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Reconstituting Authority: American Fiction in the Province  
of the Law, 1880-1920 (review)

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Reed and Ernest Gaines, Harris also maintains her status as perhaps the African American critic most committed to resisting the tendency to separate male- and female-authored texts into critically autonomous and putatively opposing camps. In fact, it is the relational range of Harris's concerns that most distinguishes her work. This book, like her previous text *The Power of the Porch: The Storyteller's Craft in Zora Neale Hurston, Gloria Naylor, and Randall Kenan* (1996), makes a strong case for the usefulness of recognizing the dialogically responsive relationship between the traditions of male and female African-American writing.

**Modelmog, William E. 2000. *Reconstituting Authority: American Fiction in the Province of the Law, 1880-1920*. Iowa City. University of Iowa Press, 2000. \$32.95 hc. 276 pp.**

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Caught up as we are in the current “turn of the century,” it is not surprising that scholars are taking a hard look at the period (roughly 1880–1920) which previously enjoyed that label. It was a time, argues William E. Modelmog, which witnessed “the rise of professionalism” (4) in both literature and the law, a phenomenon characterized by a conscious renegotiation of the relationships between such tangibles as codes and formal rules and such intangibles as experience, emotion, and creativity. That rethinking led Oliver Wendell Holmes, Jr., for example, to argue that we must “understand how to read the law. If we read it for its formal properties, it becomes ossified, nostalgic, unable to respond to change circumstances and standards. . . . If we read it as a ‘story,’ however, it possesses both a formal integrity and a responsiveness to change and revision” (9). Thus, Holmes’s decision “to practice law rather than follow in his father’s literary footsteps” was less “a rejection of literature” than “simply a way of doing a different kind of literary work” (9). Much of *Reconstituting Authority* is a meditation on this *fin de siècle* legal/lit-

erary renegotiation; and unless one happens to harbor a deep passion for legalese, it unfortunately does not make for particularly entertaining reading. On the other hand, Modellmog's analyses of texts by six authors of the period—William Dean Howells, Helen Hunt Jackson, Pauline Hopkins, Charles Chesnutt, Edith Wharton, and Theodore Dreiser—against the backdrop of legal issues of the day can be astute and revealing. The nexus of law and literature, argues Modellmog, impacted both dramatically at the turn of the century.

Part I of his study, entitled “The (Mis)Rule of Law,” posits Howells, Jackson, and Hopkins as using their texts “to reconceptualize the law and to suggest that authors, as literary professionals, can relate stories that operate in a legal manner” (23). In Chapter 1, for example, Modellmog focuses on the tensions that exist between Squire Gaylord (an old-style lawyer) and Bartley Hubbard (a cutting-edge newspaperman) in Howells's *A Modern Instance*. Howells saw attorneys at the turn of the century being replaced by journalists; but by killing off Hubbard, he betrays his discomfort at seeing newspapermen (who aren't always responsible, community-sensitive professionals) replace attorneys and judges as “figures of power” (54).

In Chapter 2, Modellmog looks at Helen Hunt Jackson's ambivalence over the legal status of Native Americans in her novel *Ramona* (original title: *In the Name of the Law*). Arguing that her book “essentially constitutes a kind of extended legal brief” (66), Modellmog explores how Jackson struggled to reconcile her commitment to “tribal sovereignty” with her commitment to “civilizing” Native Americans—an ambivalence traceable to Chief Justice John Marshall's confusing 1831 declaration that Indian tribes were “domestic dependent nations” (65). Positing *Ramona* herself as the symbol of simple, honest, virtuous Native American tribes, and *Ramona's* guardian Señora Moreno as the symbol of the legalistic, cold, uncaring U.S. government, Jackson used her novel to argue that legal guardians often create more problems than they solve. Even so, Jackson could not abandon her faith in the guardian/ward paradigm. As a result, *Ramona*

turned out to have an impact on American conceptions of Indians, but not the one [Jackson] had anticipated. Rather than becoming the new Uncle Tom's Cabin by awakening a moral outrage over the current state of law and national policy, it would operate more like a legal brief intent on asserting the law's authority and its claim to respect. But in locating the sources of that authority, Jackson exposed the division that lies at the heart of any conception of national unity or an integral American “people.” (Modellmog 2000, 97)

Not as popular as Jackson, Pauline Hopkins, the subject of Chapter 3, was less ambivalent about her own indictment of the American legal sys-

tem—and in particular, that system's characterization of African Americans as “an ahistorical entity of pure desire” (105) that consequently did not deserve protection under the law. Without that protection, lynching was perceived as quasi-legal, a private matter condoned, or at least ignored, by the law. Presenting herself as what Modellmog terms a “professional attorney and historian” (115), Hopkins wrote her novel *Contending Forces* in a deliberately “restrained—even genteel” style (116) so as to present her case that African Americans were thoughtful, articulate, and unquestionably moral citizens *even in private*. Though her novel did not have the immediate impact Hopkins had hoped, Modellmog observes that “it nonetheless hinted at the potentially powerful strategy of using the law's own ideals to identify the shortcomings of its actual practices—a strategy that would soon underwrite the founding of the NAACP” and the Civil Rights movement of the 1950s and 1960s (125).

Part II of Modellmog's study, “The Authority of Property,” zeroes in on a single aspect of the legal system, the idea of “property” (real estate, money, bonds, personal/familial privacy, even one's reputation) and the legal mechanisms intended to protect it. In Chapter 4, arguably the most insightful in his study, Modellmog explores these issues in Charles W. Chesnutt's novel, *The House Behind the Cedars*, as well as in his stories, “The Sway-Backed House,” “Uncle Wellington's Wives,” “The Web of Circumstance,” and “The Partners.” Chesnutt, an African-American lawyer light enough to “pass” for white but who chose to identify with blacks, used his fiction “as a kind of legal history” (131) that examined his era's continuing confusion over race vis-à-vis ownership. Modellmog notes that the “unfinished” quality of Chesnutt's writings points to “the dilemma in which African-American professionals such as Chesnutt found themselves at the turn of the century. Unwilling to view racial distinctions in terms of class conflict by embracing socialism, but equally averse to affirming a system in which whiteness constituted a legitimate form of capital, they sought to find and promote the measurable ‘value’ in blackness” (158). Hence Chesnutt's texts “sag precariously beneath the weight of the racialized forms of title they compellingly bring to light” (159).

In Chapter 5, Modellmog argues that the conflicts in Edith Wharton's *The House of Mirth* (1905)—conflicts “organized around terms that are both domestic (‘home,’ ‘marriage’) and legal (‘rights,’ ‘ownership,’ ‘personality’)—closely resemble those at the heart of legal debates over privacy at the turn of the century” (165). Lacking a husband (and hence the social and legal security enjoyed by white males and their spouses), Lily Bart's property consists of only one thing: her vulnerable reputation. The disparate endings of *The House of Mirth* and *The Age of Innocence* (1920), asserts Modellmog, reflect

the degree to which Wharton felt the legal climate as it concerned women had shifted during the 15 years between the novels. "If [*The Age of Innocence*] had been written fifteen years earlier, would anything have remained after Ellen Olenska's renunciation? Would we not be left, as in *The House of Mirth*, with a form of female privacy representable only by death?" (188-89).

Perhaps because Theodore Dreiser's *The Financier* and *The Titan* have been examined for decades as examples of the American business novel, Modellmog's sixth and final chapter seems anticlimactic. He argues that "perhaps more strongly than any other author in this study, Dreiser fulfills Howells's vision of the author's simultaneously legal and literary role in American public life. By suggesting that a self-regulating economy grounded in individual ownership no longer exists, *The Financier* and *The Titan* incorporate a professional ethic that justifies the emergence of the 'official' regulator and the financial expert—those progressive figures charged with creating the rules and codes that would do the work 'nature' could no longer do. And these novels also open a space for the progressive author in this now denaturalized economic arena" (194). According to Modellmog's reading, this explains why Frank Cowperwood "is more effective at defeating monopolistic tendencies than in promoting them"—a quality that renders him "both a progressive hero and a throwback to the past" (203).

In his too-brief "Postscript," Modellmog argues that his approach to these six authors (which he identifies as "interdisciplinary") has potentially more to offer than does "contemporary critical theory" (218). He invites the reader to use it to study "American literature written between the Civil War and World War I"—a body of work that "often plays second or third fiddle to . . . American romanticism and literary modernism" (219). That seems overstated; and it raises the question of why he discussed so few of those second- and third-fiddle authors active between 1880 and 1920. Certainly Kate Chopin and Charlotte Perkins Gilman (whom he mentions briefly) were interested in the interplay of law and literature, as were George W. Cable and Hamlin Garland (whom he doesn't). Perhaps indeed the primary value of *Reconstituting Authority* is its capacity to encourage other scholars to look at other writers who used fiction to grapple with the legal and literary issues of their day.