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Book Review of *Shifting the Blame: Literature, Law, and the Theory of Accidents in Nineteenth-Century America*, by Nan Goodman.

Edward A. Purcell Jr.

SHIFTING THE BLAME: LITERATURE, LAW AND THE THEORY OF ACCIDENTS IN NINETEENTH-CENTURY AMERICA; The Lawyer's Bookshelf

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The 19th century witnessed the breakdown of customary society, the spread of democratic ideals and practices, the rise of a vibrant entrepreneurial capitalism and the development of a national market and an industrial economy. Together, those changes remade American life, and not surprisingly they remade American law as well. One result was the emergence of negligence law, a major doctrinal shift that brought to the fore questions of risk, fault, causality, foreseeability, personal responsibility and a new standard of ordinary care.

In fact, so pervasive was the impact of negligence that virtually no aspect of nineteenth-century culture escaped its influence, Nan Goodman writes in **Shifting the Blame** (p. 4). Arguing that the emergence of negligence law was part of a comprehensive cultural reformation, she explores the nature of that reformation as it occurred in the realm of imaginative literature. Her focus, she explains, is on the narrative manifestations and implications of accidents and their literary telling and retelling (p. 4).

Beginning with James Fenimore Cooper and ending with Don DeLillo, Goodman considers works by some two dozen imaginative writers. She ranges from major figures in American literature to obscure authors in forgotten popular magazines, devoting particular attention to Cooper, Mark Twain, Richard Henry Dana Jr., Stephen Crane and Charles Chestnutt. In one of her best chapters, for example, Goodman examines the development of the sea novel, especially the contributions of Cooper and Dana. She shows how the genre evolved from romantic tales of reckless and swashbuckling adventure to stories that blended the emerging themes of negligence law with a new faith in the common man.

By mid-century the sea story had come to identify heroism with caution, prudence and foresight in meeting the unpredictable and deadly risks of life at sea, and it frequently chose as its heroes ordinary seamen who had to overcome not only the dangers of an unpredictable ocean but also the incompetence and arrogance of their ships' officers. The genre, Goodman concludes, reflected a popularization of the prudent hero and an application of the precepts of vigilance and caution to the common sailor (p. 37).

Shifting the Blame focuses on the efforts of legal and imaginative writers to deal with fault, causality and personal responsibility. While negligence law made those ideas central, social and technological changes during the 19th century made them increasingly problematic. Ever more commonly, accidents involved both complex machinery and possible agents who were distant, multiple and often unknown. Efforts to specify the cause of accidents and to identify agents who were at fault began to seem uncertain and even arbitrary.

The law responded by developing the doctrine of proximate cause to limit the inquiry, while imaginative writers responded by examining the implications of causal uncertainty for the sense of individual responsibility and moral accountability. In **The Rise of Silas Lapham**, William Dean Howells seemed to echo the law's pragmatic response, but Twain -- driven in part by a deep sense of personal fault for the accidental death of his younger brother -- was far less sanguine and easily satisfied. He suffered, Goodman concludes, a lifelong frustration in not being able to solve the problem of who was to blame -- for his brother's death or for the gradual disappearance of the morally responsible individual (p. 97).

By the early 20th century -- a period preoccupied with causal discontinuities (p. 159) -- Twain's anxieties had become common. In both tort theory and literature, writers increasingly turned away from strict causal inquiries and toward practical policy analysis. By the century's latter half, the fears and anxieties produced by the new threat of mass toxic torts led to yet another reformed accident narrative, one that legitimates even the most unverifiable fears and injuries (pp. 169-70).

While Goodman's principal theme is the disintegration of theories of causality, her story is neither simple nor one-directional. In an intriguing chapter, for example, she considers the significance of the development of railroad safety equipment, especially the widespread use of signaling devices designed to warn of potential dangers. The various signals, she explains, increased the clarity of the accident's causation by increasing the number of people to whom information about an impending accident could be communicated (p. 137).

For the public, the result was greater safety; for the law, it was an enhanced ability to place blame. For writers of fiction, the result was to shift their focus from accidents themselves to the drama of signalling and the efforts of heroic railroaders to prevent rapidly approaching disasters.

Goodman's discussion of the impact of race on tort law is particularly suggestive. She notes the relative absence of blacks from reported tort cases, as blacks are also generally absent from reported cases involving challenges to agreements releasing companies from tort liability. The relative absence of black plaintiffs in both types of cases is, of course, evidence that racial pressures tended to dissuade them from bringing tort suits.

In that context, Goodman points to the significant and common role that blacks played in fiction and popular culture. Countless numbers of cultural documents emphasized the black man's physical incompetence and accident-proneness (p. 118). A pervasive popular culture, in other words, added its own special disincentives for black tort plaintiffs. Potential claimants knew that they would face jurors bred to believe in black ineptness and, therefore, primed to accept the defense that any injury blacks claimed was likely their own fault.

Although Goodman does not explore the issue further, her analysis identifies one of the ways that cultural values and perceptions helped shape the massive informal legal process that resolved most disputes out of court and without judicial judgment. In this instance, the racist perceptions embedded in the nation's popular culture pressured blacks to discount their tort claims more severely and abandon them more commonly than white tort plaintiffs.

Shifting the Blame attempts a bold synthesis of popular social history with both law and literature. While its breadth pays off in striking insights and provocative suggestions, it also limits the book's achievements. Its relatively brief compass hardly allows Goodman to do justice to her many subjects.

The question of selectivity -- her choice of specific tort doctrines, judicial opinions, legal theorists, fictional writers and literary works -- regularly intrudes on the analysis, especially in the book's latter half. Moreover, some issue, such as the rise of the common man, the significance of the fellow-servant defense and the relationship between law and morals, are highlighted but then dropped. Further, the book sometimes claims too much, advancing apparently sweeping assertions on the basis of relatively scant and selective evidence. Finally, the book never adequately explains the nature of the claim made here for a historical relationship or reciprocity between law and literature (p. 9).

That law and literature have a relationship -- indeed, that they have a range of complex, changing and contingent relationships -- is hardly subject to serious challenge, but exploration of either the nature of that relationship in general or its particular form in any given context, requires a greater specificity, broader evidentiary base and more rigorous analytic framework than the book provides. Goodman cites the late Robert Cover for the principle that law and literature are coequal narratives in a normative world (p. 9), but such a proposition surely obscures the specific historical relationships between the two forms of narrative as much as it distorts their individually distinctive roles on any given historical issue.

Despite quibbles, however, Goodman has written a provocative and insightful study. **Shifting the Blame** deepens our understanding of the parallels and interactions that take place between the realms of legal and fictional narrative. Those interested in the relationships between law and literature will find her book both pleasurable and rewarding.

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