

4-1-2013

Review [of *Reading for the Law: British Literary History and Gender Advocacy* by Christine L. Krueger and *Law, Literature, and the Transmission of Culture in England, 1837-1925* by Cathrine O. Frank]

Melissa J. Ganz

Marquette University, [melissa.ganz@marquette.edu](mailto:melissa.ganz@marquette.edu)

**Reading for the Law: British Literary History and Gender Advocacy**, by Christine L. Krueger; pp. xi + 301. Charlottesville: University of Virginia Press, 2010, \$39.50.

**Law, Literature, and the Transmission of Culture in England, 1837-1925**, by Cathrine O. Frank; pp. 250. Aldershot and Burlington, VT: Ashgate, 2010, £60.00, \$114.95.

In the past fifteen years, the study of law and literature has taken an historical turn, and Victorian culture has proved to be a rich site for analysis. Moving beyond accounts that posit either necessary alignments or oppositions between legal and literary discourses, critics have examined the ways in which imaginative writers responded to and anticipated developments in areas such as trial procedure, criminal justice, and intellectual property. Christine L. Krueger's and Cathrine O. Frank's engaging books offer welcome contributions to this interdisciplinary field. Exploring topics as varied as

witchcraft trials, lunacy hearings, and charitable trusts, the studies shed new light on nineteenth-century legal culture, while probing the relationship between law and narrative, reason and emotion, empiricism and imagination.

Legal scholars tend to emphasize timeless differences between law and literature, and between rule-based and narrative-based forms of advocacy. Law emerges, in these accounts, as “an authoritarian, rule-bound, patriarchal disciplinary discourse in need of the antidote of multivoiced, subjective, and oppositional literary discourse” (Krueger 2). In her wide-ranging and impressive study of nineteenth-century gender advocacy, Krueger offers a “sympathetic critique” of such claims for literature’s “emancipatory features” (98), while challenging the view that narrative is an “intrinsically efficacious antidote to . . . positivist rules of legal reasoning” (235). Replacing an ahistorical opposition between law and literature with a “history of their interdependency, and their embeddedness in print culture,” Krueger argues that “a multidisciplinary ‘historical narrative jurisprudence’ strengthens narrative legal theorists’ claims for the transformative powers of stories” (2). Her analysis of women’s engagements with the law in nineteenth-century Britain reveals the uses of literary history for feminist as well as other “outsider jurisprudence” (3).

Krueger divides her study into four parts. The first part reads Elizabeth Gaskell’s *Lois the Witch* (1859) in the context of a long history of witchcraft prosecution. Deftly surveying changing views of these proceedings from Reginald Scot’s *The Discoverie of Witchcraft* (1584) and King James I’s *Daemonologie in Forme of a Dialogue* (1597) to treatises by Francis Hutchinson, Walter Scott, and William Godwin, Krueger argues that Gaskell’s novella exemplifies realism’s complex response to the legacy of witchcraft. Rather than theorize the legal system as a universal tool of patriarchal oppression, the text emphasizes the material and political conditions that gave rise to prosecution in seventeenth-century Salem. Gaskell also acknowledges women’s own role in the trials, even as she “posits a standard of rationality and realist historical narrative as defenses against legalized misogyny” (5).

Part 2 turns to literary and legal stories of mental competence, focusing on Mary Wollstonecraft’s *Maria: or, The Wrongs of Woman* (1798), Charles Reade’s *Hard Cash* (1863), and mid-century narratives by alleged lunatics. In different ways, all of these texts reveal the failure of narrative advocacy in a legal system that ties agency to property ownership. Part 3 considers legal and literary histories of testimony, focusing on novels by Gaskell, Charlotte Elizabeth Tonna, and George Eliot, as well as depositions in indecent assault cases from the 1840s and 1850s. The novels reject the law’s authority to credit women’s testimony, but in the process, they silence female witnesses. The depositions show that sentimental literary conventions are unreliable not only for women but also for homosexual men. Reade’s *Griffith Gaunt* (1866), by contrast, presents women as competent legal speakers, developing a “powerful popular fantasy of *pro se* representation.” Catherine Gaunt’s successful defense from a charge of murder suggests a view of “the criminal trial as a discursive site allowing for a uniquely unmediated, potent, and convincing form of self-representation” (189). For Krueger, these texts show that neither law nor literature “is intrinsically progressive, or anti-democratic” (198).

In the last part, Krueger takes up the concept of *mens rea*, or criminal intent. Narrative legal theorists claim that women and other “outsiders” can best “secure the empathic identification of legal decision makers” by narrating their own stories and

thus revealing their feelings and intentions (52). Krueger, however, uses the case of prison reformer Mary Carpenter to demonstrate the dangers of using omniscient narration to elicit sympathetic identification with others' life experiences. She then turns to a group of writers who developed strategies to conceal characters' mental states in order to create "cover stories for jury nullification of the law" (199). First, she considers representations of infanticide in William Wordsworth's "The Thorn" (1798), Scott's *The Heart of Midlothian* (1818), and Eliot's *Adam Bede* (1859). In the final chapter, she examines the cover stories at work in Anthony Trollope's *Orley Farm* (1862) and in the 1871 sodomy trial of Ernest Boulton and Frederick Park.

*Reading for the Law* makes a bold intervention in the study of law and literature, bringing together legal and literary texts in provocative ways. Krueger not only offers an important corrective to narrative jurisprudence but uncovers a rich archive of popular legal culture. At the same time, she opens up new readings of familiar works of fiction. Some readers may wish that she had further analyzed the canonical texts; Krueger resists the idea that novels and poems should be read more closely than depositions and petitions. But Krueger convincingly demonstrates the intertwining of rational and aesthetic discourses, much as she usefully challenges the dichotomy between rule-based and narrative-based advocacy. Krueger is herself an eloquent advocate; her book makes a forceful case for the relevance of literary history to social and legal change.

Where Krueger blurs the distinctions between legal and literary narrative, Frank highlights the differences between them. *Law, Literature, and the Transmission of Culture in England* examines changing treatments of the last will and testament in nineteenth- and early twentieth-century law and fiction. The emergence of the will as a formal, written document, Frank argues, shaped novelistic bequests, enabling writers to explore the formation and transmission of identity. These representations in turn highlighted tensions between testators and heirs as well as between testators and legal professionals. In the capitalist culture of Victorian England, novelists imagined the will more as an "empirical register of identity" than an expression of "private, autonomous character" (6, 3). In the early twentieth century, however, as jurists increasingly embraced social markers of identity, novelists increasingly turned to the "imperative will—the self-conscious, metaphysical attempt to define one's self" (8). The changing treatment of novelistic bequests, Frank argues, elucidates the shift from realism to modernism, while marking the widening gap between law and literature.

Frank's study unfolds in three parts. The first part examines the legal and cultural changes wrought by the Wills Act of 1837, which merged the will and the testament into a single document, repealing nearly a dozen inheritance laws dating back to the sixteenth century. The new documentary will held great narrative potential: writers saw in the will the collision of materialism and subjectivity as well as personal agency and legal restraint. Novels like *Wuthering Heights* (1847), *The Woman in White* (1860), *Our Mutual Friend* (1864–65), and *Middlemarch* (1871–72) probe these tensions, exposing the limits of the law's ways of ordering the world and revealing literature's "equal and sometimes more 'equitable' ability to define subjectivity and organize social experience" (13). In the second part, Frank examines tensions between testators and heirs, focusing on inheritances that prove burdensome for daughters and sons. Mid-century novels such as *Little Dorrit* (1855–57) and *Felix Holt, the Radical* (1866) reimagine women's relationship to property. By renouncing bequests, the heroines exercise the power of alienation while defining

themselves in non-material terms. Late Victorian and Edwardian novelists like Samuel Butler, John Galsworthy, and Arnold Bennett also privilege the wishes of heirs over those of testators, while shifting the focus from documentary wills to metaphysical wills.

The third part takes up will contests and other difficulties interpreting and implementing testators' intentions. After sketching a rich history of *cy-près*—the doctrine governing the interpretation of charitable trusts—Frank examines the treatment of faith and obligation in Trollope's *The Warden* (1855) and Edmund Gosse's *Father and Son* (1907), showing how the “expulsion of the moral and spiritual dimensions of subjectivity from [inheritance law] . . . deprived it of its ability to constitute and represent human character as fully as literature could” (192). Trollope's *Ralph the Heir* (1871) and *Mr. Scarborough's Family* (1883) as well as E. M. Forster's *Howard's End* (1910), which Frank examines in the next chapter, likewise illustrate the widening gap between legal and literary models of subjectivity. The conclusion discusses the 1925 Administration of Estates Acts, which completed the will's transformation into a “uniform and utilitarian legal text of . . . social identity” (219), before considering Virginia Woolf's account of subjective experience in *Mrs. Dalloway* (1925) and *To the Lighthouse* (1927).

*Law, Literature, and the Transmission of Culture* brings together familiar texts in exciting ways, offering insightful readings of inheritance plots and lucid accounts of legal developments. Frank's analyses of the tensions inherent in the idea of the will are particularly astute. The book would benefit, though, from a narrower focus. Frank takes up a number of issues—materialism, empiricism, agency, ownership, identity—without fully fleshing out the connections among them or relating them to her discussion of novel theory. The book's argument could also be further developed. In tracing a shift from “the documentary will” to “the imperative will,” the third part rehearses a claim made in the second part (7). The trajectories that Frank sketches, though, are convincing, as is her analysis of the growing divergence between law and literature. Storytelling, as Krueger demonstrates, does not necessarily provide the most effective path to social justice. But Frank nicely shows that in the nineteenth and early twentieth centuries, novelists offered more equitable conceptions of ownership and more robust models of selfhood than did jurists. Together, Krueger's and Frank's books offer sophisticated models of the legal-literary nexus as well as subtle accounts of the place of subjectivity in nineteenth-century legal culture. The breadth and learning of these studies will impress legal scholars and literary critics alike.

MELISSA J. GANZ  
Marquette University