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Rhyme and Reason: Why the Study of Poetry Is the Best Preparation for the Study of Law

Author(s): George D. Gopen

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## Rhyme and Reason: Why the Study of Poetry Is the Best Preparation for the Study of Law

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For years when I argued the proposition of my title to undergraduate advisees, they looked at me with a kind but pitying gaze and assumed, I imagine, that this was a novel effort on the part of an English professor to swell the ranks of his poetry classes. In 1979, however, all that changed. Mr. Justice John Paul Stevens, of the United States Supreme Court, articulated precisely this thesis in an interview at the University of Chicago, that the best preparation for the study of law was the study of poetry, especially lyric poetry. Thereafter when I detected an advisee's kind but unbelieving gaze, I produced my copy of the Stevens interview and quoted his pronouncement. The students began to sit up, take notice, and enroll in poetry classes. In preparation for writing this article, I have had the honor and pleasure of discussing the subject with Mr. Justice Stevens, who found the arguments persuasive. I wish to thank him for his time, interest, and insight.

Most law schools publish a statement in their catalogue informing prospective students that there is no particular undergraduate major necessary to preparing themselves to study law. Some add that no matter what major the student chooses, there should be a strong concentration on the developing of critical reading and writing skills. I would agree with both these statements. The majority of students I have known, however, rejoice in the former but disregard the latter, and because they have romantic misconceptions of what the study of law will require, they tend in large numbers to major in political science or government and ignore as much else as possible.

The term "pre-Law" is a misnomer; at best it describes a state of intention, and no more. The kind of mental training law school offers is not available "in little" anywhere else, and no undergraduate course or series of courses can replace or anticipate the total immersion in the Socratic method used almost universally in the first year of legal study. Law schools do not teach principles of justice, nor the canon of existing laws, nor the "meaning" of statutes, cases, or

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George D. Gopen holds a law degree and a PhD in English from Harvard University. He is assistant professor of English and formerly director of writing programs at Loyola University of Chicago. He has written a textbook, *Writing from a Legal Perspective* (West Publishing Company, 1981), and has served as a legal writing consultant.

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the Constitution; law schools teach their students how to think like lawyers. The undergraduate can prepare specifically for that experience only by developing the skills which he or she will be called upon to use in legal training, and those are the skills of critical reading and critical writing. It may well be comforting for the student to have a background in American history or British history, in philosophical reasoning or mathematical reasoning, but none of these are essential; they are only prudent. The historical facts and political theories learned in political science courses may well have to be consciously laid aside so that the new law student can free the mind to accept the approach to reasoning that law schools try to teach. Any course, in any department, that concentrates on reading skills and forces the student to write thoughtfully, clearly, and cogently will be more to the point than any substantively "relevant" course that lacks such critical attention.

The English major suits the "pre-Law" student best, I suggest, in part because English departments tend to care about reading and writing skills more than other departments, but also, more interestingly, because some of the methods they use in teaching literature, most particularly poetry, are directly applicable to the study of law. This essay limits itself to the formalistic techniques of teaching poetry that grew out of New Criticism. It leaves aside other traditional methods of interpretation (historical, psychological, etc.), which do not so often produce the kinds of mental activities described below, and it does not consider recent literary criticisms, like post-structuralism, which have yet to make their way into undergraduate pedagogy.

I make the statement with confidence: The formalistic study of poetry is the best preparation for the study of Law. The main reasons:

- I: No other discipline so closely replicates the central question asked in the study of legal thinking: "Here is a text; in how many ways can it have meaning?"
- II: No other discipline communicates as well that words are not often fungible.
- III: No other discipline concentrates as much on the effects of ambiguity of individual words and phrases.
- IV: No other discipline concentrates as much on the concept of contextuality.

*I: No other discipline so closely replicates the central question asked in the study of legal thinking: "Here is a text: in how many ways can it have meaning?"*

Other disciplines ask "What does this mean?" or "What did the author mean by this?" or "How can this be used?" or "How does this fit in with what else has been said or done?"—all of which are useful, meaningful questions in their proper contexts. The formalistic study of poetry, however, disdains an objective concept of "Truth" and concentrates instead on interpretation. It matters not what Keats or Yeats might have intended by a given line or poem: they are not around to tell us; if they were we could not trust that they consciously under-

stood everything that had gone into the composition process; and, as many now argue, the “meaning” of a poem results from a collaboration (or series of collaborations) between the writer who produced the text and a particular reader who perceives the text. Poems are not questions for which readers must supply correct answers.

The same holds true for the study of law (though not quite as consistently for the practice of law). Unlike the impression *The Paper Chase* has given to millions, there is no answer a law student can give that should elicit a “Thank you, that is correct” response from a competent law professor. A demonstration of having done the reading assignment will get the law student past only the professor’s first question (“What happened in the case of *Robinson v. Allied Furniture Movers*”?). After that, it is all mental sparring, intellectual counter-punching. In the first year of law school a student could get an A in every course without citing a single case in an examination; it is the ability to reason from different perspectives that counts. The minute a law student thinks she has “the answer,” she is lost. The professor will tap dance around that response to another perspective that makes her answer seem ridiculous.

It takes new law students a good while to learn this, having often been trained in college that questions have answers (if not right ones, then at least gradable ones), and having been reasonably successful up to that point in divining the particular answer that any given professor had in mind. For some months in the first year’s legal training it seems to the students that whenever they get where the professor wanted them to go, the professor was yet somewhere else, beckoning to them once again. It is not necessarily clear to them where they are or why they are there.

The issues considered at law school may or may not be new to a given student, but the ways of considering the issues will most probably be new. A given set of facts may result in a dozen different outcomes if tried in each of the fifty state jurisdictions. Those dozen outcomes might suffer a half-dozen different fates if appealed to higher courts. Everything depends on the approach used by a particular judge in a particular jurisdiction at a particular time. For hundreds of years cases were decided mainly on procedural grounds; if the wrong forms were used or if any errors were committed in the use of the right forms, the case was lost. By the nineteenth century we were de-emphasizing the technical and emphasizing the theoretical, until the latter started to produce outcomes equally as nonsensical as those produced by the former. In the twentieth century we have turned towards the functional or utilitarian, attempting to ensure consistency in the theoretical foundations of argument while maintaining accuracy in the technical procedures. In short, there is now a great deal to consider, given even the simplest of cases.

As an example, consider the often used textbook case of *Miner v. Bradley* (22 Pick. 457), an 1839 Massachusetts case. Defendant put up for auction a certain cow and 400 pounds of hay. Plaintiff won the bidding at \$17. He received the cow and afterwards demanded the hay, which the defendant refused to deliver since he had already used it. Plaintiff sued for the price of the hay. It all seems simple enough at first: the plaintiff paid for hay he never received, and therefore he

ought somehow to be compensated. Just how he is to be compensated turns out to be not quite so simple.

- a) If the one price of \$17 was for the cow and the hay together, can we determine how much each was worth—when the parties themselves made no such determination?
- b) If the plaintiff wants to get money back, does that not mean in this case that he really wants the entire contract rescinded, which in turn would require that he restore the cow to the defendant?
- c) If the price of hay had risen since the initial transaction, should the defendant be forced to replace the hay or merely to pay the plaintiff the market value of the hay at the time of the contract?
- d) Can the plaintiff return the cow and collect the \$17 plus the profit he could prove he would have made by reselling the cow?
- e) Should the plaintiff be able to collect the \$1 it cost him to send a wagon for the non-existent hay? Was the hiring of that wagon inextricably tied to the purchase contract?
- f) What if the defendant could prove that \$17 was a bargain price for the cow alone and that the including of the hay was merely a good-will gesture that reflected no dollar value in the terms of the contract?

As with many textbook cases, the student will never find out what actually happened in the end to Messrs. Miner and Bradley. (The Massachusetts Supreme Court found error in the trial court's instructions to the jury and remitted the case for a new trial, the results of which are usually not noted by the textbooks.) It matters only that the contractual issues be understood and that general principles be able to be deduced from comparing this case with several others somewhat like it.

Classroom work in the first year of law school will often focus on a given text that raises the kinds of perspective problems demonstrated by *Miner v. Bradley* above and that helps students recognize that discernment of "meaning" depends to a great extent on the needs and wishes of the individual discerner. Here is a text—a sentence from a hypothetical home-made will by a well-meaning grandmother who had been collecting art objects and paintings for many years:

I leave my artwork in equal portions to my surviving grandchildren.

At the time of the making of this will, hypothetical grandmother had one child, Thomas, who had married Mary when he returned from service in the Army. Grandmother has always mistrusted her son and daughter-in-law but has doted upon their two children, Ronald and Rowina, and she was glad to have the art collection bypass a generation. Grandmother dies, and the family lawyer finds the home-made will, which post-dates the one he had drawn up for her several years earlier. The grandchildren are delighted by the provision for the artwork, but the lawyer is horrified, not at the sentiment or the intention, but at the potential legal mess created by the wording. The casual reader would pass over this provision without hesitation; a careful, imaginative reader might spot some problems; the legally trained reader can see how fraught with potential confusion it is. Here are just a few possibilities:

- 1) How is "artwork" to be defined?

- a) By the intention of the makers of the object?
  - b) By the dollar value of the object?
  - c) By Grandmother's perception of the object?
  - d) By the grandchildren's perception of the object?
  - e) By a court's perception of the object?
- 2) Which, if any, of the following, therefore, would qualify as "art"?
- a) The cut-glass doorknobs on the bedrooms of the old house?
  - b) Cartoons drawn on cocktail napkins for Grandmother by her old friend Mr. Thurber?
  - c) Cartoons drawn on cocktail napkins for Grandmother by her old friend who never became a known artist?
  - d) Water colors by Grandmother?
  - e) Paint-by-the-number canvases done by Grandmother?
  - f) Handmade lace collars made and framed by Grandmother?
  - g) Handmade lace collars made by a famous French firm and framed by Grandmother?
  - h) Either f) or g) above if not framed?
  - i) One of the first telephones ever produced by the telephone company, which Grandmother had been proud to have ordered when it first came out?
  - j) A copy of that same phone produced recently by Bloomingdale's, costing \$72.50?
  - k) The deluxe edition of j), done in mother-of-pearl and costing \$3000?
  - l) Illustrated rare books?
  - m) Illustrated books not yet considered rare?
- 3) How are "equal portions" to be defined?
- a) By dollar value?
  - b) By dollar value within categories? (Dividing the pictures separately from dividing the statues, etc.)
  - c) By the number of pieces?
  - d) By a method of alternating choices between the grandchildren?
  - e) By having one grandchild make the divisions and the other take the first choice?
- 4) What is a "surviving" grandchild?
- a) One who is alive at the time of the making of the will?
  - b) One who is alive at the time of Grandmother's death?
  - c) One who is alive at the time of the dispersing of the property?
  - d) Grandmother's choice of a), b), or c), if determinable?
- 5) In which of the following situations would the child be considered a "grandchild" within the scope of the bequest?
- a) Rowina is actually Mary's daughter from a previous marriage. Thomas has always intended to adopt her but has never gotten around to it.
  - b) Three months before Grandmother's death, Thomas and Mary applied to adopt a third child. The child was not assigned to them until shortly after Grandmother's death.
  - c) Mary is pregnant with Roscoe at the time of Grandmother's death.
  - d) Thomas becomes severely disappointed with Ronald and with all due seriousness disowns him, saying "You're no son of mine."
  - e) Before Grandmother dies, Thomas and Mary divorce, Mary getting custody of the children.
  - f) Ronald, it is discovered, turns out to have been fathered by the next-door neighbor instead of by Thomas.
  - g) A year after Grandmother's death Juanita arrives with papers to prove that

she had been fathered by Thomas in a marriage he had contracted for while in the Army (her mother having died before Thomas' return). Grandmother had not known about Juanita.

A quick reading of "I leave my artwork in equal portions to my surviving grandchildren" told us something, seemingly quite clear, about Grandmother's intentions; repeated readings from varying perspectives can bring to light the potential problems created by the text. It takes months for the new law student to understand that learning to approach cases from multiple perspectives, learning how to ask pertinent questions, to weigh and balance factors, to perceive which are the relevant facts in any legal situation—that these are the real tasks of the first year of law school.

Keats' concept of "negative capability," long taught in poetry analysis courses, prepares one well for this mental jousting. "Negative capability" is the ability, when you are faced with multiple possibilities for interpretation (even mutually exclusive possibilities), not to succumb to the compulsion to choose one at the expense of the others. It is the power to interpret a line or a poem (or a person) as being both  $x$  and  $-x$  simultaneously, without the contradiction suggesting a lack of "truth." Poems are not crossword puzzles, which, once figured out, can be discarded as mere past experience: neither are most of the cases studied in law school; neither are people. Shakespeare has Hamlet complain bitterly about such treatment at the hands of his supposed friends, Rosencrantz and Guildenstern (they have just denied Hamlet's request that they play the recorders, pleading ignorance of the instruments).

Why, look you now, how unworthy a thing you make of me. You would play upon me; you would seem to know my stops; you would pluck out the heart of my mystery; you would sound me from my lowest note to the top of my compass. And there is much music, excellent voice, in this little organ, yet cannot you make it speak. 'Sblood, do you think I am easier to be played on than a pipe? (III,ii)

One cannot "pluck out the heart of the mystery" of a poem anymore than of a person; nor can one do it to any legal question worthy of being included in a course of study at a law school. As soon as one heart is plucked out by the student, two others grow in its place. Legal training concentrates on the rhetorical mode of persuasion (attempting to get the audience to agree with your point of view), not on the mode of argumentation (proving to the audience that what you say is the truth).

*II: No other discipline communicates as well that words are not often fungible.*

The word "fungible," which was suggested to me by Mr. Justice Stevens, is a legal term that when used in the negative expresses the concept of irreplaceability. *The Oxford English Dictionary* defines it by quoting Austin's *Jurisprudence* (1879):

When a thing which is the subject of an obligation . . . must be delivered in specie, the thing is not fungible, i.e. that very thing, and not another thing of the same or another class in lieu of it must be delivered.

The literary analogue of this is Flambert's concept of "*le mot juste*"—that there often is a particular word or series of words that evokes responses more rich, more varied, more appropriate than any other word or words. Consider for example the haunting fourth line of Shakespeare's Sonnet 73:

That time of year thou may'st in me behold  
When yellow leaves, or none, or few do hang  
Upon those boughs that shake against the cold,  
Bare ruined choirs, where late the sweet birds sang.

The ambiguities of the words in this line are many, and the permutations resulting from them are without number, but for the present let us look only at the word "late," not by any means the most evocative word in the line, but still "*juste*" enough not to be fungible. Replace it with the word "once," another monosyllable, equally suggestive of the present lack of birds' singing, and even alliterative with the other "s" sounds in the line: "Bare ruined choirs where once the sweet birds sang." Why does this line seem inferior to the original (or at least so very different)? Perhaps the glottal stop necessitated by the first sound in "once" interrupts the flow too much. Perhaps the sense of "dead," so distinct in the use of the word "late," has been lost. Perhaps the pain of the concept of "recent death" has disappeared, "once" referring to any time in the past, but "late" referring more specifically to a death of someone within living memory. Perhaps we regret the loss of the meaning "far into the night" and therefore "with great enjoyment," suggested by "late" but not by "once." Perhaps it is a combination of all these, and perhaps more; the closer we look at the line, the better argument we can make that "late," in this case, is not fungible. The same can be argued for the other eight words in the line and therefore for the combination of all nine words into one line of poetry. No other line could communicate precisely what this one manages to do.

Ideally, no word in a poem should be replaceable by another without there following some substantial change in the effect of the poem. Such replacing and changing serves as one of the main pedagogical devices used in law school. The students will read a case and make sense of the holding, if possible. The professor will ask one student to state the facts and the holding and to explain the reasoning. When the student has responded, the professor will change the facts slightly and ask what effect that has on the adequacy of the holding of the original case. Once the student has weeded out all the differences, the professor will change the facts again, and again, and again, until some general principle that holds all these cases together starts to emerge. It is a process that includes close textual analysis and the use of multiple perspectives, the very tools employed in the study of poetry. Law students develop a healthy paranoia (healthy because temporary and instructive) concerning the language and its unusual treatment by courts and lawyers.

Courts sometimes find themselves trapped by their own non-fungible language and can remain true to the legal concepts in question only by falsifying somewhat the normal usage of the language in question. The 1973 case of *Cumbo v. Cumbo* (9 Ill. App. 3d 1056, 293 N.E.2d 694) is a delightful example of this. An



Illinois statute allows a summons to be served on a member of a person's *family* in lieu of being served on the person himself or herself, as long as that person is at least twelve years old, thus simplifying the serving task of the bailiff and speeding up the legal process while not greatly endangering the defendant's right to knowledge. Situations arose over the years that led the court to alter the meaning of "family" for the purposes of this statute. Would a live-in housekeeper do, even if she was not related to the defendant? Yes, the court held; since she was a responsible person who would be around the house often enough to be able to deliver the summons to the defendant, she would serve the same purpose as a blood relative. What of a boarder? Again the court agreed; the boarder, like the housekeeper, was "family." *Cumbo v. Cumbo* concerned service of a summons on Mr. Cumbo to start the proceedings in his wife's divorce suit. Mr. Cumbo was not at home when the bailiff arrived, but Mr. Cumbo's thirteen-year-old brother Gregory was, and he accepted the papers. Mr. Cumbo argued that he never received the summons because his brother, who lived in another state and was in town only for a brief visit, had neglected to give it to him. The court agreed with Mr. Cumbo's point of view and ruled that for purposes of service, one's blood brother, although of age, was not "family" in the meaning of the statute because he did not reside with the defendant-to-be. "Family," once so defined, is not fungible.

Eventually the law student begins to realize that few words in the language are fungible when the eyes of a court are on them. "And" does not mean the same thing as "or"; nor is "but" always the same as "although." Every word in a contract or a statute is fair game for the interpretive powers of judges, counsel, and interested parties. A judicial tradition called the parol evidence rule requires that the written words of a contract must control the interpretation of that contract, and that neither previous writings nor oral agreements made at any time can be allowed as evidence to change the plain meaning of the written contract, unless the writing is "vague or ambiguous" on the face of it. An inaccurate or careless use of the written word, therefore, cannot be compensated for by an "I mentersay" at a later date when trouble has arisen. The assumption that words are not fungible has here become part of the substantive law.

*III: No other discipline concentrates as much on the effects of ambiguity of individual words and phrases.*

The law takes common words and gives them uncommon meanings for specific purposes. For example, to a philosopher, a psychiatrist, or an historian, the word "intent" raises possibilities of meaning that are without boundaries, or at least with boundaries that shift from particular experience to particular experience. The law cannot afford such liberality or such lack of control where "intent" is concerned. While the philosopher, psychiatrist, or historian can continue to ponder, the judge has to come to some conclusion that favors either the plaintiff or the defendant (the State or the defendant, in a criminal case). Such a word as "intent" gets its "legal meaning" through statute or through legal precedent in court cases, and once the meaning is defined, it must remain so until changed by

some other legislative or judicial ruling. "Intent" must have a narrow meaning in law in order for judges to use it.

For example: The anarchist hates the King but loves the Queen. He waits for their carriage to come by and throws in the window a lighted explosive, declaiming loudly to the crowd, "I hate the King and wish him dead; but I love the Queen and do not wish her any harm." The explosion kills both King and Queen. Did he "intend" the murder of the Queen? The philosopher, the psychiatrist, and the historian might argue at length on the subject, but the judge has to decide quickly. Yes, he "intended" to kill the Queen. Why? Since judges cannot tell with any accuracy what goes on in a defendant's mind they look to the deed and its logical consequences instead. Did the perpetrator know that death was likely to be the outcome of throwing a lighted explosive into the royal carriage, and did death actually occur as a result? If the answer to both is "yes," then the defendant "intended" the deed. "He might as well have intended the deed" becomes equivalent to "he intended it."

Comparatively few words in the language are already as settled as the above use of "intent" is under the law. Therefore a great deal of legal argument and negotiation concentrates on finding the reasons why someone (a judge, a client, an adversary, another party to an agreement) should be willing to accept one's particular interpretation of a particular word or phrase. In order to find these reasons, one must be able to perceive as many of the latent ambiguities in words and phrases as possible. Then by defining away the ambiguities one can limit the possibilities of accidental or intentional misinterpretation by others. There may even be occasions when a lawyer wants to strive for what I call anti-precision, leaving open the possibilities for reinterpreting the letter of the law (to cope with future unforeseeable circumstances) while keeping its spirit intact. (The U.S. Constitution is a supreme example of such anti-precision.)

The analysis of poetry affords students excellent practice at spotting and working with ambiguities. In other undergraduate disciplines the presence of ambiguity often leads to mere confusion, but in the analysis of poetry one can almost equate the richness of ambiguity (a positive word, not to be confused with the negative quality of obscurity) with the greatness or the depth of the poetry. The larger the number of possible responses that a poem engenders, the larger the audience to which it will continue to appeal over time. Much of the study of poetry concentrates on discerning these ambiguities. Take for example a couplet in Alexander Pope's "Epistle II: To a Lady," describing old female socialites at a ball:

Still round and round the ghosts of beauty glide  
And haunt the places where their honor died. (II. 241-242)

I would argue that the ghostly, haunting quality of these lines comes from their richness of ambiguity, even though the multiple meanings cannot be sensed consciously on first reading or kept in mind simultaneously on rereading. At first I see old women who have lost their former good looks ("ghosts of beauty") taking part in formal dances ("round and round" they "glide") in the places they

used to frequent when younger. But then other possibilities arise. "Ghosts" also suggests a lack of color where there once had been color, making the beauty itself ghostlike, but the women also are "ghosts" in that wherever they go they "haunt" the place, making it unhealthy for the youth that wishes to take its turn. These places used to be the women's regular "haunts"; now instead the women regularly haunt the places. The ghosts' gliding suggests a conscious effort by the women to display their gracefulness, but at the same time ghosts, insubstantial airy things, always "glide" when they move. "Still round and round" suggests the pattern of the dance, but also its futility; and because "still" can also mean "not moving," yet another kind of futility is suggested. There may also be a pun hiding in "still round and round," referring to the somewhat fuller figures the women now possess, compared to their earlier, more slender days. "The places where their honor died" can refer to the rooms where they elicited illicit sexual advances in their youth. At the same time these are the rooms where they used to be taken seriously by society when their honorable husbands (perhaps judges?) were alive, but since "their Honor" died, the wives are considered non-entities, "ghosts," companions to their dead spouses.

Interpretation does not end there, but this will do to make the point. Learning how to look hard at words and their combinations, learning how to play with them and explore possibilities beyond the ones perceived at first impression, will train the mind to deal with common language in the uncommon ways necessitated by the study of law.

*IV: No other discipline concentrates as much on the concept of contextuality.*

The Socratic method used in most law schools depends on the professor changing contextuality for the student and trains the student to decrease the time it takes to adjust to the new context. It serves as mental calisthenics and helps the student discover the process by which law and legal decisions are made. Change of context forces a change in perspective, a change in tactics, and perhaps changes in definitions. Here is an example from the beginning of a course in contracts.

Case #1: Smith says to Jones, "I'll sell you my cow for \$500." Jones replies, "That's fine with me. I'll buy the cow. I'll have your \$500 to you tomorrow morning." Smith says, "Fine. See you then." Next morning Jones shows up with the \$500, but Smith has changed his mind and refuses to part with the cow. Jones sues Smith for the cow.

The professor calls on a student and asks who will win the case. Student says that Jones will win the cow. Professor asks why. Student replies that Smith made an offer, Jones accepted the offer and put up the cash. Professor delineates the concept of contract that the student has constructed: A contract necessitates an offer, an acceptance, and "consideration" (the exchange of something of value). The professor puts the next case to the same student, changing the context but addressing the same general problem.

Case #2: Smith says to Jones, "This fool cow of mine. Can't stand the thing. For \$5 you can have her, for all I care." Jones says, "That's fine with me. Here's your \$5." Smith refuses to hand over the cow. Jones sues Smith for the cow.

The student is momentarily perplexed. Surely Jones should not win this case as he won the last one, but the definition of contract seems to require it: just as in the first case there was an offer, an acceptance, and a proffer of consideration, or so it seems. After some questioning and prodding, the student will be led by the professor to perceive that Smith's off-hand statement was not really an offer, but merely an expression of exasperation. As a result the word "offer" takes on new significance. Perhaps they might speak of a *bona fide* offer (an offer made in good faith). Then comes Case #3, presenting the same problem in yet a different context.

Case #3: Smith says to Jones, "I sure do need a new coat of paint on my house. I'll give you \$1000 if you'll do the job." Jones replies, "That's fine with me. I need the money, and I'll be happy to paint your house starting tomorrow." Next morning Jones appears at Smith's door. Smith hands him a check for \$1000, but Jones says, "Changed my mind. I'm not going to paint your old house after all." Smith sues Jones, asking that Jones be required to paint the house.

Who wins? The student somehow understands that the court will not force Jones to paint Smith's house, and yet there was a *bona fide* offer, an acceptance of it, and a proffer of consideration. Why then will Smith lose? After another session of prodding and questioning, the student will be led to distinguish between a suit concerning possessions and a suit concerning services, and soon it will be clear why courts will almost never grant "specific performance" in a services contract case: Jones is unlikely to do a quality job for Smith if forced into it. Therefore, Smith may recover from Jones whatever actual damage he suffers as a result of Jones' refusal, but he will not be able to force Jones to do the painting. The concept of contract is altered once again.

Let us return for a moment to the parol evidence rule. Justice Holmes said, "The making of a contract depends not on the parties having *meant* the same thing but on their having *said* the same thing." The major exception to the parol evidence rule is the case where a contract is "vague and ambiguous" on the face of it. This raises a serious question of context. *What* context—or, perhaps more accurately, *whose* context—will help a judge decide whether a particular clause is "vague or ambiguous"? Is it not the judge's own knowledge of matters extrinsic to the contract that provides the necessary context for his or her judgment here? But is not that judge specifically prohibited by the parol evidence rule from using extrinsic materials to interpret the contract *unless* it is already considered "vague and ambiguous"? It seems the parol evidence rule is hopelessly circular: We need to go outside the contract to decide whether it is reasonable to go outside the contract in order to interpret it.<sup>1</sup> Still, the cases are in the books, and

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1. An especially fine article dealing with the parol evidence rule and the criticism of poetry is Walter Benn Michaels, "Against Formalism: The Autonomous Text in Legal and Literary Interpretation," *Poetics Today*, 1 (1979), 23-34.

the rule continues to be struggled with by courts and professors, and therefore law students must learn how to consider these cases not only from multiple perspectives but in multiple contexts. There are no undisputed texts unless they exist in undisputed contexts.

First year law students will encounter intellectual challenges like this daily. The rule derived from one case is put in the different context of the facts from the next case, and as a result either the rule must change or the interpretation of it must change. Philosophy courses will provide some practice in this kind of mental activity on the undergraduate level. But poetry courses engage in it even more often, laying special emphasis on the semantic, structural, and contextual problems involved.

Sometimes the problem in interpreting poetry is as simple as considering a single line both in and out of the context of the poem as a whole. Take for example Keats' famous last lines of the "Ode to a Grecian Urn":

"Beauty is truth, truth beauty,"—that is all  
Ye know on earth, and all ye need to know.

Out of context this statement seems demonstrably false. Anyone can think of beautiful things that are false, and "the ugly truth" has become an idiom, perhaps a cliché, in the language. A careful exploration of the poem as a whole, however, sheds a different light on the closing lines, demonstrating how beauty has and is a kind of truth all its own, and that if there is any truth in the world, it resides in the response to beauty.<sup>2</sup>

At other times a multiplicity of contexts arises from semantic and syntactic ambiguities, perceivable by the student only upon several rereadings of the text. Poetry courses, more often than most other undergraduate courses, allow constant opportunities for rereading and reconsidering texts, producing an emphasis on specific wording much like that produced at law schools. Take as an example this stanza from Blake's poem "London":

How the chimney sweepers cry  
Every blackning church appalls,  
And the hapless soldiers sigh  
Runs in blood down palace walls.

Students might perceive on first reading some of the horror of which Blake writes, but they need several rereadings to understand why these words produce the effects they do. Consider for the moment only the syntactic ambiguities. By the end of the first line, "cry" seems to be a verb, its subject being "chimney sweepers"; but by the end of the second line, "cry" seems instead to be a noun, the subject of the verb "appalls." Taking "cry" as a noun is not a mistake made by the reader, but rather the recognition of an unavoidable ambiguity (whether intentional or not does not matter) created by the poet. The effect of the chimney sweeper(s) crying has already become part of the reader's response by the time

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2. For an exposition of this argument see Cleanth Brooks, "Keats's *Sylvan Historian*: History without Footnotes," in *The Well Wrought Urn*, (New York: Harcourt Brace Jovanovich, 1947).

“cry” transforms itself from a verb into a noun. (The first edition omits apostrophes, as above, but does so in general, the rules of punctuation not reigning quite as supreme then as now, especially with an iconoclast such as Blake.) In somewhat similar ways, “blackning church” functions both as the subject and the object of “appalls,” and “sigh” functions both as a verb and as a noun. “Chimney sweepers” and “soldiers” function both as plurals and possessives. In short, there is no way here of determining the parameters of local context. The meanings multiply as the focus expands, and all the meanings function simultaneously.

Often this process is even more far reaching. Contextuality can keep expanding throughout a whole work, or beyond the work, the reader growing less and less able to deal consciously with the density of thought and feeling generated. It results in something close to the kind of informed perplexity that the law student feels when the facts of the professor’s hypothetical case have been changed one more time than the student can handle. Let us take another famous passage as an example, the final words of advice from Polonius to his son, Laertes, in the first act of *Hamlet*:

This above all: to thine own self be true,  
And it must follow, as the night the day,  
Thou canst not then be false to any man.

Legions of graduation speakers have offered this as parting advice to the graduates; beautifully crafted lines of the highest morality from the pen of our greatest writer—what could be better? Put them back into the context of the speech as a whole, and their meaning takes a turn for the worse. Consider the other pieces of advice which Polonius offers as preface to his “This above all”:

- 1) Don’t let anyone know what you are thinking;
- 2) Don’t commit yourself to anything until you’ve thought it over thoroughly;
- 3) Don’t be overly familiar with anyone;
- 4) Make sure you keep your good friends, no matter by what means;
- 5) Don’t be friendly to too many people;
- 6) Don’t get involved if you don’t have to, but if you do fight, win;
- 7) Listen to what everyone else says but don’t let on what you’re thinking;
- 8) Take advantage of everyone else’s advice, but don’t counsel them in return;
- 9) Find the limits of fashion and stay within them, but always at the forefront;
- 10) Don’t help out anyone with a loan;
- 11) Don’t subject yourself to others by borrowing money from them.

At the end of all this self-seeking, self-protecting advice, “to thine own self be true” sounds egocentric in the extreme. One could argue convincingly that Hitler was true to himself yet was false to many another man. Have I unfairly interpreted Polonius’ words? Could I argue the case exactly the opposite way, or in another altogether unrelated way? Perhaps. Here is the original passage.

Give thy thoughts no tongue  
Nor any unproportion’d thought his act.  
Be thou familiar, but by no means vulgar;  
Those friends thou hast, and their adoption tried,  
Grapple them unto thy soul with hoops of steel;

But do not dull thy palm with entertainment  
 Of each new-hatch'd, unfledg'd comrade. Beware  
 Of entrance to a quarrel, but, being in,  
 Bear't that th' opposed may beware of thee.  
 Give every man thy ear, but few thy voice;  
 Take each man's censure, but reserve thy judgment.  
 Costly thy habit as thy purse can buy,  
 But not express'd in fancy; rich, not gaudy:  
 For the apparel oft proclaims the man,  
 And they in France of the best rank and station  
 Are of a most select and generous chief in that.  
 Neither a borrower nor a lender be;  
 For loan oft loses both itself and friend,  
 And borrowing dulleth the edge of husbandry.  
 This above all: to thine own self be true,  
 And it must follow, as the night the day,  
 Thou canst not then be false to any man. (I, iv)

The point is not so much that the context changes the last lines from good advice to bad, but that whatever the result for the individual reader, the context has had its effect on the interpretation of the closing lines of the speech.

Expand the context once again. At first it seemed like the famous lines were golden. Put them back into the whole speech and they start to seem all too self-serving, and Polonius appears a grasping, paranoid, meddling character. Now put the speech in the larger context of the character as a whole throughout the play. Polonius certainly does some meddling, the last bit of which leads to his death; he also seems most concerned with himself, making sure that the court is attentive to his every pronouncement and aware of the wisdom thereof. But, on the other hand, the old man is loved and respected by his children, Ophelia and Laertes, who are in many ways highly respectable characters in the play; he was counselor to Hamlet's father, who was reputed to have been a worthy and competent man; and he dares to bank on his previous success enough to ask King Claudius,

Pol. Hath there been such a time,—I'd fain know that,—  
 That I have positively said, "'Tis so,"  
 When in prov'd otherwise?

King Not that I know.

Pol. Take this from this, if this be otherwise.  
*(pointing to his head and shoulder)*

King Claudius impresses us with his business-like approach to life and his keen perception of character. If he thinks highly enough of Polonius to retain him as first counselor, ought we not to accord him some respect?

As the contexts become more complex, the problem of interpretation becomes more complex. If we are to respect Polonius, must we now look at his advice to Laertes with different eyes? We could continue to expand the context by comparing this advice to other advice speeches in Shakespeare, then to speeches of other Renaissance dramatists, then to speeches of dramatists from other ages, etc. Eventually the student of poetry understands what the student of law will

have to understand—that there is no separating substance from form or text from context.

O chestnut tree, great-rooted blossomer,  
Are you the leaf, the blossom or the bole?  
O body swayed to music, o brightening glance,  
How can we know the dancer from the dance?

(W. B. Yeats, "Among School Children")

This kind of training teaches students to be dissatisfied with any particular answer to a complex problem and warns them not to expect a final answer that will suffice to ward off all further questions. That is a necessary attitude with which to approach legal training. The student who sees a right or wrong in a Supreme Court opinion and is willing to be swayed by the outcome into believing that the search for "truth" is all will have a hard time developing the skills that the law school experience attempts to teach. The study of poetry helps students learn how to analyze language, to recognize ambiguity, and to develop consistency in interpretation. Through it students learn how to perceive with new eyes, not merely to see new things. The study of poetry and the study of law may at first seem strange bedfellows, but they actually lie most comfortably together; to understand the law is to understand the possibilities of texts, and that is precisely the province of the study of poetry.