ABSTRACT
This article begins to examine the turn to genre in works at the intersection of law and literature, broadly understood. It categorizes two examples of this turn, those of Lynn Hunt and Robert Meister respectively, as less and more critical turns to genre. The less critical turns to genre succumb more to the romantic fantasy of the completion of law by literature, whereas the more critical turns succumb less, encouraging or allowing us to experience ‘dissonance in the form one has become.’ The more critical turns to genre allow one to better articulate the critical work of law and literature, including the way we have been disciplined to separate ethics and aesthetics, sense and sensibility. I conclude by suggesting that the focus on genre may lead to a fruitful re-casting of law and literature as literacies and legalities.

KEYWORDS: affective training, critique, genre, human rights discourse, law and literature, legalities, literacies

INTRODUCTION
It is important to cultivate a literary sensibility in thinking about so-called things legal. In my own work, I have been inspired by James Boyd White’s invitation to see law as a form of ‘constitutive rhetoric’. This has meant, in both my research and my teaching, seeing law as ‘residing’ as much in language as in rules. It has meant trying to avoid what Desmond Manderson has aptly called the ‘discursive strip-mining’ that characterizes much law teaching and learning (‘Statuta’ 317). Discursive strip-mining is easily epitomized in the typical commercial casebook with its famous excerpts from both judicial decisions and scholarly articles, prepackaged bits of reason (or unreason). Most of all, I think, taking up White’s invitation has meant trying to see the ‘forms of life’ that are invoked and

1 By prepackaged bits of reason or unreason, I also mean to refer to the tendency to teach law students to find the ratio decidendi of a case (or to give it to them in a casebook) as distinguished from the obiter dicta, or what is said by the way. A.W.B. Simpson has gone as far as to say that the case method of teaching, so prominent in the United States (and Canada), would not be possible without the widespread student reliance on ‘commercially produced summaries of the law’ (7). Of course, in many law faculties, there is also widespread student reliance on summaries of courses produced by students.
evoked, presupposed and called forth, in the various ‘language games’ (Wittgenstein, *Philosophical Investigations*, aphorism 23) we play when we live a life of the law, whether professionally or not.

While I believe in the importance of cultivating a literary sensibility, I have also become suspicious of what Bernadette Meyler has aptly called ‘The Myth of Law and Literature.’ Rather than contributing to providing ‘a description of the qualities and necessary boundaries of law as an institution,’ those who subscribe to this myth display an ‘excessive faith in narrative’ itself (in the saving power of narrative *qua* narrative) and ‘a belief that literature provides the directions in which law *should* tend’ (Meyler 319). They do so by seeing one thing, ‘literature,’ as providing what is lacking – such as morality and emotion – in another thing, ‘law.’

In his recent *Kangaroo Courts*, Manderson makes a similar point, calling the idea that literature somehow ‘completes’ law a ‘romantic fantasy’ (17). Manderson’s work also considers the ‘mimetic fallacy,’ which leads us to focus on *what* a work says, rather than *how* it says. This misplaced focus, he argues, reveals literature’s ‘submission’ to law (11), the transformation of literature into evidence (10–15), which eliminates what is literary about it, including ‘questions of form, style, and genre’ (10). But does focusing on *how* a text says rather than merely *what* it says steer us away from succumbing to ‘a salvific belief in the capacity of literature to cure law or perfect its justice’ (9)?

In cultivating a literary sensibility, then, it is important to resist succumbing to the myth of law and literature. This thought came home to me most vividly through my participation in a research project entitled *Genres of Critique*, which, in part, explored the work of law and literature as a work of critique. I see critique as aiming at the identification – and experience – of our human finitude and of the various limits that define specific historical contexts. In this manner, critique flows both from some of the Kantian critical project – the identification, and perhaps testing, of limits tied to our finitude – and from its historical inflection by the likes of Friedrich Nietzsche and Michel Foucault. As Foucault puts it, critique helps people ‘begin to have trouble thinking things the way they have been thought’ (‘So Is It’ 457). In William Connolly’s words, critique – in the form

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2 Of course, the respective unity of these two ‘things’ should not be presumed. Nikolas Rose and Mariana Valverde are right, I think, in emphasizing that ‘there is no such thing as ‘The Law.’’ Law, as a unified phenomenon created by certain general principles is a fiction’ (545). On the scope and unity of ‘literature,’ see, e.g., Fowler, particularly ch. 1, ‘Literature as a Genre.’

3 Basically, Manderson accuses much law and literature work of not doing literary analysis at all, of not heeding what ‘[w]riters on literature have been saying . . . for a long time’ about the importance of ‘form and style’ (15). Of course, Lon Fuller’s work reminds us that sensitivity to questions of ‘form,’ including especially the form of ‘rules,’ is not new to so-called legal theory.
of genealogy – ‘encourages one to experience the dissonance in the form one has become’ (151). Critique almost necessarily engenders or lays bare crisis.4

As I participated in this project, I was struck by the importance of genre as a shorthand – genre merits unpacking, merits transformation into keyword (see Williams). This article aims to set the stage for such a transformation by beginning to explore the question of whether a turn to genre as a key category in one’s thinking necessarily allows one to avoid the myth of law and literature. It does so by considering turns to genre in works at the intersection of law and literature, and by categorizing them, perhaps a bit simplistically, as less and more critical turns to genre. The less critical turns to genre succumb more to the romantic fantasy, whereas the more critical turns succumb less. Indeed, a key difference between the less and more critical turns to genre is the degree to which they contribute to a more radical ‘description of the qualities and necessary boundaries of law as an institution’ (Meyler 319) by their willingness and capacity to encourage the experience of ‘dissonance in the form one has become’ (Connolly 151).

I have selected two principal examples of the use of genre drawn from the burgeoning literature on human rights and such things as ‘the novel’ – if not ‘the novel of human rights.’5 The pull of the myth of law and literature, of the salvific urge, may be particularly strong in human rights scholarship, which may itself be a genre. In my first section, I consider Lynn Hunt’s argument, in Inventing Human Rights, that the genre of the epistolary novel contributed to the rise of human rights by way of the ‘affective training’ such novels provided not only through their content but also through their form. I take her argument to be an example of the tendency within law and literature work to identify so-called progressive genres that allow for criticism of existing social structures – but without subjecting these progressive genres themselves to critique. Indeed, those who turn to genres because of their progressive nature nevertheless succumb to the romantic fantasy and tend to see literature in instrumental terms, as a means of moral edification.

In my second section, I examine one aspect of Robert Meister’s recent work on what he terms ‘Human Rights Discourse’ (2), that is, the dominant, post–Cold War conception of human rights. By way, in part, of analysis of the genre of social melodrama, his After Evil provides a more probing analysis of the kind of affective training associated with human

4 See Reinhart Koselleck’s Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society and, e.g., Mark Antaki’s The Critical Modernism of Hannah Arendt. Critique is etymologically related to crisis.

5 See Bystrom, who discusses James Dawes’s That The World May Know: Bearing Witness to Atrocity.
rights. In his account, the turn to sentiment and imaginative identification, perhaps core tenets or assumptions of a humanist strand in law and literature studies, do not necessarily serve ‘progressive’ purposes. In fact, they can serve both to delay the actualization of justice and to justify the violence tied to the preservation of the existing order. Moreover, as I suggest in my third section, Meister’s work raises the possibility that some genres – the realist novel, the sentimental novel, the romance (e.g., the genres to which Hunt – or Martha Nussbaum – turn) – ‘demand’ to be critiqued, whereas others – such as tragedy and, to stretch the idea of genre, modernist works and even anything by J.M. Coetzee – are themselves critical. As I have pursued elsewhere, the former genres reflect and enact fantasies – of sovereignty and mastery over the future, of access to the interiority of the self and others – whereas the latter call the fantasies into question and may therefore invite an experience of affective dissonance (Antaki, ‘Bridge’).

In this light, critiques of genre appear as indispensable to critique because there cannot be cognitive dissonance without affective dissonance. Indeed, as John Frow suggests, genres are ‘far from being “stylistic devices”’ (2). Genres both constitute and reveal an ethos, a way of being-in-the-world (see, e.g., Heidegger, Being). Precisely because their examination can shed light on this ethos, because it can do the work of world disclosure, it can also contribute to the work of critique (see Kompridis) by allowing us to question our way of being-in-the-world and to experience it as a problem. In exploring the work of law and literature as a work of critique, then, I see so-called law and literature as part of something broader which we might as well call ‘ethics and aesthetics,’ or the exploration of the relation, if not identity, of ‘sense’ and ‘sensibility’ – recall Ludwig Wittgenstein’s oft-quoted dictum that ‘ethics and aesthetics are one’ (Tractatus, aphorism 6.421).8

Throughout this article, the focus on genre serves to contribute to the elucidation of what Ravit Reichmann has called The Affective Life of Law. Psychoanalyst and legal historian Pierre Legendre suggests that we must stop seeing (legal) institutions in merely or mostly functional terms and start asking about the kinds of desire they instantiate. ‘[L]es constructions institutionnelles mettent en scène des figurations du désir,’ writes Legendre (27). Legendre’s own work calls into question a Western tradition of the ‘non somatic,’ that is, non-bodily, interpretation of texts. Perhaps by revealing our unconscious,9 shedding light on our habits, genres reveal,

6 On the ‘progressive’ turn to imagination in legal theory, see Antaki, ‘Turn.’
7 Perhaps the idea of genre can be stretched this way because it is so malleable. A genre is, significantly, not a class. See Fowler 37 and Derrida.
8 See generally the Winter 2004 special issue, Literature and Ethics, of Poetics Today (vol. 25, no. 4).
9 ‘Literature operates in psychoanalytic theory as the privileged site for uncovering the unconscious’ (Manderson, Kangaroo Courts 122).
offer, and structure different ‘attunements’ to the world, including different experiences and expectations of time and otherness (see Antaki, ‘Bridge’).

I conclude by suggesting that, rather than encouraging us to keep thinking of ‘law and literature,’ the focus on genre encourages us to think of legalities – of ways in which law is thought-felt-acted. Legalities are tied to literacies, to how and what we read, as well as to whether and how we are ‘willing and able,’ or unwilling and unable, to read (ourselves).

For instance, Joseph Slaughter, in his analysis of the Bildungsroman as doing the ‘sociocultural work that human rights law cannot do for itself’ (‘Enabling Fictions’ 1417), problematizes models of ‘sentimental’ or ‘humanitarian reading’ (Human Rights 325), calling for a new ‘literacy’ in human rights. Reframing ‘law and literature’ as ‘legalities and literacies’ points to the importance of what Victoria Kahn, in her reading of Thomas Hobbes’s Leviathan as an anti-romance, calls the ‘literary contract’ that Hobbes proposes to his readers, a contract that precedes and grounds the ‘political one’ (137). In other words, how we read, including how we knowingly and unknowingly accept or refuse the various invitations texts offer, may be more telling of our politics or our legal commitments than the politics we profess or the legal commitments we think we have. The critical work of law and literature, it seems to me, consists not in romantically completing law with literature, ethics with aesthetics, but in confronting how we have been disciplined to separate them, to separate sense from sensibility.

AN UNCRITICAL TURN TO GENRE

Just as Martha Nussbaum looks to the nineteenth-century, Anglo-American realist novel as a means to teach and actualize empathy and social justice, and thus to further the project of human rights, Lynn Hunt looks to the eighteenth-century epistolary novel because she claims it facilitated the rise of human rights. Just as Nussbaum turns to realist novels in Poetic Justice, Hunt purposively turns to the genre of the epistolary novel because of its form but also sees her argument as tied to ‘the novel’ more generally; as she says, ‘my argument could have encompassed the eighteenth-century novel in general’ (Inventing, 41). Mentioning three epistolary novels in particular – Jean-Jacques Rousseau’s Julie and Samuel Richardson’s Pamela and Clarissa – Hunt focuses on the ‘psychological effects’ of

10 With attunement, I have in mind the kind of thing Heidegger writes about when he writes of Stimmung. On boredom as a fundamental attunement, see, e.g., Heidegger, Fundamental Concepts.
11 Compare with Martti Koskenniemi’s emphasis on ‘sensibility.’
12 The idea of reading oneself is drawn from Hobbes. See Kahn 149 and Martel 49ff.
13 His exact words are ‘a full sentimental education in human rights literacy’ (Human Rights 326).
the novel (41). Beyond their plots and themes (which she nevertheless sees as important and discusses), she says, the epistolary form of these novels ‘encouraged a highly charged identification with the characters and in doing so enabled readers to empathize across class, sex, and national lines’ (38). Indeed, these novels ‘taught their readers nothing less than a new psychology and in the process laid the foundations for a new social and political order’ (39). While she recognizes that ‘everyone did not experience the same feelings when reading these novels,’ Hunt ultimately disagrees with the ‘clerics and doctors’ who worried about the licentiousness these novels ostensibly encouraged (48, 52). On the contrary, Hunt sides with the likes of Sarah Fielding, a novelist and the sister of novelist Henry Fielding, and ‘noted Swiss physiologist and literary scholar Albrecht von Haller’ (49), according to whom, in Hunt’s words, such novels ultimately contributed to making society ‘more moral’ (54).

Hunt argues, in her first chapter, that these novels, in large measure by way of their genre, participated in the criticism of an older order and the founding of a newer one, teaching readers to empathize and to appreciate the autonomy and interiority of others. The cultural work of these novels allowed for a broader deployment of a ‘universal’ empathy rooted in ‘the biology of the brain’ (Inventing 39). In other words, these novels provided the affective training that made possible or accompanied the spread of human rights. They therefore, presumably, provide some insight into the ‘affective life’ of human rights. The remainder of Hunt’s book moves away from, or builds on, the genre of the epistolary novel to focus on such things as the abolition of torture and the act of declaring rights. Hunt ties the abolition of torture to themes she introduces, or hints at, in her discussion of the epistolary genre: the ‘new language of sentiment’ (81), the rise of the ‘self-contained person’ (82), and the loss of ‘religious moorings’ (of ‘pain, punishment, and the public spectacle’) (95).

It is not an overstatement to say that the first chapter, and its title, ‘“Torrents of Emotion”: Reading Novels and Imagining Equality,’ tells the reader that human rights – and the broader story Hunt tells – were unleashed (my word) by the ‘torrents of emotion’ generated by these novels. As Hunt writes with regard to a review of Julie:

The Journal des Savants admitted that the novel had defects and some long-winded passages, but it concluded that only the cold-hearted could resist these

14 Of course, Nussbaum, too, is interested in ‘[l]iterary works that promote identification and emotional reaction’ (6). And Hunt is interested in the reality effect of epistolary novels (Inventing, 42).

15 For a few interesting pages on the question of novels, causation, and historical change, see the introduction of John Bender’s Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England.
‘torrents of emotion’ that so ravage the soul, that so imperiously, so tyrannically extract such bitter tears. (Inventing 36)

That human rights make ‘sense’ to us moderns, suggests Hunt, is tied to the new ‘sensibility’ that accompanied, and was in part produced by, these epistolary novels of the eighteenth century.

While he does not engage explicitly with genre, Samuel Moyn’s review of Hunt’s book paves the way for such an engagement. His review questions the way in which a dominant version of human rights appears to make sense by problematizing the story of sensibility and empathy that Hunt tells. He calls attention to her dual emphases on ‘the rise of sentiment purveyed by the novel’ and ‘a new view of the integrity of the body’ (‘Genealogy’ 26). These emphases are interrelated for Hunt: the new view of the integrity of the body was tied to the individuation of bodies and hence to the autonomy of human beings, which novels taught their readers to appreciate, if not respect. Moyn criticizes Hunt for confounding human rights and its rights talk with humanitarianism and, more important for our purposes, for idealizing humanitarianism itself (‘Genealogy’ 26). By calling attention to the dark side of humanitarianism, of a politics of ‘the heart’ (Arendt 91), of what Lynn Festa calls the ‘inter-personal relation’ of ‘sympathy’ (7), Moyn implicitly draws attention to the dark side of its literary analogue, ‘sentimentalism’ (Festa 7). Note the shift from the epistolary novel to the sentimental novel.

Moyn uncovers Hunt’s progressive and uncritical tendencies in part by invoking Hannah Arendt’s (very Nietzschean) critique of humanitarianism (see also Antaki, ‘Politics’). Moyn points out that ‘humanitarianism could underwrite violations of rights as well as their defense. Forty years ago, Arendt argued that the explosion of pity was the source not of rights but of terror’ (‘Genealogy’ 28). In On Revolution, Arendt had argued that ‘[p]ity, taken as the spring of virtue, has proved to possess a greater capacity for cruelty than cruelty itself’ (85). Whether or not pity leads to terror, as Arendt believed it had in the French Revolution, pity is a form of cruelty insofar as it is invested in the persistence of the suffering to which it claims to respond. Further, while Moyn does not emphasize this point,
pity contributed to terror, for Arendt, in part because of the Revolutionary emphasis on access to the ‘interiority’ of others – and hence on the vice of hypocrisy.  

Arendt associates the ‘torrents of emotion’ Hunt points to with the Revolutionary drive to unmask its opponents and traitors and hence with its impatience toward the masks of (legal) personality.  

Carla Hesse, in an article on the legal practices of the Revolutionary tribunal of Paris, turns to the practice of letters much more explicitly: she examines how ‘letters’ – recall the epistolary novel – served as evidence of guilt. Even ‘the mere fact of being the addressee of “counter-revolutionary correspondence” constituted a crime,’ writes Hesse in her account of the privileged place of the ‘seized private letter’ (637, 625). Written evidence generally, and letters specifically, materially and symbolically replaced the confession produced by torture, which the recent penal code had abolished. Hesse echoes Arendt in arguing that, when considering the model that guided the Revolutionaries during the Terror, Rousseau’s Social Contract ‘effaces itself’ behind his Julie. Julie, with its emphasis on ‘the submission of the private to the public,’ turns out to be Rousseau’s most Revolutionary work (Hesse 642). Moyn, Arendt, and Hesse reveal a whole new side, a dark side, to the ‘torrents of emotion’ – and their ‘tyranny’ – that Hunt celebrates. Getting at the interiority of others is constitutive of who we are – but in a much more complex way than Hunt suggests.  

Moyn’s critique of Hunt reveals her tendency to separate the good and bad aspects of modernity generally, and of genres specifically, such that she ends up arguing that the epistolary novel yielded ‘more morality’ rather than exploring more fully how it modulated and participated in an ethos, a way of being in the world. As Moyn points out, Hunt only ‘briefly acknowledges some of the dark sides of a culture of sentimental virtue like sensationalism and compassion fatigue’ (‘Genealogy’ 28). In the same vein, power has a vested interest in the existence of the weak. Moreover, by virtue of being a sentiment, pity can be enjoyed for its own sake, and this will almost automatically lead to a glorification of its cause, which is the suffering of others (Arendt 84). She goes on, ‘Terminologically speaking, solidarity is a principle that can inspire and guide action, compassion is one of the passions, and pity is a sentiment’ (84). For a good discussion of Arendt and the affective basis of human rights, see Birmingham.  

See, e.g., Judith N. Shklar’s Ordinary Vices, the first chapter of which is entitled ‘Putting Cruelty First’ and the second, ‘Let Us Not Be Hypocritical.’ As Shklar reminds us, ‘Originally, hypocrisy meant acting a part on the stage’ (47).  

Personality comes from per-sonare, ‘to sound through,’ and hearkens back to the masks actors wore in the theatre. Note the title of John Thomas Noonan’s Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks.  

As Hesse explains, from 10 March 1793 (following the trial of Louis XVI before the National Convention) an exceptional Revolutionary tribunal was instituted in Paris with a jurisdiction extending to all political crimes (630).  

All quotes from Hesse are my rough translations from the French.  

With whom she nevertheless disagrees.
with regard to the abolition of torture, Moyn reminds us that ‘while Foucault famously argued that this departure involved more insidious forms of control, Hunt defends it as a good thing’ (28). Focusing on Hunt’s uncritical tendency to think of sentiment progressively, Moyn writes,

In her last pages, Hunt acknowledges that the rise of humanitarianism and the upsurge of carnage are historical twins, thanks especially to the quintessentially modern penchant to sacrifice oneself and others in war waged for humanity’s sake or at least in humanity’s name. But she seems not to grasp that this admission amounts to a considerable qualification of her thesis, and she follows this insight with the anodyne reassurance that empathy ‘has become a more powerful force for good than ever before.’ (28)

If Moyn’s review paves the way for a critical take on Hunt’s engagement with genre, in the introduction to his The Last Utopia: Human Rights in History, he also implicitly labels Hunt’s work itself as belonging to a specific genre, that of ‘church history’ (6). The label of church history points to an audience composed of the faithful, already converted to a dominant version of the human rights project. Indeed, Hunt appears too devoted to a specific vision of the cause of human rights. As Moyn says,

Hunt’s book is for an audience for whom torture – and other visible state action – is the most grievous affront to morality. But humanitarian sentiment will seem less praiseworthy for anyone who suspects that the focus on visible forms of cruelty obscures structural wrongs that are less easy to see – even when they sometimes also cause the body to suffer, as with the pangs of hunger or the exhaustion of work. This is the sense in which Hunt’s narrative is structured to provide background and authority for 1990s humanitarian idealism – and its recent aftereffects. (‘Genealogy’ 26)

Church histories are ‘histories of the present’ but not in Foucault’s sense (Discipline 31; see also Roth). Hunt’s is a history that solidifies the present and its hold on us. It allows or encourages us to experience consonance rather than dissonance in the form we have become, to believe that we are as we ought to be and were meant to be. Hunt’s cultural history of human rights, while interesting, is not sufficiently critical and does not contribute as much as it could and should to a radical ‘description of the qualities and necessary boundaries of law as an institution’ (Meyler 319).

A CRITICAL TURN TO GENRE

As we saw, Moyn’s criticism of Hunt invites a focus on genre by allowing us to see how Hunt’s idealization of humanitarianism parallels her
uncritical treatment of genre. In his dense and magisterial book *After Evil*, Robert Meister explicitly raises genre and audience in his critique of what he calls human rights discourse. Human rights discourse is Meister’s name for ‘[t]he ethically centered approach to human rights that triumphed after the fall of communism in 1989’ and that ‘implicitly superseded the politically centered version of the Rights of Man that had been the focus of struggles for equality and liberty since the French Revolution of 1789’ (5). Meister’s human rights discourse may very well be what, in Moyn’s words, ‘Hunt’s narrative is structured to provide background and authority for’ (*Genealogy*’ 26). From this perspective, it would appear that Hunt is retrospectively claiming one genre, epistolary novels, for another, ethically centred human rights discourse. Meister’s turn to genre is meant to help us confront narratives such as Hunt’s that focus on the salvific power of sentiment. More pointedly, it encourages us to think about how and why such narratives have contributed to the ostensible authority of dominant versions of the human rights project.

The beneficiary of evil emerges as a key figure in Meister’s critique of human rights discourse. In the older human rights tradition of ‘justice as struggle,’ the victims were to fight on until they vanquished the perpetrators and obtained justice. This involved their identifying beneficiaries of evil with perpetrators, at least until the beneficiaries surrendered their ill-gotten gains. In the new, triumphant version of human rights, ‘justice as reconciliation’ (closely identified with the contemporary ‘techniques of transitional justice’ [Meister 23]), beneficiaries are distinguished from perpetrators. Reconciliation, which is meant to put an end to cycles of violence, involves leaving beneficiaries with their ill-gotten gains and hence identifying them more with ‘bystanders’ than with ‘perpetrators’ (Meister 64). A combination of an examination of genre and psychoanalysis allows Meister to think more carefully about the affective life of justice (and power) in the figure of the beneficiary, allowing him to identify and articulate desires and anxieties bound up with a ‘liberal project (wish)’ of human rights which ‘is inherently defensive with respect to an anxiety it cannot state in liberal terms’ (36).

Whereas Hunt turns to a novelistic genre to explain the rise of human rights, Meister suggests we think of so-called legal documents, documents of the new human rights discourse and its transitional justice, in terms of genre. In his discussion of the South African Truth and Reconciliation Commission (TRC) Report and TRCs in general, Meister strikingly claims that ‘[t]he liberalism of the TRC reasons in a different moral register than that of either retributive or distributive justice. It reasons in the moral register of melodrama’ (63). He explains, ‘[T]he narrative through which that truth is told assumes an audience that regards itself as sensitive to human suffering in just the way melodramatic fiction does’ (63). By drawing attention to the genre of transitional justice, its conventions, and
the audience it assumes, Meister hopes to articulate some of what transitional justice as a liberal project cannot state in its own terms.

Meister writes:

Who reads social melodrama, and why? Social melodrama is not written in the voice of the victim crying out against the oppressor and is not generally addressed to victims of the suffering portrayed. Instead, it is meant to be read by people who may want to feel bad about the conditions described but who would feel highly uncomfortable if the victim were portrayed as blaming them. In social melodrama the victim is always constructed as innocent (morally undamaged by suffering) so that the melodrama’s audience, which is likely to include beneficiaries of such suffering, can understand themselves as bystanders who are capable of feeling compassion without fear. (63–64)

Meister’s focus on the audience is important and recalls Festa’s observations regarding the kind of ‘highly-charged identification’ (in the words of Hunt [Inventing 38]) sentimental literature engenders. In her discussion of the ‘literary form’ of ‘sentimentality,’ that is, ‘a rhetorical structure designed both to incite feelings in readers and to direct those feelings toward their “proper” objects,’24 Festa argues that the ‘humanitarianism produced by the sentimental is minimal’ (7, 13). Indeed, ‘in many cases, the other with whom the sentimental reader identifies is not the victim but the community of like-feeling souls who weep over the victim’ (8–9). Similarly, in an article on the ‘chances of cultivating compassion,’ Kimberly Nance suggests that ‘not only is a sense of obligation to act only one of many possible outcomes of reading about human suffering, it is by far the least likely.’ Most often, she explains, readers can ‘restore justice’ by ‘changing their minds’ rather than ‘changing the world’ (163).

In Meister’s account, Festa’s ‘like-feeling souls’ are likely to be other beneficiaries of evil, and the melodramatic genre serves to reassure and comfort all of ‘us’ (beneficiaries) that we are, indeed, right-feeling and right-thinking folk – but without threatening us in any significant way. As Meister writes, ‘[T]he social melodramas of reconciliation allow continuing beneficiaries of injustice to pity victims without fearing them, because the victim’s grief is now disconnected from their sense of grievance’ (70). Moreover, ‘[a]s escapist entertainment, melodramas of social justice stir fantasies of rescue that reassure its audience of its innermost virtues’ (72). Indeed, ‘[h]umanitarian compassion … makes us feel good about feeling bad, creating the delusion that compassion is its own reward’ (73), that is,

24 She writes, ‘[U]nlike sensibility (which designates the susceptibility or sensitivity of a particular individual and is a quality of a subject), and unlike sympathy (which involves the capacity to feel for or empathize with another and is an interpersonal relation), sentimentality is a literary form’ (7).
that having the ‘right’ feelings is its own reward. Meister’s words recall Makau Mutua’s argument about the structuring metaphors of human rights – ‘savages,’ ‘victims,’ and ‘saviours’ – as well as the way in which this bundle of metaphors is ‘laced’ with ‘the pathology of self-redemption’ (Mutua 208). As Meister asserts, the ‘real aim’ of human rights discourse may be ‘to reassure the compassionate witness of his own redemption’ (78).  

By turning to genre, both Hunt and Meister aim to uncover and examine that which we take to be self-evident. Both look into how ‘[t]hat which is self-evident is evidence of the self’ (Manderson, ‘Statuta’ 324). However, whereas Hunt’s cultural-historical turn to the epistolary novel suggests that the novel helped to unleash a ‘natural’ empathic self to be embraced and celebrated, Meister problematizes the ‘self’ his examination of genre reveals. In his account, the ‘obvious’ is also confronted as something that is, literally, in our way (ob via). By his willingness and capacity to encourage the experience of ‘dissonance in the form one has become’ (Connolly 151), he contributes to a more radical ‘description of the qualities and necessary boundaries of law as an institution’ (Meyler 319).

Meister suggests that rather than unleash natural empathy, sentimental literature makes pain readable in a specific way, for pain is not naturally and obviously readable. If Wendy Brown observes that ‘human rights take their shape as a moral discourse centered on pain’ (453), Meister turns to genre to ask how they do so. In his account, in their disclosure of intense acts of torture and cruelty, melodramas perform ‘a partial victory over evil,’ ‘redeeming’ suffering and ‘vindicating’ victims (63). Vindication means closure. As he says, ‘Evoking physical pain as the clearest form of social injury thus becomes an ideological means to force closure on social grievance by allowing those whose pain has stopped to stand in for all who still suffer the consequences of an injustice that is past’ (65). Citing Lauren Berlant, Meister calls into question ‘[t]he notion that the true self is the self in pain’ as this notion ‘promotes the illusion that a nation can be built (or repaired) through empathic identification’ (66). He writes, ‘It is . . . not bodily pain itself but the narrative genre used to depict it that creates moral feelings in the audience’ (67). According to Meister, pain can be made ‘readable’ in a variety of genres, including melodrama, or even pornography (66–67). Making pain readable melodramatically protects beneficiaries by ‘neutralizing’ the threat posed by victims.

Meister’s use of psychoanalysis, and Melanie Klein in particular, also serves to problematize the ‘selves’ of human rights by showing how melodrama paints victims as morally innocent. Melodrama protects beneficiaries by ‘splitting the victims’ into good (reconciled) victims and bad (still struggling for justice) victims – as represented in the South

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25 ‘Exceptional figures’ (Meister’s words) who actually do amazing human rights work, then, allow us to live out our fantasies and take us off the hook, so to speak.
African context, for example, by Nelson and Winnie Mandela, respectively (Meister 34–37, 53, 59; see Ndebele). The idealized self is associated with the good victims, whereas the bad self, the one beneficiaries disavow, and his or her feelings of aggression are projected onto the bad victims. These bad victims become the carriers, so to speak, of the beneficiaries’ own feelings of aggression (Meister 35).²⁶

Meister’s problematization of human rights discourse also comes across in the broader story about modernity he tells or presupposes. Rather than embrace a church history of human rights and the simple story of secularization that tends to come along with it, Meister grasps human rights discourse as a ‘secular theology,’ as a revisiting of existential questions and burdens that lie at the heart or roots of a tradition of thought and of being (12). He writes that ‘[t]he main tropes of metaphistory – including revolution, reaction, redemption, reconciliation, return, and rebirth (as well as catastrophe, upheaval, transition, and emancipation) – are all originally theological, but not in the sense of being spiritual rather than secular. They are, rather, about the time of change, the rate at which time changes, and the time it takes to change’ (13). Indeed, the affective logic of social melodrama is tied to a ‘temporal logic’ of ‘buying more time’ for beneficiaries (13), buying more time for them ‘after evil’ (6) but ‘before justice’ (10). As we saw, melodrama buys more time for beneficiaries by allowing them ‘to pity victims without fearing them’ (70). Significantly, Meister understands transitional justice in terms of ‘[t]he locus classicus for thinking about a time between,’ that is, ‘Saint Paul’s description of the Church in the time between the Resurrection and Christ’s return in Judgment’ (10). Meister’s turns to an examination of genre, to psychoanalysis, and to Saint Paul combine to make him a probing reader and to avoid what we may call sentimental or humanitarian reading practices. At stake in doing so is critique, the experience of dissonance in the form we have become, the potential loosening of the present’s hold on us.

**Genres of Critique?**

Meister confronts the affective and temporal logics of human rights discourse by insisting that we revisit the sources or antecedents of these

²⁶ Pauline Wakeham echoes some of Meister’s argument regarding the splitting of the victim when she argues, in relation to various settings including Canada, that ‘Indigenous resistance has become caught between the categories of reconciliation and terror.’ As she writes, ‘Indigenous protesters ... become caught between threatening accusations of terrorist behavior and moralizing incitements to become good subjects committed to national rapprochement’ (24, 22). In Meister’s argument, the work of ‘splitting the victim’ is done by some dominant strands of human rights discourse, which are better brought into relief when human rights discourse is grasped as a genre. Within the genre of social melodrama Meister describes, good victims necessarily resign themselves to being reconciled; they ‘choose’ to be morally undamaged by the violence and suffering they have undergone.
logics in our religious (or secular) tradition. In one instance, he does so by way of Coetzee (to whom many literary scholars engaged in critiques of human rights turn). While he does not concern himself explicitly with the genre of Coetzee’s Disgrace – for example, Anker suggests it works in a ‘predominantly realist mode’ (256) – Meister explicitly describes it as ‘antimelodramatic’ (72).

For Meister, the novel’s antimelodramatic character is intimately bound up with its implicit revisiting of ‘early Christian writings’ that deal with ‘the moral valence of the sorrow that comes after renouncing sin’ (73). Meister’s argument that the social melodrama of human rights discourse makes us ‘feel good about feeling bad’ is tied to his treatment of acedia and tristitia by way of Walter Benjamin – acedia, ‘manifested in monks as a slowness to perform penitential tasks,’ is ‘the specific form of sin that a penitent commits if his sadness (tristitia) substitutes itself for work’ (Meister 73). For Meister, Disgrace is an engagement with the question of how to fight acedia: ‘acedia might be overcome by penitential works that do not require self-conscious identification with past victims, such as Lurie’s care for animals in the novel’ (74). Indeed, ‘[t]he treatment of animals is, for Coetzee, the paradigm of a moral difference between penance as an imperative to undergo sorrow and bearing compassionate witness as a way of feeling sorry’ (74).

Meister’s characterization of Coetzee’s Disgrace as antimelodramatic points to a broader tendency to identify some genres as worthy of being critiqued – for example, the sentimental novel, melodrama, romance, and the realist novel – and others as undertaking that critique. The idea underlying this broader tendency, I think, hinges upon affective consonance as compared to affective dissonance. Critique calls into question a taken-for-granted ethos or way of being in the world, along with the ‘scripts’ – for thought, feeling, (in)action – that come along with it, by producing dissonance out of its consonance. Meister turns to certain types of stories, and certain ways of telling them, to reveal that other sorts of stories (and other ways of telling) that resonate with us cannot be quite right. For example, the reader of Coetzee, like Meister, may find it harder to swallow the church history of human rights that Hunt professes, perhaps because Disgrace encourages the reader to call into question his or her own sentimentalism and tendency to ‘feel good about feeling bad.’

27 See, e.g., Elizabeth S. Anker’s ‘Human Rights, Social Justice, and J.M. Coetzee’s Disgrace.’ Anker states her argument as follows: ‘Disgrace exposes human rights to be indebted to an individualist logic, encouraging of possessive self-interest, grounded in reasoned abstractions that obscure ethical singularities, and premised on an exclusionary category of the human that denies society’s outcasts human rights protections’ (234).

28 But ‘mode’ is not ‘genre.’ As opposed to ‘genres,’ which can be named as nouns, Fowler says that ‘modal terms tend to be adjectival.’ As he says, “‘[C]omic’ is applied to kinds other than comedy, as when Emma is called a ‘comic novel’” (106).
In Meister’s work, Coetzee’s *Disgrace* emerges as a kind of diagnosis of, though not necessarily treatment for, a specific genre that ails us. More generally, Meister’s use of *Disgrace* points to what Fowler calls ‘antigenres,’ genres which emerge as ‘antitheses to existing genres’ (175). For instance, Fowler suggests, ‘early picaresque is itself an antigenre to romance’ (175). The reader of an antigenre may experience a kind of reversal or undoing of the genre that is countered. Moreover, the reversal or undoing of a way of being-in-the-world may come along with the reversal or undoing of a genre. Hunt’s story itself implicitly draws on the ‘epistolary novel’ as an antigenre that made possible new ways of being-in-the-world, and even laid the foundation for a new political order. However, her treatment of the way the epistolary novel extended natural empathy ‘naturalizes’ the ‘reality effect’ of the epistolary novel, such that the epistolary novel and the ethos to which it contributed need not themselves be critiqued.

If picaresque is an antigenre to romance, the ‘grand’ antigenres of our day appear to be tragedy and, in Fowler’s words, the ‘anti-novel’ engendered by literary modernism (177). On the one hand, these can be seen as countering specific genres, such as the realist novel and romance. On the other hand, they are, potentially and paradoxically, grander, and maybe even perpetual, genres of critique. That is, they respond to certain fantasies – of closure of the past and hence sovereignty over the future, of access to the interiority of others – that may come along with the human condition and that the ‘crisis of modernity’ brought or brings to the fore.

For instance, David Scott’s *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* performs a re-reading of C.L.R. James’s history of the Haitian revolution, *The Black Jacobins*, in order to undo belief in the necessity of ‘anticolonial longing’ or ‘anticolonial revolution.’ As he says, ‘[P]art of what is at stake is the problem of narrative . . . I am going to suggest that anticolonial stories about past, present, and future have typically been emplotted in a distinctive narrative form, one with a distinctive story-potential: that of *Romance*’ (Scott 7). To romance Scott counterposes tragedy, a ‘literary-philosophical genre’: ‘Tragedy questions, for example, the view of human history as moving teleologically and transparently toward a determinate end, or as governed by a sovereign and omnisciently rational agent’ (12). Similarly, in *Bound by Recognition*, Patchen Markell draws attention to how ancient tragedy (and tragic recognition, *anagnorisis*) was not simply a form of institutionalized storytelling which made possible a lasting narrative and reconciliation to past events but ‘also worked as a mode of critique,’ a critique of ‘the impossible Achillean pursuit of mastery and self-sufficiency’ (65).29

29 In my treatment of the metaphor of the book in the Epilogue to South Africa’s Interim Constitution, I read South African poet, journalist and writer Antjie Krog’s refusal to write a novel (as a way of ‘imagining blackness’) in her controversial *Begging to Be Black* as a
Many scholars who turn to literary modernism also see modernist texts as critiques of fantasies of closure and self-sufficiency. The critiques, however, cannot be ‘extracted’ from the texts because they are tied to experiencing the texts as performances. For instance, in his discussion of ‘servants as others’ in Coetzee’s early fiction, Derek Attridge suggests that ‘[i]f the ethical force of the work lies in its staging of otherness, its resistance to the drive to thematize, allegorize, and moralize, it is as an event that it makes itself felt’ (660). Echoing Attridge, Manderson says that ‘[f]or Lawrence, the novel attends to the singularity of human relations’ (Kangaroo Courts 93). Manderson emphasizes the ‘subversive performativity’ of D.H. Lawrence’s Kangaroo, which he also describes as a ‘therapeutic genre’ for Lawrence himself (Kangaroo Courts 161, 119). With the work of tragedy, of modernism, the politics of ‘recognition,’ of the successful identification of self and others, is experienced as dissonance, giving way, perhaps, to the possibility of the ‘acknowledgement’ of one’s human finitude.

For those who turn to tragedy and literary modernism, the import of these works is not simply a superior form of sentimental education. There is no redrafting of the salvific urge to complete or save ethics with aesthetics, or law with literature. Rather, the experience of the literary work is the experience of a singularity that throws the responsibility for reading back onto the reader but without reassuring him or her that he or she can bear it. If both Hunt and Nussbaum rely on the ‘reality effect’ produced by the novels to which they turn, if they tend to suppose that the reader will identify with this but not that character in this but not that way, those who turn to tragedy or modernist literature do so in such a way as to emphasize the impossibility of accessing ourselves, others, or the world, as they really are. In so doing, in emphasizing the limits of language and authority, they also raise much more directly the question of the ethics or politics of reading itself.

refusal of the so-called novel of human rights, the genre that the antigenres of modernism and tragedy critique. Her refusal, I suggest, is a refusal of a ‘human rights novel’ tied up with fantasies of knowing others and of achieving fully formed selfhood.

For example, ‘it is language which speaks, not the author: to write is to reach, through a preexisting impersonality — never to be confused with the castrating objectivity of the realistic novelist — that point where language alone acts, “performs,” and not “oneself”’ (Barthes 143).

The full heading from which ‘therapeutic genre’ is quoted is ‘Sub-text: The Novel as a Therapeutic Genre’ (119). In his treatment of literary modernism, Fowler writes of the ‘antinovel’ as one of the ‘vigoros genres’ of the ‘novel’ that continues to develop (178).

See, e.g., Cavell. Patchen Markell writes, ‘For him (Cavell), the important contrast is not between recognition and acknowledgement, but between knowledge and acknowledge-ment’ (34).

On Nussbaum in this regard, see Eaglestone 603.

On this point, Robert Eaglestone suggests that the more ‘deconstructive’ approach to ethics and literature (usually tied to modernism) produces a ‘negative version’ of the claims
CONCLUSION: FROM CRITICAL GENRES TO LEGALITIES AND LITERACIES?

At stake in much of the scholarly concern with genre, it seems to me, is the question of how and why we read. The modernist problematization of authority, authorial or other, extends to the authority with which readers invest themselves. This self-investiture of authority is a prominent theme in work on human rights. If Meister shows how melodrama presupposes an audience of beneficiaries affectively and politically invested in their own authority and security, Slaughter’s Human Rights Inc. similarly seeks to problematize the authority with which sentimental or humanitarian readers vest themselves. Slaughter draws attention to a ‘sentimental model of reading’ in which the humanitarian reader is the freely and fully developed human person who has acquired the capacity to recognize perhaps not the ‘full weight and solidity’ or ‘the reality of other persons’ but the abstract dignity of the human personality in both self and others, whatever its concrete ‘human variation,’ and who is therefore positioned to assist others with the realization of their own human personality and dignity. (325)

In Slaughter’s account, this ‘humanitarian reader’ is both the ‘product’ and reader of a genre, the Bildungsroman or coming-of-age novel, which itself has ‘generic debts to both picaresque and sentimental novels’ and narrates the story of a social outsider who acquires the personal agency to convert the picaro’s unbounded physical mobility into social mobility, and ... posits the cultivation of a democratic, humanitarian sensibility as the culmination of modern subjectivation. (42)

Taking on Richard Rorty, Slaughter writes, ‘[T]he engagement with sad stories cultivates the humanitarian disposition that represents the apogee of Bildung in the human rights teleology of personality development’ (Human Rights 324). The Bildungsroman, he specifies, is ‘exemplary in the degree to which its conventions overlap with the image of human personality development articulated by the law’ (4). Indeed, this genre ‘underwrite[s]’ the ‘tautologies’ of human rights law (e.g., human rights made by the likes of Nussbaum: rather than assert that their chosen texts contain moral lessons, they point to the impossibility of extracting these from texts. In opposition to these two approaches to ethics and literature, Eaglestone offers a third: the world-revealing character of literature, which he draws from Heidegger. It is in this third approach that Eaglestone believes we can understand Wittgenstein’s point that ethics and aesthetics are one and the same (605).
are the rights human beings have because they are human) and helps to make their ‘common sense compelling’ (85). Human rights, including their paradoxes and exclusions, make ‘sense’ to the extent that we exhibit the humanitarian ‘sensibility’ produced and naturalized by the Bildungsroman.

Echoing Meister on melodrama, Slaughter writes that a ‘sentimental model of reading has a tendency to become a patronizing humanitarianism that is enabled by and subsists on socioeconomic and political disparities’ (Human Rights 325). Accordingly, Slaughter calls for ‘a full sentimental education in human rights literacy’ (326). Such an education would uncover and confront the sensibility, and its generic constitution, that allows human rights to make sense, to be self-evident. It would involve ‘unlearning the self-congratulatory sense of benevolence (or noblesse oblige) that seems naturally to attend such reading acts of recognition’ of others as bearers of human rights (326). Such an education, to be gained by a non-sentimental reading of the post-colonial Bildungsroman, would also bring to the fore our status as ‘beneficiaries of the social, economic, and political dispensation of the world’ and make us more self-aware of how ‘we’ are their intended audience (326–27).

It seems to me that Slaughter is inviting us to see how, in Victoria Kahn’s language, a ‘literary contract’ underlies, and may be more important than, the ‘political contracts’ we think ourselves parties to. In her remarkable treatment of Hobbes and seventeenth-century contract discourse, Kahn reads the introduction to Leviathan as trying to ‘set up a contract with the reader specifying the protocols for interpreting Leviathan’ (149). As she says, ‘In the introduction to Leviathan, Hobbes made it clear that consent to the political contract depended on consent to a literary contract: a prior agreement about the dangers of romance, the limits of metaphor, and the right construction of analogy’ (18). A political contract will not make ‘sense’ unless the readers display the right ‘sensibility.’ Hobbes’s interpellation of his readers as political subjects depends on his interpellation of his readers as readers.

We contemporary readers, Slaughter intimates, are not aware of how our human rights literacies – including how we read ourselves – underlie and undergird human rights legalities, the mode of being of human rights.

35 Slaughter is much closer to Meister than to Hunt. His book is not a ‘euphoric celebration’ of human rights insofar as he expresses no more than a ‘cautious commitment’ to the human rights ideal (Human Rights 6). He argues that the Bildungsroman as a literary form and human rights discourse both naturalize the inequality that defines the human rights regime. What is more, Slaughter, just like Meister, appears to be concerned about the co-optation or demise of the Revolutionary project. The Bildungsroman ‘novelizes the German idealist theory of Bildung’ and is accordingly a ‘reformist rather than revolutionary’ genre (20, 28). Indeed, the Bildungsroman ‘filters that spirit of enlightenment [tied to the Revolutionary declarations] through the antirevolutionary conceptual vocabulary of German idealism’ (92). In other words, reconciliation drives the Bildungsroman.
We contemporary readers lack this awareness of the relation between literacies and legalities, because the mid-seventeenth-century debates Kahn examines produced us as well as ‘the disciplinary division between politics and literature’ (Kahn 21) – and we might add law and ethics to politics in her quotation. Indeed, she says, earlier readers were more aware of the interrelation of literary and political contracts than we are:

Early seventeenth-century writers and readers were aware that particular genres could be construed as beneficial social contracts or coercive ideological fictions. They were acutely aware of the role that genres played in the ‘criticism and complement’ of the Stuart Court. They understood the struggle over the cultural meanings of epic, romance, and tragedy as part of the ongoing political struggle. (18)

In Kahn’s story, the seventeenth century led to the split between politics, as a science, and its ‘poetics and passions,’ which were ‘relegate[d] to the new discipline of aesthetics’ (7). This split led to the ‘sentimental subject or effeminized man of feeling’ (7–8) so important to the ‘novel of human rights’ and to our discussion above. We live this disciplinary split insofar as we fail to see how we have been disciplined to separate sense and sensibility. The critical work of law and literature, it seems to me, consists not in romantically completing law with literature, which replicates the split Kahn describes, but in confronting how we have been disciplined to separate sense and sensibility.

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