

Porsdam, Helle, *Legally Speaking: Contemporary American Culture and the Law*. Amherst: University of Massachusetts Press, 1999. xiii + 269 pp.; ISBN: 1-55849-208-9; \$15.95 paper.

'[T]he lawyer had only to weave arguments, and, by some magic, wealth and standing followed....'

Henry David Thoreau's remark in *Walden* hints at a view of lawyers, and by implication the judicial system within which they weave their arguments, long countenanced in the United States. The historical disparagement of lawyers and courts notwithstanding, Linda Greenhouse in the *New York Times* (2 July 2000) characterized the U.S. Supreme Court's 1999-2000 term as 'a vivid reminder of the court's power to scramble settled expectations, put old questions to rest and, ultimately, to have the last word.' A closely divided Court ruled on such issues as partial-birth abortion, federalism, due process, the Miranda warnings, and hate-speech legislation, handing down decisions that – coupled with reactions to those decisions in mainstream public discourse – suggest that the questions raised and themes investigated in Helle Porsdam's *Legally Speaking* remain contentious and of major concern.

Working at the intersection of law and the humanities, or, more specifically, the intersections of law and literature, non-fiction, television, and legal and literary theory, Porsdam examines cultural artifacts and legal scholarship that foreground legal principles, the legal system, its practitioners, its litigants, and their meaning for American society and culture in a variety of works. These include Tom Wolfe's *The Bonfire of the Vanities* (1987); works by Scott Turow, including *Presumed Innocent* (1987); Sara Paretsky's V. I. Warshawski series, Margaret Atwood's *The Handmaid's Tale* (1985); and William Gaddis's *A Frolic of His Own* (1994). Porsdam presents ample evidence of how these cultural artifacts synecdochically represent the importance of law for American culture, a significance she also discerns in audience fascination with Judge Joseph A. Wapner on the television series *The People's Court*. Porsdam also examines a number of non-fictional works, such as Melissa Fay Greene's *Praying for Sheetrock: A Work of Nonfiction* (1991), Derrick Bell's *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987) and *Faces at the Bottom of the Well: The Permanence of Racism* (1992), and Patricia Williams's *The Alchemy of Race and Rights* (1991). Finally, Porsdam interrogates three examples of work being done within the field of law and literature, Richard Posner's *Law and Literature: A Misunderstood Relation* (1988), Ronald Dworkin's 'Law as Interpretation' in *Texas Law Review* (1982), and Stanley Fish's *Doing What Comes Naturally: Change, Rhetoric and the Practice of Theory in Literary and Legal Studies* (1989). In her analysis of the literary and non-fiction works, Porsdam first surveys and queries particular aspects of jurisprudence and American legal culture before reading the specific works from the perspective of law in light of her theoretical findings. *Legally Speaking* falls within the field of law and literature, but it also reverses the usual approach – re-thinking law based on literary textual theory – and instead looks at American society and culture through a legal lens. This is a much needed transposition, since literary theorists have as much to learn from the study of law as legal scholars have to learn from literary scholarship.

Quantifiable indications of the importance of law to American society – the proliferation of lawsuits, the multiplication of legal codes, the expansion of the Justice Department, and an almost exponential increase in the number of lawyers – are sketched. More importantly, though, Porsdam investigates how, within an adversarial system of litigation and amongst the jurists who settle disputes, the interpretation of legal texts—federal and state laws, the United States Constitution—as well as of unwritten, judge-made law, the common law, is not only a continual point of contention in the resolution of legal conflicts but also a contributive factor in the creation and re-creation of American society and culture. In the process, *Legally Speaking* addresses a variety of points raised by issues of race and gender, community and individual rights, of what can be known and posited about a given society and culture and about the limits to that knowledge and those postulations.

Porsdam approaches law as a sociocultural artifact that bridges the cultural and the political, finding it a contingent set of doctrines that 'has fabricated its own identity and authority' and through its rhetoric 'managed to cover up how it works and manipulates' (237). During the 1980s and 1990s, law's contingency and manipulateness became more difficult to conceal as what Porsdam succinctly labels 'liberal legal discourse' was repeatedly challenged by the postmodern and multicultural Left, represented in part by advocates of Critical Legal Studies. 'Adherents of postmodern critical thought,' Porsdam points out, 'have done their best over the past couple of decades to raise our consciousness' and provide an alternative view of law (237). Their attacks and efforts to repel them have frequently been played out in debates over foundationalist and anti-foundationalist views of law. Often framed in terms of the ontological or epistemological status of interpretation, such debates have appeared repeatedly within the field of law and literature.

In her analysis of the positions Posner, Dworkin, and Fish have staked out in querying what law can learn from literary practice and theory, Porsdam foregrounds difficulties posed by the indeterminacy of textual meaning and the elusiveness of constraints on the reader in the process of interpretation. These are particularly important in the work of judges, whose interpretations, according to the ideals of the American legal system, should be non-arbitrary and reasonable; and all the more so since the interpretive aspect of law highlights its political aspects as well. 'The more familiar a lawyer gets with the thoughts and arguments of the various schools of literary thought,' she argues, 'the more obvious it becomes to him or her that propositions of law—or literature—are not just out there waiting to be found, but are the result of active interpretation on the part of the individual placing them' (232). That interpretation is a crucial process within the practice of law and adjudication is beyond contention; even strict constructionists cede the need for interpretation. Indeed, interpretation is especially important for the American judicial system because of its common law roots.

Porsdam argues that the peculiar status of the common law in American jurisprudence and the understanding of higher law and fundamental rights within that common law system have both served to unify Americans in the absence of more traditional national commonalities. In providing a unifying approach to resolving conflicts and administering justice, Porsdam argues, common law has made a significant

contribution to the formation of American society and culture. Because of this, Porsdam makes clear, anti-foundationalists were – and have remained – as hesitant as foundationalists to abandon the law completely. Both camps seem to accept that little else in American society and culture can unite Americans as law has done for more than two centuries. In American society and culture at the turn of the millennium, 'law has come to effect not only people's everyday lives but also their consciousness or mentality, their way of thinking about and formulating social, political, moral, and cultural issues' (2).

Liberal legal discourse has played, and continues to play, a considerable role in how such issues are broached, debated, and resolved. Ultimately, Porsdam critiques that discourse for its failure to expose its own contingencies, its own role in creating and perpetuating structures of power, and its own failure to resolve the inconsistencies of its promise and its practice. Nonetheless, she argues that whatever liberal legal discourse's shortcomings, it provides ideals such as individual freedom and sociocultural equality that are crucial to conceptions of justice in contemporary society and culture. In the end, then, liberal legal discourse emerges triumphant: Porsdam concludes that critical views and critiques of liberal legal discourse notwithstanding, the numerous proponents of alternative legal discourses often end up making what 'amounts to a leap of legal faith' (246). That leap consists of their challenging liberal legal discourse as far as possible before embracing (however reluctantly or partially) goals and tenets of modernist liberal legal discourse such as liberty and equality.

Law seems at first blush an unlikely institutional candidate for the source of sociocultural unity, bearing in mind the number of jurisdictions found within the United States. Given the wide range of concerns to American Studies, law provides an excellent framework within which to focus on various aspects of American society and culture. *Legally Speaking* investigates the promises and shortcomings of American law measured against issues of race, and gender that circulate with prominence in American Studies, and it opens the door to larger questions of American community and identity. That door, in turn, opens upon a theoretical expanse across which legal and literary scholars have waged various battles amongst themselves in an effort to determine whether or not one can coherently speak of the society and culture of the United States in the singular. *Legally Speaking* suggests one can and offers a novel approach to the study of American society and culture that goes beyond analyzing the presence of law in cultural artifacts to look at the crucial role played by law in the United States.