

US Law and Literature in the 1880s

The goal of this course is for students to learn an interdisciplinary method of cross-examining law and literature at a particular moment of history. That method respects the relative autonomy of both fields of study—law is not literature, and literature is not law. But it also recognizes that both inhabit the same cultural field. By “cross-examining” the two while relating both to the various forces at work in that culture, we can come up with an understanding of a particular era we would not get if we focused on only one of the two disciplines. In the process, our understanding of both the law and the literature of that period is altered.

We will focus on the 1880s because of its importance for both law and literature. A number of the issues raised at the time are still with us today. In the law there are important issues of race involving African Americans, Native Americans, and Chinese immigrants. Those issues raise questions of federalism as they often test the limits of national versus state jurisdiction. With the invention of the electric chair renewed the debate over a state’s right to sentence people to death for punishment of a crime. The question of the extent of governmental power was also raised with the rise of laissez-faire economics. In turn, the premises of laissez-faire economics and its celebration of individual competition were challenged by the rise of monopolistic corporations. The period saw some of the most important cases granting corporations, which were affirmed as legal persons, some 14th Amendment rights. At the same time that the courts upheld the doctrine of freedom of contract in economics, it confirmed the state’s right to regulate the marriage contract by upholding anti-miscegenation laws and laws against Mormons and polygamy. The decade also saw the birth of a tort right to privacy protecting individuals from having their privacy violated by other private parties, especially the press.

In literature the 1880s saw the rise of literary realism. One volume of *The Century Magazine* serialized publication of Howells’s *The Rise of Silas Lapham* and James’s *The Bostonians*, while publishing an excerpt from Twain’s *Huckleberry Finn* and a debate between author George Washington Cable and journalist Henry Grady over the issue of race in the wake of the Supreme Court declaring the Civil Rights Act of 1875 unconstitutional in 1883. The period also saw publication of the first short stories by the African American author Charles W. Chesnutt responding to Joel Chandler Harris’s extremely popular Uncle Remus stories. But not all the fiction in the period was produced by the realists. We will also read a best-selling account of the racial issues of Reconstruction by Albion W. Tourgée, who would later become Homer Plessy’s lawyer. Finally, we will read two works set in California: Helen Hunt Jackson’s *Ramona*, considered the *Uncle Tom’s Cabin* for Native Americans, and Maria Amparo Ruiz de Burton’s *The Squatter and the Don*, which portrays the status of those of Mexican descent in a state ruled by the corporate monopoly of the Southern Pacific Railroad.

We will use these literary works to give insight into the legal issues and the legal issues to give insight into the literary works, while gaining a historical perspective on social, economic, and racial issues that are still with us.