

# Taking Law Seriously

William Gaddis, *A Frolic of His Own*. New York: Poseidon Press, 1994. Pp. 586. \$25.00

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*A Frolic of His Own* is not merely the finest novel ever written about the Federal Rules of Civil Procedure . . . .

In an era when students who have not paid the dues of reading Eliot, Yeats, or even Wordsworth claim the privilege of post-modernist critique, William Gaddis's *Frolic* may prove temptation or corrective. It will prove temptation if its howling swirl of disconnected voices and its pronouncements about the reducibility of law to language receive false praise and are condescendingly characterized as postmodernist. It will prove corrective if viewed as a blessedly old-fashioned modernist novel, or, better yet, as an even older-fashioned *cri de coeur* for personal salvation, if not social justice, as a value still undeconstructed. Even more fundamentally, it will prove corrective as a display of linguistic art capable of anger, hysterical humor, and undeconstructable prose assertion.

As a first step, I will risk naive referentiality in the most literal sense: I will say what the novel is about. It is about an insanely neurotic man named Oscar Crease who, like other characters in the book, cannot overcome his conviction that the justice system is the best medium for winning recognition of his yearnings, beliefs, and claims of integrity. As observed by Oscar's sister Christina, the sweet-souled and tragically realistic demurrer to all overheated plaintiffs in the book: "the money's just a yardstick isn't it. It's the only common reference people have for making other people take them as seriously as they take themselves, . . . ."<sup>1</sup>

Though money may be the currency of law according to Christina, the message of the book is that law itself is the debased currency of all social relationships. Anyone who has worked in a civil court knows that the clerk's office regularly receives pleadings filed by

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1. WILLIAM GADDIS, *A FROLIC OF HIS OWN* 11 (1994).

paranoid schizophrenics who, using the most elaborately formal legal language, sue the Pope, the President, the Commissioner of the NFL, along with other parties, named and unnamed, who are most demonstrably engaged in a conspiracy against them. From Gaddis's perspective, the crazed regular courthouse pleader is not so much aberrant in his mental condition as representative of us all in his belief that the civil justice system is the best medium for all desperate hopes for recognition, respect, and solace. The civil complaint is thus the sonnet of our times. This belief is essentially the theme of *A Frolic of His Own*. Indeed, while normal conversation and casual affective language in the book may be stilted, stereotypical, and unexpressive, the loonier manipulations of legal jargon are its true poetry of feeling and idealism.

Oscar, who seems to be sitting around in his bathrobe, eating and drinking throughout the book, is a middle-aged, occasional history instructor and playwright living in a frumpy relic of aristocratic real estate on Long Island. He has become a professional plaintiff, but all his suits go awry. Oscar sues for personal injury damages because his own car ran him over, and learns more than he cares to about civil procedure and tort. More notably, he sues because part of his play, *Once at Antietam*, has been appropriated by a sleazeball filmmaker named Kiester for an extravagantly profitable junk film called *The Blood in the Red, White, and Blue*. Oscar's copyright suit leads him to ask his brother-in-law Harry Lutz to supply a lawyer. Deeply empathetic but compromised by his own role in the corporate legal world, Harry supplies a lawyer, Basie, who appears to be at the top of the class in terms of legal sophistication, even after he is exposed, or perhaps celebrated, as a mere actor playing the role of lawyer under false license.

Oscar is the ultimate plaintiff—in part because of the representative poignancy of his pleas in his magnificently absurd copyright infringement lawsuit, and in part because he is the ultimate defendant: he literally must sue himself. Oscar stood in front of his car while trying to start the ignition with a wire; once started, it ran him over.<sup>2</sup> Oscar's parlor is a vortex of wildly clashing legal voices, human and otherwise. Through him or near him are heard lawyers' sleazy settlement offers; judges' absurdly pompous yet elegantly articulate renderings of human (and canine) accidents in regal formalism; lawyers' torturings of formal language in deposition disputes beyond what is dreamt of in analytic philosophy courses; and lawyers' pleadings in which the baroque technicalities of the civil complaint

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2. GADDIS, *supra* note 1, at 18.

ironically capture the frustration of the all-too-human plaintiff. The copyright suit also invites a second clash of voices, the literary. Oscar's play is, most notably, itself a work of (legal) plagiarism, since by his own admission the play is an homage to Plato; less admittedly, it steals from Camus and Rousseau, and probably infringes Eugene O'Neill's work. It is also a contemporary Augustan *Dunciad* denouncing the Babel-babble of legalistic fools. It is a Sterne-like comic jaunt.

This book is far too devoted an homage to modernist giants to be demeaned as a postmodernist critique of the authenticity of the literary voice. More relevantly, the play within a novel is a terrific pastiche of modern literature. The melodramatic *Once at Antietam* is, at the very least, bad Faulkner. Maniacally interwoven through the other screaming voices in the novel, *Once at Antietam* becomes part of an Eliotic *Wasteland* and an exuberant Joycean satire—as edited by Nabokov. Or the play may be what we would have if Joyce were to capture a satirist capturing how Eliot, in his own homage to Dickens (“he do the police in different voices”<sup>3</sup>), would rewrite *Absalom, Absalom!* The homages here are respectful to the originals, as P. D. Q. Bach is to Johann Sebastian.

Gaddis also offers an ironic commentary on scholarship that views legal systems as the media for the expression of plural racial and ethnic voices; it is also a commentary on the view that law is redeeming and redeemable if the suppressive dominant discourse gives way to expressions of the wide variety of human needs and hopes, and to the telling of a wide variety of human stories. Within the admittedly narrow social band of Oscar's friends and family, Gaddis plays out the implications of the “plural voice” or “narrative” approaches to law by representing what a comic horror we might have if law served that very purpose.

Not only is *A Frolic of His Own* somewhat skeptical about postmodernist voice-pluralism, it is so old-fashioned a modern novel that it unabashedly has themes, and it is so well-wrought that these themes connect coherently with its plot and metaphors. Hence it certainly invites conventionally dry formal analysis or realism-based social analysis, for those who like that sort of thing. The book is about divided selves: Oscar sues himself; two substitute soldiers for Thomas, Oscar's self-representative figure-hero in the play, kill each

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3. HE DO THE POLICE IN DIFFERENT VOICES is the original title for the first half of *THE WASTELAND*, drawn from Dickens's *OUR MUTUAL FRIEND*. In Dickens's work, the character Betty Higden says this of the young fellow Sloppy, who, probably representing the young journalist Dickens himself, could mimic characters he heard in the London courts. *THE CAMBRIDGE COMPANION TO T. S. ELIOT* 213-14 (A. David Moody ed., 1994).

other at *Antietam*. It is about racial division turning on itself: the true elitist in the book is Madhar Pai ("Mudpye"), the East Indian Anglophile lawyer who insists that Oscar's play requires that the mysterious character Mr. Kane in *Once at Antietam* be portrayed as a Jew in order to heighten racial and ethnic tension. It is about whether art can be original, but without the chic baggage of deconstruction. It is about the degradation of art and justice in vulgar commercial images—and since it truly denounces these, it falls blessedly short of a postmodernist embrace of the commercial. It is about art and justice, law and opera. Most obviously, it is about the corruption of the ideal and the aspirational by the vulgar. The lunatic obsessives in the book, and the lunatic obsessions of Oscar in particular, are "authentic"—or, even better, truly sincere.<sup>4</sup> The obsessions destroy humanity, but they thereby somehow affirm the nobility of both destroyer and destroyed.

The brooding omnipresence in the book is Oscar's 97-year-old father, Thomas Crease, judge and son of a more famous judge who served with Holmes both at Ball's Bluff and on the Supreme Court. The younger Judge Crease reaches back spiritually (and indeed physically) to the Holmesian heyday, yet he is still a candidate for elevation to the Second Circuit. He has lived long enough to be denounced by a truly postmodernist Republican demagogue who believes that overturning a jury verdict is an assault on states' rights (but who is mainly angry because Judge Crease's theory of proximate cause in tort explicitly excludes "Acts of God"). Judge Crease somehow blends into Holmes himself as a distant, aloof figure, available to his progeny only through the agency of his clerk. The Holmesian-style wisdom partly serves to affirm a Darwinian view of law, whereby individual yearnings may have to be suppressed to serve utilitarian ends, yet it also serves a moralistic and admonitory role, denouncing the crass, selfish instrumentalism of the contemporary legal system. Oscar yearns for fatherly protection, but all he receives in the end is a modest bit of help in legal maneuvering: Judge Crease violates all rules of role propriety by helping to write the brief that wins Oscar his appeal on the copyright suit in the very court to which the judge still aspires.

Perhaps the best lawsuit in the book is that adjudged by Judge Crease, *Szyrk v. Village of Tantamount*, in which a vain sculptor's metallic contraption has accidentally trapped a dog. Judge Crease indirectly decrees the dog's death when he grants a prohibitory

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4. These words are used in the interesting senses found in LIONEL TRILLING, *SINCERITY AND AUTHENTICITY* (1975).

injunction against the Village's First-Amendment-threatening effort to undo the sculpture in order to let out the dog. Just as Oscar ultimately sues himself, the parties in this lawsuit effectively end up suing themselves: the village at one point calls for preservation of the sculpture for its tourist value even when the sculptor himself wants it dismantled. From his Holmesian-Olympian perspective, Judge Crease takes a playfully condescending view of the notion of theological forces in the law. In Judge Crease's magisterial discourse on proximate cause, he cites testimony quoted in an earlier case: "God struck that (expletive) pile of (expletive) with his good old lightning because it's a (expletive) abomination on this beautiful land the Lord give us here . . . .":<sup>5</sup>

By "an act of God" the law denotes a natural and inevitable phenomenon occurring beyond human origin and intervention. . . . On the other hand the proceedings in the case here under appeal were only further inflamed by the brief submitted by an ironically labeled amicus curiae on behalf of cross-claimant Mr Szyrk quoting from the writings of E M Cioran "[c]ontemplating this botched Creation, how can we help incriminating its Author, how—above all—suppose him able and adroit? Any other God would have given evidence of more competence or more equilibrium than this one: errors and confusion wherever you look!"

. . . . With all respect due the parties, the jury, the God fearing community, and the common man of which it seems to have more than its share and over half this country's population planning an afterlife in the felicitous company of Jesus and even God himself, belief in God has neither bearing upon nor any relevance to these earthbound proceedings. In short, He may enjoy as much room in your hearts as you can afford Him, but God has no place in this court of law.<sup>6</sup>

As Harry Lutz wisely, sadly, and impotently notes, the legal doctrines and language play out their own extreme consequences beyond any sensible human control:

Szyrk got a restraining order while he tries to take it to the high court so now everybody who was suing him is suing the Village, James B charging them with detaining and endangering Spot and now these animal rights people joining in with a writ for unlawful restraint, sort of a canine habeas corpus with some psychological expert testifying Spot's having a nervous breakdown.<sup>7</sup>

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5. GADDIS, *supra* note 1, at 293.

6. *Id.* at 292-93.

7. *Id.* at 235-36.

It takes a wise old judge to look down with Olympian detachment on this chaos of legal and spiritual competitors, but wry detachment is all a judge can offer: the world of lawsuits is beyond the logistical and psychological control of the judicial system even when a wise judge presides. Litigants require admonitory reminders about fundamental facts of human and nonhuman nature. As for the sculptor's claim for damages, to compensate him for the harm done to the sculpture, Judge Crease says:

Further to this charge, defendants respond, and the court concurs, citing plaintiff's original artistic intentions, that these steel surfaces have become pitted and acquired a heavy patina of rust following plaintiff's stated provision that his creation stand freely exposed to the mercy or lack thereof of natural forces, wherewith we may observe that a dog is not a boy, much less a fireman brandishing an acetylene torch, but nearer in its indifferent ignorance to those very forces embraced in the pathetic fallacy and so to be numbered among them.<sup>8</sup>

Judge Crease dismissed the counterclaim that the sculpture was an attractive nuisance, an "allurement to trespass," and therefore responsible, by distinguishing precedent involving "a boy similarly entrapped and provoking a similar outcry until a proffered ten dollar bill brought him forth little the worse."<sup>9</sup> As Judge Crease says, "a boy is not a dog."<sup>10</sup>

Let me continue hopefully<sup>11</sup> trying to preempt the postmodernist take on Gaddis: This is a novel in which characters utter moral assertions that may indeed be what the novelist wishes us to believe. Or, this may be a novel in which the novelist believes the characters are no worse than naive for supporting their moral assertions so earnestly. As Oscar says of Bagby, the crass Civil War profiteer in his play:

All this crime, greed, corruption in the newspapers, you think they're just part of the times we're living today? that our great Christian civilization is breaking down right before our eyes? It's just the other way around. These petty swindles of Mr. Bagby's outfitting the Union army, the only difference is all that was in tens and hundreds of thousands and today it's in the millions and billions, false invoices, double billing, staggering cost overruns

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8. *Id.* at 32-33.

9. *Id.* at 33.

10. *Id.*

11. Note rare correct use of "hopefully."

and these six hundred dollar toilet seats all wrapped up like the American flag?<sup>12</sup>

These remarks may be so “situated” and its speaker so fatuous as to be undeserving of moral credit for this fine rant, but Gaddis unconsciously believes that this is a meaningful sentiment. In a similar vein, Oscar says of his play generally (and then has his sentiment all too typically reduced to a cause of action):

It’s the cry of desolation and innocence and, and of sadness and loss for all humanity in these two men, that they’re each other’s victims that’s the tragic irony, that’s what makes the drama if there’s a scene like this in the movie they stole it didn’t they? in this complaint?

—Right there in the charge of unjust enrichment . . . .<sup>13</sup>

Nor is Gaddis afraid of jokes that are (merely?) jokes. These are jokes tinged with savagely well-meant political and moral disappointment in the ways of the world: “[W]e’re not just suing for damages you put in reasonable attorney fees too . . . . —If attorneys’ fees were reasonable do you think Harry would be driving around in a car like ours?”<sup>14</sup> The absurd puns (the sculptor is Szyrk—“sick”; “Crease” may suggest either split personality or furrowed brow) reveal Gaddis to be confidently bitter, as if humor is an entitlement of those who can claim the right of righteous indignation.

This is indeed a world where we find, *inter alia*, a trademark dispute whereby the Episcopal Church sues Pepsi-Cola for infringement, claiming that the anagrammatic relationship of their names is no accident.<sup>15</sup> But do not be deceived by the characters’ discourse about legal language:

What do you think the law is, that’s all it is, language.

—Legal language, I mean who can understand legal language but another lawyer, it’s like a, I mean it’s all a conspiracy, think about it Harry. It’s a conspiracy.

—Of course it is . . . . Every profession is a conspiracy against the public, every profession protects itself with a language of its own

. . . .<sup>16</sup>

Words are both cheap and expensive: the sadly wise Christina, Oscar’s sister, is appalled to learn that the federal courts worry about issues like a trademark-infringing portable toilet called “Here’s

12. GADDIS, *supra* note 1, at 153.

13. *Id.* at 177.

14. *Id.* at 183.

15. *Id.* at 241.

16. *Id.* at 284.

Johnny.” Harry “corrects” her: “Not talking about portable toilets Christina we’re talking about millions of dollars . . . . Free speech about the right of publicity.”<sup>17</sup> Gaddis’s nasty exposés of legal language do not really purport to show that “law is ultimately about language,” but that law is, unpostmodernistly speaking, about injustice or at least the visceral human feel of injustice. Thus, Oscar denounces the notion of no-fault insurance:

It’s not even an idea, it’s a jerrybuilt evasion of reality of course someone’s at fault. Someone’s always at fault. It’s all a cheap dodge chewing away at the basic fabric of civilization to replace it with a criminal mind’s utopia where no one’s responsible for the consequences of his actions, isn’t that what the social contract is all about?<sup>18</sup>

The point is that even though the legal system is a “jerrybuilt evasion” of reality, there is a reality to evade. Though the characters are fools to believe that the legal system they have made or inherited will bring them justice—or even that they deserve justice—they are not fools to believe that something like justice could exist and perhaps has existed. For Gaddis, justice is not quite so distant as Utopia. Yet it does not rest in the socially constructed pseudo-essentialist tissue of texts that the postmodernist might smugly describe as justice. It is a “real ideal” and one which this species should be capable of achieving, but which, in Gaddis’s almost vindictively angry view, this species has idiotically botched.

The ultimate fear in this book is the flip side of the ultimate hope: that plaintiffs will win the personal vindication they seek in lawsuits, and with souls so distorted by their obsession with legal vindication of their humanity, they will lose it through victory. As Christina apprehensively wonders:

And if [Oscar] wins? . . . What you see in the headlines out of Washington every day isn’t it? caught redhanded destroying evidence, obstructing justice, committing perjury off on frolics of their own and when they get off on some technicality, everybody knows they’re guilty but there’s not enough there to prove it so they can proclaim they’ve been proved innocent, wrap themselves in the flag and they’re heroes because now they believe it themselves, because the law has vindicated who they think they are like saying where would Christianity be today if Jesus had been given ten to twenty with time off for good behavior, and if

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17. *Id.* at 236.

18. *Id.* at 251.

he wins? If Oscar wins and this whole cockeyed version of who he thinks he is vindicated because that's what the law allows?<sup>19</sup>

Gaddis is fascinated by how money and speech blend into the currency of a corrupt world. If the book had addressed the doctrine of, say, "corporate speech" under the First Amendment,<sup>20</sup> he would have denounced the notion of advertising and political bribery corrupting the ideals of free political speech. He would not, however, have taken the postmodernist or critical route of saying that even core political speech is an economic phenomenon, that the distinction between the commercial and the political is false.

To the extent that the law and literature movement views legal principles as contingent constructions of language, Gaddis is a skeptical, only partial member. There is, of course, a more positive theme of the law and literature movement, the suggestion that viewing law in literary terms will help us bring greater spiritual enrichment to our political and ethical efforts. Gaddis offers an equally ambivalent view of this component. In this regard, the popularity of the law-and-literature link as a subject for scholarship, or at least the pronouncement of law-and-literature as a major new scholarly enterprise, reflects a strange contemporary tendency to turn to literature as an engine of spiritual renewal. Even before postmodernism settled into our minds as a peculiarly alienated phase of culture, it was often literature itself that took the form of culture seeking its own lost innocence. This turn to literature for renewal is ironic, since, as the great critic Richard Poirier has noted, literature has its own internal conflicts that are all too representative of the various types of alienation, malaise, and disbelief which are said to distress modern culture.<sup>21</sup> Thus, as Poirier says, it might make more sense to view literature as a model of postmodernist confusion than as a cure for it. The extra irony here is that Gaddis's characters turn to law for the renewal, affirmation, or "validation" that other phases of life cannot offer. The great modernist writers who turned to poetry for cultural redemption were most anxiously aware that literature is something of a rhetorical house of cards—contrived from earlier models, historically dependent, and far from historical inevitability, so far so that if we can imagine the absence of any particular great writer, we must acknowledge that the writing would not have been missed. Gaddis's characters turn to law to find the deep justifying structure for their lives and find instead a house of cards.

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19. *Id.* at 398-89.

20. See *First National Bank v. Bellotti*, 435 U.S. 765 (1978).

21. See generally RICHARD POIRIER, *THE RENEWAL OF LITERATURE* 3-66 (1987).

As wordy, encrusted, corrupt institutions turn to literature for renewal, they find writing which is itself committed to conventions, usages, grammars, structures, and rhetorics, viewed with dismay as the products of inappropriate systems which often seem artificial or inappropriate. For Gaddis, those who look to law for renewal also find wordy, encrusted, corrupt institutions, though he suggests that the neurosis and narcissism which we sometimes dignify as spiritual crisis may have corrupted and encrusted a legal system that once served to lend some dignified order, if not redemptive justice, to society. In the end, Gaddis's characters demean law by overrating it. Because they obsessively grasp at its machinery as their hope for salvation, they corrupt it and are corrupted by it. For Gaddis, we can make the law as good as we can make ourselves, but it cannot make us better than we make ourselves.

If there is a climactic encounter in this strangely well-wrought novel, it is (indirectly) between Oscar and his father. Old Judge Crease somewhat ambiguously snatches Oscar's lawsuit from the jaws of defeat. Gaddis then Faulknerianly renders:

It's my grandfather's watch, it was in his pocket he almost forgot to give it to me. I had to sit there with him while he dragged me through the whole thing again. Father getting furious when he saw that lower court decision where Mudpyle put one over on that stupid woman judge and what fools we were not to spot the trap they laid for us letting us sue in district court here instead of California preempting the Federal statutes and getting it under New York law and not even following through with an appeal, what kind of nitwits were my lawyers anyhow? This old bugger tried to run them down but they told him my lawyer had gone fishing and they didn't know anything about that black who showed up down there trying to register these family letters for copyright so Father sat down and did it himself. He knew Judge Bone, knew he'd see right through it but he sat down and wrote out the appeals brief himself . . . maybe Father thought I was a damn fool, but he came through for me didn't he? snapping the watch case open, snapping it closed hard and clutching it there—that he cared about me . . . .<sup>22</sup>

But what does this legacy amount to? We learn that Judge Crease "forgot" to give his own father's watch to Oscar, too distracted by his appellate obsessions. His clerk says:

He just chuckled as though it was all, as though it was just a farce no, no he said, the Judge never gave a damn for things like

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22. GADDIS, *supra* note 1, at 520-21.

that, all that sentimentality or the movie you wrote he knew they were just using it to keep him off the circuit court he never blamed you, he may have thought you were a fool but he never thought you were venal and he didn't draw up that appeal for love of anybody, not you or anybody no. It was love of law. When he got his hands on that decision he was mad as hell. He acted like the closest person in his life had been raped, like he'd come on the body of the law lying there torn up and violated by a crowd of barbarians. . . . that was him all right, your father, had me up for two nights digging out every citation that applied and a hundred more to be sure patching up that appeals brief with them like bandages wherever there was a scratch on this body he held dearer than his own life or yours or anyone else's this love he had for the law . . . .<sup>23</sup>

Since the plot itself ends with deliberate, whimpering nonfinality, a better climax to note would be the "self-encounter" of Oscar when he faces the legal problems of his automobile lawsuit. Since Oscar had dominion over the car that injured him, and since no one else was driving it, the insurance agent Gribble, seeking settlement, warns him of the difficulties of suing oneself, of the law's disdain for suits in which the plaintiff and defendant are the same, at least in the case of natural persons: "To put it in plain language you might almost say that this a suit between who you are and who you think you are, the question being which one is the plaintiff and which one is the [defendant]."<sup>24</sup> Oscar then asks: "Do you know Montaigne? . . . Where he says it's a hard task to be always the same man . . . there is as much difference between us and ourselves as there is between us and other people."<sup>25</sup> Then the wonderful nonresponsive response: "I see your point Mr. Crease, but bringing in your friend as a third party can only complicate things further, unless of course, he might join the suit as a formal party in establishing negligence as the proximate cause."<sup>26</sup>

Talk about law and literature!

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23. *Id.* at 559-60.

24. *Id.* at 544-45.

25. *Id.* at 545.

26. *Id.*

