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Integrating Humanities into Family Law and the Problem with Truths Universally Acknowledged

Carol Sanger*

INTRODUCTION

Family Law differs from the other subjects under discussion today in at least two respects. As a matter of curricular location, it is not always considered a core course. I am therefore grateful for Melissa Murray’s public recognition of the “coreness” of Family Law within a legal education. Second, if one purpose of integrating humanities into the core curriculum is to humanize the law, it is probably safe to say that Family Law is already humanized enough. The subject comes fully loaded with all too human conflict and suffering: cruelty, anger, sex, disappointed expectations, and all of these play out along one or another gender matrix. Indeed, it’s hard to think of any subject in Family Law—maybe jurisdiction?—that doesn’t have at least a flash of pain below the surface. Students don’t need to watch *Kramer vs. Kramer*,¹ to use an ancient example, in order to understand the aftermath of divorce. A fair few of them will have experienced both the run-up and the aftermath themselves. The

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1. *KRAMER VS. KRAMER* (Columbia Pictures 1979).

problem in Family Law is more often tamping down classroom emotions than expanding them.

And yet, I regularly supplement my Family Law courses with materials from the humanities, and this panel has provided the occasion for me to think more reflectively about why I do this and what I want students to get out of it.² I will put three reasons on the table, and take two off pretty fast. The first reason is that showing and telling is fun. Most of us have used props in one or another course, whether a stuffed fox, a firecracker, or a photo of Shirley MacLaine.³ A second reason is that drawing from sources outside of law makes us look cool. Put another way, outside sources humanize not only the materials but they humanize us too. But alas, fun and cool may not fully justify the move toward humanities, in part because I suspect we might get this part wrong. Our coolness frames of reference are in most cases not the same as our students'. Monty Python is no longer the lingua franca of cleverness, and I can't reliably tell you what is. And as for props, I'm not sure that any law student today cares what Shirley MacLaine looks like. Moreover, to the extent that either fun or cool is a matter of finding props to accompany the cases, students are far better at uncovering items and images than we are.⁴

A sounder basis for integrating humanities into our classes is, of course, that it enhances how we teach in substantively significant ways. I have spent some time thinking about what these ways are, and I want to try out my ideas this morning using aspects of marriage as my testing ground.

I spend a full month on marriage in Family Law, and I use a fair range of what I'll call "extrinsic evidence" from the humanities. Because there is so much one could use, I am fairly strict with myself about what I do use. It seems

2. I am putting aside the question of what we mean by "humanities." I will simply use the definition supplied by the federal government in the National Foundation of the Arts and Humanities Act of 1965: humanities includes but is not limited to

the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archaeology; comparative religion; ethics; the history, criticism and theory of the arts; those aspects of social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to reflecting our diverse heritage, traditions, and history and to the relevance of the humanities to the current conditions of national life.

National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. § 951 (1965). The definition seems to omit economics, engineering, and the hard sciences but is otherwise quite capacious.

3. Several contract casebooks include pictures of Shirley MacLaine to accompany *Parker v. Twentieth Century-Fox Film Corp.*, 3 Cal. 3d 176 (1970), a popular mitigation of damages case, to liven things up. Indeed, there was a feminist critique some thirty years ago about whether the inclusion of a can-can kicking Shirley MacLaine was the best approach to thinking more deeply about the ways in which the teaching of contracts might be problematically gendered. See Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065 (1984–1985).

4. Of course, props are fun. What contracts professor wouldn't want to introduce a new generation to The Ronettes singing *Be My Baby* (see *Greenfield v. Philles Records, Inc.*, 780 N.E. 166 (2d Cir. 2002) (contract's silence on synchronization and domestic licensing does not create an ambiguity opening door to extrinsic evidence to determine the intent of the parties)), and actually show them the adorable Ronettes. See *THE RONETTES, BE MY BABY* (Philles Records 1963).

important that when we take the time to introduce new materials, it should not be just a matter of word association football (“this novel reminds me of this case”), but rather that the materials connect to larger themes around which the doctrinal topics are wrapped or from which legal rules emerge. In Family Law these themes include the relation between family and market structures; Family Law as a reflection of contemporary social values on race, gender, and everything else; constitutional limitations on the regulation of intimate relationships; and the politics of Family Law and law reform. Connection to these larger themes provides one way of sorting and sifting the wealth of material from which one might choose.

However, I want to suggest a different reason why I am willing to take time away from doctrine and case law to spend it in the humanities. My suggestion is this: The humanities expand the imagination so that students can understand lives that are not like their own. The lives presented in novels or recounted in interviews may not be like the lives of our students because of when (or sometimes where) the two sets of lives are lived. They may not be like their own because of cultural differences, or because of the sometimes inexplicable nature of preferences and the choices that people make with regard to intimate relationships. This imaginative reach toward understanding different lives, times, or preferences is important in a number of ways.

The first has to do with classroom exchange. A work of fiction—and I draw many of my examples today from literary sources—provides a common text that enables students to simultaneously focus upon and distance themselves from the subject at hand. Precisely because it is invented, focusing on a fictional character avoids putting any one person or group in the class on the spot to have to “own” a particular subject: polygamy, say, or same-sex marriage. I am not saying that student experience is not valuable. I am saying that a fact-rich, emotionally intricate common text offers the opportunity to discuss hard topics without the silent expectation or nod that any particular black, gay, Latino, poor, or Mormon member of the class will have to defend or explicate the issue for the rest of us.

The ability to understand other lives different from one’s own also matters with regard to interactions outside the academy. Some of our students will represent clients; others will sit in judgment on them. Still others will be involved in drafting, enacting, and even vetoing legislation. All of these activities are, I suggest, better carried out when the judge, legislator, or executive has developed imaginative capacities about how other lives are lived and how law is experienced. This is not quite the same thing as empathy, a practice that sadly has been downgraded from a virtue to a political liability in recent times.⁵ It may be possible to appreciate or grasp a position or

5. See Robin West, *The Anti-Empathic Turn*, NOMOS VII (forthcoming 2012). The “turn” became explicitly political during Justice Kagan’s confirmation hearings when Senators Grassley and Sessions objected to the exercise of empathy by judges. See Dahlia Lithwick, *Supreme Court*

sentiment—to see or recognize something from the perspective of the subject—without necessarily identifying emotionally with the subject’s sentiment, circumstances, or plight. That is, as Susan Bandes has explained, to grasp another’s position may at one level be simply the cognitive capacity to understand what others are thinking or feeling.⁶ But it can go deeper: moral imagination or empathy is also “the ability to *stand in the shoes of another*, to understand that others have concerns and feelings and values different from our own. It is a tool, a capacity, and one that does not necessarily come easily.”⁷ And as Bandes insists, either form is “essential for living in the social world,” the very place we mean for our students to hang out.⁸

So far I have been speaking rather generally about what work humanities does for teaching law and why the method, perhaps uniquely, sharpens, often subtly, students’ sense of what law encompasses beyond black letters. I want now to turn to a few concrete examples from three subtopics of marriage—incest, adultery, and race—to show how the humanities contribute to richer, more complicated understandings of topics that on first glance might look less complicated.

I.

INCEST

I begin with incest. Most Family Law casebooks have a case or two on incest, usually as an example of statutory prohibitions on marriage. Students learn about degrees of affinity and whether relations of the whole blood and the half should be treated the same. They may learn that in other cultures incest is more narrowly defined than in the United States so that marriages between cousins, for example, or uncles and nieces do not traditionally fall within the prohibited range in the country of origin. Yet, as reported in a 2003 *New York Times* article, cousin marriage in the United States—and not between immigrant couples but among the home-grown marrying kind—is practiced here as well.⁹ In my experience, the subject of cousin marriage tends to make students nervous, and that nervousness can be put to good use. Again, what I want students to think about, although I don’t spell it out this way, is that practices that may look peculiar to us (the big Us who stands for everyone else) are not always peculiar to others and that there may be a logic, and even a necessity, to those practices.

Breakfast Table Empathy Has No Party, SLATE (June 29, 2010, 4:46 PM), http://www.slate.com/articles/life/the_breakfast_table/features/2010/supreme_court_breakfast_table/empathy_has_no_party.html.

6. Susan Bandes, *Moral Imagination in Judging*, 51 WASHBURN L.J. 101, 109 (2012).

7. *Id.* at 112.

8. *Id.* at 109.

9. Sarah Kershaw, *Shaking Off the Shame*, N.Y. TIMES, Nov. 25, 2009, available at <http://www.nytimes.com/2009/11/26/garden/26cousins.html?pagewanted=all>. The practice is also reflected in a more recent *Times* piece on incest as a topic in television programming. See Dave Itzkoff, *A Family Affair as Old as Oedipus*, N.Y. TIMES, Dec. 11, 2011, available at http://www.nytimes.com/2011/12/12/arts/television/incest-as-plot-point-on-3-hbo-series-just-by-chance.html?_r=1&scp=1&sq=incest&st=cse.

One can get at this, in the case of incest, with a most interesting socio-economic history of nineteenth-century incest written by British anthropologist Adam Kuper. In *Incest and Influence: The Private Life of Bourgeois England* Kuper argues that in nineteenth-century England cousin marriage was crucial for the consolidation of family capital so that family commercial enterprises could thrive.¹⁰ He focuses on two kinds of enterprise: the banking business and the development of British potteries. Kuper charts out the regime of cousin marriage among the Rothschilds in the first case and the Wedgewoods in the second. He also has a wonderful opening section that discusses the near endless and ever-so-normal marriages between cousins (and functional siblings) in the nineteenth-century British novel. I don't assign that part but I do put the book on reserve. That is not because I think novels are not central to the project at hand but because one can't do everything. There is also a more recent novel, the extraordinary *Middlesex* by Jeffrey Eugenides, which considers, among other transformative depictions, consensual incest within the context of a family immigration story.¹¹ Finally, if one is into film festivals—spoiler alert!—John Sayles's movie *Lone Star* offers an intriguing presentation of incest that again pushes viewers off the comfortable incest perch where you think you know what you think about it, and makes you reconsider.¹² One comes to understand that people may marry cousins or even siblings for reasons that are not inexplicable, however we in the end decide to regulate the practice.

II.

ADULTERY

My second topic for a humanities intervention is adultery. As a few here may remember, adultery was once a common ground for divorce back in the day when you had to have a ground. In New York it was the only ground until 1966. But our students don't know about "back in the day." The idea that you could not simply divorce a person to whom you no longer wanted to be married, for just that reason alone, comes as a shock. Like, what's law's problem, anyhow? I think, as well, that most of our students don't know much about being married—either its joys and satisfactions or its exasperations and discontents. They have also not thought much about the relation between the content or quality of a marriage and the how and the rules of exit.

To get at that intriguing topic, I often use two sources. The first is the Prologue to Phyllis Rose's group biography *Parallel Lives: Five Victorian*

10. ADAM KUPER, *INCEST AND INFLUENCE: THE PRIVATE LIFE OF BOURGEOIS ENGLAND* (2009).

11. JEFFREY EUGENIDES, *MIDDLESEX* (2002). I also recommend the short and powerful *The All of It* by Irish novelist Jeanette Haien and Susan Frelich Appelton's review essay of *Middlesex*. JEANETTE HAIEN, *THE ALL OF IT* (1988); Susan Frelich Appelton, *Transgender Tales Jeffrey Eugenides's Middlesex and Other Stories of Popular Culture, Sex, and Law* (Wash. U., School of Law, Working Paper No. 04-01-03), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=491223.

12. *LONE STAR* (Columbia Pictures 1996).

Marriages.¹³ The Prologue is a general contemplation of married life, at a time when at least within a particular class, divorce was not only hard to get but also stigmatizing. But Rose observes that modern divorce law also burdens marriage, and in an interesting way: it is “[b]ad enough to choose once in a lifetime whom to live with; to go on choosing, to reaffirm one’s choice day after day, as one must when it is culturally possible to divorce, is really asking a lot of people.”¹⁴ Marriage, even amiable marriage, does ask a lot of people. The second source is the chapter “Vulnerability by Marriage” from political theorist Susan Okin’s *Justice, Gender and the Family*.¹⁵ Here Okin applies sociological exit theory—those who have less power about leaving an institution have less power while in the institution—to the situation of wives in marriage. Students may dispute whether twenty-first-century marriages fit this late twentieth-century model, but the chapter gives them new vocabulary and perhaps new insights into why marriages sometimes work as they sometimes do.

And this leads us back to adultery. Adultery comes in at least two legal formats: real adultery and fabricated adultery, and I begin with the fabricated. I like teaching fault-based divorce, and not only because fault is always attempting a come-back in one form or another, but also because it helps students understand what is going on in all those movies from the 1930s, 40s, and 50s.¹⁶ I like teaching fault because it shows what the incorporation of moral judgments into Family Law looks like, not in theory but when it is operationalized. Chapter 4 of Evelyn Waugh’s 1934 novel *A Handful of Dust* offers a grand account of how the evidence necessary to prove adultery is negotiated, assembled, and rehearsed, and how many things can go wrong in the process.¹⁷ I’ve almost never had an uninteresting class discussion about our hero Tony, whose wife Lady Brenda has informed him that she simply must have a divorce in order to marry her lover. The dutiful Tony must then go about finding a suitable co-respondent for himself in order to stage an assignation by the sea that is suitably sordid and suitably documented.¹⁸

13. PHYLLIS ROSE, *PARALLEL LIVES: FIVE VICTORIAN MARRIAGES* 18 (1983).

14. *Id.* at 18.

15. SUSAN MOLLER OKIN, *JUSTICE, GENDER AND THE FAMILY* (1988).

16. Take the following exchange from Alfred Hitchcock’s 1938 film, *The Lady Vanishes* in which “Mrs.” Todhunter tries to force her married lover’s hand by making their relationship public:

“Mrs.” Todhunter:

If there is a scandal, there’ll be a divorce. You couldn’t let me down. You’d have to do the decent thing as only you know how.

Mr. Todhunter:

You forgot one very important thing, Margaret . . . your husband would divorce you, no doubt. But my wife will never divorce me.

THE LADY VANISHES (Gainsborough Pictures 1938). The script is available at *The Lady Vanishes Script-Dialogue Script*, SCRIPT-O-RAMA.COM, http://www.script-o-rama.com/movie_scripts/l/the-lady-vanishes-script-transcript.html (last visited Jan. 1, 2012).

17. EVELYN WAUGH, *A HANDFUL OF DUST* (1934). See generally Walter Wadlington, *Divorce Without Fault Without Perjury*, 52 VA. L. REV. 32 (1966).

18. To keep things neat, in early nineteenth-century Scotland, after an adultery-based divorce, the offending partner was prohibited from marrying the co-respondent.

Despite what I said before about no time for fun, this is fun. It clarifies how to hire a baby sitter if your co-respondent should turn up with her own child in tow, or how much to take off for the mandatory photographic of posed in flagrante relations.¹⁹ It also helps clarify how mid-century gender roles structured the procedural aspects of divorce. As one of my students this year asked in genuine confusion, why would a man who was really having an affair insist that she be the plaintiff in the divorce action thereby requiring him to fabricate his own affair? I explained that this was the gentlemanly thing to do, and that Tony was a gentleman. This was regarded with some incomprehension by my student. Didn't I understand that this made things worse for Tony? Yes!, I replied back, but there were social costs to him of doing otherwise.

And the point of this back and forth? It is not to educate a class in 2012 about the mores of the upper class in 1934 England. Rather, it is to provide something of a case study to show a situation where people take positions in law that may be contrary to their own apparent interests, and to use an example that is largely unfamiliar to students so that when an example comes that is factually more familiar—a mother taking less in child support in order to secure custody, for example—the outline of the phenomenon will already have been established.

Earlier I mentioned real adultery, and here I want to introduce a short story by Alice Munro called *The Bear Came over the Mountain*.²⁰ (The story was made into a movie called *Away from Her*, with Julie Christie.²¹) The story concerns a married woman in her sixties who decides that her Alzheimer's disease has become sufficiently disabling that it is time to go into sheltered living. Her husband reluctantly agrees, visiting her faithfully. He slowly comes to understand that she has fallen in love with another patient. This is a strange sort of adultery, and one that the husband comes not only to accept but to make possible by securing the funds so that the man can stay in the facility. I like the story because it captures the complexity of long-term marriage in an interesting way: the husband's tactics in supporting his wife's unfaithfulness are endearing and involve his own unfaithfulness. The idea of adultery within a happy marriage and not for purposes of thrills but devotion is something new, though something similar seems to have played out quietly with regard to Justice Sandra Day O'Connor's husband before his death in 2009.²²

19. Lawrence Friedman reports a 1932 study of itemized states of undress—kimonos, BVDs, and dressing gowns—in divorce actions in New York City. See Lawrence M. Friedman, *A Dead Language: Divorce Law and Practice Before No-Fault*, 86 VA. L. REV. 1497, 1513 (2000).

20. Alice Munro, *The Bear Came over the Mountain*, in HATESHIP, FRIENDSHIP, COURTSHIP, LOVESHIP, MARRIAGE: STORIES (2002). Short stories are an economical way to introduce the humanities. Each story in the Munro volume hits the mark. Two older sources worth rummaging are AMERICAN FAMILIES: 28 SHORT STORIES (Barbara Solomon ed., 1989) and THE NEW FAMILY (Scott Walker ed., 1991). An excellent collection of short stories about adoption is ELYSE GASCO, CAN YOU WAVE BYE BYE, BABY?: STORIES (1999).

21. AWAY FROM HER (The Film Farm 2006).

22. Joan Biskupic, *A New Page in O'Connors' Love Story*, USA TODAY, Nov. 13, 2007, http://www.usatoday.com/news/nation/2007-11-12-court_N.htm.

III. RACE

Finally, in considering integrating the humanities into our teaching, it is worth remembering that law itself is located within the humanities. I therefore draw my last example from case law to suggest that there are excavating possibilities in our own backyard. The case I have in mind is *Sargent v. Sargent*, a 1920 case from New Jersey that is included in the current Areen and Regan Family Law casebook as an example of the old-fashioned doctrine of collusion.²³ The facts are sort of cute: A wife has an affair with the family chauffeur, and because the husband may have known about but did nothing to stop it, his request for a divorce is denied. So far so good; a bit of doctrine with room for reflection on changing notions of spousal obligation as mediated through gender.

But if one digs deeper, the excerpt in the casebook is revealed to be dangerously misleading and inadequate, for it turns out that *Sargent v. Sargent* is riddled with race.²⁴ The husband and wife were an upper-class white couple and the chauffeur, according to the court, “a coffee colored negro, showing the characteristics of his race, save that his hair is straight . . . [,] intelligent, but speaking ungrammatically, and I would say of not a prepossessing appearance.”²⁵ In contrast, Mrs. Sargent appeared to be “a woman of modest demeanor and of refinement and education, . . . [possessing] beauty of face and form.”²⁶ While the court announces a general rule about a husband’s duty to protect his wife from misadventure when he suspects her of it, the key in this case is race. Despite a wagon load of witnesses, early wire-tapping, and much other evidence, the court finds the underlying premise unthinkable:

The thought of this cultured, refined, and modest appearing white woman in sexual relation with any negro is revolting to the senses. . . . To convince me that defendant has departed from the traditions of her race and has fallen so low in the human scale and has been so grossly immoral as to place herself among the most debased of womankind the evidence must be so convincing and compelling as to leave no doubt whatever existing in my mind as to her guilt.²⁷

Arguing in the alternative, the court further concludes that if Mrs. Sargent did have an affair, it was all Mr. Sargent’s doing: “Would an outraged husband, who had learned that a negro was his wife’s lover, want to be in the presence of a wife who had so dishonored him, without an ulterior motive on his part? . . .

23. JUDITH AREEN & MILTON C. REGAN, CASES AND MATERIALS ON FAMILY LAW (5th ed., 2006).

24. *Sargent v. Sargent*, 114 A. 428 (N.J. Ch. 1920). I am grateful to Prof. Bela Walker for introducing me to this aspect of the case, while she was a student at Columbia Law School.

25. *Id.* at 429.

26. *Id.* She was also “a member of various women’s organizations, of a Browning society, of musical clubs, and she was a church attendant.” *Id.*

27. *Id.* at 430.

It is also difficult to resist the conclusion that he wanted her to commit adultery. Certainly his conduct does not indicate that he did not want her to.”²⁸ Thus the case is not so much about old-fashioned gender roles as old-fashioned racism, embedded in paragraph after paragraph of the long decision.

Sargent is not an easy case to discuss in class, but I think it is worth the discomfort (recognizing that the discomfort might not be shared evenly throughout the class). Race permeates Family Law; we are all familiar with *Loving*, with *Palmore*, with *Moore v. East Cleveland*.²⁹ *Sargent*, in contrast, involves no constitutional challenges. It is just the courts of New Jersey making sure that the social order remains orderly as they apply the regular rules of Family Law to a divorce request. In this way, the full case, like a short story, gives students a more complete story about how race and intimacy operated in the 1920s in a northern state. The case helps get us ready for *Loving* by laying out the utter unthinkability of interracial sex as an aspect of marriage law.³⁰ It also foreshadows the tremendous bravery of Richard and Mildred Loving.

Here I quickly mention Robert Pratt’s autobiographical insights into that latter case, as Pratt, when a boy, sat on his grandmother’s porch and watched Richard Loving pull into his garage each night and pull the door down.³¹ Pratt’s essay also brings *Griswold* into new light. He describes how five years after the Lovings married, in the early hours of the morning Sheriff R. Garnett Brooks and two other law enforcement officers “opened the unlocked door of their home, walked into their bedroom, and shined a flashlight in their faces.”³² When the Supreme Court in *Griswold* describes the imagined horror of “the police . . . search[ing] the sacred precincts of marital bedroom for telltale signs of the use of contraceptives,” it is Mildred and Richard who come easily to mind.³³

CONCLUSION

Are there reasons to pause before turning to the humanities? Certainly. The diversion takes time and no one ever thinks they have time enough to cover all the important stuff as it is. This can be overcome, however, in part by losing the term “diversion”—that is by integrating rather than tacking on—and by recon-

28. *Id.* at 438–39.

29. *Loving v. Virginia*, 388 U.S. 1 (1967); *Palmore v. Sidoti*, 466 U.S. 429 (1984); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977).

30. See RACHEL MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE* (2003); RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION* (2002).

31. Robert A. Pratt, *Crossing the Color Line: A Historical Assessment and Personal Narrative of Loving v. Virginia*, 41 *HOW. L. J.* 229 (1997–1998).

32. *Id.* at 236.

33. *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (“The very idea is repulsive to the notions of privacy surrounding the marriage relationship.”). See also Mark Strasser, *Sex, Law, and the Sacred Precincts of the Marital Bedroom: On State and Federal Right to Privacy Jurisprudence*, 14 *NOTRE DAME J.L. ETHICS & PUB. POL’Y* 753–89 (2000).

sidering just what the important stuff is. I am not willing to let certain topics go without the slightest worry that I am putting a dent in anyone's legal education. But a second and more humbling hesitation is this: we are not all trained in the humanities and in reaching for what is unquestionably good material, I think we have to have some humility about our ability to teach it. Integrating humanities has to mean something more than "I read a good book that has something to do with X and it would be really fun to teach it." As bestowed with natural talent as my mother thinks I am, I really don't know how to teach literature or history.³⁴ That is not to say any of us shouldn't sometimes stretch ourselves to study up (or pair up) and try something new; it is only to say that integrating the humanities is not only a matter of their relevance, but our abilities.³⁵

There is, of course, much more. I adore Philip Larkin's *This Be the Verse*, which is really good when teaching either custody or contraception, and you get to say a bad word.³⁶ But I will leave it with race, incest, and adultery, and urge you all to give them a try.

34. In this regard, I have been lucky to pair up with someone who does know how to teach at least one of them. I regularly co-teach a seminar, "Meanings of Motherhood: Legal and Historical Perspectives," with history professor Alice Kessler-Harris. But we know our limits. Much as we are tempted each time we revise our syllabus to include Toni Morrison's *Beloved*, we do not. See TONI MORRISON, *BELOVED* (1987).

35. As an example, I quite like an essay by Jeremy Waldron called *When Justice Replaces Affection: The Need for Rights*. Jeremy Waldron, *When Justice Replaces Affection: The Need for Rights*, 11 HARV. J.L. & PUB. POL'Y 625 (1988). The piece uses *Romeo and Juliet* to explore how law stands at the ready when communal norms fail. Because I am not philosophically trained, I leave out the part on Immanuel Kant. But I like what Waldron drew from Germaine Greer's characterization of the play: the tragedy of *Romeo and Juliet* not as wretched bad luck for star-crossed lovers, but rather as the inevitable isolation and misunderstandings that result when people are deprived of the framework of civil marriage in circumstances where clan hostilities deprive them of a solution within the more intimate community of family.

36. They fuck you up, your mum and dad.
They may not mean to, but they do.
They fill you with the faults they had
And add some extra, just for you.

But they were fucked up in their turn
By fools in old-style hats and coats,
Who half the time were sappy-stern
And half at one another's throats.

Man hands on misery to man.
It deepens like a coastal shelf.
Get out as early as you can,
And don't have any kids yourself.

Philip Larkin, *This Be the Verse*, in COLLECTED POEMS (2001), available at <http://www.poetryfoundation.org/poem/178055> (last visited Jan. 1, 2012). A recording of Larkin reading it himself is also available. *This Be the Verse*, YOUTUBE.COM, <http://www.youtube.com/watch?v=qahT62n8tcA> (last visited Jan. 1, 2012).