

INTERNATIONAL LAW AND THE HUMANITIES: DOES LOVE OF LITERATURE PROMOTE INTERNATIONAL LAW?

*Daniel J. Kornstein**

Re-examining a basic assumption is always useful. This is so because many serious errors can flow from an assumption uncritically accepted. An example may be the relationship between international law and the humanities, specifically literature. A seemingly taken-for-granted assumption, long and deeply held, is that a love of good literature has a cultivating and civilizing effect that promotes humanistic values transcending national boundaries, an effect that, if only indirectly, humanizes international law and prevents atrocities. Today we ask: Is this assumption correct?

History and current events supply many examples of apparently highly civilized societies—where the reading of good books has been much esteemed—that have violated international law and acted with atrocious inhumanity. This gap between soothing assumption and harsh reality more than justifies re-examination of our premise. We need to call into question, we need to dig away at the foundations, we need to critically study, some of our deepest assumptions about the virtues of a passion for great literature. If we at least start this process, we may be surprised, perhaps even shocked, at what we find.

We may discover, contrary to our implicit, firmly embedded notions, that devotion to literature is not enough by itself to advance international law, that in fact too much reading of literature can, paradoxically and counter-intuitively, hurt rather than help international law.

I.

To say “reading is good” is extraordinarily trite. It is the most obvious sort of conventional wisdom, a cliché on the order of “the world is round.” Ever since we were children, we have been told the benefits of reading, especially reading good literature. Books supply us with riveting, arresting, life-changing experiences and insights. They teach us about people, about human nature,

* Daniel J. Kornstein, a partner in the New York City law firm of Kornstein Veisz Wexler & Pollard, LLP, is a former president of the Law and Humanities Institute and current chair of the Law and Literature Committee of the New York County Lawyers’ Association. While in the U.S. Army during the Vietnam War, he helped prosecute one of the My Lai Massacre courts-martial. This article is a revised reproduction of oral remarks presented at the International Law Weekend 2005, held at the House of the Association of the Bar of the City of New York, from October 20 to 22, 2005

about social interactions, about emotions. As Thomas Carlyle put it, “All that mankind has done, thought, gained or been . . . is lying as in magic preservation in the pages of books.”¹

The supposed benefits of literature for international law are easily outlined. Great literature, it is said, humanizes the reader, it makes people more human. Literature can lead to personal transformation, self-knowledge, and rich development of the individual's inner life. Reading gives us revelation and insight, new ideas and new understanding. Good books have a capacity to criticize and challenge life as it is, and often to gesture toward something better. Literature is thus a force for betterment.

Like all art and music, like all the humanities, literature contributes to international law by tapping primal energies, expanding cultural perspectives, and breaking down barriers between nations and peoples. It is a great unifier that reveals and encourages interconnectedness, a broad, enlightened vision as a universal human right. It affects our emotions, makes people more empathetic, more aware of cultural variety and the nuances of individual motivation. Literature can enlarge our consciousness and help us identify with varied characters and ambiguous situations, with different people in faraway lands, with other people in our own land. The result should be a sense that we each bear moral responsibility for all forms of degradation—repression, coercion, exploitation, torture, prejudice—wherever they occur.

For support, one could string many apt literary quotations. A particularly appropriate line that leaps to mind comes from our own Walt Whitman's *Leaves of Grass*: “Whoever degrades another degrades me, and whatever is done or said returns at last to me.”² Or, from the same poem: “By God! I will accept nothing which all cannot have their counterpart of on the same terms.”³ Sentiments like these, spoken on behalf of “many long dumb voices,”⁴ come from writers and inspire readers without borders.

More generally, literature can provide unique insights in morals and ethics. It can enrich, refine and stabilize moral perceptions and sensibilities. It can teach about ethics in law and promote greater ethical awareness. The fully experienced literary masterpiece tends to liberate. Great literature is rarely repressive.

Many of these observations form the core of the modern law and literature movement. Behind that movement lies the idea that literature helps us

1. Thomas Carlyle, *Hero as a Man of Letters*, in *ON HEROES, HERO—WORSHIP, AND THE HEROIC IN HISTORY* 388 (Univ. of Neb. Press, 1966) (1840).

2. Walt Whitman, *Song of Myself*, in *WALT WHITMAN, LEAVES OF GRASS* 188, 210 (The Library of America, 1982) (1855).

3. *Id.* at 211.

4. *Id.*

understand the underpinnings of law. Literature provides sources of understanding about legal ideas that are more accessible than traditional sources of legal philosophy.⁵

Blessed with such benefits, a love of reading literature should, at least in theory, further international understanding and law. But the test is how the theory works in practice.

II.

Experience has not always borne out the benefits of literature for international law. Theory has not always matched reality. This unhappy track record raises the strange question whether the benefits of reading good literature—the benefits of culture generally—may have been oversold in terms of their humanizing and civilizing effects on the international stage.

We all know historical examples of societies famous for their distinguished culture that have engaged in war, persecution and torture. Germany in the 1930s and 40s is only the most obvious and oft-cited example. There are others, and, lest we become too self-satisfied, some of them uncomfortably close to home. Terms like “extraordinary rendition,” disheartening goings-on at places like Abu Ghraib Prison or My Lai, or current opposition to humane interrogation techniques—all these make us Americans uneasy. What does this mean for our assumption about the civilizing impact of a love of literature and the humanities?

One of the most perceptive and provocative comments on this point comes from eminent cultural and literary critic George Steiner, a man who has spent most of his life reading and writing about books. “The simple yet appalling fact,” wrote Steiner in his 1967 book *Language and Silence*, “is that we have little solid evidence” that reading good books does Avery much to enrich or stabilize moral perception, that they humanize.”⁶ He went on to lament, “[w]e have little proof” that such reading “in fact makes a man more humane.”⁷ In the end, Steiner, himself a champion of the humanities, found himself “unable to assert confidently that the humanities humanize.”⁸

To illustrate his point, Steiner cited the familiar example of World War II: “When barbarism came to twentieth century Europe,” explained Steiner, “the arts faculties in more than one university offered very little resistance, and this is not a trivial or local accident. In a disturbing number of cases the literary

5. See, e.g., JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (James B. White ed., 1973); RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITATURE* (1992).

6. GEORGE STEINER, *Silence and the Poet*, in *LANGUAGE AND SILENCE* 61 (McClelland & Stewart Ltd., 1967) (1958).

7. *Id.*

8. *Id.*

imagination gave servile or ecstatic welcome to political bestiality.”⁹ As a result, Steiner arrived at the sad conclusion that, “literary values and the utmost of hideous inhumanity could exist in the same community,” even “in the same individual sensibility.”¹⁰

These remarks from so cultivated and astute an observer as George Steiner are troubling and seriously undermine our assumption about love of literature and international law. And Steiner is by no means alone. Although he wrote almost forty years ago, his disquieting attitude has been echoing hauntingly ever since. “People to whom literature is important may prefer to obtain their knowledge of human nature from books rather than from living people,” commented Judge Richard Posner of the Seventh Circuit in his stimulating 1988 book *Law and Literature*.¹¹ “But whether books are superior to life as a source of such knowledge is an undemonstrated and not especially plausible proposition.”¹² Judge Posner questioned whether literature is an “essential source” of either “psychological or moral knowledge.”¹³

Similar questions rose to the surface in 1990, in connection with, of all things, a Supreme Court appointment. David Souter has always been an avid, voracious reader of good books—literature, history, philosophy as well as law. His fondness for books struck some people as a threat to the Republic and as a reason not to confirm him when he was nominated the Supreme Court by President Bush I. According to *Time* magazine in 1990, the “more serious question” about Souter was “whether a man who seems to prefer books to people can empathize with and understand the problems of ordinary people.”¹⁴ On the New York Times Op-Ed Page, a professor worried whether Souter’s reading of so many books precluded him from developing what all judges should have a: “genuine feel for the human condition.”¹⁵

Doubts about the virtues of reading have continued to be heard from some unexpected quarters. In 2003, in an essay in, of all places, the prestigious New York Times Book Review, Laura Miller complained, “I can’t say I’ve seen much evidence to support the notion that reading is good for you.”¹⁶ Less than a year later, the same publication ran a similar essay by Christina Noring entitled *Books Make You a Boring Person*. In that essay, Noring wrote of “a

9. *Id.*

10. *Id.*

11. RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* 303 (1988).

12. *Id.*

13. *Id.*

14. Margaret C. Washington, *An 18th Century Man David Souter is a Flinty New Englander with a Love of Books and a Reverence for Legal Precedent*, *TIME*, Aug. 6, 1990, at 19.

15. Roy L. Brooks, *What About Souter's Human Resume?*, *N.Y. TIMES*, Aug. 1, 1990, at A21.

16. Laura Miller, *The Great Books Workout*, *N.Y. TIMES*, Sept. 7, 2003, at 31.

new piety in the air: the self-congratulation of book lovers [B]ookworms have developed a semi-mystical complacency about the moral and mental benefits of reading.”¹⁷

What is happening here? Why is reading—one of our most highly prized values—coming under attack? These comments by Steiner, Posner, Miller and Noring are not anti-intellectual, philistine attacks on reading or on culture generally. They are serious, heart-felt, subtle, even profound criticisms, from leading thinkers and writers in respectable literary publications. They need to be explored a bit. Why does the flagship book review in America publish two essays, one in 2003 and one in 2004, questioning the benefits of reading? And how does this bear on international law?

III.

We can begin to offer at least a few tentative, primarily psychological explanations.

First is the possibility that too much reading can alienate us from life and experience. Reading, as happened with Emma Bovary, “can even spoil your appetite for real life.”¹⁸ Overmuch genteel reading of books can create a collective indifference. A genuine distinction exists between reading about something and actually experiencing or feeling it. Unlike books, human interaction supplies first-hand, face-to-face experience, which often makes a deeper, more emotional, more indelible impression than merely reading about the same thing. To suffer a broken heart is much more intense than to read about it in *Wuthering Heights*; to experience an unwanted pregnancy is a far cry from reading *The Scarlet Letter*.

Preoccupation with books, taken to an extreme, can distance readers from real people and juices of real life. This can dull how we react to real-life situations. “The focusing of consciousness on a written text,” Steiner explained, may “diminish the sharpness and readiness of our actual moral response.”¹⁹ If we “give psychological and moral credence to the imaginary, to the character in a play or a novel, to the condition of spirit we gather from a poem,” added Steiner, “we may find it more difficult to identify with the real world, to take the world of actual experience to heart.”²⁰

In a trenchant and powerful insight, one that lingers in the mind of any serious reader, Steiner noted, “The capacity for imaginative reflex, for moral

17. Christina Nehring, *Books Make You a Boring Person*, N.Y. TIMES, June 27, 2004, at 23.

18. Miller, *supra* note 16.

19. STEINER, *supra* note 6.

20. *Id.*

risk in any human being is not limitless.”²¹ Such qualities, rather, “can be rapidly absorbed by fictions.”²² The consequence could be, in Steiner’s words, that “the cry in the poem may come to sound louder, more urgent, more real than the cry in the street outside. The death in the novel may move us more potently than the death in the next room.”²³ Steiner’s conclusion, the far-reaching implications of which have yet to be fully appreciated, is absolutely devastating. “Thus,” he wound up his disconcerting discussion, “there may be a covert, betraying link between the cultivation of aesthetic response and the potential of personal humanity.”²⁴

Wow! Steiner’s pathbreaking comments, translated into everyday language, become the tremendously unsettling message that: The more you read, the more you may become an immoral or amoral monster because you are only a passive observer rather than an active participant; you are unfettered to real people and real life. An individual can be remarkably insensitive to others not only despite but precisely because of having studied stacks of novels.²⁵ This is revolutionary and deeply disheartening. Steiner’s trailblazing thesis ranks with those of Copernicus, Darwin and Freud in its power to overthrow generally accepted truths.

While not on the same level of Steiner’s devastating analysis, other possible drawbacks to overmuch reading exist. There is, for example, the danger of second-hand thinking and living. “By filling yourself up with too much of other folk’s thoughts,” wrote Christina Noring, “you can lose the capacity and incentive to think for yourself.”²⁶ Rather than becoming creative, compulsive readers may be rigid thinkers.²⁷

Books do not necessarily make for better people. “There’s not much indication, either,” wrote Noring, “that reading substantially improves anyone’s character, in fact, it often seems to have the opposite influence.”²⁸ Nor, she added, “does it sweeten the disposition.”²⁹ People who read literature do not appear to have higher ethical standards than people who do not.

There is also the danger of elitism. People who are passionate about reading tend to be well educated and somewhat intellectual. Books could thus be a status symbol, a way to distinguish those who regard themselves as

21. *Id.*

22. *Id.*

23. *Id.*

24. STEINER, *supra* note 6.

25. Nehring, *supra* note 17, at 23.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

cultured thinkers from the mere bourgeoisie or lower classes. The upshot may be a class attitude of disrespect or even resentment for those who lack the same devotion or who are more mesmerized by material things than by ideas. The tone of the anti-reading comments by Miller and Noring, for instance, carry a distinct whiff of snooty elitism, as if reading good literature should not be experienced—and can never be properly experienced—by the masses.

Whether we agree or disagree with these observations, they at least cast some doubt on the supposedly beneficial relationship between love of literature and its civilizing effect on international law.

IV.

What we have here is a nice little Hegelian dialectic. The thesis is that love of literature promotes humanistic values and therefore facilitates international law. The antithesis is that reading too many books may actually dehumanize and lead to violations of acceptable international behavior. The task now is to try to formulate a plausible, creative synthesis. Such a tentative synthesis might turn on the simple, fundamental concept of balance, of keeping the impulse to read within limits, of combining reading with life.

The problem may ultimately be one of harmony. The trouble may not be reading, but too much reading, reading at the expense of living, at the expense of human interaction. This may be an example where you can have too much of a good thing. Life is lived not only through books.

In this sense of a good thing that can be overdone, reading may have something in common with religion. Like reading, religion can be and has been an important force for betterment. Most, if not all, religions have an uplifting and comforting ethical and moral core. Taken to extremes, however, even religion can be dangerous. The world has seen too many wars, persecutions and intolerance in the name of religion—some of which are happening even today—not to be wary of religious extremism. Extremism in the defense of reading or religion may be a vice; moderation in the pursuit of both may be a virtue.

That at least seems to be Wordsworth's point about reading when he says, "Close up those barren leaves" and "Up up my friend and quit those books."³⁰ Book smarts only go so far. Reading without what Daniel Goleman calls "emotional intelligence" is counterproductive.³¹ Of course, reading is much too important, much too vital to trash the way Laura Miller and Christina Noring do, and one wonders if they themselves really believe what they say. In any

30. William Wordsworth, *The Tables Turned*, in *THE POETICAL WORKS OF WORDSWORTH* 481 (Thomas Hutchinson, ed., 1933).

31. DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* (1995).

event, here as well as elsewhere, the solution may be to search continuously for the right balance in one's life.

Exactly here is where lawyers play a special and prominent role. By virtue of their profession, lawyers have traditionally tried to balance the contemplative life with the active life, a life of study with a life of action. That is what lawyers do; they engage with life. Lawyers are scholarly types who give up the peace and quiet of the study for the rough and tumble of the courtroom, the back and forth of the negotiating table, the stresses and strains of real people's problems. It was Cicero, a Roman combination of lawyer, statesman and philosopher, who famously said, "The whole glory of virtue is in activity."³²

The proper combination, the right blend, of reading and living is what counts. One without the other, or too much of one and too little of the other, is not good. Louis Brandeis, for all his vast and compulsive reading, understood this point perfectly. The key to practicing law, he once wrote, "can never come from books." "The controlling force is the deep knowledge of human necessities . . . no hermit can be a great lawyer . . . a lawyer who does not know men is handicapped."³³ To avoid becoming stunted, we need human contact, from people, from life.

Justice Brandeis's comments apply equally to literature and international law. His perspective may point the correct way to thinking about literature and international law—one should read great books but one should also devote as much energy to living too and to dealing with real people. In the end, it all comes down to balance. We do indeed need to steer clear of any "semi-mystical complacency about the moral and mental benefits of reading."³⁴ And that final insight makes re-examination of our basic assumption worthwhile.

32. ROBERT A. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* 74 (1984) (quoting Marcus Tullius Cicero).

33. ALPHEUS T. MASON, *BRANDEIS: A FREE MAN'S LIFE* 79–80 (1946) (quoting Justice Louis Brandeis). Brandeis's comments about the balanced legal life resemble Flaubert's attitude toward writing. In terms of how much a writer should be involved in life, "Flaubert occupied a half-and-half position. . . . He put it best, perhaps, when he said that a writer must wade into life as into the sea, but only up to the navel." JULIAN BARNES, *FLAUBERT'S PARROT* 132 (Vintage Books, 1990) (1984).

34. Nehring, *supra* note 17.