

criminal law, and much of tort law besides, can be viewed as a civilized substitute for what would otherwise be the irrepressible impulse to avenge wrongful injuries." Moving nimbly through a critical analysis of revenge as "an extremely clumsy method of maintaining order," he concludes "that law channels rather than eliminates revenge—replaces it as system but not as feeling."

This "feeling" has played not only a central part in the development of law but has also staked a large claim in the Western literary tradition—a fact that is often curiously overlooked by "literary lawyers." Posner traces the prominence (varying, to be sure) of the revenge motif from the Greeks through the Elizabethans to the present, adducing the *Iliad*, *Julius Caesar*, *Hamlet*, and Heinrich von Kleist's *Michael Kohlhaas*, among other works, as evidence of the enduring literary preoccupation with vengeful passion. Moreover, Posner's interpretations of these masterpieces are exceptional in their clarity and concision, and he pauses along the way to refute easily a great deal of the critical quackery—Nietzschean, Freudian, etc.—that has cluttered our understanding and appreciation of *Hamlet*.

Posner's approach to literature is avowedly New Critical; this method is the reason for the cogency of his own interpretations, based solidly on evidence found (or not found) in the works themselves. Posner marks off the critical territory well: "Intentionalism assigns primacy in the creation of the meaning of the work of literature to the author, reader-response criticism to the critic or other reader, New Criticism to the work itself." But he finds the New Critical method inappropriate when reading statutes and the Constitution: legal texts demand that one be attentive to the intentions of the "authors." Posner defends those divergent approaches to law and literature with astonishing rigor, and he is worth quoting at length on this crucial distinction:

A poet tries to create a work of art, a thing of beauty and pleasure. He either succeeds or fails. If he succeeds, we do not care how banal his intentions were, and if he fails, we do not care how elevated they were. A

legislature, however, is trying to give commands to its subordinates in our government system, the judges who apply legislation in specific cases. A command is designed to set up a direct channel between the issuer's mind and the recipient's; it is a communication, to be decoded in accordance with the sender's intentions. If a message is garbled is transmission, you ask the sender to repeat it; that is intentionalism in practice. If you cannot reach the sender, you try to glean from everything you know about him and the circumstances of the failed message what he might have meant; again the correct analysis is an intentionalist one.

Law and Literature is not entirely concerned with correcting excesses. Posner, for example, finds "the literary analysis of [judicial] opinion is—highly promising." Naturally, he turns to Holmes's dissent in *Lochner* and, after an astute exegesis, declares it "a rhetorical masterpiece" but logically flaccid. (Posner's analyses of other judicial styles are equally illuminating.) Furthermore, he avers that literature can offer judges guidance in "craft values"—that is to say, impartiality, scrupulousness, and concreteness. (One

should note that Posner's own disciplined prose possesses all these virtues.) Such "aesthetic integrity," as he terms it, is especially needed today when "The avoidance of the concrete is ubiquitous in legal prose." Literature can also assist in clarifying nebulous legal categories like defamation and obscenity. Interestingly, he favors a curtailment of copyright law for the solidly anti-Romantic reason that "literary imagination is not a volcano of pure inspiration but a weaving of the author's experience of life into an existing literary tradition," and thus an author must be able to use the tradition with some latitude if it is to thrive.

What animates Posner's opposition to much of the law and literature movement is his obvious respect for the rule of law and the genius of our literary tradition. Yet one suspects that Posner's plea for recognizing law and literature as overlapping but essentially discrete disciplines will go largely unheeded. After all, to declare oneself a literary New Critic and a legal intentionalist is to consign oneself to the dustbin that contemporary academic fashion has marked "reactionary." Which is one reason *Law and Literature* deserves our closest attention.

Gregory J. Sullivan writes from Trenton, New Jersey.

REVISIONS

WHY JOHNNY CAN'T NUTHIN'

A growing number of people recognize that the school systems of the United States constitute a monopoly with all the characteristic arrogance and inefficiency we expect. But while Pacific Bell or the power companies have to provide a service whose effectiveness can be easily measured, schools deal in intangibles: intellectual and moral development. Everyone knows the schools are a mess, but most of the proposed solutions—merit pay for teachers, longer hours, curriculum reform, etc.—will do little more than legitimate the wasteful tyranny exercised by teachers' unions, central offices, and state school superintendents. Myron Lieberman is one of the few critics of the system with sufficient intelligence and candor to explode the myth

of school reform. In his latest book, *Privatization and Public Choice* (New York: St. Martin's Press; 400 pp., \$35), he calls for approaches that are both radical and eminently practical.

Lieberman proposes to begin the break-up by two sets of measures: privatization and increased public (which typically means parental) choice. Privatization includes such steps as contracting out services, selling government property and subsidies to non-governmental suppliers. Choice is not restricted to choice among government-owned options, but a real choice among all the possibilities, including religious schools and home schools.

Lieberman is not an optimist, and his purpose is not to provide a blueprint for success. What he does claim is that the variety of measures he outlines stand the best chance of making headway against the establishment. (TF)

Letter From Washington

by Samuel Francis

Left, Right, Up, Down



Since the time of the French Revolution, the labels "left" and "right" have served as universal symbols on the road atlas of modern politics. The exact meaning of the symbols has never been clear, especially when they are applied outside the narrow streets of practical politics and extended to the broader ranges of philosophy, religion, and even aesthetics. Nevertheless, like "A.M." and "P.M." or "A.D." and "B.C.," left and right have become indispensable to the mental and verbal organization of otherwise incomprehensible phenomena.

Because they originally pertained to the different sides of parliamentary assemblies in the wake of the French Revolution and served to distinguish those, on the left, who supported the revolution and its legacy from those, on the right, who opposed it, left and right might retain some clear meaning if employed in that sense. Insofar as the ideological legacy of the revolution is captured in its motto of "Liberty, Equality, Fraternity," and insofar as contemporary politics still revolves around these terrible pleasantries, then we might continue to lump certain schools of politicians and political thinkers as "left" and others as "right."

But throughout the 1980's (and probably henceforward) such schools seem to be out for a long vacation. What is called the "right" in American politics today seems to invoke and take seriously all the slogans and clichés that derive from "Liberty, Equality, and Fraternity" and that would ordinarily locate their exponents on the left. Its champions talk of the "global democratic revolution," universal "human rights," "equality as a conservative principle," and the final emancipation of mankind from war, racial and national

prejudice, tyranny, and poverty through universal economic and technological progress. No noble savage of Enlightenment lore nor his less noble descendants who pulled the ropes of the guillotine in the Year One would raise an eyebrow at the rhetoric and ideology of the contemporary American right.

Things aren't much different on what is called the "left." While once only rightish pessimists such as Spengler or Henry Adams talked about the decline, suicide, or dissolution of the West, today that theme is a staple on the rubber chicken circuit of liberal Democrats. Newly elected Democratic Majority Leader Richard Gephardt sounded the note when his colleagues elevated him to his new post in the House, and last year he ran his presidential campaign on the issue of "economic nationalism," which Michael Dukakis also picked up when his own campaign ran into trouble. Whatever the economic merits of their ideas, that issue presupposes the reality and significance of national identity and contradicts the universalism implicit in the "Fraternity" that *sans culotte* armies spread across Europe in the 1790's.

Moreover, *Washington Post* columnist Richard Cohen, whose writings usually seem to be archetypal expressions of what the collective unconscious of conservatives want liberals to say, recently penned a column that older conservatives ought to find unexceptionable. Mr. Cohen inveighed against the homogenization of America through shopping malls, fast-food emporia, motel chains, housing developments, and "restorations" such as those in Williamsburg and Old Town in Virginia. The ideological premise of such homogenization, of course, is again the cosmopolitanism and universalism that informed the French Revolution and that liberated souls such as Mr. Cohen have trumpeted throughout their careers. Whether he has as yet grasped the contradiction between his recent column and his lifelong convictions I do not know.

One gentleman of the left who has

grasped it, however, is the radical historian Christopher Lasch, whose recent writings reveal a profound suspicion of the abstractions that lurk in "Liberty, Equality, and Fraternity." In a recent essay in the *New Oxford Review*, Mr. Lasch dwells on his intellectual autobiography, showing how his personal and intellectual development eventually led him to shatter the very idols of the left to which he had paid homage all his life. Noting that the left's own road map of America was divided between New York and Washington on the one hand and what it regarded as "the vast hinterland beyond the Appalachians—the land of the Yahoo, the John Birch Society, and the Ku Klux Klan" on the other, Mr. Lasch expressed his emerging disenchantment with the contours of that map.

By the late 1970's and early 1980's I no longer had much confidence either in the accuracy of this bird's-eye view of America or in the progressive view of the future with which it was so closely associated. "Middle Americans" had good reason, it seemed to me, to worry about the family and the future their children were going to inherit. My study of the family suggested a broader conclusion: that the capacity for loyalty is stretched too thin when it tries to attach itself to the hypothetical solidarity of the whole human race. It needs to attach itself to specific people and places, not to an abstract ideal of universal human rights. We love particular men and women, not humanity in general. The dream of universal brotherhood, because it rests on the sentimental fiction that men and women are all the same, cannot survive the discovery that they differ.

Mr. Lasch's thoughts in this passage, one would think, would induce our keepers of the conservative flame to