2010

A Study in Law and Literature: Themes of Exceptionalism and Equity in British and American Culture

William J. Wagner

The Catholic University of America, Columbus School of Law

Follow this and additional works at: http://scholarship.law.edu/scholar

Part of the Law and Society Commons

Recommended Citation


This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.
Introduction

A Study in Law and Literature: Themes of Exceptionalism and Equity in British and American Literature

BY WILLIAM WAGNER+

The advent of a new scale of international terrorism on September 11, 2001 posed a case for moral and legal evaluation that appeared to some in the global community to evade the reach of received rules or principles of moral or political action.¹ The perceived threat and a certain sense by some governmental actors to an entitlement of latitude in response seemed to sever the situation from rules and principles in a depth dimension of consciousness. For many, the case's enormity overwhelmed its abstract moral definition. The foreign policy response of the United States—the country which had been attacked—further reinforced this quality in the situation, for the foreign policy of the United States is distinguished by a characteristic tendency to assert exceptions over rules. In its at least intermittent inclination to set aside the constraint of ordinary rules and principles for the sake of responding to "terror," the world community found itself caught up in a narrative both global and particular. This was an international narrative, but it was also a national story being now carried forward on the world stage. It was a new chapter in the story of American Exceptionalism.²

Ordinarily the capacity to say that a case comes under a rule or principle makes the perceived injustice of a case easier to bear. A rational path to ending conflict, then, appears and reasons can be entertained for what is right and wrong. In the ordinary course of affairs, most human beings rely on rules of morality and of law to judge cases. Their sense of themselves as rational and

---

¹ Professor of law, director, Program for Studies in Jurisprudence, and faculty editor, JOURNAL OF LAW, PHILOSOPHY AND CULTURE, Columbus School of Law, The Catholic University of America.

² See generally GODFREY HODGSON, THE MYTH OF AMERICAN EXCEPTIONALISM 128-54, 165-90 (2009) (developing the shadow side of this mythology which at times serves as an excuse domestically for failing to responsibly advance the common good and in foreign policy for unacknowledged resort to exploitation of other peoples).
decent, moral and law-abiding depends upon as much. They are confident that rules or principles resolve legal and moral problems. Where a case is not expressly foreseen, they generally assume that an exception to govern it can be implied from a rule or principle's more fundamental purpose or intention.

But the intuition that the exception overrides the rule, predominanting in many quarters after September 11th, contradicts this assumption. This post-September-11th intuition is in line with an altogether different preference. People also wish to perceive situations as falling outside of principles or rules. A situation may seem too trivial to us for moral or legal import. But a grave emergency jeopardizing survival—"necessity knowing no law"—may also lead to a judgment that "all bets are off" and that people will "do what they have to do." Somewhere along the way, confidence in rules and principles ends. People then suppose that they have cause for war in one form or another and not for addressing rights and wrongs in accord with law or principle. They justify the actions they contemplate by raw necessity or by the call of some kind of higher destiny. Such seems to be the case to many after September 11th.

Even so, when one attempts to banish rule and principle, they simply retreat to another plane. The apparently exceptional case may be subject to principles or rules at a level that for the time being remains unstated. Who is to say, for example, that the exceptional case of this post-September-11th world is not, in fact, still subject to evaluation under yet unstated rules and principles, perhaps those of just war reasoning or the prudential counsel that war itself—if it is to be rational—shall remain the pursuit of politics or, put in another way, of peace, by other means?

In sum, the public response to the post-September-11th perception of the threat of terrorism harbors clashing moral intuitions. The threat's exceptional character and the exceptionalist terms of many responses to it appear, as often as not, in the foreground, while in the background, a countervailing expectation makes itself felt. An example of the latter appeared in Anglican Archbishop Rowan Williams' public statement of his view that the act of aiming to take the

---

3 As Aquinas acknowledges, "the mere necessity brings with it a dispensation, since necessity knows no law." THOMAS AQUINAS, SUMMA THEOLOGICA, III.1, Q. 96, Art. 6. (trans. Fathers of the English Dominican Province, Blackfriars ed. 1963) [hereinafter SUMMA].

4 In support of this view, consider the action of the German Federal Constitutional Court in deciding that the principle of respect for the moral dignity of the person required it to strike down, as unconstitutional, a key (exceptionalist) anti-terrorism provision of the German Air-Transport Security Act providing that military defense permitted the shooting down of civilian aircraft bearing innocent civilian passengers if necessary to thwarting a terrorist attack. Bundesverfassungsgericht (BVerfG) (Federal Constitutional Court 59 Neue Juristische Wochenschrift (NJW) 751, 757 (2006)).

5 CARL VON CLAUSEWITZ, 1 ON WAR 118-119 (J.J. Graham, trans., Penguin 1968) (1918) ("The War... particularly of civilized Nations... is a political act.").

6 Aristotle, Nichomachen Ethics, in THE RHETORIC, POETIC AND NICOMACHEAN ETHICS OF ARISTOTLE [4 WORKS OF ARISTOTLE] Book X (1177b10) (p. 423) (Thomas Taylor trans. 2002) [hereinafter Nichomachean Ethics] [No one chooses to wage war, or prepares for it, for the sake of waging war...].

7 von Clausewitz, supra note 5, at 119 ("War is not merely a political act, but also a... continuation of political commerce, a carrying out of the same by other means.").
life of Osama bin Laden fell within the assessment required under received moral rules and principles.⁸

Short of answers to the profound ethical questions that our perplexing international situation now presents, a first desired step is the integration of a more unified perspective of moral and self-understanding, capable of making sense, at a minimum, of both sides of this clash in intuitions, and, if possible, of doing justice to both. Just how can these counterpoised vantage points be brought into reflective equilibrium as we strain to find solutions to the ethical, political, and legal dilemmas in international policy that are before us, whether we are citizens of the United States, Great Britain, or some other country?

I. One Avenue Toward a More Unified Viewpoint: A Look at the Dialectic of Exceptionalism and Its Opposite in the Mirror of Literature

Moral theory, religious ethics, and international law could all be enlisted for the purpose of the integration of a unified grasp of both faith in rules and principles and of so-called exceptionalism. Although the public hearing that these disciplines could expect to obtain in the matter might be something else, each, no doubt, could supply concepts purporting to provide the very theoretical distance that the situation generally resists. Before one too quickly avails oneself of such conceptual means, another route to the desired unity of perspective, however, also offers itself for consideration. That avenue is the study of literary accounts of the fashioning of personal and national narratives under the conditions of this theoretical intractability of clashing intuitions. Such study entails a patient attending to the unitary nature of experience itself, even in the fulcrum of historic change and clashing ideas. While not theoretical in a strict sense, such study offers a first step towards integrating a sense of where we are and who we may yet become, as we are await progress, in stages, in reaching more adequate insight into the ethical issues before us.

The study of literature depicting persons wrestling with problems of principle- and rule-based moral reasoning in the face of the exigencies of an exceptionalist imperative may reveal something about the way in which the individual moral agent and the moral community arrive at narratives of identity in emerging historic contexts. No less, it may shed light, however indirect and subtle, on the meaning of current options in moral, political and legal philosophy. Such light is no less welcome for entering the picture seemingly unbidden. The essays in law and literature that follow illustrate both beneficial outcomes of studies in the field known as “Law and Literature.”

⁸ Williams cited the killing of an unarmed man as presumptively problematic morally, and the failure of those involved to bring bin Laden to justice for his manifest war crimes by bringing him to justice rather than summarily killing him. See THE GUARDIAN, supra note 2.
The essays were solicited for the purpose of advancing an understanding of what relevant canonical texts in American and British literature may show about effects of the clash currently underway between proponents of the exceptionalist view and their principled opponents on narratives of human identity. While the investigation proposed is of literary sources, it requires at least a minimal baseline orientation to relevant terms in classical moral reasoning dedicated to framing exceptions to stated rules in the pursuit of justice. The most central concept of the kind is arguably that of *equity*, a concept familiar to many people by its grounding of a special branch of judicial authority designated by that name in British and American law. This concept serves heuristically to frame the question of how a case, at one and the same time, might be viewed as outside of a stated framework of rule or principle and yet still more broadly inside a larger frame of normative reasoning.

Another necessary conceptual reference that is a baseline in the study is, of course, the definition of the American Exceptionalism, the assumptions of which are embedded in current governmental policies and in the accounts of them given by various observers. The mentality of American Exceptionalism strongly influences perception, thought and action of those who embrace it. It tilts judgments on what counts as persuasive in the normative discussion of moral claims in a post-September-11th world. In contrast to the idea of equity, this mentality is fairly impervious to moral philosophy, resting as it does upon an often unconscious inherited quasi-theological basis that is by its nature at odds with the statement of philosophical reasons.

Encounter with moral or quasi-theological threads of consciousness during the uncertain light of historic moments like our present one contribute to the identity of a community even preceding its arrival at fully conscious philosophical and theoretical insight. Literature often, in one way or another, has concerned itself with this process of identity-formation. Reflection on literary themes relating to national identity growing out of such situations has been valued since there have been listeners or readers of the *Iliad* and the *Aeneid*. Literary studies today revolve around these themes. In gathering the essays that follow, this journal assumes that the study of literary depictions of problems in equity and exceptionalism can illumine the meaning of narratives

---


13 See, e.g., Saree Makdisi, *Literature, National Identity, and Empire*, in *The Cambridge Companion to English Literature, 1740-1830*, 4, 62 (Thomas Keymer & Jon Mee eds. 2004) ("Britain's sense of itself and of its very modernity were by the end of the eighteenth century comprehensively shaped by the discourses of imperialism and by Britain's changing image of relations with the cultural other.").
taking shape since September 11th without waiting for the further bridge of
theoretical certainty or philosophical unanimity.

A brief further sketch of the meanings of the terms of equity and
exceptionalism, along with a further brief account of the relevance to the topic at
hand of the mode of jurisprudential reflection known as studies in "Law and
Literature," will now set the stage for the reader's consideration of the essays
that follow.

A. Equity

The *locus classicus* on exceptions in moral reasoning arises in Aristotle's account
of *phronesis* or practical reason in pursuit of *dike* or justice.\(^{14}\) According to
Aristotle, the moral agent applies principle to concrete cases with regard for
right measure.\(^{15}\) He observes that the virtue of justice correctly allocating costs
and benefits between and among persons in a due ratio to desert.\(^{16}\) He stipulates
that such can be determined only against the totality of circumstances, and he
goes on to say that this totality can be discerned only in relation to the judge's
own virtuous character.\(^{17}\) Aristotle, then, informs us that a just judge will, at
times, discern the spirit of the rule calls, against the backdrop of this totality of
circumstances, for an exception, that the rule does not acknowledge on its face.\(^{18}\)
Aristotle calls the virtue of knowing when to recognize such exceptions *epikeia*
or, in English, equity.

As an example, Aristotle cites the notion in criminal and tort law that degrees
of fault follow from extent of intention, carelessness or bad luck.\(^{19}\) Even where
the rule is silent in the matter, he holds that the equitable judge will read these
distinctions into the law.\(^{20}\) Similarly, he alleges that the just judge will assess
culpability only against the backdrop of the accused's overall pattern over time
of respect for the victim, as well as of his or her more general history of conduct,
whether the rule names these factors or not.\(^{21}\) He argues that equity does not
blunt justice, but perfects it, for he holds that drawing back from the full rigor of
the letter of the law fulfills rather than defeats justice, for this and not the hard
edge of the rule is justice's perfection.\(^{22}\)

---

\(^{14}\) *Aristotle, Nichomachean Ethics*, in *THE RHETORIC, POETIC AND NICHOMACHEAN ETHICS OF ARISTOTLE* Book V, pp. 309-

\(^{15}\) Id. at Book I (1106a26-b28) (pp. 258-59).

\(^{16}\) Id. at Book V (1131a9—1132b20) (pp. 313-17).

\(^{17}\) Id. at Book VI (1144a7-8) (p. 344).

\(^{18}\) Id. at Book V (1137b12-16) (p 328); *The Rhetoric*, supra note 8 at Book I (1374aa27-28) (p 70) & 1374b15 (p.
71).

\(^{19}\) *The Rhetoric*, supra note 8, at Book I (1374b5-9 (p. 71).

\(^{20}\) Id. at Book I (1374b/4-5) (p. 71).

\(^{21}\) Id. at Book I (1374b/16-28) (p. 71).

\(^{22}\) *Nichomachean Ethics*, supra note 5, at Book V (1137b7-10 (p 328).
The post-September-11th exception aims at lifting ordinary immunities to the intentional infliction of harm or negating rights to judicial process or it aims at the hardening of ordinary penalties because of what it sees as the aggravated nature of the offense.\(^\text{23}\) How, then, does this peculiar mode of flexibility out of "necessity" mesh with the seemingly reverse flexibility of mildness in Aristotle's idea of equity? To consider the Aristotelian notion of equity in tandem with contemporary exceptionalism raises the question of what, if any, any implicit common basis for relating rules and exceptions these two viewpoints share; and, if there is none, of how the split in moral consciousness that this would imply is to be understood\(^\text{24}\)

### B. Exceptionalism

In today's post-September-11th climate, some will doubt that Aristotle's general principles—even those regarding exceptions—apply. Michael Walzer, a precursor of contemporary exceptionalists, argued, for example, in the debates over nuclear deterrence in the 1970s\(^\text{25}\) that total emergencies take national decision altogether out from the scope of general principle. But if Walzer is right, the narrative that is unfolding now is, at some point, immune to moral evaluation in Aristotle's sense. If for the sake of argument, we concede Walzer's point, we find ourselves, nonetheless, still required to interpret the underlying attitude seen in Walzer's work which remains subject to cultural interpretation quite aside from its specifically philosophical content. Walzer's viewpoint resonates with the narrative now being interwoven in current affairs, the so-called myth American Exceptionalism. This particular national narrative has become a tributary of new, evolving global consciousness itself of uncertain future.

The religious roots of Islamist ideology in Al-Qaeda are well known.\(^\text{26}\) Those of American Exceptionalism, for the most part, are seen more dimly. But, Deborah Madsen, a scholar of American Literature and Culture, argues that today's American exceptionalist attitudes in foreign policy spring from a religious self-concept originally propounded by colonial America's

---


\(^{24}\) Naturally, in pursuing this investigation, Aristotle's concepts, intended, principally, for describing the moral and political agency of individuals must be aligned, by yet other suitable concepts, for application to the interaction of nation-states and global actors. Concepts seen in Aristotle's own treatment in political science of the case of war, those of Augustine's just war thinking in *City of God* and Kant's reasoning on the morality of war in his essay, "Perpetual Peace: A Philosophical Sketch," all come to mind as prototypes.

\(^{25}\) Walzer formulated the exception to the ordinary moral prohibition on inflicting mass killing on civilians in an enemy nation as "supreme emergency, defining that case as being "face to face not merely with defeat but with a defeat likely to bring disaster to a political community." *Michael Walzer, Just and Unjust Wars: A Moral Argument in Historical Illustrations* 251-68, 268 (1977).

Massachusetts Bay settlers. These American precursors held themselves to be a "redeemer nation." As John Winthrop declared on board his ship Arabella, "Wee shall be as a Citty upon a Hill." This seminal "myth" took clearer shape during the colony's antinomian controversy, when the Puritan John Cotton declared that "[t]he colonists have identified themselves as a nation within Christ—as the visible sainthood redeemed by Christ—and as a spiritual nation they have been led to found a geographical nation in the New World," appointed by God "to a particular place." In Madsen's view, the Puritan colonists saw themselves "necessarily repeating the social history of the Israelites.

Madsen reminds us that these colonists believed that God's intentions can never be fully known, "for the divine mind is so completely beyond the reach of human intellect, and so the danger of assuming knowledge." Convicted of human depravity, they were forever attuned to signs of decline in their own midst. They searched—as they believed by grace—for signs of divine favor or wrath according to a Providence that might yet restore "a remnant" to God's favor, and, in so doing, they found "high purpose to their errand."

They took as their hermeneutic the presupposition that they were agents of a "redemption...[that] can only come from God's chosen people, those whose historical mission it is to save other nations from their own folly." Through this same lens, indigenous peoples appeared as "satanic agents through whom God warns and chastens" his own. Madsen concludes that this is a national myth that lives on even now in the thought process of America as America's "mythological refuge from the chaos of history and the uncertainty of life" through which Americans seek "to control and dominate the terms of their own destiny," while exporting their ideology to the entire world.

If Madsen is correct, American interventionism starts not from the recognition of a rule establishing the elements of justice, but from the self-perception of a graced a priori exception from an eschatologically conceived trend of decline and loss. Its exception arises not under a rule reasonably comprehended, but under a divine exhortation to be apart as "an order of saints made visible." It is appropriated as a mythic election, made visible as a sign of God's own breaking into a world otherwise threatened by sin and despair. In taking up action, America gives visible proof that it is God's righteous remnant and it, at once, holds off the outer darkness of the world and staves off its own collapse.

27 DEBORAH L. MADSEN, AMERICAN EXCEPTIONALISM (1998) [hereinafter Madsen].
29 Madsen, supra note 23.
30 Id. at 16.
31 Id. at 26.
32 Id. at 24.
33 Id. at 166.
34 Id. at 32.
35 Id. at 166.
always threatening through incipient human depravity.

Should this mythic narrative indeed still, as Madsen suggests, have its hold on American consciousness, it may, nonetheless, be the case at it now has a more secular coloration than it did heretofore, and it may, in the meanwhile, exhibit other signs as well of substantial transmutation during the centuries since its origin. Yet, in its fundamental, quasi-theological conception of moral and political agency, it has not changed. Its eschatologically inspired horizon, to some extent, alters or displaces Aristotle's concepts of reason and virtue in the minds of those who embrace it, and it, in one way or another, affects the normative consciousness through which contemporary American culture views the threat of international terrorism after September 11, 2001.

C. The Jurisprudential Value of Studies in Law and Literature

In her article, *Equity and Mercy*, Martha Nussbaum suggests that turning to narrative at a juncture such as the present is anything but a second-best moral response. She argues that literary narratives illuminate the philosophical concept of equity, a concept to which she assigns centrality from her perspective as an exponent of the classical tradition of moral reasoning. As a scholar of classical philosophy and, at the same time, as an advocate of the "Law and Literature" movement, Nussbaum observes that the Greco-Roman tradition saw a "close connection between equity and narrative." She suggests that literature can mirror "complex life histories, looking at the minute details of motive and intention and their social formation," corresponding to what the Roman stoic philosopher, Seneca, for example, "would have the good judge examine." Nussbaum expresses her agreement with Seneca, stating:

The person who "reads" a complex case in the manner of the reader of a narrative or the spectator at a drama is put in contact—by the structure of the forms themselves as they solicit the reader’s or spectator’s attention—with two features of the equitable: its attentiveness to particularity and its capacity for sympathetic understanding. This means that the spectator or reader, if he or she reads well, is already prepared for equity and, in turn for mercy.

Nussbaum heartens us to think that, in parallel, the difficulty in withdrawing from the concrete historical post-September 11th narrative may, if approached creatively, enhance rather than curtail our moral insight into its meaning. Where, at least, we remain grounded in our concrete relationships and situation, we may thereby perhaps apply abstract moral concepts more adequately. The study of literary narratives can help us to maintain precisely this grounding.

36 *Equity and Mercy*, supra note 23, at 83.
37 Id. at 102-04.
38 Id. at 105.
Among the essays in law and literature that follow, those of John Finnis on William Shakespeare's *Measure for Measure*, Ernest Suarez on Eugene O'Neill's *Long Day's Journey into Night* and Anne Anlin Cheng's on Ralph Ellison's *Invisible Man* are of particular interest, with Nussbaum's idea in mind.

In the present context, literary narrative has a second relevance. It draws our attention to the derivation of identity from evolving concrete experience, in the very course of fashioning of narrative from experience. The formation of identity through narrative occurs arguably in a pre-moral phase of awareness, which—while laying the foundation for moral engagement—is not yet specifically moral in its categories. In literature, the writer interacts in a larger process in which a people joins together in weaving together its narrative of common meaning at this original level. The intersecting reports of actors in public events, as well as of journalists and other commentators, in popular culture, come to be stored in long-term and collective memories as the basis of our future selves.

Manifestly, the present unfolding of history as we encounter it in the press and in the air we breathe after September 11th occurs through this mysterious process of the weaving of narrative. After September 11th, we have witnessed the discovery of not just plots, but “plot lines” which are unveiled, invented, and switched. Consider alone the frenetic accounts of the mysterious woman who was allegedly, but not actually, killed at the side of Osama Bin Laden on May 2, 2011. Governmental spokespersons and journalists alike gave out detailed blocking diagrams with what look like stage directions. Lists of possible *dramatis personae* were put forward. All manner of dramatic plot sequences were asserted, hypothesized, withdrawn, and denied. The “victim’s body was positioned in a way that suggested she was being used as a shield.” The character that Osama bin Laden grabbed and held up as a human shield was his wife. Then the stage blocking changed. She was not at Osama bin Laden’s side and she was not a shield. If she had been near him, his character was such, we were assured, that he well might have grabbed her and used her as a human shield, but he did not have the chance. He could not have because the stage blocking has changed. She was somewhere else in the room, and she was

39 John Finnis, *Exceptionalism and Exceptionless Moral Norms in Measure for Measure*, post, pp. 103-10 [hereinafter Finnis].
46 *The Killing of Osama bin Laden*, supra note 43.
"rush[ing] the U.S. assaulter." She was not killed. She was merely shot in the leg. Then, the *dramatis personae* shifted. She was not a wife of bin Laden; she was the wife of a courier. She was elsewhere and she was caught in the cross-fire.

The Pakistani government brought out its blocking diagrams and stage directions, and the drama shifted again. The point of view changed. The woman was not a woman; she was a twelve-year old girl. She was not being used as a human shield. She was not on that side of the room, but on this side of the room. She was not a shield; she was a spectator whose psyche was at risk. She was Osama bin Laden’s daughter being traumatized at seeing her own father shot in the head. She was not killed but she was shot. She was shot in the ankle. She was not shot at all; she was hit in the ankle. What she was hit with was a piece of a grenade. Another woman was shot somewhere else in the compound. She is on the list of *dramatis personae* but we haven’t yet decided which character as yet, “we are not sure if she is a doctor, a nurse, a maid or what.” In reading these accounts, one might have thought that one was reviewing the changing drafts of a playwright in the process of crafting a dramatic work.

The study of literary sources fosters deeper insight into the construction of narrative of identity in this pre-moral sense, no less than it illustrates human struggles in consciousness of moral and equitable rule and principle. What is the culture saying about the basic themes its members consider to constitute their identities as they arrive at statements of plot line, character, and incident? And, in view of the role of the American role in the current historic narrative, how do themes relating to the myth of American Exceptionalism figure in this story in contemporary culture? Among the essays that follow, Emma Smith’s on William Shakespeare, Tracy Strong’s on Mark Twain, and Dave Smith’s on Emily

---

47 The Killing of Osama bin Laden, supra note 43.
48 Gordon Reyner, Steven Swinford & Martin Evans, *Day Two - and A New Version of bin Laden’s Dying Moments*, The Daily Telegraph (Gr. Brit.), May 4, 2011 at 4 (Osama bin Laden wife was shot in the leg, not killed).
50 Gordon Reyner & Toby Harndon, *White House Backtracks On How bin Laden Died: Spokesman Admits He Was NOT Armed He Was NOT Cowering Behind His Wife and She Was NOT Killed In the Firefight*, The Daily Telegraph (Gr. Brit.), May 4, 2011 at 1.
51 Jason Burke, *Death of Bin Laden: Al-Qaida Chief’s 12-year-old daughter ‘Saw Him Shot Dead*, The Guardian (Gr. Brit.), May 4 at A8 [hereinafter Daughter Witnessed His Death].
53 Daughter witnessed his death, supra note 51.
54 Id.
55 Id.
56 Id.
57 Emma Smith, *Prenzie Angelo: Making Meanings from Measure For Measure*, post, pp. 141-49 [hereinafter Emma Smith].
58 Tracy B. Strong, "Glad to Find Out Who I Was": What Can be Learned on a Raft, post, pp. 151-77 [hereinafter
Dickinson and Walt Whitman are of particular interest in relation to just this question.

II. Introduction to the Essays

The authors of the essays that follow were invited to explore the themes of equity and exceptionalism in one or more literary text drawn from the canon of American or British Literature and to do so in response to the problematic set out above. Each essay is a study in "Law and Literature." Still, none elects to comment expressly on its relevance to the questions set out above. Instead, each develops a thesis with close attention to the contours of the literary work investigated from the author's particular philosophical or conceptual commitments. Each essay allows the points it may make in connection with the thematic of the project that elicited them speak for themselves. Other than to offer the observation that those essays treating canonical works of American literature may perhaps, not surprisingly, be mined for insight into the phenomenon of American Exceptionalism, while those treating Shakespeare might have a special relevance to themes in equity, this introduction follows suit. Beyond this, it also seems helpful to note generally that the essays appear to fall into two general groups, based on a differentiation in focus, with respect to the themes presented above. Three of the essays—those of John Finnis, Earnest Suarez, and Anne Anlin Cheng—appear to revolve around moral or political agency, while the other three—those of Emma Smith, Dave Smith, and Tracy Strong—seem to explore the formation of narrative identity on another basis that might be called pre-moral, because not keyed as directly to moral agency.

This introduction will now close by giving a brief sketch of the focus of each essay to permit the reader more rapid access to them, and ultimately, through them, to the wider imaginative terrain of Anglo-American fiction, where, to paraphrase Tracy Strong, neither "argument," nor proposed heuristic frameworks finds admittance to the inner exchange between the imaginative work and the reader's imagination.

A. Essays Oriented to Literary Depictions of Moral and Political Agency

Finnis's, Suarez's, and Cheng's essays appear to illustrate Martha Nussbaum's notion that virtuous moral judgment occurs with literary-like sensitivity to contextualization. Each of these essays illumines an intertwinement within a work of literature, of moral reasoning with companion elements of awareness.

59 Dave Smith, The One-Size-Fits-All Walt Whitman, With a Nod to Emily Dickinson, as Running Mate, post, pp. 179-96 [hereinafter Dave Smith].
John Finnis's sees in Shakespeare the contextualizations of moral choice in life's opportunities for penance, grace and redemption. Ernest Suarez's discerns in O'Neill the contextualization of a teleology of memory, personal identity, and family history. Anne Anlin Cheng's uncovers in Ellison a contextualization of political agency in unconscious psychic process and social construction by "raced subjects."

1. John Finnis

John Finnis, who is a moral philosopher and a philosopher of law, explores William Shakespeare's *Measure for Measure*. In Finnis's reading, the play's premise is that practical reason by its nature applies itself to particular events and so calls for exceptions. But Finnis draws our attention to another principle accounting for the play's drama: some norms prohibit an action regardless of circumstances. He draws out Shakespeare's contextualization of this "hard teaching." A "back-and-forth" of social interaction, while not itself "moral," is the context within which characters may grow towards virtue. Where a moral norm does apply, the majority of people may lack insight into a moral norm, without this itself impugning the norm's truth. At the same time, the complex demands of political prudence on those with responsibility for the common good are to be measured differently than is individual choice. As the play's central themes, Professor Finnis highlights the need of all for charity and the roles of repentance and conversion as openings for grace, and of humility as remedy for hardheartedness.

2. Ernest Suarez

Ernest Suarez, who is a professor of American literature, meditates on Eugene O'Neill's *Long Day's Journey Into Night*. Suarez introduces the reader to the twentieth-century nuclear family as the setting for O'Neill's development of his themes of family relationship, identity and responsibility. In Suarez' reading, we encounter the intertwining of a sense of right and wrong with other kinds of feelings, such as adequacy or failure, self-acceptance or regret, and forgiveness or resentment. Suarez helps the reader to grasp O'Neill's insight that
knowledge of one’s own wrongdoing and one’s own victimization are intertwined. He portrays O’Neill’s family as vacillating between recrimination and forgiveness. Professor Suarez unpacks O’Neill’s symbolic reliance on the sacrament of confession in communicating what he has to say on these themes. Where Finnis leads us to Shakespeare’s resolution of his drama in grace, Suarez leads us O’Neill’s as a deepening of psychological understanding.

3. Anne Anlin Cheng

Anne Anlin Cheng, who is a professor of English literature and African American Studies, studies Ralph Ellison’s Invisible Man. She illumines Ellison’s metaphor of “invisibility,” as disclosing the way in which American consciousness among “raced subjects” pre-determines perception and description. She assists the reader to grasp Ellison’s insight that this state of mind is one of mutual projection. In this characteristic consciousness, the majority depends for its identity on the minority it suppresses, and the minority, in turn, finds its identity in being excluded and by excluding. Cheng draws upon Freudian psychology to explain the unresolved grief that is at the heart of this shared identity, and she proposes that a dynamic of mutual grief is evident in the crisis of American civil rights law. She observes that this same dynamic lies at the root of America’s tragic avowal of civic values when it is most traumatized by its own inability to live them. The resolution that Professor Cheng finds in Ellison occurs in his insight that subjective agency is not “uncompromising individualism” when freed of illusions, but “painful interpersonal negotiations.”

B. Essays Oriented to the Narrative Formation of Personal or National Identity

Smith’s, Strong’s, and Smith’s essays share less a focus on moral and political agency, than a common emphasis on the role of literary narrative in the formation or construction of personal or national identity. Emma Smith, writing on William Shakespeare, sees the literary narrative as a provocation to the
formation of identity rather than as a stopping point expressing specific moral convictions. Tracy Strong, meditating on the *Adventures of Huckleberry Finn*, echoes this idea in his own way as he relates the literary metaphor of drifting down a river with another person to the possibility of transformation in identity. Dave Smith traces parallels between the discovery of their individual voices by Emily Dickinson and Walt Whitman and the formation of distinctive American identity.

1. Emma Smith

Emma Smith, who is a literary scholar and lecturer, and senior tutor at the University of Oxford, writes on Shakespeare's *Measure for Measure*.80 As her opening ambit, she teases the idea of readers' “ethical or religious interpretative agendas” apart from the content more properly inhering in the text.81 She then illustrates the propensity of readers to impose agendas on the text82 by tracing the concrete history of unsubstantiated readings of a particularly intriguing word located in Shakespeare’s text.83 She agrees that the play seeks contextualization, but points out that the play takes this mixing so far as to mix “meaning and unmeaning.”84 She points to the play’s many characters’ irresolvably diverse ethical postures85 and offers that they more provoke questions than resolve them. She asserts that the play evades any straightforward demonstration of its meaning, but suggests that it should be lauded for this quality.86 Professor Smith suggests that the play’s meaning inheres not as much in the text as in the meanings it provokes in the minds of its readers.87

2. Tracy Strong

Tracy Strong, who is a professor of political science, offers a reading of Mark Twain’s *Adventures of Huckleberry Finn*.88 Strong explores Twain’s central metaphor of floating down a river and its meaning for both national and individual identity.89 He asserts the importance of recognizing that the book has

---

80 Emma Smith, supra note 56.
81 Id. at 142-43.
82 Id. at 143.
83 Id. at 142.
84 Id. at 149.
85 Id. at 144.
86 Id. at 148-49.
87 Id. at 148-49.
88 Strong, supra note 57.
89 Id. at 158, 162, 164.
no "argument." Strong sees in Twain's account itself a contribution to the accrual of American national identity in its fashioning of an American "voice" and its capturing of American vernaculars. He shows us that Twain celebrates American tendency to reject inherited hierarchies. While Strong notes that Twain rejects conventional moral codes, he observes that, the novel's main character models moral learning learns through his own imperfections. Professor Strong proposes as Twain's resolution the insight that the recognition of mutual personal dependency more than adherence to conventional codes is essential to human transformation.

3. Dave Smith

Dave Smith, who is a poet, literary critic, and professor of creative writing, uncovers the salient qualities of Emily Dickinson's and Walt Whitman's poetic voices. He shows that these voices are singular, and that they are expressive of the pursuit of happiness while answering to the fear of abandonment characteristic of the modern individual. Smith tells us that each rejects hierarchies of the past but considers itself to have all knowledge within itself sufficient to its task even amidst great social change. Smith's principal focus is on Whitman, whom he depicts as presenting himself as individual and yet as speaking for all, and as proclaiming the equality of viewpoints while himself holding forth on the cosmic issues. Smith suggests that Whitman's "paradox, contradiction, and juxtaposition" in "endless parallelism" reflect this characteristic stance. He presents Whitman's resolution both as brief for the individual and as a belief, even in the face of burgeoning national power, that

---

90 Id. at 156.
91 Id. at 164-66.
92 Id. at 158-60, 163.
93 Id. at 160-62.
94 Id. at 160.
95 Id. at 167-68.
96 Dave Smith, supra note 58.
97 Id. at 196.
98 Id. at 178-85.
99 Id. at 196-96.
100 Id. at 188.
101 Id. at 185.
102 Id. at 186.
103 Id. at 188.
104 Id. at 193.
105 Id. at 188.
106 Id.
the “growth of the individual” equals the growth of the nation, an “apotheosis of
divine and democratic will.”

III. Conclusion

Readers are invited to ask, as a matter of their own creative response, what
implications these authors’ essays may possess for the larger symposium
questions eliciting them. And, vice versa, they are invited to ask what these
larger questions have, of relevance, to say about the deeper and more perennial
meaning of the canonical works of Anglo-American literature which these
authors address.

Do these essays, in some way, suggest that our response to the current world
situation may find its grounding in relation to reliable rules and principles of
practical reasoning, even as we orient ourselves to exceptional cases? Or, do
they, by contrast, indicate that the very ground of that response must be an
exception premised on a higher, unrepeatable destiny? What do these essays
lead the reader to conclude about the continuing viability of the classical vision
of practical reason proposed by Aristotle, and, conversely, about that of the myth
of American Exceptionalism so-called? And what do they say about the
possibility of some dialectic that might unite even as it sometimes divides these
concepts?

Do these essays expose, perhaps, that, for all of its arresting drama, the
current world situation is essentially no more than an opportunity to return to
perennial human themes? Or in keeping with America’s prophetic and
exceptionalist roots, do they lead one to conclude that America and perhaps the
world is destined in to manifest divine election or apotheosis of national or
global identity in some truly singular way?

Beyond particular answers to such questions, these essays, at the very least,
serve as salutary reminder of how literary narrative can model the virtue of
equity, while adding to the narrative of identity, even or especially, in the midst
of moral perplexity.

\[107\] Id. at 190.