The University of Chicago Law School and
The Scherer Center Present

Manhood in American Law and Literature
February 17-18, 2012

An interdisciplinary academic conference

Full Agenda, Presenters, and Abstracts
Friday, February 17:

9:00: Welcoming Remarks
9:15 to 11:15: Student papers
   Chair: Emily Buss, The Law School, The University of Chicago
   Speakers:
   Patrick Barry, 3L, The Law School, The University of Chicago
   Straight from the Slaveholder’s Mouth: Law as Persuasion in the Anti-Slavery Speeches of Frederick Douglass
   Hilary Leewong, 2L, The Law School, The University of Chicago
   Shooting Blanks: Hapa Men and Mixed Race Sex in Kip Fulbeck’s Paper Bullets
   Benjamin Ogles, Ph.D. student, Department of Classics, The University of Chicago
   A Strong and Beautiful Bug
   Paxton Williams, 2L, The Law School, The University of Chicago
   The Indictment of the Law and Notions of Masculinity in Ossie Davis’ Purlie Victorious

11:15 to 12:00: Fatherhood and Manhood
   Chair: Randy Berlin, The Law School, The University of Chicago
   Speaker: Emily Buss, The Law School, The University of Chicago
   Fatherhood in Classic American Literature

12:00: Lunch for Presenters

Friday Afternoon:

1:00 to 3:45: The Manly Man: Guns, Courage, Failure
   Chair: Eric Posner, The Law School, The University of Chicago
   Speakers:
   Richard Posner, US Court of Appeals for the Seventh Circuit and The Law School, University of Chicago
   Manhood in Hemingway
   Deak Nabers, Department of English, Brown University
   Law from a Gun: Nuclear Warfare, Manhood, and Post-World War II Constitutional Formalism
   Douglas Baird, The Law School, The University of Chicago
   American Stoic
   Michael Warner, Department of English, Yale University
   Manning Up: Failure in Masculinity and Failures of Masculinity

4:00: Dramatic scenes (with musical interlude)
   The Little Foxes
   Featuring Martha Nussbaum and Douglas Baird
   The Caine Mutiny Court-Martial
   Featuring Richard Posner, Diane Wood, Jonathan Masur, Daniel Abebe, Paxton Williams, and Chris Skene
   "The Dodger"
   Performed by Martha Nussbaum, Jajah Wu, J.D. 2011, and Gary DeTurck, 3L (piano)
   "To Keep My Love Alive"
   Performed by Jajah Wu
   "Can't Help Lovin' That Man of Mine"
   Performed by Martha Nussbaum

5:15 to 6:30: Oates plenary reading and plenary panel
   Plenary panel:
   Joyce Carol Oates, Richard Posner, Diane Wood, Alison LaCroix, Martha Nussbaum

6:30: Reception
7:30: Dinner (by invitation)
Saturday, February 18:

9:15: Breakfast for Presenters
9:45 to 11:30 Unmanly Men
  Chair: Todd Henderson, The Law School, The University of Chicago
  Speakers:
    David Halperin, Department of English, University of Michigan
      Bitch Baskets: Sex Roles and Gay Male Femininity
    Martha Nussbaum, The Law School and Department of Philosophy, The University of Chicago
      Jewish Men, Jewish Lawyers: Roth's Eli, the Fanatic and the Question of Jewish Masculinity in American Law
    Saul Levmore, The Law School, The University of Chicago
      Informants, "Barn Burning," and the Public Interest: Disloyalty in Literature and Law

11:30 Lunch for Presenters

Saturday Afternoon:

1:15 to 3:30: Manhood, Race, Empathy
  Chair: Laura Weinrib, The Law School, The University of Chicago
  Speakers:
    Glenda Carpio, Department of African-American Studies, Harvard University
      Obama and the Staging of Scottsboro Boys
    Richard McAdams, The Law School, The University of Chicago
      Empathy and Masculinity in To Kill a Mockingbird
    Brook Thomas, Department of English, University of California at Irvine
      Of Mules and Men, Schools and Suffrage

3:45 to 6:00: Manhood, Rights, and Responsibilities
  Chair: Jane Dailey, Department of History, The University of Chicago
  Speakers:
    Robin West, Georgetown University Law Center, Georgetown University
      The Great Gatsby and the Death of Torts
    Colin Dayan, Department of English, Vanderbilt University
      Like a Dog: Animal Law, Human Cruelty, and the Limits of Care
    Eric Slauter, Department of English, The University of Chicago
      Conceptions of the Rights of Man
**Presenters and Abstracts**

**Douglas Baird**  
*American Stoic*  
The Second Industrial Revolution brought with enterprises on a scale previously unimagined. While a cotton mill might need tens of thousands in capital, railroads required tens of millions. A small handful of individuals came to lord over a few key industries. These individuals were a new character type. New words were imported into the language to talk about them—tycoon, magnate, mogul. This new breed of man controlled the fate of others in a way that only kings possessed in a previous age. But these new men remained private individuals. They possessed great power, but were just as subject to the law as anyone else. Dreiser’s Trilogy of Desire captures in fiction the life of one of these men and provides a deep study of this distinctly American character and his relationship to the law.

**Emily Buss**  
*Fatherhood in Classic American Law and Literature*  
Who counts as a father? What do we expect of fathers? To what are they entitled and what do they owe to their children? These questions are taken up, again and again, under American law, as men battle with other men, with mothers, and with the state, over matters of responsibility for, and control over, children.

The law’s answers to these fundamental questions about paternal rights and responsibilities are undertheorized, and perhaps necessarily so. While the Supreme Court has afforded the highest level of constitutional protection to parental rights, the sources and scope of those rights are driven by compelling intuitions grounded in culture and experience more than logic or conventional legal reasoning. And these intuitions are highly gender specific, despite a strong legal commitment to gender equality. In this paper, I will turn to American literature to explore our understandings of fatherhood, and what is at stake for father and child alike in that relationship. In an attempt to get as full a picture as possible, I will draw on a number of works where these themes are prominent, rather than focusing in greater detail on a single work. Intriguingly, the issue of who counts as a father, and particularly whether genetics or behavior matter more, is addressed at great length in law, and very little in literature. (I will consider the extent to which these themes are taken up in *The Scarlett Letter*). I will argue that the single-minded focus in American Literature on genetic fathers offers an answer, of sorts, to the identity question. Genes matter, a lot, and more than scholarly legal reflection suggests they should.

In contrast, much developed in American Literature is the value of fatherhood, and what makes a good father. The effects of a father’s actions and relationships on his children are considered, repeatedly, in American classics. In some, fathers are present and successful (*To Kill a Mocking Bird*), in many, fathers struggle (*East of Eden, Cat on a Hot Tin Roof, Death of a Salesman*). In others, fathers are conspicuously absent (*Native Son*), or conspicuously disconnected (*The Great Gatsby*). Fathers are the would-be makers of empires (*Absolom, Absolom; Cat on a Hot Tin Roof*); and very often the source of serious problems to be overcome (a theme increasingly addressed in recent literature that may not count as classic: *The Poisonwood Bible, The Secret Life of Bees, 1,000 Acres*...).

The paper will tie some of the answers offered, in literature, to the questions framed in law, and consider whether this literature illuminates this strongly protected, but poorly developed, area of American law.

**Glenda Carpio**  
*Obama and the Staging of The Scottsboro Boys*  
Beginning with the controversy caused by the 2010 Broadway production of *The Scottsboro Boys*, this talk examines the 1931 legal case upon which the show is based, and, more specifically, the issues both the show and the case highlight regarding black masculinity in American culture. Falsely accused of raping two white women, the nine boys (and men) who came to be known as the Scottsboro Boys were subjected to a series of trials (spanning nearly a decade) which reveal in appalling detail the deeply ingrained racism of American judicial courts. The Broadway show highlights the horror of this history through gallows humor and, as Charles Isherwood notes in his review in *The New York Times*, “draws an implicit comparison between the stereotypes of minstrelsy and the racist assumptions that influenced the treatment of the Scottsboro defendants in the news media and the courts.” Perhaps most poignantly, the show makes vivid the struggle that the Scottsboro defendants had to engage in against the complete loss of hope in the face of their dire situation and the tragedy of their caged youth. Despite wide differences in time and circumstance, the fact that the Broadway show premiered during Barack Obama’s presidency provides an opportunity to meditate on how, in *Dreams from My Father* (1995), the president addressed the limited possibilities for black masculinity in
contemporary America. We have come far from the injustices meted out to the Scottsboro Boys and yet, both Obama’s first autobiography and the staging of The Scottsboro Boys in 2010, urge us to ask what of the past persists and for whom. As it is well known, Obama based his presidential candidacy on his “hope” mantra. What is perhaps less known is the fact that it is based on his dark view of race relations in America—at least before he became the symbol of a supposedly post-racial America that he is now. The concluding part of this talk examines how, in Dreams from My Father, Obama renders vivid his own and other black youths’ struggle against the erasure of identity by racial stereotyping and against despair. It is only in this context that one can understand why for Obama it takes audacity to hope that we can transcend America’s history of racial conflict. Now, in the post-glow of his initial popularity and promise, Obama is several steps removed from the views of black masculinity that he first articulated. But the peculiar coincidence of the staging of The Scottsboro Boys during his presidency gives us an opportunity to look back at an earlier and arguably more candid Obama.

Colin Dayan

Like a Dog: Animal Law, Human Cruelty, and the Limits of Care
A couple of cases tell the legal story of canine profiling but also demonstrate how general standards become the foundation for discriminatory practices. In characterizing the specific landscape for judicial cruelty, I suggest that where dogs are concerned, especially, ideas of personhood and the meaning of cruelty are sorely tested. What, to return to Holmes, is the “external standard of conduct” to which the ideal, average, “decent” and “prudent man” must accede? And how does this standard become explicit in the dangerous classification of dogs and the legal fictions associated with them? A certain kind of dog and a certain kind of man are at risk, threatened by the peculiar vigilance that comes with socially sanctioned iniquity. Legal narratives, I argue, establish what Stephan Palmie has called a “moral topology” and I will elaborate as a “legal ethnography” that depends for its power on definitions of “social value” and “public welfare.”

David Halperin

Bitch Baskets: Sex Roles and Gay Male Femininity
What is gay male femininity? The topic is an embarrassment to current attempts to present male homosexuality as “virtually normal.” The legacy of Victorian science would seem to imply that gay male femininity is virtually pathological. The emergence of transgender studies has complicated the question but not answered it. The polarized model of gender which remains dominant in our society continues to enforce a binary opposition between masculinity and femininity, which creates further problems of interpretation. I argue that gay male femininity, in some of its forms at least, needs to be understood not in terms of femininity as that category pertains to women but as a form of gender dissidence that is not reducible to femininity in any conventional sense.

Saul Levmore

Informants, “Barn Burning,” and the Public Interest: Loyalty in Literature, Law, and Manly Endeavors
Legal systems require information and often reward whistleblowers. In contrast, such informants are thought of as rats or snitches in literature, as in popular culture, where loyalty to comrades is thought a manly attribute in peace as it is in war. There are easy cases in American literature, where the courageous and loyal character does not inform on another because the reader and the author so plainly disapprove of the legal or other rule that has been violated. Refusing to inform on a runaway slave is one such easy example. I argue that law is most concerned with behavior among strangers, while literature is focused on loyalty to clan. Cases in which the two are in tension are rather rare, though that reduces the role of literature in helping readers think through difficult moral questions. Faulkner’s well-known story, “Barn Burning,” is one coming-of-age story in which the conflict is apparent, and the paper explores that work as well as more abstract questions regarding loyalty, courage, and the revelation of information.

Richard McAdams

Empathy and Masculinity in To Kill a Mockingbird
The novel To Kill a Mockingbird redefines the ideal of mid-20th century Southern white masculinity. As the child narrator Scout is not conventionally feminine, the gentle and introspective Atticus Finch is not conventionally masculine. He does not hunt, drink alcohol, use tobacco, or play football, but stays at home with his children and reads. Yet Atticus is the conventional hero of the novel for having the courage to confront a lynch mob and to challenge the prevailing sentiment of his community. Harper Lee thus rewrites the southern code of chivalry. Instead of the white male protection of white women from black predation and a belief in the lost cause of the Confederacy, Atticus fights for the lost cause of Tom Robinson, seeking to defend a black man from white predation.
An important element of this reconstruction is the theme of empathy. In another deviation from conventional masculinity, Atticus has a strong sense of empathy and compassion, which he seeks to teach Scout. This emphasis invites the reader to imagine characters and events beyond the understanding of the unreliable child narrator, particularly the interaction between Mayella Ewell and Tom Robinson. Atticus’s courtroom advocacy illustrates the troubled value of empathy in lawyering: understanding an adversary’s thoughts and feelings is strategically useful, making it easier to anticipate and manipulate their behavior, but empathy may produce feelings of compassion that are inconsistent with the requirements of zealous advocacy. Atticus’s empathy makes him more effective at cross-examining Mayella, but also makes him understand her story better than anyone else in the novel. Part of the cost Atticus bears in defending Tom Robinson is his unpleasant knowledge of the harm he inflicts on Mayella, completing his rejection of conventional chivalry.

Deak Nabers

Law from a Gun: Nuclear Warfare, Manhood, and Post-World War II Constitutional Formalism

This paper examines the impact of nuclear weapons on the way the law was conceived in postwar American literature, legal theory, and military policy. It contends the nuclear weapons were persistently seen as having scrambled traditional accounts of the relationship between violence and power, and that in so doing they repeatedly encouraged the conclusion that legal authority inheres in social relations and forms rather than concrete and codified expressions of a given sovereign’s will. If law had once seemed irreducibly dependent upon power, after Hiroshima power would seem irredutibly dependent upon law. Even as nuclear weapons radically increased the susceptibility of men to coercive power, they underscored the dependence of power on the social and formal apparatus on which it operated. This shift simultaneously rendered legal authority an effect of social practice and rendered the terms of social life an effect of legal form. I examine how these developments led to reconceptualization of the relations between men and the state in World War II novels (chiefly Catch-22), works of nuclear strategic theory (chiefly Thomas Schelling’s Arms and Influence), and academic legal debate (chiefly the exchanges between H. L. A. Hart and Lon Fuller).

Martha Nussbaum

Jewish Men, Jewish Lawyers: Roth’s Eli, the Fanatic and the Question of Jewish Masculinity in American Law

“Although he is a Jew, he has none of the odious characteristics of his race.” Thus begins a letter of recommendation—typical of its kind—for an academic job candidate on the East Coast in the 1940’s. What might those “odious characteristics” be? My goodness, there were so many. Jews were “vulgar,” lacking gentility. They talked too loud and used their hands too much. Their bodies were soft and fleshy, suggestive of a lack of interest in transcending the physical. They laughed out loud and made too many jokes. Their hips were too big. They took delight in baroque maneuvers of argument. There was a feeling that they probably smelled, though of what it was not easy to say. (One common version was that they all smoked large cigars, a myth that managed to allude to more than one item in the above catalogue of horrors.) Above all, they were emotional about everything, and they simply did not comprehend that emotion, like humor, is itself vulgar and must be carefully concealed, particularly at the dinner table, in order that society should roll on smoothly.

Today it comes as a shock to recall that these stereotypes once served to exclude a Jewish lawyer from the best firms (known as “white shoe” firms). For, today, it is no exaggeration to say that the good lawyer just is a Jew. The once-despised characteristics are both ubiquitous and normative. What good lawyer would not be both argumentative and passionate? What good lawyer would prefer an elegant ironic reticence to gutsy involvement? And what lawyer really wants to look, even, like someone with no guts and no hips?

This transition and its manifold contradictions is the topic of Philip Roth’s hilarious and tragic story Eli, the Fanatic (1957). The story pits the WASPified Jews of Woodenton—a West Chester suburb by comparison to which Scarsdale figures, in the story, as a town overrun by Jews—against a group of orthodox Jews who have opened a home and school for immigrant Jewish orphans on a property that used to belong to “old man Puddington,” the WASP scion of the town. Eli Peck, a local lawyer retained by the assimilated Jews, is charged with getting the Jews who do not behave “like everybody else” to move away, lest their presence taint the reputation of the “good” Jews in the eyes of their WASP neighbors. Eli, a self-constructed WASP lawyer, then encounters a true Jewish lawyer in the person of Tzuef, who runs the orphanage. In the complexities that ensue, the story presents a picture of the profound conflict in the heart that self-stifling of Eli’s sort
produces. It also enlists its readers’ sympathies on the side of the Jewish lawyer, eliciting strong emotion; equally important, it gets its reader to laugh out loud at the absurd behavior of the WASP-Jews. The reader who reads the story attentively, reacting in these ways, with passionate sympathy and unrepresed hilarity, has become, by its end, a Jew.

In this way, I shall argue, the story does not simply chronicle a social moment, it intervenes in it—at a time when the stereotype was just beginning to crumble—subverting the rigidities of assimilation and changing the “inner eyes” of its readers, so that they see something about themselves, and others, that they did not see before.

Richard Posner
Manhood in Hemingway
This paper situates Hemingway's fiction in the realist fiction of the 1920s and 1930s (the dismal period of entre deux guerres), an important stage in a three-stage, two and a half century decline in the concept of manhood, now archaic in Western society.

Eric Slauter
Conceptions of the Rights of Man
How and why did ordinary people come to speak a language of rights in late eighteenth-century America? Ideas about rights expanded dramatically in the Atlantic World in the century between the Declaration of Rights of the English Convention Parliament of 1689 and the French Declaration of the Rights of Man and Citizen in 1789. This essay surveys the first three quarters of that century, long neglected in narrating the rise of rights in revolutionary America, and then considers the effects of a shift from claims rooted in the civil rights of Englishmen to the natural rights of man. As white male revolutionaries began to disconnect rights claims from a mooring in history, religion, ethnicity, and even property, they encountered domestic voices that had barely registered in the “rights-talk” of colonial America. Free and unfree blacks, white women, and poor white men all discovered in the amplified political prominence of rights a potent weapon for social critique. In embracing the natural rights of man revolutionaries could not avoid confronting the unnatureness of the existing social order.

Brook Thomas
Of Mules and Men, Schools and Suffrage
W.E.B. Du Bois wrote of how black men were "emasculated by a peculiarly complete system of slavery." Mark Twain said of African Americans, "We have ground the manhood out of them." I will look at some works of late nineteenth-century and early twentieth-century works of literature and how they portray three efforts by freedmen to assert their manhood: military service, education, and the franchise. I will also look at how those efforts were both advanced and blocked by the law.

Michael Warner
Manning Up: Failure in Masculinity and Failures of Masculinity
In most forms of masculinity the normativity of manliness is experienced as a demand, a problem, an environment of risk. The tension between ascribed maleness and achieved manliness constantly reactives possibilities of failure or lateral movement. This structure, together with increasing tension between gender and the concept of the person, helps to understand the long history of literary preoccupation with the utopian dimension of male failure and the tragic dimension of male achievement, illustrated here by “Rip Van Winkle” and Billy Budd.

Robin West
The Great Gatsby and the Death of Torts
The Great Gatsby, set during the age of automobile, is replete with unintentional and intentional torts, including negligence, battery, alienation of affections, false imprisonment, and of course negligent homicide. Yet tort law is not even mentioned, much less pursued as an avenue for redress of the various harms done the victims of these torts. As Nick observes, these are indeed, (to paraphrase) "careless people who wreck lives and then retreat into their money leaving others to clean up the mess." Yet at the end of the novel, Nick gives Tom a pass, resolving to not even make him suffer the embarrassment of a refused handshake on a public street. After all, he surmises, Tom was so much like a child, a force of nature really, that to do otherwise would be pointless.

Why is there no tort law and no mention of tort law in Gatsby? Criminal law, after all, although ineffectual, is mentioned throughout. But never tort law, although the novel is centrally about private wrongs. The paper argues that reason has to do less with Fitzgerald's intentions than with the invisibility and ineffectuality of tort law in the 1920s, particularly with
regard to automobile accidents. The tort law of the time, like Nick, roundly condemned the negligent tortfeasor as blameworthy (in terms that eerily echo Nick's assessment of the Buchanans), but then routinely failed to effectuate its judgments, for three reasons: the built-in inaccessibility of the system to working class people (such as Myrtle and Wilson); the doctrine itself (under which Myrtle's contributory negligence would have barred recovery) and the stance of would-be tort reformers, who, rather than try to hold tort to its moralistic and quite masculine promise, instead shifted to advocacy for compensation schemes that would provide care for victims, but would leave blameworthiness, culpability, and the idea of negligence as a "wrong" out of the picture altogether. The idea of tort as a moral wrong requiring recompense, and of corrective justice requiring a legal system that would demand it, had begun to disappear by the end of Gatsby's decade.

**Student Presenters and Abstracts**

**Patrick Barry**

*Straight from the Slaveholder's Mouth: Law as Persuasion in the Anti-Slavery Speeches of Frederick Douglass*

This paper examines Frederick Douglass's use of the law—specifically, reading aloud from slave codes—in a set of anti-slavery speeches written after the publication of his autobiography, *Narrative of the Life of an American Slave*. The main question asked is: what does Douglass' turn to the law do to his traditional status within the genre of 19th century sentimental literature?

**Hilary Leewong**

*Shooting Blanks: Hapa Men and Mixed Race Sex in Kip Fulbeck's Paper Bullets*

In legal history, as in literary analysis, much air time is devoted to "the two races"—understandably. Black and white, the two sides of one coin, slave and master, minority and majority. Binaries are easier to think through; it is easier to know who to side with when we assure ourselves there are only two choices.

In reality, race—both in legal history as well as in literary analysis—is much more fragmented. If one is to question the essentialist concept of race at all, it is inevitable to lead to a place where we are all "mixed." Despite the social taboos against racial mixing that make up the background of our nation's social fabric, racial mixing has taken place since the earliest colonies, throughout the slave trade. In other words, racial mixing has been a part of American history long before *Loving v. Virginia* held that state laws prohibiting interracial marriage were unconstitutional.

It must follow, then, that our literary narratives that explore racial identity in America always have had a shadow of mixed race within them. But differing sociocultural contexts required different analyses of this identity group. From the faux-scientific blood rhetoric of Thomas Jefferson's time, to the intentionally inflammatory "white/black" language imposed by President Johnson in the post-war chaos, ideas about racial mixing have always been closely tied to economic interests and power struggles. Thus, it has not been until the late 20th century that literature exploring "mixed race identity" as such has emerged from the post-miscegenation closet.

Literature of this sort still experiences a marginalized status within other canons—attempts to organize the un-organizable. Does mixed-race Asian-American literature belong in the Asian-American literature section? What if the author is queer? Does it belong in Gender or Feminist literature courses? Should all literature by non-white authors, or exploring ideas of racial identity, be grouped together into a category of solidarity? These are unsettled questions that run parallel to how mixed race people will be classified in contemporary politics. There are benefits to solidarity among groups—but where do these mixed folks belong? The latest census has encouraged mixed people to check multiple boxes, including one called “Other,” as an act of resistance to historically “monoracial” categorization by the U.S. government. However, in an ironic twist of events, oftentimes this approach splits the power of the groups in attracting resources to their communities. We must ask, what is the goal of this identity search?

In *Paper Bullets* by Kip Fulbeck, Kip is a mixed-race Asian-American man, also identified as “hapa”—meaning “half” in pidgin from Hawaii, which refers to people of mixed Asian descent. He seeks to explore his racial identity by exploring sex in a *post-Loving* world.

If interracial sex is still taboo, as the ghosts of our historical forbears remind us, who is left for the mixed race American to couple with? Monoracial choices are not available for him—all sex is racial transgression. Fulbeck
explores his sexuality with white women, Asian-American women, even a half-Chinese half-Caucasian woman with the exact background as himself. Ultimately, he realizes this fraught choice of coupling for mixed-race people highlights what is wrong with our way of thinking about racial identity. It illuminates the boundaries between identities left as a vestige of anti-miscegenation laws, and brings to the fore the conflicting personal decisions that a generation of mixed young adults are grappling with as these legal norms shift into the twenty-first century.

Benjamin Ogles

A Strong and Beautiful Bug

In discussions of manhood and law, the writings of Henry David Thoreau often have seemed to champion the cause of natural solitude and individualistic anarchy. The present paper, however, suggests that both of these engagements with Thoreau deeply misinterpret the character of his philosophy. Rather than belonging to the procession of thinkers who have pronounced on the nature of man and law, Thoreau considers such proposals a kind of problem and analyzes how they may be overcome. In other words, rather than seeking the right concepts to describe and guide men, Thoreau urges upon his readers a way of thinking that, by transforming the individual, continually transcends such ideas. Thoreau pursues such transformation by inverting the work done through attention. Typically, one pays attention to the particulars of a situation in order to refine and revise one’s understanding and ends. Thoreau, however, through his argument, his style, his images of larvae and embryos, intimates that the particulars, rather than simply enriching one’s view of the world, actually constitute and determine that view, as if by metamorphosis. The aim of Walden itself—to awaken his neighbors—then is not merely a metaphor for realization, but a developed conception of understanding. In his essay on “Civil Disobedience,” Thoreau applies to law the same concern for development. Rather than considering law as a conclusion to be trusted, Thoreau approaches it like the steps of a developing character whose transformation is the true aim. As a result, he wishes not to promote correct conceptions but to stimulate and improve the molten, human ground upon which rest the plates of law. Thus, Thoreau’s work manifests an abiding concern for and trust in transformation as the proper development of man and his institutions.

Paxton Williams

The Indictment of the Law and Notions of Masculinity in Ossie Davis’ Purlie Victorious

Purlie Victorious, published in 1961, might be characterized as a satire or farce. It might also be characterized as a social commentary and an indictment of the legal and political system as seen in the United States. Taking place in “the cotton plantation country of the Old South,” Purlie Victorious tells us much about how individual and societal motivations are effected by the law, and how the law—for better or worse—can produce unintended—or intended—consequences, which can manifest themselves in ways that define, alter, and upend what might be considered “manly” or “masculine”. When considering Davis’ use of stereotypes, dialect, and representative characters, it is worth noting that Purlie Victorious was written while Davis was stage managing an off-Broadway production of the folk comedy The World of Sholom Aleichem, which utilized many of the same techniques.

In this paper I explore masculinity as seen through the statements and actions of the four major male characters: Reb’n Purlie Victorious Judson, Gitlow Judson, Ol’ Cap’n Cotchipee, and Charlie Cotchipee. While written in broad strokes, each character is nuanced in ways that shed light both on what it means to be a man and how our perspective of the law is informed by how we are viewed by—and can affect—the legal and political systems that empower or constrain us. Also explored are how conceptions of what it means to “be a man” are defined in light of bounded rationality, collective action problems, adaptive preferences, monopoly of power, and commodification of that which is generally non-commodified.

While the central legal questions involved concern probate, successor rights, and property rights (the play concerns Reb’n Purlie’s attempts to secure money that was left in a will to a deceased aunt so that he might purchase his family’s ancestral church), Davis speaks to larger issues and addresses the need of the Constitution, the Bill of Rights, and the Supreme Court to simply stand for what they purportedly stand for. Several times in the play we see that Reb’n Purlie views these documents and institutions as his articles of faith, as when he exclaims:

I preached the New Baptism of Freedom for all mankind, according to the Declaration of Independence, taking as my text the Constitution of the United States, Amendments
First through Fifteenth, which readeth as follows: “Congress shall make no law—”

This paper also explores what happens when the law is marked by capriciousness, as well as the competing default conceptualizations of the law—to wit, whether the law is just except when it is unjust, or whether the law is unjust except when it is just. Where the default is set matters, as it influences belief in, and fidelity to, the legal system, and informs the machinations one employs to effect the legal system. Related, in the relationship of Purlie and Gitlow, we see, exaggerated for clarity, differences in philosophy regarding the use of appeasement (feigned or otherwise) versus direct opposition in working to increase one’s rights and fulfill one’s own manhood. This struggle has been defined in successive generations by the actions of such men as Booker T. Washington and W.E.B. Du Bois, Dr. King and Malcolm X, and even to some extent today, Cornel West and President Obama.

Finally, as judges often get to revisit their prior decisions and re-assess their understandings of the law, this paper examines how an understanding of Purlie Victorious might be adjusted over time in light of greater societal changes. Questions of interpretation and understanding have been put to the Emmy-Award winning actor Robert Guillaume, who performed the role of Purlie Victorious in the musical adaptation of the play on Broadway in 1971, and on film in 1981. Mr. Guillaume’s insights after over 40 years of interpreting this literature should prove helpful to understanding how our notions of the law, literature, and the intersection of the two may evolve.

Questions about the conference? For questions concerning academic matters, scheduling, or conference substance, contact Chris Skene at 850-445-9551 or cnskene@gmail.com. If you have administrative questions, contact Rebecca Klaff at 773-834-4326 or rklaff@law.uchicago.edu.