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# *The Emperor of Ocean Park:* The Quintessence of Legal Academia

THE EMPEROR OF OCEAN PARK

By Stephen L. Carter

New York: Alfred A. Knopf, 2002.  
Pp. 657. \$26.95 Hardcover.

*Reviewed by Benjamin Barton*†

Think back to your first days of law school. Think of the shock of the Socratic Method and the complexity of the materials in your casebooks. Remember the authoritative timbre of your first professor's voice and the fear and awe she inspired. She had written articles and books on multiple topics. She was a national expert in law and [blank], and all you knew about [blank] was a one-semester class in college five years ago. She was a genius and rumored to be really, really tough. She religiously used the Socratic Method and knew more about the law than you would ever know (or, frankly, would ever want to know).<sup>1</sup> You were perpetually nervous and apprehensive, and for those first couple of months you studied hard, attended class, and diligently attempted to decipher the law's mysteries.<sup>2</sup>

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1. This account is not, of course, meant to be universal. Many, including Professor Carter, have noted a different student reaction to law professors of color. See p. 111 (describing a White student's insolent challenge to a Black professor, and attributing it to "perhaps even the unsubtle racism of the supposedly liberal white student who cannot quite bring himself to believe that his black professor could know more than he. About anything."); Brian Owsley, *Black Ivy: An African-American Perspective on Law School*, 28 COLUM. HUM. RTS. L. REV. 501, 515-20 (1997) (describing student disrespect for both Black and Indian law professors).

2. Some professors dislike teaching first-year classes because so much basic material and jargon must be covered. Others particularly enjoy teaching first-year students because they are enthusiastic, try

This story can have several endings. In one version, the professor taught you more than you ever thought you could know about legal reasoning and about how judges and lawyers think about complicated issues, and you mastered the subject itself. In another version, the professor proved as advertised—brilliant—but she was way too much for you and your classmates to follow. You all ended up purchasing commercial outlines, grumbling about being lost in class, and hoping, probably incorrectly, that knowledge of black letter law would help on the exam. For most students, the story ends up somewhere between these two poles. You somewhat liked the class, you learned a lot, but once you got the hang of the Socratic Method and the whole “hide the ball” thing, it seemed a lot less impressive. Why be frightened of the professor’s questions? Of course she knows all the answers and the students know none—she’s the professor!

Stephen L. Carter’s mystery novel, *The Emperor of Ocean Park* (“*Emperor*”), is reminiscent of the sometimes exhilarating, sometimes fascinating, sometimes disappointing, and sometimes frustrating experience of the first year of law school.<sup>3</sup> It is a novel by a law professor about a law professor,<sup>4</sup> and its structure, themes, characters, plot, and, most of all, its subtext, are all unmistakably the product of a legal academic. As such, *Emperor* is the perfect launching point for this Review Essay’s consideration of the character, predilections, strengths, and weaknesses of the modern law professor.

Professor Carter<sup>5</sup> is a law professor’s law professor: his writing, teaching, thoughtfulness, and scholarly interests reflect the best aspects of

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hard, and have not hit the brutal wall that mandatory first-year curves usually impose upon many students. At the University of Michigan Law School, Professor Yale Kamisar began my first-year Criminal Law class by gleefully and somewhat chillingly proclaiming that he “loves to mold the clay.”

3. This comparison to the first year of law school is not the scathing criticism that the many who dislike law school would infer. I greatly enjoyed law school and remember the ups and downs of the first year, warts and all, fondly. Moreover, as an artistic or commercial endeavor, one can hardly challenge the success of *Emperor*. The novel received a number of very favorable reviews. See, e.g., Jason L. Riley, *Ivy League Intrigue*, WALL ST. J., June 7, 2002, at W12 (“‘The Emperor of Ocean Park’ is an admirable debut.”); Jonathan Shapiro, *The Gilded Ghetto*, L.A. TIMES, June 2, 2002, at R6 (“Stephen L. Carter’s ‘The Emperor of Ocean Park’ is a remarkable debut novel.”). *Emperor* was a best seller throughout the summer of 2002, see *Best Sellers*, N.Y. TIMES, Sept. 8, 2002, § 7, at 26 (showing twelve weeks on the best seller list); John Grisham selected it for the *Today Show* book club, see Bill Goldstein, *TV Book Clubs Try and Fill Oprah’s Shoes*, N.Y. TIMES, Dec. 16, 2002, at C17; and it is being adapted for movie production, see Stephen Schiff, *All Right, You Try: Adaptation Isn’t Easy*, N.Y. TIMES, Dec. 1, 2002, § 2, at 28.

4. Nevertheless, in the lengthy and humorous “Author’s Note” at the conclusion of *Emperor*, Professor Carter specifically disclaims that the book is a “roman à clef on law teaching” (p. 655).

5. Among Professor Carter’s varied interests is the study of civility and incivility, see STEPHEN L. CARTER, *CIVILITY* (1998), and he has noted the inadvertent rudeness involved when a stranger uses one’s familiar name. See Stephen Carter, *Rudeness Has a First Name*, CHRISTIANITY TODAY, Oct. 22, 2001, at 108 (“I was raised with the belief that calling a stranger by his first name is a privilege, not a right, and it is available only if bestowed.”). In *Emperor*, the narrator notes with irritation an acquaintance’s use of his nickname without permission “in the manner of salesmen and politicians everywhere” (p. 432). Thus, this Review Essay will refer to *Emperor*’s author as Professor Carter.

our profession. Not surprisingly, then, *Emperor* represents what is good about legal academia, its gravitas and curiosity, and encapsulates the breadth of Professor Carter's brilliant academic career. It seamlessly blends Professor Carter's highly influential research and writing in areas as diverse as legal academia, judicial selection, race, and religion into a powerful, and at times gripping, novel. In fact, Professor Carter's scholarship, and now this book, has raised him to the rarest of heights: he is now considered a serious scholar outside of the confines of the academy.<sup>6</sup> He has demonstrated virtuosity and bravery across multiple styles of legal scholarship, from more traditional doctrinal work,<sup>7</sup> to remarkable interdisciplinary legal scholarship,<sup>8</sup> and even a somewhat unique combination of personal narrative and policy recommendations.<sup>9</sup> He has approached sensitive emotional topics like the role of race or religion in our society with temperance and wisdom and has presented unpopular and controversial views with a fair and even hand. Professor Carter's intellectual and narrative abilities translate well to fiction, and *Emperor* draws heavily from his scholarly works like *The Confirmation Mess*, *The Culture of Disbelief*, *Civility*, and *Reflections of an Affirmative Action Baby*. As in a successful law school class, he is able to bring together disparate disciplines (such as philosophy, theology, and semiotics) into a unified and remarkably interesting whole.

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6. This sentence originally dubbed Professor Carter a "public intellectual," but was changed out of respect for his disdain for that title. See Robert Birnbaum, *The Narrative Thread—Stephen Carter, Identity Theory*, at <http://www.identitytheory.com/people/birnbaum52.html> (posted July 14, 2002) (quoting Professor Carter as saying "The reason I don't like the term—I don't have a strong sense of offense—on campuses the term 'public intellectual' is often used to deride people who are not serious scholars, one is merely a public intellectual, you see, as opposed to a serious scholar."). Professor Carter's rejection of this appellation is, of course, further evidence that he truly is the law professor's law professor. "Public intellectual" is an honorary title, connoting general public interest in a scholar's academic work. Yet many of the academics fortunate enough to have earned the title would avoid the honor in favor of being considered a more serious (and presumably more obscure) scholar.

7. See, e.g., STEPHEN L. CARTER, *THE CONFIRMATION MESS* (1994) [hereinafter CARTER, CONFIRMATION]; Stephen L. Carter, *The Constitutionality of the War Powers Resolution*, 70 VA. L. REV. 101 (1984); Stephen L. Carter, *Parents, Religion and Schools: Reflections on Pierce, 70 Years Later*, 27 SETON HALL L. REV. 1194, 1194-1210 (1997).

8. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* (1993) [hereinafter CARTER, CULTURE] is probably Professor Carter's best known and most influential work. While not explicitly interdisciplinary in the "law and [blank]" sense, Professor Carter's work on the intersection between law, religion, and politics has been so broadly influential that he is the only nontheologian to win the prestigious Louisville-Grawemeyer award in religion. See University of Louisville, Grawemeyer Award—Religion, at <http://www.grawemeyer.com/winners/index.html> (last visited Feb. 9, 2004). In *The Culture of Disbelief* and other works expounding on law, culture, and religion, Professor Carter mixes in his own Christian testimony with Biblical quotations, theology, and more traditional sources like Supreme Court cases. His unique structure allows the form of the argument to inform and prove his main argument that current day politics, law, and academia should not discount or ignore sincerely held religious observance. See CARTER, CULTURE, *supra*, at 213-74.

9. Professor Carter's first book, STEPHEN L. CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991) [hereinafter CARTER, REFLECTIONS], is both a raw and personal account of life as a Black law professor and professional, see *id.* at 1-27, 47-50, 115-19, and a thoughtful and nuanced look at the costs and benefits of affirmative action.

Good law teachers and scholars present more than just the law, and in *Emperor* Professor Carter gives us more than just a mystery.

Yet *Emperor* also falls prey to some of legal academia's intrinsic weaknesses. Like much modern legal scholarship, it is at times too long, too detailed, and too involved. Further, like a problematic law school class, *Emperor* falls prey to some classic professorial foibles, and the book sometimes reminds the reader of classic Socratic overreaching.<sup>10</sup> The comparison to the Socratic teacher is particularly apt, because writing a good mystery is like teaching a law school class: the professor/author poses a series of questions to the students/readers to entice and teach them. If the questions are inscrutable, as with some in *Emperor*, it can choke the fun out of a good class/mystery.

For me, the process of reading the book, enjoying Professor Carter's insights, and yet remaining critical of some of the book's central mysteries helped crystallize many of the strengths and weaknesses of modern law teaching and inspired this Review Essay. The book itself casts a loving, yet occasionally caustic, eye on legal academia, and this Review Essay means to do the same. Part I offers a brief overview of *Emperor's* plot. Part II looks at some of *Emperor's* flaws, noting how they subconsciously, but perfectly, reflect some of the inescapable flaws in current legal academia. Finally, Part III looks at a few of *Emperor's* many assets and connects them to some of legal academia's undeniable strengths.

## I

### A BRIEF OVERVIEW

In *Emperor* Talcott Garland, an African-American law professor at an elite New England law school,<sup>11</sup> narrates a story of three interlocking mysteries. The primary mystery involves the death of Professor Garland's father, the former Judge Garland. The book begins as Judge Garland, a

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10. Many of this Review Essay's criticisms of *Emperor* arise out of its status as a legal mystery or thriller and out of the expectations and obligations that accompany that status. Professor Carter, however, has not entirely embraced that characterization. See Birnbaum, *supra* note 6 ("People describe [*Emperor*] as a mystery and in some sense it is. To me it's a love story."); Dave Welch, *Stephen L. Carter's Summer Job*, at <http://www.powells.com/authors/carter.html> (last visited Oct. 27, 2003) ("My goal all along was principally to tell the story of the family. I wasn't that concerned, as I began to search for a vehicle to tell the story, about genre."). Nevertheless, there is a certain *res ipsa loquitur* quality to the book: the central driving force of the book is the unraveling of the who, what, and why of a mysterious death; in other words, it is at heart a mystery.

11. There are indisputable surface parallels between Professor Carter and his protagonist. Stephen L. Carter is a Black Yale Law School graduate who worked briefly for a law firm in Washington, D.C., has taught law at Yale Law School since 1982, and is now the William Nelson Cromwell Professor of Law. See AM. ASS'N OF LAW SCHS., THE AALS DIRECTORY OF LAW TEACHERS 2002-03 354 (2002). Not only is Talcott Garland a Black law school professor at the New England law school where he earned his J.D., but he worked briefly in Washington, D.C. before becoming a professor (p. 12). Such parallels, however, are less interesting than the ways in which the book is so clearly the work of a law professor.

prominent African-American conservative, former federal judge, and disgraced Supreme Court nominee, dies of an apparent heart attack. This storyline allows Professor Carter to raise many of the novel's most provocative themes, including the intersection of race and politics, the relationships between fathers and sons, the relatively closed world of upper-class Black Washington families, and the crushing costs of overweening ambition.

The second mystery involves the potential nomination of Professor Garland's wife, Kimberly Madison ("Kimmer"), to a vacant seat on a federal court of appeals. Kimmer, a partner at a law firm, is in competition for the post with one of Professor Garland's faculty colleagues. In combination with the late Judge Garland's experience of failing in a bid for the Supreme Court, this storyline allows Professor Carter to dramatize and humanize what he has termed "the confirmation mess" surrounding appointments to the federal judiciary. It also forms the backdrop for Professor Carter's amusing depiction of faculty politics.

The last mystery concerns the state of the Garland-Madison marriage, and whether Kimmer has been faithful. This storyline allows Professor Carter to reflect upon modern relationships, religion, and what it means to be a faithful and forgiving spouse. In sum, *Emperor* undoubtedly creates powerful characters and moving storylines, while intimately discussing both race and religion. The novel's difficulties arise in the mysteries themselves.

## II

### THE LAW PROFESSOR'S UNCONTROLLABLE IMPULSES

Stephen Carter is a law professor first and foremost, and the style and approach of *Emperor* reflect some of the mistakes that law professors often cannot help but make. This Part chooses a few law professor characteristics and shows how they manifest themselves in *Emperor*. Part II.A discusses the strengths and weaknesses of the Socratic Method and explains how some common downsides are reflected in Professor Carter's novel. Part II.B does the same with legal scholarship, criticizing it and *Emperor* for compulsive over-inclusion.

#### A. *The Seductive Dangers of the Socratic Method*

The Socratic Method is the most unique and unchanging aspect of legal education.<sup>12</sup> First-year law students expect to be immersed in the study of law, but the Socratic Method requires them to learn and study the

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12. See Nira Hativa, *Teaching Large Classes Well: An Outsider's View*, 50 J. LEGAL EDUC. 95, 99 & n.11 (2000) (noting that the Socratic Method is generally unique to law schools); Richard Werner et al., *Teaching Law With Computers*, 24 RUTGERS COMPUTER & TECH. L.J. 107, 121 (1998) ("Law school instruction is unique in its extensive use of the Socratic method.").

law in an unfamiliar and disconcerting manner. Many students feel as if the professor's questions require mind reading rather than an understanding of the law, and at some point the students realize that they learn as much about the professor's own conscious and unconscious ideology as they do about the law itself. This revelation is generally beneficial; recognizing that professors, judges, and lawyers expound more than neutrally stated principles of law is essential to success in law school and in practice. Nevertheless, the centrality of a professor's demeanor and views to the success of the Socratic Method raises one of the great dangers of law teaching: Socratic classes can easily become all about the professor, and thus no longer about educating the students.

In recent years there has been a sizeable backlash against the Socratic approach.<sup>13</sup> Much of this criticism has focused upon the stultifying effects the Socratic Method has upon students. The main culprit is said to be the law professors' penchant for "hiding the ball."<sup>14</sup> Its defenders, however, claim that the Socratic Method forces students to work through legal doctrines on their own in ways that a lecture never does.<sup>15</sup>

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13. These criticisms take many forms. Scholars from the feminist and critical legal studies movements (among others) have noted that the current law school structure disenfranchises and alienates women and students of color. See, e.g., Jennifer Gerarda Brown, *Apostasy?*, 75 CHL-KENT L. REV. 837, 840 (2000) (arguing that the Socratic Method "leaves many women feeling silenced, devalued, and deadened, both intellectually and emotionally"); Lani Guinier et al., *Becoming Gentlemen: Women's Experience at One Ivy League Law School*, 143 U. PA. L. REV. 1, 80-81 (1994) ("The way things are done in law school (the Socratic method, issue-spotting exams, large classrooms, unpatrolled [sic] and informal networks) devalues and distorts those characteristics traditionally associated with women such as empathy, relational logic, and nonaggressive behavior."); Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547 (1993). Others have argued that law schools are too focused on theory and too divorced from teaching practical skills. The ABA's controversial McCrate Report argued for greater law school emphasis on skills training. See AM. BAR ASS'N, SECTION ON LEGAL EDUC. AND ADMISSION TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATION CONTINUUM (1992); see also Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23, 36 (2000) [hereinafter Rhode, *Legal Education*] (arguing that "most institutions do not focus sufficient attention on practical skills such as interviewing, counseling, negotiation, drafting, and problem solving"). Others have argued that the case method contains its own hidden, and harmful, ideology. See Philip C. Kissam, *The Ideology of the Case Method/Final Examination Law School*, 70 U. CIN. L. REV. 137 (2001) (arguing that current law school teaching and evaluating methods contain a hidden ideology and recommending a move toward a more "reflective" approach to legal education).

14. See Hativa, *supra* note 12, at 99 (reporting law student complaints that "[h]ide-the-ball is not efficient. They ask you questions and give you no answers."); Andrew J. McClurg, *The Ten Commandments of [The First-Year Course of Your Choice]*, in TECHNIQUES FOR TEACHING LAW 29, 31 (Gerald F. Hess & Steven Friedland eds., 1999) ("From a student's perspective, the Socratic method might be defined as follows: 'The professor hides the ball and then tries to embarrass students who can't find it.'"). Consider also Pierre Schlag's fascinating use of professorial games of "hide the ball" to help prove a deeper and more disturbing secret: there is no ball (or if there is a ball, no one can describe it). See Pierre Schlag, *Hiding the Ball*, 71 N.Y.U. L. REV. 1681, 1683-86 (1996).

15. See Philip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound, 1/31/90)*, 109 HARV. L. REV. 911, 915 (1996) ("The [Socratic method] as applied to the case method forces the student—and helps him—to decipher those materials, to reconcile (when possible) what may first appear to be inconsistent, to apply and appreciate the limits of apparently general principles, and to use

*Emperor* itself is not written in the Socratic Method, i.e., as a series of questions. Nevertheless, a mystery is in many ways a Socratic exercise involving a series of questions aimed to entice, educate, and occasionally confuse. The author helps the reader along with a series of clues, sometimes helpful, sometimes not, before finally revealing the true answer. This comparison elucidates the strengths of the Socratic Method: an expertly taught Socratic class carries the student being questioned, as well as the rest of the class, along on an intellectual search similar to the unraveling of a good mystery. The professor's questions help a student reason through a legal principle and engage the entire class. Great law professors can have an entire class on the edge of their seats, following along as their classmate finds the answers to the professor's legal conundrums. This level of teaching, however, requires a careful calibration by the professor: if the questions are too easily solved or the answers too readily given, the class learns less, and many will lose interest. If the questions are too hard, the class grows confused, and many will lose hope. In short, when utilized effectively the Socratic Method must be all about the *students*. Good professors show the class how smart the students themselves are, and create a trust relationship that results in mutual confidence.

### 1. *The Unanswerable Question*

Difficulties arise, however, because it is so easy for a professor to abuse her power and the students' trust in ways much more insidious than the straightforward cruelty depicted in *The Paper Chase* or *One L*.<sup>16</sup> Good Socratic teaching is about the students. Bad Socratic Method is about how smart the professor is.<sup>17</sup> There are a number of ways for the professor to fall into this trap. The most common, however, occurs when a professor

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analogies, judging better and worse ones."); Elizabeth Garrett, *Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools*, 1 GREEN BAG 2D 199, 201 (1998) (reviewing LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, & INSTITUTIONAL CHANGE* (1997)) ("Professors could lecture students about legal reasoning, but those who use the Socratic Method prefer to rely as much as possible on active learning.").

16. Professor Kingsfield, the classic "old white guy" professor, is the paradigm of the cruel Socratic professor. See JOHN JAY OSBORN, *THE PAPER CHASE* (1971); *THE PAPER CHASE* (Twentieth Century Fox 1973); see also SCOTT TUROW, *ONE L* (1977).

17. Interestingly, Professor Carter includes a scene where his protagonist bullies a law student who has stated a sweeping legal proposition (torts class is irrelevant because "the rich guys always win") with little underlying factual basis (pp. 111-14). Of course, reading this scene is amusing to professors who do not teach at Yale, because Professor Carter's example involves a student overstepping his bounds in challenging the professor, a situation rarely seen outside of Yale's (and similar institutions') hallowed halls. Most professors would do a small dance to be confronted by a student challenging orthodoxy and/or the professor. Indeed, most opportunities for bullying outside of Yale involve grossly *underprepared* students. Cf. Garry Trudeau, *Doonesbury* (Jan. 19, 1986) (displaying a professor's shock at hearing a student ask a question during a lecture and exclaiming, "A response! I finally got a thinking response from one of you, and I thought you were all stenographers! I have a student! A student lives!" The student responds by asking "What's the deal here? Am I in trouble?").

asks a student a question she cannot possibly answer. In these situations the benefit of the Socratic Method—the students' opportunity to reason through a complicated problem on their own—is eviscerated, leaving only the chance for the professor to impress the students with her intellectual superiority. Typically, the results are the opposite: a dissolution of trust between the professor and students.

*Emperor* suffers from this characteristic Socratic weakness. Throughout the novel, Professor Carter hides important balls from the reader. An example is Professor Garland's search for his father's "arrangements." Immediately following his father's death, a series of characters begin to ask him about these "arrangements." At first the protagonist thinks they are asking about funeral arrangements or the will, but it quickly becomes apparent that they are referring to something else. The what, where, and why of the "arrangements" make up one of the book's chief mysteries.

Nevertheless, the final resolution of this mystery relies wholly on a personal detail from Professor Garland's past that is not revealed to the reader until after the mystery is already solved (p. 627). Although the result is certainly surprising, the reader feels betrayed when she realizes that she has followed a mystery for 627 pages that she could not have solved on her own unless she remembered a single innocuous reference buried in a series of reminiscences in the first chapter.<sup>18</sup>

This style of writing violates the trust between the reader and the author.<sup>19</sup> A mystery should invite and challenge the reader to gather clues, reflect upon their meaning, and speculate about how they fit into the mystery as a whole. A good mystery matches a series of events, characters, and motivations to create multiple plausible scenarios in the reader's mind, and requires the reader to revise her understanding and theories up to the moment of resolution. The joy of the resolution is the "aha!" moment for the reader, when she lines up all of the clues and sees where she was right or

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18. After reading the book three times, I realized that the location of the "arrangements" is mentioned once at the outset of the book amongst a string of memories (*see pp. 3-6*), and again as the answer is discovered (p. 627). For those concerned that the mystery has been ruined, the reference is so obscure that I predict that you could mark these specific pages in your mind, read the book, and still have great difficulty guessing the answer.

19. The novelist and essayist Jonathan Franzen has described two models of fiction writing. One, the status model, involves writing as art for art's sake: whether the average reader is engaged or pleased is of no import, since what matters is the production of great art. The second is the contract model: the novelist and the reader enter into a mutually beneficial contract, where the writer promises to deliver certain goods to the reader, and "a novel deserves a reader's attention only so long as the author sustains the reader's trust." Jonathan Franzen, *Mr. Difficult*, *NEW YORKER*, Sept. 30, 2002, at 100. A mystery falls solidly into the contract model. A well-crafted mystery creates a trust relationship, a relationship that carries certain explicit and implicit duties which an author violates at her peril. *Cf.* MARK HADDON, *THE CURIOUS INCIDENT OF THE DOG IN THE NIGHT-TIME 5* (2003) ("In a murder mystery novel someone has to work out who the murderer is and then catch them. It is a puzzle. If it is a good puzzle you can sometimes work out the answer before the end of the book.").

wrong. When the solution lies outside the purview of the reader's knowledge, there is no "aha!" moment.

## 2. *The Siren Song of Indeterminacy*

Every Socratic first-year class includes the moment when a student recognizes that there may not be a correct answer to the professor's questions. There may in fact be multiple answers to any given question; some or all law is indeterminate. For students often raised on the warm certainty of high school and undergraduate lectures followed by multiple-choice exams requiring little more than the regurgitation of facts, this indeterminacy can be quite disturbing.

Law professors tend to love indeterminacy for both good and bad reasons. Some of the most influential trends in legal scholarship, from legal realism to critical legal studies, rest on the central recognition of an essential indeterminacy in the law.<sup>20</sup> Even those professors who dispute the claims of legal realism or critical legal studies still recognize and teach indeterminacy at some level or another. Most professors explain the many different plausible solutions to a legal problem in class and give tests with fact patterns purposefully based on uncertain areas of the law. Law students rarely receive an "A" for unequivocally stating "Plaintiff wins."

Recognition of indeterminacy is crucial to understanding and practicing law. Any law student who thinks the answers to most legal questions can be found by a simple application of the law to the facts will be a poor lawyer indeed. Nevertheless, few, if any, practicing lawyers will tell you that everything, or even most things, in the law are indeterminate.<sup>21</sup> To the contrary, lawyers of every stripe, from litigators to tax lawyers, make a living by predicting how the law applies to a specific set of facts. The true skill of being a lawyer is not the recognition of indeterminacy, but the ability to work through and around it.

Many professors dwell too long on indeterminacy and spend too little time on how to lawyer through uncertain law. Taking students through the looking glass of legal indeterminacy by using the Socratic Method is an impressive intellectual feat and is actually quite fun for the

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20. For a discussion of the legal realists, see JEROME FRANK, *LAW AND THE MODERN MIND* (1931); LAURA KALMAN, *LEGAL REALISM AT YALE, 1927-1960* (1986); K.N. LLEWELLYN, *THE BRAMBLE BUSH* (1930). For an overview of the critical legal studies movement, and a discussion of the centrality of indeterminacy, see MARK KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* (1987); ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986); Mark Tushnet, *Critical Legal Studies: A Political History*, 100 *YALE L.J.* 1515 (1991). For an article linking the two schools of thought, see John Hasnas, *Back to the Future: From Critical Legal Studies Forward to Legal Realism, or How Not to Miss the Point of the Indeterminacy Argument*, 45 *DUKE L.J.* 84 (1995).

21. This visceral empirical reality, along with the difficulty of creating any policy prescriptions based on radical indeterminacy, has been the central barrier to full acceptance of the more strident versions of legal realism and critical legal studies. See, e.g., RICHARD A. POSNER, *FRONTIERS OF LEGAL THEORY* 13-14 (2001).

professor.<sup>22</sup> However, without the recognition that most legal results are actually relatively predictable (and not uniformly unjust), the truly significant lessons of lawyering are lost.

This professorial over-emphasis upon the indeterminacy of the law is well reflected in *Emperor*. Throughout the book critical plot elements are partially or wholly obscured from the reader. The true identities and motives of several of the key players seeking the "arrangements" (they are represented by various henchpersons) are never revealed.<sup>23</sup>

The lack of clear and complete answers from Professor Carter is by design, as the indeterminacy of Professor Garland's search for answers, and more broadly his life, is a major theme of the novel. Multiple secondary characters lecture the narrator on the uncertainty of life: "Some of your questions have no answers Talcott, and some of them have answers you will never know. That is the way of the world, and our inability to discover all that we wish we could is what makes us mortals" (p. 496). At a later juncture a major player answers most of the narrator's questions with "possibly" or "maybe" and then explains: "Life is probability, Professor, not certainty" (p. 564).<sup>24</sup> Professor Carter returns to uncertainty in the moving coda to the novel, as the narrator reflects upon the bittersweet ambiguity of life and recognizes that "I have long been comfortable living without perfect knowledge" (p. 653).<sup>25</sup>

While indeterminacy in relationships is to be expected, uncertainty in the plot itself is off-putting to the reader; how can she participate in the

22. In fact, much of the great success of the legal realists and the crits arises because proving indeterminacy itself is highly seductive. Once one recognizes the essential epistemological uncertainty of the law in one case or area of law, there is a great compulsion to apply the same critical eye to other areas of the law until you are left with the extreme conclusion that everything is indeterminate. This seduction is behind much of the professorial over-reliance upon indeterminacy: it is much more fun to tear down illusions of certainty than to explain how to navigate uncertainty. Cf. Christopher L. Sagers, *Waiting with Brother Thomas*, 46 UCLA L. REV. 461 (1998) (defending the role and purpose of skeptics).

23. For example, all we learn about one group is the name of their henchwoman, that they are not the government, that they presumably are not organized crime, and that they dub themselves "the good-but-not-great guys" (p. 403). At the end of the book the narrator still does not know whether this group was "Another faction? Another mob? Another federal agency?" (p. 653).

24. Professor Garland well expresses the reader's frustration at these responses: "Maybe. Maybe. Nothing ever seems to be a hundred percent certain any more. All this time and I am still chwing on cotton" (p. 564). Nevertheless, Professor Carter sees to it that many of Professor Garland's queries are never fully answered.

25. The passage continues:

Semiotics has taught me to live with ambiguity in my work; Kimmer has taught me to live with ambiguity in my own home; and Morris Young is teaching me to live with ambiguity in my faith. That truth, even moral truth, exists I have no doubt, for I am no relativist; but we weak, fallen humans will never perceive it except imperfectly, a faintly glowing presence toward which we creep through the mists of reason, tradition, and faith (p. 653).

Another passage reads: "I expect little from life other than mystery and ambiguity, so perhaps it is too much to demand of my feelings about my father that they come suddenly into crystalline focus" (p. 615).

central mystery if there are *no* answers to some of her fundamental questions? *Emperor* thus reflects the classic professorial over-emphasis on indeterminacy. Sometimes law professors lose the forest for the trees: establishing the uncertainty of the law becomes more important than actually understanding and navigating the law.

### 3. *Teaching the Hard Way*

Another weakness of law professors is over-reliance on the Socratic Method. Whatever the method's strengths, students learn in different ways, and different teaching styles are necessary to keep both the professor and the students fresh. This is particularly true in second- and third-year classes, where the students generally have either mastered or tuned out the Socratic Method. Nevertheless, many law professors plow on in the one style of teaching they know.

Professor Garland's teaching approach is reminiscent of this tendency. He describes the "usual arrangement" he has with his students as follows: "they do not particularly like me, but they work their tails off in my class" (pp. 579-80). Regardless of the pedagogical efficacy of Professor Garland's arrangement, it reminded me of one of Professor Carter's more intriguing, and ultimately problematic, authorial choices. Unlike many legal thrillers,<sup>26</sup> *Emperor* is written entirely in the first-person singular. Professor Garland tells us the entire story from start to finish. This has many advantages, the most notable being the author's ability to share the depth and subtlety of Professor Garland as a character and the reader's opportunity to access the narrator's intimate thoughts.

A major disadvantage to the strategy is its effect on the relationship between the reader and the narrator. Professor Carter couples the first-person singular narrative with the use of frequent cliffhangers. On several occasions, Professor Garland ends chapters with major bombshells and then deliberately withholds the rest of the story from the reader for pages, and sometimes chapters.<sup>27</sup> Any mystery reader recognizes this as a classic page-turning strategy. Most mysteries are written in third-person

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26. See, e.g., MICHAEL CRICHTON, *DISCLOSURE* (1993) (third-person omniscient); JOHN GRISHAM, *THE FIRM* (1992) (same); JOHN GRISHAM, *THE PELICAN BRIEF* (1993) (same); BRAD MELTZER, *THE TENTH JUSTICE* (1997) (third-person singular); SCOTT TUROW, *THE BURDEN OF PROOF* (1990) (same). For notable exceptions, see JOHN GRISHAM, *THE RAINMAKER* (1995) (first-person singular); SCOTT TUROW, *PRESUMED INNOCENT* (1987) (same).

27. In some instances, the narrator actually tells the reader that he knows a critical piece of information without sharing the information with the reader. The worst example occurs on page 571, where a subchapter ends with the narrator declaring "I know who [critical plot element] is." Professor Garland does not fill the reader in, however, until page 627. In another example, he tells us on page 379 that he "know[s] who has read the missing report," but waits until page 421 to tell the reader. These cliffhangers are among the many conundrums that are difficult or impossible for the reader to figure out, as each requires the reader to catch and note tiny details hundreds of pages earlier. Such awkward puzzles only compound the reader's irritation with the narrator/Professor Carter.

omniscient, however, so we blame the book's author for our discomfort, not the central character in the book. Reading *Emperor* in first-person singular feels like sitting in a room with a friend who starts a conversation by saying, "I know who killed my father," and then continues on a different subject for an hour before disclosing the identity of the murderer. In short, the danger of first-person singular is that the reader blames the narrator for authorial choices and tricks, and, after a while, the reader occasionally feels like one of Professor Garland's students: we don't particularly like him, but we're working hard to follow his book.

#### 4. *Outside Expertise*

Another law professor foible is the imposition of obscure or inscrutable outside knowledge upon an unsuspecting class. As noted below, the current interdisciplinary movements in legal academia are among the academy's greatest strengths.<sup>28</sup> Lawyers must often acquire and translate outside areas of expertise, and an interdisciplinary approach to teaching trains students to do the same. Nevertheless, an interdisciplinary approach requires the use of an unfamiliar language and carries with it the implicit danger that the teacher will lose the students—making them passive or hopelessly confused. An interdisciplinary approach impresses the students with the breadth of the professor's knowledge, but it takes a deft and sensitive teacher to keep the students engaged.

*Emperor* suffers from a similar weakness. It utilizes the language and play of chess both thematically and as a key to unraveling the mystery of the "arrangements." In particular, Professor Carter introduces the reader to the world and vocabulary "of a different, more exclusive fraternity, the chess problemist" (p. 85).<sup>29</sup>

Problemist argot titles the book's three subparts (pp. 7, 217, 439); there is a chess epigraph; there are multiple "obscure chess puns"<sup>30</sup>; and a particular chess problem is at the heart of the mystery. The problem with *Emperor*'s reliance upon chess problemist language and themes is not that chess problems are, as Professor Garland himself sarcastically notes, "an area about which nobody cares" (p. 318). To the contrary, one of the great strengths of any fiction is its capacity to teach and inform, and a lot of the chess information is interesting.<sup>31</sup>

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28. See *infra* Part III.B.

29. "Problemists try to find new and unusual ways to use the fewest possible pieces as they challenge solvers to figure out how white can play and checkmate black in two moves, and so on" (p. 85).

30. Professor Garland proclaims that "[m]y father once proposed changing the name to The Three Fools, one of his many obscure chess puns . . ." (p. 198), and at one point Professor Carter uses the chess term *zugzwang* (p. 522), while naming a chapter *Zwischenzug*, another chess term (p. 522).

31. In fact, many legal thrillers are successful precisely because they translate the heretofore unknown world and language of the law for all types of readers.

The problem is that following some of the story requires chess fluency, and in a mystery it is disconcerting to be barred from “playing along” and solving the mystery because one lacks intimate knowledge of a technical subject. A chess problem is central to unraveling the mystery of the “arrangements,” and at one critical point in the novel Professor Garland uses his knowledge of chess to develop and implement a plan to end his search for the “arrangements” (pp. 533-35). The plan itself is quite complicated and reflects a great deal of thought, effort, and expertise on the part of Professor Garland and Professor Carter, but it leaves the reader as a passive spectator rather than an active participant. This denies the reader the “aha” pleasure of asking “what would I do in this situation” and comparing her plan with the author/protagonist’s. To be denied this pleasure not only frustrates the reader, but also makes her feel uninformed and inexperienced.

*B. Over-Inclusion and the Difference Between a Slice of Life and Life Itself*

The similarities between the failings of legal academia and the shortcomings of Professor Carter’s novel do not stop with analogies to the Socratic Method. *Emperor* also reflects many of the problems of the most common form of scholarly writing in law, the law review article. The most apparent malady is the tendency to include way more information than is necessary. *Emperor* suffers from the same problem.

Even a casual reader of an American law review will notice that law review articles are packed with multiple asides and superfluous references to other disciplines. The eclecticism of legal academia is, indeed, one of its greatest strengths, and to a certain extent the impulse towards over-inclusion is just a by-product of looking at legal concepts from multiple perspectives. Nevertheless, much of the scholarship in present-day law review footnotes moves beyond eclectic to outright babbling.<sup>32</sup>

The law professors’ tendency to include too much information may be the product of our unusual system of legal publishing, the student-run law review. The bread-and-butter publications of virtually every other academic discipline are peer-reviewed,<sup>33</sup> and this distinction has resulted in a torrent of criticism for legal scholarship.<sup>34</sup> Many professors blame ignorant

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32. I have actually received the advice that a good law professor “never has a thought that she does not publish.” That advice alone helps explain a lot about current legal scholarship.

33. The difference between student- and peer-edited journals has led some to respect less the work of legal academics. See Arthur D. Austin, *The “Custom of Vetting” as a Substitute for Peer Review*, 32 ARIZ. L. REV. 1, 4 (1989) (“The use of student edited journals as the main outlet for legal writing is an embarrassing situation deserving the smirks of disdain it gets from colleagues in the sciences and humanities.”); Gerald N. Rosenberg, *Across the Great Divide (Between Law and Political Science)*, 3 GREEN BAG 2D 267, 270-71 (2000) (describing the advantages of peer-reviewed political science journals over student-edited law reviews).

34. For an early and (in)famous example, consider Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936) (noting two problems with law review writing: “One is its style. The other is its

law review editors who over-edit work they do not understand.<sup>35</sup> Yet, the flip side may also be true. For the same reasons, or because of authorial intransigence, students are likely *under*-editing. Both phenomena explain why legal scholarship includes more information than is necessary: either the student-editors have asked for more background than necessary, or they have failed to cut out the fat.

Other factors may also contribute to this problem. Certainly one is the sheer number of law reviews in existence. There are so many law reviews that almost everything a professor writes can find a home somewhere.

Another may be the writing and acceptance process. Professors have every incentive to improve and edit their work before sending it out to law reviews for publication, but have little desire to follow or encourage editing after acceptance. Once an article is accepted, many professors rigidly oppose any substantial editing, i.e., the type of editing that would be necessary to make law review articles short and readable.<sup>36</sup> Moreover, much of the editing of law review articles that does occur involves shunting side-issues and academic asides to the footnotes, rather than excising them altogether.<sup>37</sup>

It is interesting to note, therefore, that Professor Carter has stated in several interviews that one of the biggest adjustments from academic to fiction writing was leaving footnotes behind.<sup>38</sup> Professor Carter ascribes this difficulty to a desire to demonstrate to the reader the source and

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content.”). For a cogent overview of a century’s worth of criticism, see Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 628-54 (1996). For other excellent recent criticisms, see Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 125-30 (2002); James Lindgren, *An Author’s Manifesto*, 61 U. CHI. L. REV. 527 (1994); Rhode, *Legal Education*, *supra* note 13.

35. See, e.g., Lindgren, *supra* note 34, at 527-29. Professor Garland himself expresses a version of this criticism (p. 229).

36. As a general rule of human nature, most authors (and especially law professors) do not like to lose any word or pithy observation they have written.

37. It should be noted that this author is unquestionably guilty of this exact crime. See, e.g., *infra* note 46 (blathering about Shakespeare’s tale of Henry VI); *infra* note 74 (digressing to express an opinion about law school’s over-emphasis on publication); see also Benjamin Hoorn Barton, *Why Do We Regulate Lawyers? An Economic Analysis of the Justifications for Entry and Conduct Regulation*, 33 ARIZ. ST. L.J. 429, 439 n.30 (2001) [hereinafter Barton, *Justifications*] (including a self-deprecating joke about my Toyota Tercel); Benjamin H. Barton, *An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation—Courts, Legislatures, or the Market?*, 33 GA. L. REV. 1167, 1214 n.179 (2003) [hereinafter Barton, *Institutional Analysis*] (expatiating with a superfluous but amusing anecdote about Abraham Lincoln).

38. Professor Carter himself admitted that it was difficult to give up footnotes in writing *Emperor*. See Dick Staub, *The Dick Staub Interview: Stephen L. Carter*, CHRISTIANITY TODAY, Sept. 2, 2002, available at <http://www.christianitytoday.com/ct/2002/134/21.0.html> (explaining that he missed footnotes and, as a result, his “author’s note at the end of the book is absurdly long. . . . I had to do that for my own comfort. I don’t think I could have written a novel, as a scholar, without making sure I got my facts right, and making sure the reader knew.”). The note itself is proof of legal academia’s indelible imprint on Professor Carter; who else but a law professor would proclaim his love and longing for lost footnotes?

correctness of a particular factual assertion. The style of *Emperor* suggests that Professor Carter misses the opportunity to digress.

One of the great strengths of the book is its ability to translate an interesting and unusual slice of life—a Black law professor’s life at an elite law school—to the outside world. The novel is rich with faculty politics and professors seemingly culled directly from their faculty offices.<sup>39</sup> Nevertheless, Professor Carter occasionally veers from a “slice of life” to a fulsome description of life itself, which is problematic in a 654-page mystery. We read along as Professor Garland checks his law school mail (p. 15), listens to his voice mail (p. 172), reflects upon campus parking (p. 157), goes to the gym (p. 11), and remembers the titles of various academic conferences (pp. 57, 189). Admittedly, this criticism is somewhat unfair, especially since other, less mundane, observations about the life of a law professor are among the more enjoyable aspects of the book. As a contracts teacher, Professor Carter must understand that although he correctly names *Emperor* a novel, a mystery carries an implied warranty of fitness for a particular purpose, and wasted space and pages of non-clues, while generally interesting, can detract from the plot.<sup>40</sup>

### III

#### FROM OLD SCHOOL TO NEW SCHOOL: LEGAL ACADEMIA’S GREAT STRENGTHS

Despite its weaknesses, *Emperor* reflects much of what is and has been great about legal academia. The book also reflects the talents and personality of its now famous author, Professor Carter. This Part discusses what these strengths are, and why it is no surprise that Professor Carter has done a particularly good job displaying them in *Emperor*.

Professor Carter’s scholarship may be categorized as both “new school” and “old school.” It is stylistically “new school” because his scholarship includes personal narrative. It is substantively “new school” because he has repeatedly dared to challenge the orthodox thinking on race and religion. Indeed, he has taken a fresh approach to topics as diverse as the role of anti-government dissent in a democracy,<sup>41</sup> the separation of church and state,<sup>42</sup> and the confirmation of federal judges.<sup>43</sup>

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39. An example is the scathing portrait drawn of the “free thinking” constitutional expert Marc Hadley (pp. 338-42).

40. Again, consider the implied contract between the reader and author of a mystery. See Franzen, *supra* note 19, at 100.

41. See STEPHEN L. CARTER, *THE DISSENT OF THE GOVERNED: A MEDITATION ON LAW, RELIGION, AND LOYALTY* (1998).

42. See, e.g., STEPHEN L. CARTER, *GOD’S NAME IN VAIN: THE WRONGS AND RIGHTS OF RELIGION IN POLITICS* (2000).

43. See CARTER, *CONFIRMATION*, *supra* note 7.

On the other hand, Professor Carter is also decidedly “old school.” He possesses what always was, and always will be, one of the great strengths of a legal scholar: a strong moral compass coupled with a reasoned and reasonable voice willing to discuss or debate any issue, but unwilling to bend on central matters of principle.<sup>44</sup> Professor Carter’s willingness to consider thorny, personal, and moral topics in his scholarship makes him particularly attractive as a public thinker in ways law professors once were but now seldom are.

American law schools were once the foremost repositories of legal morality and ethics. This reputation has eroded over the years. In fact, whether law professors should even discuss morality or ethics is a matter of much debate. Because Professor Carter answers this question in the affirmative, he explicitly hearkens back to the time when a law professor served as a teacher and a moral compass.<sup>45</sup>

Part III.A argues that *Emperor* embodies this choice and reminds its readers that a great tradition of the American legal academy is its ability to serve as the moral conscience of American law. Part III.B discusses how Professor Carter’s novel showcases one of modern legal academia’s great strengths: its unceasing desire to canvass, integrate, and apply other disciplines to the study of the law. If the first part of this Review Essay was an attempt to show how *Emperor* reflects the failings of legal academy, the second part seeks to show how it also reflects its successes.

### A. *Legal Academia as a Moral Compass*

For as long as there have been lawyers, there has been a great hue and cry over legal ethics (or lack thereof).<sup>46</sup> Over the last two hundred years bar

44. Only an academic of Professor Carter’s stature and demeanor could have written the books *Civility and Integrity*. See CARTER, *CIVILITY*, *supra* note 5; STEPHEN L. CARTER, *INTEGRITY* (1996).

45. For an example of this earlier approach, consider H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958), which explicitly appeals to moral reasoning to dispute the legal realist’s critique of positivism.

46. Consider, for example, Deborah Rhode’s quotations from Seneca and Plato concerning lawyers’ questionable ethics. See DEBORAH RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 1 (2000) (“Over two thousand years ago, Seneca observed advocates acting as accessories to injustice, ‘smothered by their prosperity,’ and Plato condemned their ‘small and unrighteous souls.’”). Other notable examples include CHARLES DICKENS, *BLEAK HOUSE* 355 (Signet Classic 1980) (1853) (noting that the English Chancery Court, and its judges and lawyers, were “held in universal horror, contempt, and indignation, [and were] known for something so flagrant and bad that little short of a miracle could bring any good out of it to any one”), as well as dictum from WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH* act 4, sc. 2 [hereinafter *HENRY VI*] (“The first thing we do, let’s kill all the lawyers.”).

It should be noted, however, that a sizeable number of attorneys and judges have argued that the *Henry VI* quotation is actually praising lawyers, as a critical bulwark against rebellion and chaos. See, e.g., *Walters v. Nat’l Ass’n of Radiation Survivors*, 473 U.S. 305, 371 n.24 (1985) (Stevens, J., dissenting) (“As a careful reading . . . [of *Henry VI*] . . . will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.”); DANIEL J. KORNSTEIN, *KILL ALL THE LAWYERS? SHAKESPEARE’S LEGAL APPEAL* 28-32 (1994) (arguing that the

associations and state supreme courts have reacted to professional dishonesty by pressing law schools into service. For instance, the American Bar Association (ABA) now requires law schools to teach a class in professional responsibility.<sup>47</sup> This development has proven controversial, and law professors debate whether to teach legal ethics as a narrow exercise in analyzing the ABA Rules of Professional Conduct, or whether to tackle broader questions at the intersection of law and morality.<sup>48</sup> Most choose the former.<sup>49</sup>

Some argue that the recent law school “professionalism” crusade is not only ineffective, but may actually be harmful. Widespread professorial skepticism about the regulation of lawyers<sup>50</sup> may itself engender cynicism amongst law students taking a mandatory “legal ethics” class. I have previously argued that focusing upon those entering the profession is a fig leaf for the failure to discipline *currently* licensed lawyers better, who are presumably the problem. This emphasis on barriers to entry may, in fact, harm consumers by further restricting access to the profession and inflating the costs of legal representation.<sup>51</sup>

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line should be seen as a compliment to lawyers); Chief Justice Larry Lehman, *Passing the Torch*, 25-JUN WYO. LAW. 13 (2002); Judge Jay Patterson, *Down With Casual Day!*, 65 TEX. B.J. 352, 354 (2002) (“We all realize that when the Shakespeare character said, ‘First, we will kill all the lawyers,’ he was addressing the fact that we attorneys are the lynch pins, the vital cogs in the machinery that ensures order, justice and liberty in a free society.”); Larry M. Wertheim, *The Law of “The Simpsons,”* 60 BENCH & B. OF MINN. 30, 31 (2003) (“Yet, the better reading [of *Henry VI*] is that, since the statement is made by a vicious rebel . . . it should be read as a compliment to lawyers.”). The context of the quote is during a speech by a rebellious commoner to his followers. The immediate context of the comment (between a laundry list of campaign promises for a post-revolution utopia and a description of lawyer deception and dishonesty), however, leads one to believe that Shakespeare did, indeed, mean to disrespect lawyers. See HENRY VI act 4, sc. 2.

47. For a description of the ABA requirement for the teaching of legal ethics, see Deborah L. Rhode & Paul D. Paton, *Lawyers, Ethics, and Enron*, 8 STAN. J. L. BUS. & FIN. 9, 34 (2002).

48. See, e.g., Christopher L. Eisgruber, *Can Law Schools Teach Values?*, 36 U.S.F. L. REV. 603, 603 (2002) (“If we want to deter people (including lawyers) from committing theft, fraud, or other crimes, a law school course is an ineffective tool for the task.”); Nancy B. Rapoport, *Presidential Ethics: Should a Law Degree Make a Difference*, 14 GEO. J. LEGAL ETHICS 725, 734-35 (2001) (“[W]e all know that the mandatory, single professional responsibility course in law school is not the best way to inculcate professional responsibility, and that teaching black-letter ethics rules, divorced from *real* situations facing *real* lawyers, leads to hypertechnical interpretations and a disconnect from the values underlying the ethics rules.”).

49. Teachers of professional responsibility feel stuck between a rock and a hard place. On the one hand, many professors (and students for that matter) are uncomfortable trying to tackle any true ethical or moral issues in a professional responsibility class. On the other hand, the professors recognize the hollowness of teaching professional responsibility as a black-letter class about the application of the ABA Rules. For more on these challenges, see Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals*, 39 WM. & MARY L. REV. 457 (1998); Symposium, *Recommitting to Teaching Legal Ethics*, 26 J. LEG. PROF. 101 (2002).

50. For a discussion of the disjunction in legal academia amongst the legal ethics “believers” and “heretics,” see Samuel J. Levine, *Faith in Legal Professionalism: Believers and Heretics*, 61 MD. L. REV. 217 (2002).

51. See Barton, *Justifications*, *supra* note 37, at 441-50; Barton, *Institutional Analysis*, *supra* note 37, at 1190-91.

Law professor discomfort with teaching ethics or morals, however, is a relatively new phenomenon. Law professors were the originators of organized American legal ethics.<sup>52</sup> Throughout the twentieth century, many law professors proudly and consciously taught ethics or morals along with the law and would likely argue that one could not be taught without reference to the other.<sup>53</sup>

There is a movement within current legal academia, spearheaded by professors of legal ethics, to return to a more explicit academic link between morality and law.<sup>54</sup> Although Professor Carter is not among these professors of legal ethics, his academic interests and writing certainly make him a kindred spirit.<sup>55</sup> Professor Carter is thus a throwback to a time when the words morality, law, and ethics inspired more than nervous giggles, smirks, and eye-rolling.<sup>56</sup>

*Emperor* is steeped in Professor Carter's thinking on the legal profession and society as a whole. Near the end of the novel, Professor Garland is asked to give the law school commencement speech. In the address he presents a powerful indictment of American culture and the current practice of

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52. The two most famous nineteenth-century works belong to Professors Hoffman and Sharswood. See DAVID HOFFMAN, FIFTY RESOLUTIONS IN REGARD TO PROFESSIONAL DEPARTMENT (1836); GEORGE SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS (1854). The ABA Canons, as well as most earlier state codes of ethics, owed a great deal to Hoffman and Sharswood's work. See GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING 13 (3d ed. 1999).

53. Consider, for example, the great legal philosophers of the mid-century, who freely (and without irony) considered the overlap, intersection, and differences between law and a common morality. See, e.g., LON FULLER, THE MORALITY OF LAW (1964); H.L.A. HART, THE CONCEPT OF LAW 155-212 (1961). Current legal philosophers continue to struggle with these questions, but by and large morality and ethics have been excised from the typical law school classroom.

54. This movement is usually couched in terms of linking legal ethics and a broader conception of "justice," but there is an inescapable moral component to the definition of "justice." For the most prominent examples of this movement, see DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1988); RHODE, *supra* note 46; WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS (1998). Other academics have focused less specifically on legal ethics, but have similarly advocated a return to a more thoughtfully moral approach to law teaching and lawyering. See, e.g., MARY ANN GLENDON, A NATION UNDER LAWYERS 177-253 (1994) (describing and decrying recent changes in legal academia); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993) (advocating that law schools and the legal profession return to the lawyer-statesman model of the profession).

55. In publicity interviews for *Emperor*, Professor Carter has expressed a vision of the legal profession quite similar to that of Professors Rhode, Luban, and Simon. See Birnbaum, *supra* note 6 (noting that nineteenth-century legal theorists considered the lawyer's primary duty to "the public interest," and arguing that "the lawyer is a human and owes a duty to humanity if nowhere else").

56. The irony, of course, is that the long and checkered history of misuse and abuse associated with "ethics" and "morality" has greatly contributed to the precipitous decline in their stock on university campuses and law schools. For example, law schools of the late nineteenth and early to mid-twentieth century were much more likely to appeal directly to an inherent morality or ethics; these schools were also much more likely to have an all-White, male faculty and student body. In fact, many have argued that the loss of a single, monolithic morality is a small price to pay for greater diversity of viewpoints among both students and professors. Professor Carter certainly recognizes these arguments in his scholarship, see, e.g., CARTER, CIVILITY, *supra* note 5, at 20-37, but he returns repeatedly to those central points of morality that bind all of us together and are undeniable.

law, and he issues a clarion call to avoid “the self-indulgence that is replacing both capitalism and democracy as the nation’s true ideology” (p. 582). Throughout the book Professor Carter peppers in similarly insightful comments on civility,<sup>57</sup> parenthood,<sup>58</sup> over-tolerance,<sup>59</sup> sexual promiscuity,<sup>60</sup> the nature of human beauty,<sup>61</sup> legal hairsplitting,<sup>62</sup> and the current obsession with shifting personal responsibility.<sup>63</sup> While readers may disagree with some of his points, it is refreshing and significant that Professor Carter addresses them in his fiction and his academic writing. Professor Carter presents a powerful counterpoint to academic efforts to present morally neutral thinking or to deride any common morality altogether. The book similarly challenges the reader not to rest on preconceived notions or received wisdom. Fortunately, Professor Carter avoids an overly sanctimonious tone by using a deeply flawed narrator who often fails to follow his own guidance and standards.<sup>64</sup> In sum, *Emperor* reveals one of the longstanding, and seemingly forgotten, strengths of legal academia: an academic unafraid to consider legal questions and their full moral, societal, and ethical underpinnings.

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57. At one point Professor Garland fails to call a White policewoman “ma’am” and wonders if he did not “[b]ecause she is white and I am black? Is rudeness the legacy of oppression? Downward, downward, civilization spirals, and all we Americans seem able to do about it is quarrel over the blame” (p. 125).

58. Professor Garland ruminates on:

the hopeless pain of the failed desire to give [his son] a normal childhood . . . whatever counts as normal these days. Two parents who actually love each other might be an interesting and radical beginning, but the mere suggestion that the traditional household might turn out to be good for children offends so many different constituencies that hardly anyone is willing to raise it any longer. Which further suggests, as George Orwell knew, that within a generation or two nobody will think it either. . . . Moral knowledge that remains secret eventually ceases to be knowledge (p. 228).

59. “I marvel at how a civilized world can make a virtue of having no judgment, teach it to kids, preach it from the pulpit” (p. 272).

60. “[L]ike most young adults of that era—or for that matter, this one—we were besotted with the notion, dangerously antithetical to civilized life, that obeying our instincts was not merely our right but our responsibility” (p. 290).

61. “He shuffled to the edge of the porch, coughing helplessly, the timbre thick and wet and physically disgusting to my child’s ear, for it takes many years on God’s earth to learn that what is truly human is never truly ugly” (p. 398).

62. “Legal hairsplitting of [language] tends to make the public angry, but it is often a good way to escape responsibility for breaking the law. Politicians are fond of it, except when a member of the other party does it. We law professors teach it to our students every day as though it is a virtue” (p. 435).

63. “In today’s America, and certainly in the Garland family, nothing is the fault of the person who does it. Everything is the fault of the person who blows the whistle” (p. 554).

64. The narrator’s father, the Judge, also presents a powerful counterpoint; throughout the novel Professor Garland quotes his father’s moral advice, all the while slowly discovering that his father’s life did not always match his words.

B. *Multidisciplinary Scholarship, Cross-Pollination, and the Delightful Mishmash of Modern Legal Scholarship*

*Emperor* reflects another strength of legal scholarship: its ability to study law through the prism of interdisciplinary study. Some have criticized the growing emphasis on interdisciplinary scholarship, or the “law and [blank]” movements.<sup>65</sup> Others argue that law professors, frequently only partially literate in a separate academic field, simplify, bastardize, or misunderstand the disciplines they purport to apply.<sup>66</sup>

These criticisms may have value, but they fail to grasp two points. First, while such scholarship may not always directly address a legal question or problem, it is incorrect to conclude that such scholarship is therefore “unlawyerly” or cannot help hone the skills of students or practicing lawyers. To the contrary, the ability to co-opt and use knowledge from other disciplines is a quintessential legal skill. Virtually every type of practicing lawyer will tell you that practicing law requires learning and assimilating a great deal of information about the outside world. For example, litigators must frequently acquire sufficient expertise in a business or scientific specialty to explain it effectively to a judge and jury,<sup>67</sup> and corporate lawyers must learn enough about a particular industry to perform meaningful due diligence.<sup>68</sup>

Clearly, acquiring a ready understanding of an unfamiliar field and then applying the law to that field is a critical legal skill. Legal academics are utilizing this same skill and instinct in interdisciplinary teaching and

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65. Such criticisms come from all corners. Judge Harry Edwards has famously argued that impractical interdisciplinary scholarship is dangerously divorcing legal academia from the profession. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992) (arguing that “significant contingents of ‘impractical’ scholars,” frequently of a multidisciplinary flavor, “produce[] abstract scholarship that has little relevance to concrete issues, or addresses concrete issues in a wholly theoretical matter. As a consequence, . . . judges, administrators, legislators, and practitioners have little use for much of the scholarship that is now produced by members of the academy”); see also Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: a Postscript*, 91 MICH. L. REV. 2191 (1993) (canvassing the reaction to his first article and reiterating his concerns). For one infamous example of scholarly excess, see Dennis W. Arrow, *Pomobabble: Postmodern Newspeak and Constitutional “Meaning” for the Uninitiated*, 96 MICH. L. REV. 461 (1997), a 228-page parody of post-modern legal scholarship.

66. See, e.g., Frank B. Cross, *Political Science and the New Legal Realism: A Case of Unfortunate Interdisciplinary Ignorance*, 92 NW. U. L. REV. 251, 252-53 (1997) (noting legal academia’s relative ignorance of political science’s “attitudinal model” of judging); Epstein & King, *supra* note 34 (arguing that most legal scholarship misunderstands and misapplies the meanings and methods of academic empirical research); Rosenberg, *supra* note 33, at 268 (“The problem is that many legal academics have ventured forth from this secure base into areas where they lack either expertise or training. While their desire to reach out to other disciplines, questions, and modes of analysis is commendable, on the whole they have done so without the knowledge or training necessary to do it well.”).

67. A lawyer who specializes in accountant malpractice once told me that he relishes the opportunity to cross-examine accountants because he “knows their business better than they do.”

68. Stockholders of Enron, insert cheap shot here.

scholarship. A student who can learn enough about law and economics to understand modern antitrust law, for example, is well on her way to becoming a successful lawyer in any specialized field.

Second, as many practicing attorneys will attest, part of the fun of being a lawyer is learning and mastering areas of expertise outside of the law. The process stretches the imagination and sharpens the intellect. Similarly, it is frequently more fun to write, and to read, interdisciplinary scholarship.<sup>69</sup> Admittedly, much interdisciplinary scholarship can be fairly criticized as “trendy,”<sup>70</sup> non-empirical,<sup>71</sup> useless outside of legal academia,<sup>72</sup> or simply poorly done.<sup>73</sup> Further, an appreciation of interdisciplinary scholarship should not suggest any disdain for more traditional, doctrinal scholarship. Instead, it simply recognizes that having more varied types of legal scholarship greatly improves the overall product.<sup>74</sup>

*Emperor* reflects the likable mélange of current legal scholarship. Professor Carter captures the inquisitive and acquisitive nature of the modern interdisciplinary law professor by packing a little bit of all of his academic work into his first novel. In a way, Professor Carter has produced the ultimate work of the law and literature movement; he uses his novel to present many of his theories on race, legal academia, religion, and culture.

Like some of Professor Carter’s scholarly work, the novel is a powerful and thoughtful statement about race in America. *Emperor* condemns the racial attitudes and policies of both liberals and conservatives. White liberals “are far more comfortable telling us what we need than asking us what

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69. Cf. Lawrence M. Friedman, *Law Reviews and Legal Scholarship: Some Comments*, 75 DENV. U. L. REV. 661, 664 (1998) (noting that “law reviews have opened their doors to ‘narrative,’ and, whatever the failings of this style, it is not usually boring”).

70. See, e.g., LAURA KALMAN, *THE STRANGE CAREER OF LEGAL LIBERALISM* (1996) (charting the history of “law and [blank]” movements becoming trendy).

71. See, e.g., RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 210-26 (1999).

72. See Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314 (2002) (arguing that interdisciplinary legal scholarship should be judged by its relevance to practitioners and judges).

73. See Robert W. Gordon, *Lawyers, Scholars, and the “Middle Ground,”* 91 MICH. L. REV. 2075, 2111 (1993) (deriding much interdisciplinary scholarship as “horribly pretentious and vacuous—schlock economics, schlock history, schlock philosophy, schlock poststructuralist theory”); cf. Charles W. Collier, *The Use and Abuse of Humanistic Theory in Law: Reexamining the Assumptions of Interdisciplinary Legal Scholarship*, 41 DUKE L.J. 191 (1991) (arguing that the tools applied via interdisciplinary scholarship are fundamentally unsuited to the study of law).

74. Another sensible quality control measure would be to curtail the emphasis on scholarship for tenure and prestige among professors. Most scholarship that is forced (i.e., motivated solely by a desire for tenure or to satisfy institutional requirements) is, not surprisingly, uninspired. Law schools do need to ensure that all professors are doing (or will continue to do) their fair share of work. Nevertheless, a system that encouraged all professors to pursue their true strengths and interests (e.g., teaching, public-interest litigation, bar service, institutional service) would be healthier and would likely improve the product of legal academia on all levels, including scholarship. Cf. John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135 (1997) (arguing for an overhaul of legal academia’s priorities and practices).

we want” (p. 206).<sup>75</sup> Worse still is the oppressive smugness, or hidden racism, of many White liberals.<sup>76</sup>

Professor Carter also details how African Americans tend to be more conservative than most Americans on religion, school vouchers, abortion, and school prayer (pp. 205-06). Nevertheless, these views do not translate into Republican votes because of a history of subtle and not-so-subtle racism.<sup>77</sup> Recalling his first book, Professor Carter also challenges the typical thinking on affirmative action. For example, one of the critical strengths of Professor Garland’s wife’s candidacy for the federal bench is that she is a Black female. The narrator makes it clear how uncomfortable Kimmer is to think that race or gender will affect the decision.<sup>78</sup> Earlier, the narrator argues that affirmative action may well have co-opted the “best among [the community’s] potential leaders,” transforming them “into young corporate apparatchiks in Brooks Brothers suits” (p. 21).

*Emperor* also provides a witty and accurate description of law teaching. The narrator gripes about teaching students to whom “the connection between the desire for the degree and the desire to understand the law grows more and more attenuated” (p. 12).<sup>79</sup> He also gently chides his

75. Professor Garland also describes “an elementary school that looks like a casualty of some Balkan war” and wondering “how many of my faculty colleagues would remain so adamantly opposed to voucher programs if their children were required to attend a school like this one. Alas, the education of the darker nation has become a side issue in contemporary liberalism” (p. 511).

76. For smugness, consider the White teachers at the narrator’s pre-school:

They are hopelessly well-meaning, in the manner of white liberals of their class, but because they believe they have transcended racism (which afflicts only conservatives) they remain blissfully unaware of how their disdainful elitism is perceived by the few black parents who can afford the school. Nor is there any point in enlightening them: their desperately sincere apologies would only make matters worse, signaling, as liberal apologies tend to, that the members of the darker nation are so weak of character that there can be no greater sin than insulting one.

White liberals, of course, believe themselves to be made of stronger stuff. That is why they so often support rules punishing nasty comments by whites about blacks but readily forgive nasty comments made by blacks about whites (pp. 178-79).

For hidden racism, consider this law student:

I glare at the cocky student and see, for a horrible moment the future, or maybe just the enemy: young, white, confident, foolish, skinny, sullen, multiply pierced, bejeweled, dressed in grunge, cornsilk hair in a ponytail, utterly the cynical conformist, although he thinks he is an iconoclast. . . . I read in his posture insolence, challenge, perhaps even the unsubtle racism of the supposedly liberal white student who cannot quite bring himself to believe that his black professor could know anything more than he. About anything (p. 111).

77. “Like the fact that it was conservatives who fought against just about every civil rights law ever proposed. . . . Like the fact that it was the great conservative hero Ronald Reagan who kicked off his campaign by talking about states’ rights in Philadelphia, Mississippi” (p. 206).

78. These feelings clearly evoke Professor Carter’s powerful description of the emotional and psychological baggage associated with affirmative action described in *Reflections of an Affirmative Action Baby*. See CARTER, REFLECTIONS, *supra* note 9.

79. In one particularly dark moment, Professor Carter voices the fears many law professors have when they consider the lives and goals of some ambitious law students (as well as our own):

[A]ll of them our students, all of them hopelessly young and hopelessly smart and thus hopelessly sure they alone are right, and nearly all of whom, whatever their espoused differences, will soon be espoused to huge corporate law firms, massive profit factories where

students for learning anything but the practice of law, with sarcastic references to overheard student conversations about “what Hegel would have said about some rule of the Securities and Exchange Commission” (p. 358) and “dialectical interstices” (p. 236). Professor Carter also voices the occasionally existential loneliness of legal scholarship, noting that “we labor on the trenches, filling the pages of the nation’s law reviews” (p. 229) and that “[w]e speak and write nonsense” (p. 239). Faculty politics are also a running and humorous theme.<sup>80</sup>

Nevertheless, Professor Carter’s essential love for legal academia shines through on multiple occasions, from a description of an inspiring class (p. 171), to the joys of personally searching out books in the law stacks (p. 460). The moment in *Emperor* that best encapsulates Professor Carter’s love for legal academia, however, occurs at a most unlikely time. The narrator is facing down a villain with a pistol who is explaining (in traditional mystery style) how he has evaded the authorities, and now means the narrator a world of harm. In response, the narrator writes, “Even though I am likely to be dead in about ninety seconds, the semiotician in me is impressed. All of forensic science is, in this sense, based on a classic misapprehension of cognition: the inability to distinguish between the signifier and the signified” (p. 543). Only a true academic would respond to a threat at gunpoint, during his last ninety seconds of life, by reflecting upon semiotics.

Lastly, *Emperor* is a rumination on public and private virtue, and the role of religious observance. Professor Carter has written extensively about the intersection between law, democracy, and religion, and this theme is echoed throughout the book. The book’s most admirable characters are deeply religious, from the Reverend Doctor Morris Young<sup>81</sup> to Rob Saltpeter<sup>82</sup> and to Dana Worth (a conservative lesbian Christian).<sup>83</sup> The

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they will bill clients at ridiculous rates for two thousand hours of work every year, quickly earning twice as much money as the best of their teachers, and at half the age, sacrificing all on the altar of career, moving relentlessly upward, as ideology and family life collapse equally around them, and at last arriving, a decade or two later, cynical and bitter, at their cherished career goals, partnerships, professorships, judgeships, whatever kind of ships they dream of sailing, and then looking around at the angry, empty waters and realizing that they have arrived with nothing, absolutely nothing, and wondering what to do with the rest of their wretched lives.

Or maybe I am just measuring their prospects by my own (p. 101).

80. At one point a faculty member derides a faculty candidate as follows: “I know Marc thinks she’s the next Catharine MacKinnon, but, in my opinion? She’s a zircon in the rough” (p. 462).

81. Dr. Young is characterized as “a throwback to an earlier generation of preachers” (p. 295), and Professor Carter gives him some of the book’s best lines, such as “Anger is not a right. It is an emotion” (p. 299). Dr. Young also proclaims that “[t]he trouble with rights . . . is that as soon as you have them, you think you have something of value. But all that has true value comes from the Lord. When you give a man a right, it is too easy to forget him” (p. 349).

82. A deeply religious Jewish professor of constitutional law who quips that “*the trouble with America is not that it is a Christian nation, but that too often it isn’t*” (p. 237).

book regularly raises biblical themes,<sup>84</sup> and many of the narrator's central struggles are over forgiveness.

*Emperor* thus shares the spirit of the best interdisciplinary scholarship: a voracious appetite for any and all insightful modes of analysis. Professor Carter's ability to meld the distinct and seemingly disparate parts of his novel into a powerful and moving whole is an achievement worthy of a professor who has similarly melded separate disciplines in his distinguished scholarly career.

#### IV

#### CONCLUSION

From a nascent law professor's point of view, the fun of reading *Emperor* was the shock of recognition—the novel is so clearly the work of a law professor. There are certain downsides that come with that recognition, but overall there is the enjoyable sensation of discourse with a familiar and brilliant old friend. Despite all of the gloom and doom surrounding legal academia and the legal profession as a whole, *Emperor* exudes a warm and hopeful feeling. A work so filled with creative energy, powerful observations, philosophical acuity, and all of old school legal academia's charms and foibles cannot help but inspire anyone interested in the field to join it or to labor on as part of it.

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83. "[S]he runs the local branch of the Pro-Life Alliance of Gays and Lesbians. *Everybody hates us for something or other*, she told me, quite pleased" (p. 355).

84. One of the book's central struggles is over the relationship between fathers and sons, and Professor Carter specifically cites to the story in Genesis of the disloyalty of Noah's son Ham (contained in *Genesis* 9:18-27) (p. 430). For other biblical references, see page 583 (discussing *Exodus* 16:1-36), and page 304 (considering *Ephesians* 5:22-24). Professor Carter's reference to *Ephesians* 5:22-24 is interesting because it references one of St. Paul's most controversial (and from many feminists' point of view, most damaging) writings. See *Ephesians* 5:22-24 ("Wives be subject to your husbands as to the Lord; for the husband is the head of the wife, as Christ is the head of the Church. As the church is subject to Christ, so let wives also be subject in everything to their husbands."). For an example of a feminist critique, see MARY DALY, *THE CHURCH AND THE SECOND SEX* (1968).