history of the black American novel. It has a timely theme—interracial violence—and is even set in the South Side of Chicago, where Martha Nussbaum teaches. Its protagonist, Bigger Thomas, a black man of twenty from the Chicago slums who is already a hardened criminal, kills a white woman, Mary Dalton. The killing probably is accidental, but afterward Bigger decapitates her and stuffs her body into a furnace in an effort to conceal the crime. Later he rapes and murders his black girlfriend. He pleads guilty to killing Mary (he is not even charged with the murder of his black girlfriend—a commentary on white indifference to black life) and is sentenced to death. The novel ends with Bigger awaiting execution. We are invited to believe that his smothering of Mary, from which all else follows inexorably, is due to her patronizing efforts, and those of her Communist boyfriend and limousine-liberal father (a slumlord, of course), to befriend Bigger as part of a program of helping the black race and that his proneness to violence is the consequence of “a mode of life stunted and distorted”²⁸ by white bigotry. At the sentencing hearing his lawyer goes so far as to argue: “The truth is, this boy did *not* kill! . . . He was *living*, only as he knew how, and as we have forced him to live” (p. 366). The pervasiveness of bigotry is further emphasized by the erroneous but unshakable belief of the legal establishment that Bigger raped Mary²⁹ and by threats of lynching.

Native Son is a period piece. Its picture of race relations is accurate for the 1930s, but not for today. The persistence into the present of an abnormally high level of violence among young black males (the black murder rate is more than seven times the white murder rate) may be a legacy of racism, but if so the causal linkage is subtle and the remedy obscure. Nussbaum argues that the moral teaching of *Native Son* is that “the stigma of social hate and shame” is “fundamentally deforming of human personality and community” (*PJ*, pp. 96–97). But this is an old lesson, one we have learned by heart, and it is not all that well presented in Wright's novel. The early chapters, with their striking

portraits of mutually uncomprehending poor blacks and liberal whites, promises a superb novel of manners. But beginning with Mary's dismemberment, implausibilities crowd in on the reader, the tone becomes increasingly strident, the black characters lose their depths, the energy of the writing flags. As Harold Bloom remarks with reference to Bigger's death vigil, "Wright, in *Native Son*, essentially the son of Theodore Dreiser, could not rise always even to Dreiser's customarily bad level of writing."³⁰ Bloom adds, "Either Bigger Thomas is a responsible consciousness, and so profoundly culpable, or else only the white world is responsible and culpable, which means, however, that Bigger ceases to be of fictive interest and becomes an ideogram rather than a persuasive representation of a possible human being. Wright . . . was not able to choose" (p. 4).

Nussbaum's choice of works of literature to discuss in *Poetic Justice* is a clue that there is nothing morally improving *in literature itself*, any more than there is in music or painting or architecture. If there were, she could choose three much greater works without having to worry about whether their overt themes were "liberal." That was the kind of thing that she tried to do with *The Golden Bowl*, but she produced a reductive interpretation. Great literature *resists* being used to edify, as we can see by asking why Nussbaum chose *Native Son* (locale aside) as her racial novel rather than *Othello*, an incomparably superior work. The answer may lie in the politics of education and public advocacy in our multiethnic society. Whatever the best interpretation of the attitude of *Othello* toward black men and toward white women who marry them, there are enough traces of the racist and sexist attitudes that permeated Shakespeare's society and are not refuted by the play to poison any attempt to use it as a vehicle for attempting to instill an empathetic awareness of the problems of blacks and women, or for denouncing racial prejudice and sexism.³¹ It is true that the play equivocates between Othello as Moor and Othello as Negro ("thick lips," I.1.68). The Elizabethans applied the word "Moor" indiscriminately to Africans, rather than distinguishing as we do between North Africans (and until their expulsion from Spain, the Muslim inhabitants, formerly conquerors, of that country) and Sub-Saharan Africans.³² But this equivocation simply multiplies the prejudices against Othello, whose cultural as distinct from racial "Moorishness" is signaled by "his uncontrollable passion . . . , his superstitious interpretation of the handkerchief, his ritualistic attempt to make the murder of Desdemona a sacrifice."³³ Images of bestial transformation—an Ovidian inversion—abound, and

the beast is Othello.³⁴ It is unclear whether the audience is intended to consider interracial marriage unnatural. Some of the characters in the play do; others don't. I think the audience is intended to think interracial marriage unnatural. It is typical of a Shakespearean tragedy to begin with an unnatural act that is a clue to the impending disaster, whether it is Cawdor's treachery, Gertrude's marriage to her brother-in-law, or Lear's dividing his kingdom. But I am only guessing. What is clear is that Othello is grossly deceived, forms ugly ideas about women, and commits a hideous crime that he can expiate only by his own suicide. What other Shakespearean tragic hero smothers a woman?

Of course this must not be the last word about the play. Othello is a heroic figure, albeit a deeply flawed one. White Iago is incomparably more villainous. *Othello* can be read as a tragedy about mutual misunderstanding between the sexes, rather than about anything to do with race. Othello's isolation from polite Venetian society by virtue of his military career and his foreignness make it difficult for him to form a true picture of a Venetian woman's character, while Desdemona, because of the cloistered upbringing of women of her social class, knows nothing about men.³⁵ Alternatively, *Othello* is a "tragedy of perceptions," like Faulkner's novel *Light in August*. Because the other characters in the play cannot accept Othello as "equally human but culturally different," he (like Faulkner's Joe Christmas, the black who passes for white) comes eventually to believe that his only choice is between assimilation and barbarism, and he oscillates between those poles (Berry, p. 318). *Othello* can be read most simply as a play about how the insecurity that a man feels who is married to a much younger woman makes him prone to jealousy, and how difficult jealousy is to allay when once it is aroused.

So there are "safe" readings of *Othello*, as of Faulkner and Twain, two other great writers who dealt with race sympathetically but to modern ears insensitively.³⁶ Yet one is never completely safe with a great writer, especially Shakespeare, whose greatness "lies in the fact that, whatever univocal insights or affirmations may be expressed within any work, they are thoroughly *dramatised*—that is, set within a complex interlocutory process such that they are never the 'final vocabulary' of individual works."³⁷

Another feature of Nussbaum's choice of novels to discuss in *Poetic Justice*, a feature related to my earlier point that the literary canon must be drastically shrunk in order to be made edifying, is that they are, as it were, preselected. Their take on the social issues they deal with

corresponds to her own. The three novels were chosen to illustrate, rather than to shape, her moral stance. If literature were really believed to be a source of ethical insight, the critic would examine and compare (and the teacher would assign) works of literature that reflected different ethical stances. *Hard Times* would be matched with *Nostromo* or William Dean Howell's *The Rise of Silas Lapham*, *Maurice* with "Death in Venice" or Sartre's "The Childhood of a Leader," *Native Son* with *Prester John*. Or the focus would be on undeniably ambivalent works, works that seem to wobble around the moral center, as it now seems to us, such as *Othello*, or *Pudd'nhead Wilson*, or *Light in August*. Instead the ethical position is in place before the examination begins, and furnishes the criteria of choice and shapes interpretation.

And is it an accident that *Maurice* was written by a homosexual and *Native Son* by a black? Or is the choice of these novels to discuss a statement of identity politics—of the right of members of marginalized groups to be represented in the literary canon, so that the other members of these groups will feel proud? Representation may cheer up some of them, but it is unlikely to change anyone's behavior.

James Boyd White's exemplary novelist is Jane Austen; and let us consider how he fits her "dark" novel, *Mansfield Park*, into the law and literature canon.³⁸ Fanny Price, a poor young girl, is taken into the home of wealthy and aristocratic relatives to be brought up properly but also to be patronized and even abused, Cinderella-fashion. At first she accepts and indeed internalizes the false values of her grand relatives, but gradually she sees through them and is rewarded at the end of the novel with marriage to the most decent (and through contact with her much improved) member of the family. The point interestingly emphasized by White is that Fanny is handicapped both by being poor and oppressed and as a result deficient in self-esteem and in a sense of independence, and by having to think as well as speak in the vocabulary of her upper-crust relatives—she has no other vocabulary. But it is one that, Newspeak-fashion, inverts the proper sense of words, substituting good manners for good morals. These circumstances retard (though not forever, as it turns out) Fanny's rejection of the false values of her grand relatives. Although White does not quite say this, he seems to view *Mansfield Park* as an allegory of the process by which an oppressed minority struggles for emancipation. Central to that process, in White's view, is the minority's achieving enough suppleness in the use of the language that the majority has imposed upon it to turn that language right side up so that it will express the minority's needs and aspirations. Language is both the prison and the key to the prison.

There is a strong didactic element in Jane Austen's novels, and I do not question the validity of White's interpretation. My only quarrel, which may seem petty, is that he is awfully far from law. Indeed he has quite escaped law's gravitational pull. Lawyers must learn to master language lest they be mastered by it, but to use Jane Austen as the vehicle for imparting this lesson is as strained as using the poetry of Wallace Stevens to rebuke jurisprudential extremes.³⁹ White, like Grey, loves literature and knows law and wants very much to yoke them; but they are frequently and in his hands an unruly team.

If we do not read literature in order to form better or truer opinions on matters of religion or politics, economics or morality, what do we read it for? One answer is to learn to read better by reading texts that are difficult because of cultural distance or the density or complexity of the writing. Another is to learn to express ourselves better by sitting at the feet of masters of expression. Most distinguished writers of nonliterary prose, who in law include Holmes, Cardozo, and Hand, have been well read in the literary classics (though in part this just reflects the character of elite education when they were growing up).

In reading literature we are also learning about the values and experiences of cultures, epochs, and sensibilities remote from our own, yet not so remote as to be unintelligible. We are acquiring experience vicariously by dwelling in the imaginary worlds that literature creates.⁴⁰ We are expanding our emotional as well as our intellectual horizons. An idea can usually be encoded straightforwardly enough and transferred more or less intact to another person. It is different with emotions. I do not *feel* your pain, your losses. You can *describe* a pain, its origins, and its consequences in as comprehensive detail as you like and I still will not experience them. And likewise with describing your feelings about growing old, falling in love, losing a friend, failing in business, succeeding in politics. Imaginative literature can engender in its readers emotional responses to experiences that they have not had. We read *King Lear* and *feel* how—or some approximation to how—a failing king feels, the wicked bastard feels, the evil daughters, the good daughter, the blinded earl, the faithful retainer, the corrupt retainer, the fool, all feel. We experience simulacra of the agony of madness and the pang of early death in *Hamlet*, the depths of mutual misunderstanding in *The Secret Agent*, the loneliness of command in *Billy Budd*, the triumph of the will in Yeats's late poetry. This is the empathy-inducing role of literature of which Putnam and Nussbaum speak. But empathy is amoral. The mind that you work your way into, learning to see the

world from its perspective, may be the mind of a Meursault, an Edmund, a Lafcadio, a Macbeth, a Tamerlane, a torturer, a sadist, even a Hitler (Richard Hughes's *The Fox in the Attic*).

Because most literature, even comedic, is about disruption, about screw-ups, it might be thought to be full of implicit lessons on how to keep out of trouble and be happy. On this view, as on the moralistic, literature can change us, though to make us more successful at the game of life rather than morally better. I think this is unlikely, that as I said earlier you don't get reliable practical tips from literature. Instead literature helps us, as Nietzsche would have put it, to become what we are. The characters and situations that interest us in literature are for the most part characters and situations that capture aspects of ourselves and our situation. Literature helps us make sense of our lives, helps us to fashion an identity for ourselves. If you don't already sense that love is the most important thing in the world, you're not likely to be persuaded that it is by reading Donne's love poems, or Stendhal, or Galsworthy. But reading them may make you realize that this is what you think, and so may serve to clarify yourself to yourself.

The "real you" that you discover by reading literature may not, however, be a Romantic, let alone a tame modern liberal, a supersensitive hyperegalitarian—the people whom Nietzsche ridiculed for thinking they are good because they have no claws. Yeats and Hemingway, Haggard and Buchan, Waugh and Pound may express your innermost self more faithfully than Austen, Joyce, and Forster do. You may prefer the macho Conrad of *Nostromo* and *Lord Jim* to the feminist Conrad (as it seems to me) of *The Secret Agent* and *Victory*. You may revel in the war-glorifying stanza of Yeats's poem "Under Ben Bulbin," written a year before the outbreak of World War II: "You that Mitchel's prayer have heard, / 'Send war in our time, O Lord!' / Know that when all words are said / And a man is fighting mad, / Something drops from eyes long blind, / He completes his partial mind, / For an instant stands at ease, / Laughs aloud, his heart at ease." The possession of knowledge, whether of oneself or of others, does not dictate its use for moral ends. Not only may we identify as readers with the egomaniacs, scamps, seducers, conquerors, psychopaths, tricksters, and immoralists who people fiction in such number; we may improve our skills in manipulating people to our own selfish ends by developing through the reading of fiction a better understanding of the naive and vulnerable, the good, the generous human types that we encounter in fiction side by side with the charming, sometimes dazzling, scoundrels.

I have no quarrel with the analogy that Booth and Nussbaum draw between reading and friendship. Bookish people do make friends with an author and even more commonly with his characters. Just as shy, imaginative children befriend imaginary beings or anthropomorphize animals, so shy, imaginative adults befriend literary characters. But does friendship make for goodness? Are bad people characteristically friendless? Literature offers a vast choice of friendships. Many of them are with evil, dangerous, or irresponsible people—*awful* role models. To befriend them is to risk being led astray, just as by other evil companions. It is not a big risk; but neither is the opposite—the likelihood that we will become better people by imaginatively befriending the “good” implied author and his “good” characters.

To emphasize the role of literature in imparting self-knowledge is better than assigning it the role of making the reader a more moral individual. But it still gives literature too solemn and even puritanical an air. Literature is one of the arts, and like the other arts yields pleasure as well as knowledge. Pleasure comes in many forms, and it is difficult to know which ones literature yields. Brian Vickers observes that “we understand works of literature far better than we understand our own lives, and they form satisfying wholes, aesthetic and ethical intellectual unities, in a way that life seldom does.”⁴¹ As his observation suggests, the pleasure that literature offers need not be of the jolly, frivolous, escapist, or sensuous sort. Indeed, “sweet though in sadness” (to borrow a phrase from Shelley’s “Ode to the West Wind”) well describes much of it. Philosophers since Aristotle have puzzled over the paradox that the depiction of disaster and undeserved suffering in tragic dramas yields pleasure to the audience.⁴² The pleasure that literature confers thus seems peculiar, and perhaps peculiarly “intellectual.” “Pleasure” may not even be the best word,⁴³ especially when the work of literature is grimly realistic. Reading such a work is a different experience from drinking a glass of champagne or eating *poulet de Bresse*.

A distinctive “pleasure” (or, better perhaps, satisfaction) that literature and other arts impart and that is especially foreign to a moralistic outlook is an echo chamber effect to everyday life. (It is hinted at in the passage I just quoted from Brian Vickers.) The life depicted in works of literature is recognizably human and therefore like our own, but it is more intense, more charged with significance. When we are reading literature, whether it is a brilliant “light” work like Forster’s *A Room with a View* or a brilliant depressive work like *Crime and Punishment*, whether

it celebrates romantic values or sees through them, we live, for the moment anyway, more intensely. We have a vision of a life more “real” (concrete, meaningful, intelligible, coherent, conscious) than our everyday existence. We have a sense of immense human possibility (a marked response of art lovers to a first-rate art museum). We feel bigger; we are transported, exhilarated. This is not a simple hedonism; but it is something that a Nietzsche or a Heidegger can understand better than the most sensitive moralist can, for it has to do with a sense of power and selfhood rather than with the moral sense. Culture does not ennoble; it enriches.

Literature may function as therapy,⁴⁴ and more commonly as consolation. The atheist may find a substitute for religion in the stoic values in Shakespeare’s plays or Yeats’s poetry, or simply in the sense that literature inhabits a timeless realm, is death-defying. The emotional effects of literature thus are various. It moves as well as pleases, shocks as well as delights, intoxicates as well as soothes, braces as well as relaxes. But all these effects are psychological rather than moral. Taking to heart Edgar’s admonition to his father (*King Lear* V.2.8–10),

What, in ill thoughts again? Men must endure
Their going hence, even as their coming hither;
Ripeness is all

may make us stronger, or prouder (or even humbler); it is unlikely to make us better.

It is no answer that while Shakespeare was not an egalitarian, he had insights into other moral issues, such as the problem of evil or the issue of steadfastness in the face of adversity, and it is for those insights that we value him. The Stoics were moralists, and Stoic values are conspicuous in many of Shakespeare’s plays. You might read Shakespeare and decide that you were, or should strive to become, a Stoic. But this is just another example of how literature can help the readers become what they really are—which may not be a *moral* improvement over the reader’s present, inauthentic self.

Particularly remote from morality is the disinterested, “art for art’s sake” pleasure that much literature affords. This is closest to the pleasure that we derive from the visual arts, especially abstract art, and from music, especially instrumental music. It is the pleasure that comes from being in the presence of beauty. Consider the middle stanza of Keats’s “Ode to Melancholy”:

But when the melancholy fit shall fall
 Sudden from heaven like a weeping cloud,
 That fosters the droop-headed flowers all,
 And hides the green hill in an April shroud;
 Then glut thy sorrow on a morning rose,
 Or on the rainbow of the salt sand-wave,
 Or on the wealth of globèd peonies;
 Or if thy mistress some rich anger shows,
 Emprison her soft hand, and let her rave,
 And feed deep, deep upon her peerless eyes.

Or this stanza from Part V of "The Waste Land":

A woman drew her long black hair out tight
 And fiddled whisper music on those strings
 And bats with baby faces in the violet light
 Whistled, and beat their wings
 And crawled head downward down a blackened wall
 And upside down in air were towers
 Tolling reminiscent bells, that kept the hours
 And voices singing out of empty cisterns and exhausted
 wells.

These two stanzas are good candidates for touchstones of literary greatness. Yet they have no moral or informational content to speak of. (The stanza from Keats's ode will *not* help anyone suffering from depression, and it is patronizing toward women.) They have only beauty. It is true that although musicality is an important part of their appeal, it cannot be divorced from the sense of the words, as is often possible with songs. Even nonsense verse, "The Owl and the Pussycat" for example, depends for its effect on our being able to understand the words and sentences.⁴⁵ Still, it is very difficult to extract a moral of any sort from the stanzas that I have quoted, or anything that could be described as information; and even the echo chamber effect that I described earlier seems muted.

It is not only in poetry that we derive an enjoyment fairly described as aesthetic from reading works of imaginative literature. The appeal of prose works as different from each other (and from snatches of poetry) as *The Stranger*, "The Dead," *The House of Mirth*, *The Sound and the Fury*, *For Whom the Bell Tolls*, *The Golden Bowl*, and *Moby-Dick* has largely to do with the formal properties of these works—changes of pace, shifts of

voice and point of view, the echoing and doubling of themes, the arousing of expectations and the deferral of their satisfaction, the creation and release of tensions, and the harmonizing of disparate elements—properties similar to those of instrumental music.⁴⁶ The more attuned we are to these properties, the less concerned we will be with the moral beliefs of the implied or the actual author. The formal properties do not exhaust the worth and appeal of literature, but the moral properties, I suggest, are almost sheer distraction.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

I thank Albert Alschuler, Wayne Booth, Richard Craswell, Stephen Holmes, Lawrence Lessig, Martha Nussbaum, Eric Posner, and participants in a Work in Progress Luncheon at the University of Chicago Law School for many helpful comments on an earlier draft of this essay. It will appear in somewhat different form as part one of chapter 8 of my book Law and Literature: The Relation Rethought, forthcoming from Harvard University Press.

1. See, for example, his essay "A Note on the Limits of 'History' and the Limits of 'Criticism,'" in *Seventeenth-Century English Poetry: Modern Essays in Criticism*, ed. William R. Keast (London: Oxford University Press, 1962), pp. 352, 357–58. The New Critics were not always successful, however, in maintaining the distinction between the moral and the aesthetic response to literature.
2. "The durability of *Gulliver's Travels* goes to show that, if the force of belief is behind it, a world-view which only just passes the test of sanity is sufficient to produce a great work of art." George Orwell, "Politics vs. Literature: An Examination of *Gulliver's Travels*," in *The Collected Essays, Journalism and Letters of George Orwell*, vol. 4, eds. Sonia Orwell and Ian Angus (New York: Harcourt Brace Jovanovich, 1968), pp. 205, 222–23. On Eliot's views, which contain the same equivocation as the New Critics whom he inspired, see Malcolm Budd, *Values of Art: Pictures, Poetry and Music* (New York: Penguin, 1995), pp. 98–99.
3. Helen Vendler, "The Booby Trap," *New Republic*, Oct. 7, 1996, pp. 34, 37. Compare Benedetto Croce, *Guide to Aesthetics* (Riverside, New Jersey: Bobbs-Merrill, 1965), pp. 57–58: "The artist is always unblamable morally and uncensurable philosophically, even though his art may have for subject matter an inferior morality and philosophy. Insofar as he is artist, he is not a man of action and does not reason, but poetizes, paints, sings."
4. Frank Kermode, "Forster and Maurice," in Kermode, *The Uses of Error* (Cambridge: Harvard University Press, 1991), pp. 265, 268.
5. See Martha Nussbaum, *Love's Knowledge: Essays on Philosophy and Literature* (New York: Oxford University Press, 1990); hereafter abbreviated *LK*.

6. Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon Press, 1995), p. 12; hereafter *PJ*. See also *Love's Knowledge*, pp. 2–4.
7. Wayne C. Booth, *The Company We Keep: An Ethics of Fiction* (Berkeley: University of California Press, 1988), p. 172, italics added.
8. Booth, "Rabelais and the Challenge of Feminist Criticism," in *The Company We Keep*, p. 383. Booth is explicit about the ethical consequences of literature: "everyone who has read much narrative with intense engagement 'knows' that narratives do influence behavior" (p. 227). "Almost everyone—except for a few theorists—would agree not only that we read for instruction but that the instruction often *works*" (p. 229). See also pp. 232–35.
9. See, for example, Russell Fraser, *The War against Poetry* (Princeton: Princeton University Press, 1970), chap. 7.
10. John H. Wigmore, "Introduction," in John Marshall Gest, *The Lawyer in Literature* (Boston: Boston Book Co., 1919), pp. ix–xii.
11. Robin West, *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1993), pp. 7, 13, 263 (footnote omitted).
12. Anne B. Goldstein, "Representing the Lesbian in Law and Literature," in *Representing Women: Law, Literature, and Feminism*, ed. Susan Sage Heinzelman and Zipporah Batshaw Wiseman (Durham: Duke University Press, 1994), pp. 356, 358 (footnote omitted).
13. James Boyd White, "Law and Literature: 'No Manifesto,'" *Mercer Law Review* 39 (1988): 739, 751 (hereafter White).
14. Geoffrey H. Hartman, "Is an Aesthetic Ethos Possible? Night Thoughts after Auschwitz," *Cardozo Studies in Law and Literature* 6 (1994): 135, 137, 139. There is no soft evidence either.
15. K. K. Ruthven, *Critical Assumptions* (Cambridge: Cambridge University Press, 1979), p. 184.
16. Yes, he did read Jane Austen. See Letter to Frederick Pollock, Aug. 2, 1923, in *The Essential Holmes: Selections from the Letters, Speeches, Judicial Opinions, and Other Writings of Oliver Wendell Holmes, Jr.*, ed. Richard A. Posner (Chicago: University of Chicago Press, 1992), p. 10.
17. "The novel, while permitting and even suggesting certain criticisms of its characters, promotes mercy through its invitation to empathetic understanding." See too p. 130 n. 45.
18. See Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (Berkeley: University of California Press, 1957), chaps. 1–2.
19. See Erich Auerbach, *Mimesis: The Representation of Reality in Western Literature* (Princeton: Princeton University Press, 1953), chap. 18.
20. Jonathan Dollimore and Alan Sinfield, "History and Ideology: The Instance of *Henry V*," in *Alternative Shakespeares*, ed. John Drakakis (London: Methuen, 1985), pp. 206, 227.

21. Irving Kristol, "Reflections of a Neoconservative," *Partisan Review* 51 (1984): 856, 859.
22. Hilary Putnam, *Reason, Truth and History* (Cambridge: Cambridge University Press, 1981), p. 55.
23. Cf. Daniel Brudney, "Knowledge and Silence: *The Golden Bowl* and Moral Philosophy," *Critical Inquiry* 16 (1990): 397–437, commending Maggie's "tact" in resolving the crisis created by her husband's adultery with minimum damage to the people involved.
24. Nussbaum may be coming around to this view, for in an essay written after *Love's Knowledge* she criticizes Maggie and her father (a widower who marries Charlotte) for treating their spouses "as fine antique furniture," thereby "denying them human status." Martha Nussbaum, "Objectification," *Philosophy and Public Affairs* 24 (1995): 249, 288.
25. Joseph A. Boone, "Modernist Maneuverings in the Marriage Plot: Breaking Ideologies of Gender and Genre in James's *The Golden Bowl*," *Publications of the Modern Language Association* 101 (1986): 374, 380.
26. S. L. Goldberg, *Agents and Lives: Moral Thinking in Literature* (Cambridge: Cambridge University Press, 1993), p. 301.
27. Kermode calls it "a fairly simple wish-fulfilling fantasy; it has symbolic patterns in the usual Forster way, and these will no doubt be made much of, but they seem to be relatively inert and self-indulgent." Kermode, *The Uses of Error*, p. 271.
28. Richard Wright, *Native Son*, 1966 paperback edition, p. 358. The passages I quote from this edition are unchanged in the uncut version of the book. See next footnote.
29. Yet at the insistence of the Book of the Month Club, Wright cut out several sexual scenes, in one of which Bigger is sexually aroused by Mary shortly before he smothers her (see pp. 96–97 of the Harper paperback edition, 1993). These cuts were not restored until 1991. See the Rampersad, Tuttleton, and Kinnamon essays in Robert J. Butler, ed., *The Critical Response to Richard Wright* (Westport, Connecticut: Greenwood Press, 1995), pp. 163–76. That was after Wright's death, so we cannot be certain that the restored text is more authentic than the originally published one.
30. Harold Bloom, ed. "Introduction," in *Richard Wright's Native Son* (New York: Chelsea House, 1988), p. 1.
31. On Elizabethan stereotyping of and hostility to blacks, see Karen Newman, "'And wash the Ethiop white': Femininity and the Monstrous in *Othello*," in *Shakespeare Reproduced: The Text in History and Ideology*, ed. Jean E. Howard and Marion F. O'Connor (New York: Methuen, 1987), pp. 143, 148–49, 153. On racism in *Othello* itself, see John Salway, "Veritable Negroes and Circumcised Dogs: Racial Disturbances in Shakespeare," in *Shakespeare in the Changing Curriculum*, ed. Lesley Aers and Nigel Wheale (London: Routledge, 1991), pp. 108–12, 115–22.
32. David Bevington, "Othello, the Moor of Venice," in *The Complete Works of Shakespeare*, 4th ed., David Bevington, ed. (New York: HarperCollins, 1992), p. 1117. Barbara Everett, in her book *Young Hamlet: Essays on Shakespeare's Tragedies* (Oxford: Clarendon Press, 1989), chap. 9, argues that the play presents Othello as a distinctively Spanish Moor.

33. Edward Berry, "Othello's Alienation," *Studies in English Literature 1500–1900* 30 (1990): 315, 317–18 (hereafter Berry).
34. Jonathan Bate, "Ovid and the Mature Tragedies: Metamorphosis in *Othello* and *King Lear*," *Shakespeare Survey* 41 (1989): 133, 136–37.
35. Gayle Greene, "'This That You Call Love': Sexual and Social Tragedy in *Othello*," in *Shakespeare and Gender: A History*, ed. Deborah Barker and Ivo Kamps (London: Verso, 1995), pp. 47–62.
36. On Twain, see Booth, note 7 above, p. 477. Booth believes that Faulkner's works are "to some degree marred by sexism" (p. 405); he does not mention racism in connection with Faulkner.
37. David Parker, *Ethics, Theory and the Novel* (Cambridge: Cambridge University Press, 1994), p. 60. Even Dickens is not safe; *Hard Times* expresses his fierce antipathy to labor unions, *Oliver Twist* his anti-Semitism; most of his novels are sexist.
38. See James Boyd White, *Acts of Hope: Creating Authority in Literature, Law, and Politics* (Chicago: University of Chicago, 1994), chap. 6, "Austen's *Mansfield Park*: Making the Self Out of—and Against—the Culture."
39. See Thomas C. Grey, *The Wallace Stevens Case: Law and the Practice of Poetry* (Cambridge: Harvard University Press, 1991), discussed in my book *Overcoming Law* (Cambridge: Harvard University, 1995), pp. 476–81.
40. Kendall L. Walton, *Mimesis as Make-Believe: On the Foundations of the Representational Arts* (Cambridge: Harvard University Press, 1990), p. 273.
41. Brian Vickers, *Appropriating Shakespeare: Contemporary Critical Quarrels* (New Haven: Yale University Press, 1993), p. 143.
42. See Budd, *Values of Art*, pp. 110–23; Walton, *Mimesis*, pp. 255–59.
43. Cf. Nelson Goodman, *Languages of Art: An Approach to a Theory of Symbols*, 2nd ed. (Indianapolis, Hackett, 1976), pp. 242–43, 250, 259.
44. Morris Robert Morrison, "A Defense of Poetry Therapy," in *Poetry as Healer: Mending the Troubled Mind*, ed. Jack J. Leedy (New York: Vanguard, 1985), p. 28.
45. "The Jabberwocky" in *Through the Looking-Glass* is the limiting case; but the drift of the poem is quite intelligible, even though a number of the made-up words are purely evocative. (Likewise *Finnegans Wake*.) And right after the recitation of the poem Alice (and the reader) is told the meaning of the made-up words.
46. On the properties of "abstract" (nonvoice, nonrepresentative) music, see Budd, *Values of Art*, pp. 164–69.