

Continuing Negotiations

LAW AND LITERATURE IN SHORT STORIES

BY LOUIS AUCHINCLOSS

Kieran Dolin

Abstract. Louis Auchincloss was, during the mid to late twentieth century, America's foremost lawyer-writer. His maintenance of "dual citizenship" in an era of discursive specialization is examined through historical critical analysis. His short story sequences concerning law firms stage a conflict between literature and law, yielding various imaginative solutions.

One of the most sustained developments of the Law and Literature movement has been the series of rich historical studies exploring the shifting relations between literature and law in American culture. In the work of Robert A. Ferguson, Laura Hanft Korobkin, Brook Thomas and others, the representational practices of both literary and legal texts are analysed through a process of "slow, close textual reading" recommended by Peter Brooks to build up a densely textured account of the ways language and power have interacted.¹ Not only do these studies establish the formative role of law in American literature and the cultural bases of American law, but in doing so they allow us to see law and literature as institutions, and to chart changes in their cultural authority. An important aspect of this as of any historicist project is to illuminate the present. In 1983, Ferguson introduced his study of the eighteenth-century "configuration of law and letters" with a brief admonitory comparison: "To study this legacy is to retain the example for a modern culture in which the stark separation of intellect, art and politics should give every citizen pause."²

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Biographical studies confirm that separation as the norm, but shifts in critical method “from work to text” and from formalism to a politically conscious criticism have disclosed continuing interrelations between these different discourses. In *American Literary Realism and the Failed Promise of Contract*, Brook Thomas “cross-examines” these contemporaneous literary and legal doctrines, rather than taking individual actors as his primary focus.³ In tracing the deep affinities between realist and contractarian discourses, his study also affords an indirect critique of the freedom-of-contract rhetoric that resurged in America during the early 1990s. Emerging from this context of separation created by professionalism and liberal individualism, the dialogue between law and literature has seemed to some of its practitioners and theorists to provide an ethical model not only for lawyers, but for the wider culture. For example, the titles of major books by Martha Nussbaum, *Poetic Justice*, and Richard Weisberg, *Poethics*, announce a reintegrative hope through wordplay that juxtaposes literary theory and public ideals.⁴

I wish to contribute to this ongoing study of American legal–literary relations by focusing on a contemporary writer who has successfully defied the prevalent disciplinary specialization, Louis Auchincloss. As the editors of a recent anthology of legal stories note, Auchincloss was for almost three decades a partner in a New York law firm and a specialist in estates and trusts. In addition to this professional career, he has been a prolific and acclaimed author, publishing twenty-five novels and thirteen collections of short stories as well as books of literary criticism and history.⁵ Much of his fiction explores the world of legal practice. Jay Wishingrad sees Auchincloss as a peerless guide to this milieu: “no-one else gives the non-lawyer the substance and feel of the mega-firms that handle the legal affairs of the *Fortune* 500 corporations and *Forbes*’ 400 richest individuals and families.”⁶

A complex and elegant realism seems the natural harvest of this dual expertise in two distinct discourses. I would like to examine the causes and consequences of that “reality effect” by showing how law is represented in a significant subset of stories that deal rather with writing, art and literature.⁷ For there is in Auchincloss’s short fiction a recurrent structure of opposition between lawyers and writers, or between law and the writing of books that has not hitherto been noticed, and which undermines any assumptions of an automatic partnership between law and literature. The study of these stories will therefore shed new light on his work and on the tense relations between these two discourses generally in the second half of the twentieth century.

I

Academic literary criticism of the fiction of Louis Auchincloss has been rare in the last ten years, despite the arguments of Brook Thomas, Tony Hilfer, and others that realism is a cultural form of continuing importance.⁸ The critics who have attended to his work have been those like James W. Tuttleton and Adeline R. Tintner who value the novel-of-manners tradition of Henry James and Edith Wharton.⁹ Auchincloss's self-description as a "Jacobite," and his critical writings on Wharton, lend support to this critical placement.¹⁰ In the pluralist environment of contemporary literary studies, however, the hegemonic class and ethnic affiliations of this form are critiqued, and its recent history negatively valued:

J. P. Marquand, James Gould Cozzens, John O'Hara, John Cheever, and Louis Auchincloss were the diminished heirs to what once had been a major tradition in American fiction. [T]his WASP novel of manners . . . devolved into a mere social record or documentation of the status anxieties and sexual or professional problems of a declining elite.¹¹

What this judgment overlooks is the possibility of a critical representation of these modes of social identity. David Carrier has recently responded to this type of criticism by arguing that the fictions of Auchincloss "provide an often savage dissection of the ruling class to which he belongs."¹²

The interdisciplinary study of law and literature has not so far addressed Auchincloss's representation of "professional problems," notwithstanding the prominent representation of his stories in anthologies of legal fiction, the publication of which has been one of the by-products of the movement. Following the enthusiastic remarks quoted above, Wishingrad opens his anthology, *Legal Fictions*, with an Auchincloss story, "The Tender Offer," and includes a second, "The Colonel's Foundation."¹³ Fred M. Shapiro and Jane Garry, the editors of the most recent anthology, *Trial and Error*, organize their selection chronologically, and include "The Senior Partner's Ghosts" among other writings from the 'sixties by Harper Lee, Philip Roth, and others.¹⁴ "The Senior Partner's Ghosts" was previously anthologized in John Welcome's *Best Legal Stories II*, and as I hope to show, it fully merits its fame.¹⁵

More generally, when Auchincloss's stories are read in the context of a movement to dismantle the boundaries between law and the humanities, their significance changes and expands. Among the critics who have taken seriously

the realist claims of Auchincloss's work, the most vigorous and far-reaching account is that of Gore Vidal, who insists upon the political implications of his world of "banking and law, power and money."¹⁶ Writing in 1974, Vidal attacked the general depreciation of this writer by critics who, viewing the novel of manners as a cultural relic, overlook the continuing hegemony of moneyed elites in American society. For Vidal, Auchincloss is important precisely because his stories describe intimately and unabashedly the motivations and machinations of "the masters of the American empire" and the lawyers they retain. Where other writers view Auchincloss as serving this class, Vidal sees him more complexly as "revealing and in some ways . . . betraying his class."¹⁷

What enables this ambivalent representation? According to Vidal, it is literature. The reading and writing of books, the immersion in a literary as well as a business culture, causes Auchincloss to see Wall Street differently. This thesis is drawn from a persuasive and insightful reading of Auchincloss's autobiographical account of his childhood and education, *A Writer's Capital*.¹⁸ Taking up with due seriousness the young Louis's early perception of the gendered divisions of the adult world and of the "dull, soul-breaking" duties of "the manly world of law and finance," Vidal astutely sees that literature was an alternative, rather than an adjunct, world, one centred around the leisured lives of women in upper-class New York. In this society, law and literature were gendered formations, and accordingly placed in mutual opposition: "The story of Auchincloss's life is how he reconciled the world of father with that of mother; how he became a lawyer and a novelist."¹⁹

A Writer's Capital narrates the *rapprochement* of these investments in law and literature through a dialectical plot. In this text, Auchincloss suddenly switches to law school without taking his Arts degree after a publisher rejects his first novel; once there he discovers an immediate liking for legal study, sensing beneath the rules a structuring of human relations, and finding in the cases some unexpected affinities with literature.

I was reaching for any piece of wood to pitch into the dying fire of my imagination. It was exciting to find a whole log pile. For what was a case but a short story? What was the law but language? Was there any reason that a judge shouldn't be a great writer? Wasn't Cardozo one?²⁰

After World War II he began to put this conviction into practice, working as a lawyer and publishing fiction. Following initial literary successes, he decided to give up law for full-time writing but eventually recognized that both activ-

ities were indispensable to his success. Auchincloss views this synthesis in modest and pragmatic terms: “All I can say is that a great step was taken when I ceased to think of myself as a ‘lawyer’ or as a ‘writer.’ I simply was doing what I was doing when I did it.”²¹

It is possible to discern in this shift of focus from identity to action a shift from a Romantic theory of literature, centred on the imagination aflame and the expression of a unique individual vision, to a rhetorical theory of writing, centred on performance in different genres. While the former fosters a tendency towards internal division, the latter allows the possibility of a partnership between literature and law. If, following literary sociologists like Dubois and Durand, we supplement a history of ideas with a history of practices, and think of literature as a field or institution in the range of genres that both he and his fictional characters write, from diaries to biographies, from histories to fiction, there is evidence for a pre-Romantic theory in Auchincloss’s writings.²² And yet, it would be facile to extrapolate further from the adoption of a neo-classical theory of literature to a utopian or anachronistic republic of letters like that traced in eighteenth-century America by Ferguson.²³ Auchincloss emphasizes in the title of the last chapter of *A Writer’s Capital*, “Compromise,” that he has worked out a practical synthesis between his two careers, rather than forged a single career or a unified theory of writing.

To give due weight to this personal “compromise” is to accept the core of Vidal’s articulation of a gendered binary opposition between the law and literature in this writer’s work. His reading is useful not only for the large claims made for the author (“he is a good novelist and a superb short-story writer”²⁴), but also for its method. For Vidal is prepared to read Auchincloss figuratively, to generalize his details of character and event into politically-charged signs. In this, he prompts subsequent readers of this body of realist fiction to examine its structure and ideology, rather than simply to applaud the picture of legal culture that it presents.

II

In the light of this narrative of “compromise,” it is not surprising that many of Auchincloss’s stories “are directly concerned with writing fiction, biography and autobiography.”²⁵ The motif of writing is “particularly prevalent in some of the law-firm stories,” as Christopher C. Dahl has noted in his informative

study.²⁶ A recurrent device in these is the selection of the literary lawyer as protagonist. The characteristic situation of these men is to mediate between the hard-edged world of business and law and the illusion of a more genteel or glamorous world of culture. Such protagonists perceive a conflict between the rival claims of these two alternatives, a conflict they seem uniquely placed to resolve. The realist aesthetic favored by Auchincloss ensures that the outcome of their actions is more often than not a personal demystification and disappointment.

In “The Tender Offer” (1983), for example, Valerian Shaw, a partner whose clients are chiefly old-money families and businesses, is marginalized by the corporate takeover of his major business client. His senior partner, knowing of Valerian’s literary interests, co-opts him as consultant in a conglomerate’s raid on a small publisher, Pilgrim Books, the owner of which is a friend of Valerian’s. The predatory idioms and ruthless profit-seeking of the company raiders are juxtaposed against the respect for cultural tradition declared in Pilgrim’s intention to publish a complete edition of two key diarists of old New York. Auchincloss constructs through Valerian’s eyes a tendentious romantic opposition between law as the servant of corporate capitalism and law as the ally of humanist culture. “Was it conceivable that a massive corporate conglomerate, controlled by men concerned with profit alone would countenance such a project? Of course not! The mere suggestion might cost its proponent his job.”²⁷ The literary lawyer is caught by two competing affiliations. The corporate battle is replicated in a personal *psychomachia*, in which Valerian “leaps” to “the other side of a deep crevice” to join his friend. He divulges the planned raid, breaching legal ethics of client confidentiality in favor of personal loyalty and inherited cultural values. In the final movement of the plot, Auchincloss works a devastating peripeteia. Valerian learns that he has been an incidental player, whose own values have further marginalized him. The publisher has skillfully turned the corporate raid into a merger, with himself as chairman of the new conglomerate. Far from returning Valerian’s loyalty, he insists on his removal from the legal partnership for his loose tongue. The “tender offer” of the title is not merely the formal takeover bid, but the seduction of Valerian through the invitation to edit the diaries for Pilgrim.

“The Tender Offer” can be viewed within the context of the James-Wharton tradition as a drama of manners, with Valerian Shaw representing the defeat of an already-nostalgic cultural ideal. In this light, it is crucial that Shaw’s ideals are as vulnerable as his senior partner’s. The story can also be read synecdoch-

ically. Gore Vidal's interpretation is supported by the theoretical work of Roman Jakobson, who pointed out long ago the reliance of realist fiction on metonymy and its related figure, synecdoche.²⁸ Such a reading is attempted within the story by Valerian, and readers may adopt his interpretive method without sharing the limitations of his viewpoint. In this framework, Pilgrim Books can well stand for independent literary publishing, and its difficult survival in an economy dominated by multinational corporations with diversified interests. "The Tender Offer" foregrounds realist figuration with the Audubon print of two hawks fighting over a bleeding rabbit which hangs above the table where Valerian and the publisher meet. This conventional symbol of capitalist competition is enlivened by the shifting identification of predator and prey. In the domains of both law and literature, ethical principles are sacrificed on the altar of economic survival. In this pragmatic context, literature is "incorporated" into the new conglomerates, but the literary lawyer is expelled from the partnership. This poignant contrast registers the cost of the modern compromise between law and literature.

Quite apart from individual stories of literary lawyers, Auchincloss has refined the "short story sequence" as a significant form for representing the conflicted culture of the Wall Street law firm. In works like *Tales of Manhattan* (1967), *The Partners* (1973), and *Fellow Passengers* (1989), he tells the story of either a man, a family, or a firm through a series of separate, discontinuous narratives, building up a collective portrait through a set of stories involving different lawyers. A literary precedent for this form is celebrated in Auchincloss's critical writings. In *Pioneers and Caretakers*, his study of American women writers, Auchincloss emphasized the combination of independence and interdependence in Sarah Orne Jewett's *The Country of the Pointed Firs* by terming it a "loose-leaf novel."²⁹ While many critics, including Christopher Dahl, stress the unity achieved in such sequences, J. Gerald Kennedy has argued that "textual discontinuities may . . . offer more productive insights into the cultural significance of the form."³⁰ In a far-reaching argument, he suggests that "breaks or intervals between narratives produce a formal cleavage and impose a textual insularity." Such textual containment reinscribes social barriers which inhibit the formation of community. Yet the "aggregate text" with its recurrent characters, multiple viewpoints, and overlap of incidents, offers a "glimpse of connection" and an illusion of collectivity. In its hybridized form between short story and novel, the short story sequence can therefore enact the search for, and the limits to, community in contemporary societies.

To relate this theory to a law firm may seem surprising, given that traditionally a partnership of lawyers shares the bonds of a common profession, a broad political commitment to capitalism, and often a single gender and race profile. However, as “The Tender Offer” shows, these shared modes of social identity are accompanied by differences of class, ethnicity, belief, and personality, which fuel contests to preserve or increase power and income at moments of economic change or constraint.

The period since 1958, when Auchincloss became a partner in a firm, has seen major changes in the composition, conditions, and values of legal practice. Marc Galanter and Thomas Palay use the methods of quantitative sociology in their study, *Tournament of Lawyers: The Transformation of the Big Law Firm*,³¹ to trace these changes in their complexity. While law has remained a numerically strong and hierarchized profession marked by specialization and a high public profile, dominated by large firms, and owing its strongest ties to clients, it has had to adjust to changing social and commercial conditions. Longstanding prejudices against the employment of women, Jews, blacks, and other minorities have “receded into insignificance” to create a more diverse professional demographic.³² The number of lawyers has increased, as has the size of firms, and also the proportion of lawyers working for big firms. Society has become more litigious, and the amount of legal regulation has markedly increased, resulting in a greater volume and complexity of contentious legal work. Competition within the profession has become more intense in fluctuating economic circumstances. As a result, traditional ethical rules against advertising have been relaxed, and more aggressive personnel policies have been instituted by firms. The gentlemanly decorum of a learned profession has been superseded by the norms of a cut-throat business culture deemed necessary for survival in a more competitive legal and commercial marketplace. While this restructuring creates a “more precarious and more pressured” environment for junior lawyers, Galanter and Palay maintain that the life of partners is even more affected:

Partners are under mounting pressure to maintain a high level of performance—and performance that fits the business strategy of the firm. Many new features of the law-firm world (mergers, lateral movement) amplify the power of dominant lawyers within a firm to sanction their errant colleagues, and the prevalent culture endorses such sanctions. So partners worry about having their prerogatives or shares reduced or even being “de-equitized” or “departnerized” or “pushed off the iceberg” altogether.³³

The verbal strategies of Galanter and Palay's lawyer-informants here—their euphemisms, neologisms, and metaphors, respectively—betray the level of vulnerability produced by this complex of economic and ideological change. This unstable context, where professional traditions and commercial motives clash, is therefore fertile soil for the short story sequence. In such a context, a lawyer who doubles as a writer, indeed a writer whose texts reveal an attachment to past cultural and social forms, may be an object of suspicion as well as of pride.³⁴ Kennedy points out that the short story sequence is a “literary commodity,” rather than a “commercial strategy.”³⁵ As such, he speculates, the genre displays a special predilection for marginality that reflects “the writer's own alienated position in the system of literary production.” Such a hypothesis invites us to consider the economic context in which Auchincloss published his stories, and worked as a lawyer. Traditionally, a writer of short stories has two forums for publication, first in magazines and then in a book collecting such stories together. Both these opportunities have declined in recent decades, as the number of magazine outlets for fiction has diminished, and the market for collections has also lessened. In this climate, Dahl reports that Auchincloss “has been fairly successful” in placing his work with a range of mainstream up-market and popular journals from the *New Yorker* and *Harper's* to the *Saturday Evening Post* and *McCall's*.³⁶

In this context, the subsequent book of the short story sequence is both a “commercial strategy” and a “literary commodity.” In this respect, Auchincloss acquires a potential authority as a producer of symbolic and economic capital, as well as a position of marginality in the fields of literature and law. These contradictions, between community and autonomy, between being an insider and being an outsider, between the claims of culture and the claims of economics, are self-consciously explored through the figure of the literary lawyer in his short story sequences.

III

I now wish to analyse two such stories, “The Senior Partner's Ghosts” and “Abel Donner.” “The Senior Partner's Ghosts” was published in the sequence, *Tales of Manhattan*, and “Abel Donner” in *Fellow Passengers*.³⁷ The publishing history of both these stories involves, however, a clear crossing of the interdisciplinary boundaries between law and literature: they both first appeared in

the *Virginia Law Review* in commemorative issues, rather than in literary or popular journals. “The Senior Partner’s Ghosts” appeared in Volume 50 as the lead item of the second number, accompanied by an introductory headnote that is at once a tribute to the author and a defense of the story’s inclusion in the volume:

One of the Law Review’s great distinctions is having a distinguished man of letters among its alumni. Mr Auchincloss served as Book Review Editor for the 1940–41 session. He now combines the careers of practicing lawyer and professional writer. Although Mr Auchincloss’s fiction is not usual *Review* fare, it seemed most fitting to ask him to contribute to the fiftieth volume. He responded with this story about the celebrated firm of de Grasse and Prime.³⁸

That the publication of this text required an articulated defense attests to the power of disciplinary specialization at the time. Equally, however, the original invitation suggests a residual humanist belief in the value of literary texts for lawyers.

The subtle balancing of contradictory claims for literature’s symbolic power and its irrelevance for lawyers is played out at greater length in the editors’ introduction to the entire fiftieth volume of the *Virginia Law Review*. As this document provides evidence about legal–literary relations during the period when Auchincloss worked out his “compromise,” it is worth analysing here. In an endeavor to provide a generalized ground from which to launch commentaries on several areas of law, the editors provide a contextual introduction, summarizing the technological and social changes during its five decades of publication by reading “the seismograph of poetry.”³⁹ Having traced the representation of engines in Whitman, Frost, Crane, and Ferlinghetti, however, the argument suddenly abjures its relevance to lawyers:

Of course the disorder which these poets sense is not in the area of the lawyer’s professional concern. The poet’s interest in the relationship between the individual and society is on a different, more subjective level than the lawyer’s. But the same force, technological progress and its by-products, has threatened to disrupt the “domestic tranquility” that the law exists to maintain.⁴⁰

A humanist belief underscores the initial resort to poetry, but the meaning derived therefrom is to be quarantined. Law and literature are refigured as

opposites: poetry it seems is a recorder of chaos, law an attempt to preserve order during a period of change; poetry is subjective, law is presumed to be objective. Despite the amplitude of its introduction, the *Review* sees its real function as offering “immediate practical value [in the] exposition of legal problems of current importance.” In this unlikely context, literature gains entry because its author is already a member of the profession, and “The Senior Partner’s Ghosts” still requires an apology.

Turning from the circumstances of publication to the text itself, it may well be that “The Senior Partner’s Ghosts” needed an apology, for it is a story of literary transgression, or writing as iconoclasm. The protagonist, Sylvaner Price, is taking time out from legal practice each morning to write a biography of his law firm’s founder, Guthrie Arnold. The “dry and impersonal” Price has long cherished a romantic desire to write the secret history of the dashing Arnold:

Guthrie Arnold in Sylvaner Price’s pages would *live*, as a man as well as a lawyer, as a sportsman as well as a philanthropist, as a connoisseur in porcelains as well as in horseflesh, as a wit, as a dandy, as a lady killer, as an iconoclast, in short as a holy terror.⁴¹

To accomplish this feat of characterization, the lawyer chooses what seems an apt method of composition, free association. Under the influence of this freedom, however, his monologues soon depart from the expected bounds of memory into what may be his own invention, or at least his creative interpretation of Arnold’s attitudes. Price has aimed to subvert the dull official conventions of corporate histories, but has not bargained for the degree of transgression that results. As he dictates his text, Arnold’s representation slips from revered predecessor to grasping and amoral pragmatist.

The story is structured as a comic Gothic drama, in which the struggle between propriety and imagination in Price’s consciousness is externalized as an “evil spirit” hitherto trapped in the portrait of Arnold that dominates the firm’s reception area, but now released by Price’s reminiscences. In consternation, after the first episode that escapes his authorial control, Price approaches the commanding equestrian portrait, which, with its accompanying trophy cases, preserves the official memory of Arnold, only to see it wink at him. The sentient portrait is of course a classic motif of Gothic fiction from *The Castle of Otranto* to *The Portrait of Dorian Gray*. Price then experiences another conventional sign of haunting, the chilling of the room. The following morning,

after keeping the ghost at bay through a strict control of his narrative, Price learns of the death of a client who *almost* fulfilled Arnold's ideal of "a 'clean' estate," one that comes "off the bough with hardly a pluck."⁴² Miss Jenkins's one failure was to decline Price's advice to make him a co-executor. In a scene that combines humorous presentation, ethical alarm and narrative surprise, Price watches with ineffectual horror as his hands, now possessed by the antic spirit, tamper with the will, replacing the page naming the executor with an earlier copy containing Price's name, and then resealing the document. Despite the prospect of earning \$300,000 in fees under this change, Price's revulsion at his or the ghost's action is sufficient to bring on a coronary attack.

This conflict between law and desire culminates in an ethical challenge—to keep his misconduct secret and do nothing, or to waive the fee and submit to aspersions of senility. The story presents law's desire to contain or dispel the secrets and illicit desires of the Gothic realm not just through a return to moral realism but through the psychoanalysis that the firm requires Price to undergo in an attempt to lay his ghosts to rest. The analyst, who is "not one of your bearded Freudians," pronounces the ghost unreal, Arnold an adornment to the profession, and Price a victim of a lifelong identification of "pleasure with sin."⁴³ That Arnold symbolized some of Price's desires is undoubtedly one explanation of the events of the plot; but these desires only began to find expression once Price began his book. It is therefore important to consider the role of literature in this conflict experienced by the lawyer.

The possibility that narrative undoes some of the work of repression is confirmed by Price's next session on the book. Despite the analyst's declaration of his sanity and of the safety of the free association method, Price encounters the same slippage towards shocking utterances as before. He immediately abandons this process and reverts to a dryly official recital of the public record:

As he intoned the names of civic institutions and civic honours, as he listed honorary degrees and quoted from testimonials, as he delivered anecdotes to illustrate the wisdom, the commonsense, the humanity, the loveliness of his subject, he might have been an undertaker driving in, one by one, the nails of the coffin of Guthrie Arnold—his Guthrie Arnold, Satan's Guthrie Arnold, the firm's Guthrie Arnold, anybody's Guthrie Arnold—what did it matter, so long as there was peace?⁴⁴

This concluding image of repression discloses that the conflict is a literary one, between two forms of writing. On one hand, Price sees the opportunity

for a uniquely true biography of Arnold, one that would celebrate the individuality of the subject as it revealed the imaginative insight of the writer. On the other, faced with the scandalous disclosures produced by this method, he recognizes the appeal of an official history that hides the challenges posed by Arnold for writer and reader in the penumbra of a hagiographic halo. What emerges from this representation of alternative genres is a metonymy of literary and legal authorship, and with it, an account of the fate of the literary in the house of the law. For ultimately, “The Senior Partner’s Ghosts” is structured around the binary opposition between law and literature, public and private, objective and subjective, fact and fancy, chaos and order that is rehearsed in the *Virginia Law Review* Foreword, in *A Writer’s Capital*, and almost ubiquitously in modern Western culture. For Sylvaner Price, Guthrie Arnold was able to transcend these divisions and defy expectations.

What is interesting is that Price’s Romantic conception of Arnold as an integrated and full-blooded hero does not survive the writing process. The ideal constructed by the portrait and preserved in the firm’s memory is dismantled when translated into a verbal narrative that aims to represent the “character” of the man. By representing Arnold’s buccaneering personality as the desired Other of the grey legalist Price, Auchincloss is able to figure writing as the scene of a drama of repression and return. Price’s desired book is an imaginative, creative and lovingly personal tribute to Arnold; its coordinates locate it on the literary side of the binary divide. However, dictating this text in his office during a defined part of the working day, Price cannot slough off his legal acculturation. In this context of desire and guilt, literature becomes a Gothic site in which writing involves involuntary repetition and loss of rational control. Price becomes the uncanny double of Arnold when anecdote becomes action, and illicit desire is pursued despite the law.

Despite the lawyers’ satire of “bearded Freudians,” Freud’s discussion of the uncanny is helpful in reading this story. In his preliminary discussion, Freud cites Schelling as arguing that “everything is uncanny that ought to have remained hidden and secret, and yet comes to light.”⁴⁵ What Price constructs through his free association is an insight into the aggressive and mercenary aspects of Arnold’s character that cannot be reconciled with his heroic status. Nor are these revelations consistent with his reputation in the firm and community. Price’s text presents Arnold as an *unheimlich* figure, the familiar memory of the “holy terror” returning with unfamiliar menace when his attitudes are instantiated in speech and story. Price’s creative writing mimics the

psychoanalytic process, revealing anxieties and wishes that have been repressed or disavowed. The haunting of Sylvaner Price by a disreputable double of Guthrie Arnold symbolizes a disturbing revelation of law as an institution for gaining power and money. Perhaps more importantly, literary writing (if I may use that tautology) is represented in the story as an exploratory and demystifying discourse, wayward and unpredictable in its figurations and trajectories, pleasurable and potentially dangerous. Through its association here with the Gothic, the literary is placed in opposition to the legal, and constructed as the domain of the mad and the scandalous. In the ensuing contest of faculties, it is censored by law and replaced with a socially-sanctioned biographical fiction.

IV

Fellow Passengers, a “loose-leaf novel” published in 1989 charts the life of a lawyer-writer, Daniel Ruggles, through a sequence of stories about formative relationships. One such story, “Abel Donner,” was originally published in the *Virginia Law Review* “in commemoration” of its seventy-fifth anniversary in 1989. Indeed it featured as the first item in the first number of that volume. Far from apologizing for a text which was “not usual Review fare,” this headnote simply states, “All attorneys are storytellers of one sort or another.”⁴⁶

Despite this affirmation of a common rhetorical practice, “Abel Donner” revisits the oppositions that structured “The Senior Partner’s Ghosts.” In Ruggles’s first-person account, Donner is represented as the epitome of the formalistic black-letter lawyer, as someone who lived only for and by the law, and who “totally rejected the least bit of color or character or *feeling* in any subject presented.”⁴⁷ Initially, efforts to establish a broader relationship fail before his professional persona: “He treated me with the same dry, impersonal courtesy that he accorded to all in the office.”⁴⁸ This reserve is finally broken down by a young novelist, Jason Parrish, who marries Alda Thorne, a member of a wealthy family whose legal affairs Donner organizes. While Donner is suspicious that Parrish is a fortune-hunter, Parrish sees Donner’s unyielding insistence on legal protocol despite the threats of an overbearing client as evidence of a rare integrity and allegiance to the law. Whereas Ruggles regards Donner as “the personification of [a] grim fantasy” that “art was illusion and law reality,” Parrish sees him as the hero of a novel, and sets out to charm him

into friendship.⁴⁹ If, following Jakobson and Ruggles's own resort to figuration, we once again view these characters metonymically, then law and literature are here placed in mutual opposition along Romantic lines, one as a discourse of objective reason, the other a discourse of subjective expression and feeling. At a dinner party that the Parrishes hold for the Donners, this opposition—and the indifference of Donner on which it is based—is put in question. Mrs Donner tells Ruggles,

“Abel has talked to me a lot about you. . . . [H]e hopes you won't give up the law again. He feels that your two disciplines are now in harness. Some of your partners think you'd be a better lawyer if you gave up the distraction of writing. But he feels, and I agree with him, that you wouldn't give the time you saved to the law. You'd just give it to fretting over what you'd done.”

For a moment I was afraid there would be tears in my eyes. That this old couple, whose feelings I had always assumed were at the most neutral, should have discussed the vital problem in my life and analyzed it with such understanding and sympathy, was profoundly moving.⁵⁰

The ideological rifts between law and literature in contemporary society charted by Ferguson and others, are here set aside through sentimental discourse. In the rest of the story, moreover, plot is manipulated to reinforce this discursive reconciliation. Before turning to a discussion of the plot, it is noteworthy that Mrs. Donner is the voice of this revelation. Vidal confidently avers that Auchincloss “reconciled the world of the father with that of the mother,” but in the literary–lawyer stories so far considered, women are notably absent.⁵¹ One of the explanatory signs of Sylvaner Price's dry legalism is the death of his wife, “years before.”⁵² The opposition of law and literature is figured through the exclusion of the feminine from the world of legal practice. As part of their realism, these stories repeat the gendered polarity of Auchincloss's youth. In order successfully to negotiate that opposition, the male literary lawyer in “Abel Donner” is offered the insight and sympathy of a female confidante. The narrative precondition and parallel to this reconciliation is the romance between Jason Parrish and Alda Thorne. Despite being indispensable, however, Mrs. Donner and Alda play only a secondary role, that of bringing the male lawyers and writers together.

The plot of “Abel Donner” proceeds through repetition and reversal. In the episode that first attracts Jason Parrish to Donner, the lawyer refuses to sanction the attestation by a notary of Harry Thorne's signature to a document

unless Thorne himself is present, no matter what the inconvenience to the client. Since Ruggles and others can identify the signature as Harry's, this stricture of Donner's seems extremely formalistic. Later in the story, after having secured Donner's friendship, Parrish attempts the same short-cut, requesting a notarization *in absentia*. In an elegant multiple reversal, this test of the letter of the law and its resident upholder by a literary iconoclast is perceived and thwarted by Ruggles. In a gesture of friendship for Donner, and a crucial act of solidarity with the law, Ruggles insists—over Donner's objections—that Parrish come to the office and fulfil the notarial requirements. At the moment that Ruggles perceives Parrish's manipulative ploy, he commits himself to legality and halts the seduction of Donner.

In Aristotelean terms, this ending brings together *anagnorisis*, or recognition, and *peripeteia*, or reversal, in a comic or happy ending. While Sylvaner Price remains the victim of internal division, locked into the compulsive repetitions of a Gothicized fiction, Ruggles is able to command the playful fictionist to obey the law, and thereby to give legal effect to the document to which they all sign their names. The literary lawyer here tells a story of the mediation between his two careers, founded on a union between affective imagination and legal ethics. What this comic *peripeteia* creates is an instance of the poetic justice imagined by Nussbaum, in which each side is given its due, duty and desire merge, and law and literature are no longer opposites. Ultimately, what is reversed is the "grim fantasy" of irreconcilability, replaced by a romance of unification grounded in love.

These two stories, published in the *Virginia Law Review* a quarter of a century apart, plot different trajectories for the relationship between law and literature in contemporary culture—one of uncanny resemblance and hostile competition, and the other of harmony and mutual benefit. While it is tempting to read them in chronological order, as parts of a loose-leaf novel, a narrative of progress subtended by the law and literature movement, it is truer to the realism of Auchincloss's *oeuvre* to conclude by insisting on the plurality of those "processes of negotiation and exchange" that mark the contracts of literature and law.⁵³ "Abel Donner" is not the last story of a literary lawyer: this protagonist reappears in "The Hidden Muse" in *The Atonement and other Stories*, published to coincide with the eightieth birthday of Auchincloss in 1997.⁵⁴ Here the movement of the plot is from apparent integration to dissonance and separation. A young associate lawyer, David Hallowell, finds the law utterly absorbing, both as work and as a subject for fiction written in his spare time.

The narrator underlines the metonymic function of these details, reflecting the character's understanding of the two institutions: "he felt that, with himself, law and literature were almost the same pursuit."⁵⁵ This belief cannot be sustained, as David comes to see literature as giving him a different relationship to the firm from his colleagues: "They cared for what it could do for *them*, and he only for what he could do with *it*."⁵⁶

In this stark and admittedly immature insight, writing and law are represented as forms of self-promotion, but somehow in this environment, aesthetic values are antithetical to economic ones. While his friend Larry enters the partnership, David resigns from the firm. In a muted ending, he recognizes that while this decision confers imaginative freedom, Romantic autonomy has a price: "He could render his friend Larry as brave as a Conrad hero . . . but he would no longer be a warm and living part of [the firm]. Maybe it would be better to be Larry after all. But that was no longer his choice."⁵⁷ That note of regretful separation, weighing up what is gained and lost when literature contracts with law, offers a fitting summary for Louis Auchincloss's extensive and complex negotiations as a literary lawyer.

1. Peter Brooks, "A Slightly Polemical Comment on Austin Sarat," 10 *Yale Journal of Law and the Humanities* 410 (1998). Key historical studies of American literature and law include Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, MA: Harvard University Press, 1983); Laura Hanft Korobkin, *Criminal Conversations: Sentimentality and Nineteenth-Century Legal Stories of Adultery* (New York: Columbia University Press, 1998); and Brook Thomas, *American Literary Realism and the Failed Promise of Contract* (Berkeley: University of California Press, 1997).
2. *Id.*, at 10.
3. Brook Thomas, *American Literary Realism and the Failed Promise of Contract* (Berkeley: University of California Press, 1997).
4. Martha Nussbaum, *Poetic Justice: The Literary Imagination in Public Life* (Boston: Beacon Press, 1995); Richard Weisberg, *Poethics and other Strategies of Law and Literature* (New York: Columbia University Press, 1992).
5. This summary is drawn from Fred R. Shapiro and Jane Garry, eds., *Trial and Error: An Oxford Anthology of Legal Stories* (New York: Oxford University Press, 1998), p. 357; and James W. Tuttleton, "Louis Auchincloss at 80," 16:2 *The New Criterion* 33–37 (1997).
6. Jay Wishingrad, ed., *Legal Fictions: Short Stories about Lawyers and the Law* (Woodstock: Overlook Press, 1992), p. x. Writing from a completely different political perspective, an historian of legal practice in the New Deal era invokes an Auchincloss character as "epitomiz[ing] the spirit of this generation." See Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), p. 181.
7. Roland Barthes, "The Reality Effect," rpt. *French Literary Theory Today*, Tzvetan Todorov, ed., R. Carter, trans. (New York: Cambridge University Press, 1982), p. 11.

8. See Thomas, *supra* note 3, and Tony Hilfer, *American Fiction Since 1940* (London: Longman, 1992), chapter 7.
9. See Adeline R. Tintner, "Louis Auchincloss Reinvents Edith Wharton's 'After Holbein'" 33 *Studies in Short Fiction* 275–77 (1996); and James W. Tuttleton, *The Novel of Manners in America* (Chapel Hill: University of North Carolina Press, 1972).
10. Louis Auchincloss, *Pioneers and Caretakers: A Study of Nine American Women Writers* (Minneapolis: University of Minnesota Press, 1965); and his *Reflections of a Jacobite* (New York: Houghton, Mifflin, 1961).
11. Morris Dickstein, "Fiction and Society 1940–1970," in *The Cambridge History of American Literature* vol. VII, Sacvan Bercovitch, ed. (New York: Cambridge University Press, 1994), p. 108.
12. David Carrier, "Louis Auchincloss" 61 *Bomb* 60 (Fall 1997).
13. Wishingrad, *supra* note 6 at 3 and 162 respectively.
14. Shapiro and Garry, *supra* note 5 at 357.
15. John Welcome, ed., *Best Legal Stories II* (London: Faber and Faber, 1970), p. 170.
16. Gore Vidal, "The Great World and Louis Auchincloss" in *United States: Essays 1952–1992* (New York: Random House, 1993), p. 370.
17. *Id.*, at 367.
18. Louis Auchincloss, *A Writer's Capital* (Minneapolis: University of Minnesota Press, 1974).
19. Vidal, *supra* note 16 at 371.
20. Auchincloss, *supra* note 18 at 76.
21. *Id.*, at 125.
22. Jacques Dubois and Pascal Durand, "Literary Field and Classes of Texts," in *Literature and Social Practice*, Philippe Desan, Priscilla Parkhurst Ferguson and Wendy Griswold, eds. (Chicago: University of Chicago Press, 1989), pp. 137–53.
23. Ferguson, *supra* note 1.
24. Vidal, *supra* note 16 at 368.
25. Christopher C. Dahl, *Louis Auchincloss* (New York: Ungar, 1986), p. 153.
26. *Id.*
27. Auchincloss, "The Tender Offer," rpt. in Wishingrad, *supra* note 6 at 9.
28. Roman Jakobson, "Two Aspects of Language and Two Types of Aphasic Disturbance," in Roman Jakobson and Morris Halle, *Fundamentals of Language* (The Hague: Mouton, 1956), pp. 53–72.
29. Auchincloss, *Pioneers and Caretakers*, *supra* note 10 at 7.
30. J. Gerald Kennedy, ed., *Modern American Short Story Sequences: Composite Fictions and Fictive Communitities* (New York: Cambridge University Press, 1995), p. 196.
31. Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991).
32. *Id.*, at 67–68.
33. *Id.*, at 57.
34. Auchincloss self-consciously addresses the ideological attachment of the novel of manners to "the great world" that it represents in "The Novelist of Manners," the literary-lawyer story in *The Partners* (New York: Houghton, Mifflin, 1973), pp. 160–61. Many of the conflicts and changes summarized here are metonymized in the dissolutions and mergers affecting the partnership of Shepard, Putney and Cox in this loose-leaf novel.
35. Kennedy, *supra* note 30 at 195.
36. Dahl, *supra* note 25 at 137–38.
37. Louis Auchincloss, *Tales of Manhattan* (New York: Houghton, Mifflin, 1967); and *Fellow Passengers* (New York: Houghton, Mifflin, 1989).
38. 50 *Virginia Law Review* 195 (1964).
39. *Id.*, at 1.

40. *Id.*, at 3.
41. Louis Auchincloss, "The Senior Partner's Ghost," rpt. in Shapiro and Garry, *supra* note 5 at 360. Quotations are drawn from the text published in *Tales of Manhattan* and reprinted in the anthology, *Trial and Error*. The most accessible text and page references are to this latter source. In the transition from journal to book publication, the names of the leading characters, and their firm, were changed. Guy de Grasse and Sylvaner Prime became Guthrie Arnold and Sylvaner Price, and the firm became Arnold and Degener. These changes subtilize Price's "primacy" in the partnership, distinguishing between moral and practical leadership, and thereby render his crisis the more acute.
42. *Id.*, at 361.
43. *Id.*, at 369, 370.
44. *Id.*, at 372.
45. Sigmund Freud, "The Uncanny," rpt. in Victor Sage, ed., *The Gothick Novel* (London: Longman, 1990), p. 77.
46. 75 *Virginia Law Review* 1 (1989).
47. Auchincloss, "Abel Donner," in *Fellow Passengers*, *supra* note 37 at 173.
48. *Id.*, at 171.
49. *Id.*, at 174.
50. *Id.*, at 185.
51. Vidal, *supra* note 16 at 371.
52. Auchincloss, *supra* note 37 at 358.
53. Thomas, *supra* note 3 at 9.
54. Auchincloss, "The Hidden Muse," in *The Atonement and Other Stories* (New York: Houghton Mifflin, 1997), pp. 134–43.
55. *Id.*, at 140.
56. *Id.*, at 141.
57. *Id.*, at 143.