

to each of the three principal couples at bedtime; a surprise 70th birthday party for Ma. The smell of each of the homes we enter is in our nostrils; Leigh knows them past the details of decor. The best scenes, the pivotal scenes really, are long ones between Cyril and Shirley, private, warm, funny, basically grim. (Leigh believes in improvisation, but how much of these and other scenes were improvised it's impossible to tell.)

All the actors are good, though Heather Tobias, as Cyril's sister, has a near-impossible job. Her giggling frenzies are based on some observations of Leigh's or hers that simply don't resolve into a character, even a satirical one. Philip Davis is exactly right as Cyril, appealing without any hint of trying for it, a quiet human being resigned to mere cheerfulness. Edna Dore is granitic as old Ma, lost but unafraid. Leigh uses her face tellingly in close-ups while people buzz around her.

An epitome of the film is the casting of Shirley. Ruth Sheen's upper front teeth protrude like a small amphitheater. That is plain fact. When we first see her, so sorry is our conditioning in stereotypes, we assume she must be a figure of fun, some sort of simp. But quickly it becomes clear that she is a serious, major character, one of a pair of lovers, and quite soon, particularly because of the tender scenes between her and Davis, her face becomes the only face for the gentle and humane woman she is. Leigh's choice of Sheen is typical of his approach to narrative and to filmmaking. He wants to jolt our preconceptions.

How does *High Hopes* end? Pretty much as it began. No climax, no substantive change, no extricable point. We have simply journeyed along the way in some people's lives. Cyril and Shirley are merely keeping on, trying to live decently even if resignedly, even if the title of their film is now only wry.

EDWARD ROTHSTEIN ON MUSIC

Strictures at an Institution

Anyone who attends concerts with any regularity has undoubtedly come across something we might call an "Institutional Performance." An Institutional Performance is a musical performance that an institution mounts in order to honor itself. They were once quite rare, restricted to special events staged on special occasions. But in recent years they have proliferated as our musical institutions—Philharmonic societies and opera companies and concert halls—reach an age where centennials and milestones are commonplace.

The point in an Institutional Performance, of course, is never the music itself, but the way the music reflects on its host and patrons. So the repertory in an Institutional Performance must come from the same era in which the institution itself evolved—that is, the 19th century (give or take a decade or so on either side). The music cannot be intimate or small-scaled, though, for that would give the wrong impression of the history and the significance of the institution. Instead it must be a display of force and grandeur. It should also reveal the institution to be caring

and soulful, which explains the use of, say, Mahler's Second Symphony on such occasions.

Another approach to mounting an Institutional Performance—which suits the miscellaneous aesthetic now at work in musical life—is to present a "collection." Such a collection involves countless "great" performers parading across the institution's stage. These presentations accomplish just what the institution wants; the attention is never drawn to the music itself, but always to who's coming next and who performed best. The emphasis is on the institution's power of patronage.

These are always "gala" events and are often broadcast on television, but I have never seen or heard one yet that wasn't depressing. The highlight of the centennial celebration for the Met a few years ago was, curiously enough, the performance of two hit songs by Lionel Richie—leaving the high bowing on its knees to the low. One of the most discouraging of gala Institutional Performances took place on the unveiling of the renovation of Carnegie Hall; the renovation itself was an institutional

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Our skyrocketing National Debt and high *real interest* rates are threatening us with economic decline. Consider these facts:

1. From 1980 to 1988, 80% of the \$1.69 trillion increase in the National Debt was *interest* on that Debt. In 1988, the \$151 billion of net *interest* on this Debt was 98% of the entire Federal budget deficit of \$155 billion.

2. The *real interest* on the prime (prime rate minus inflation rate) jumped from an average of 1.6% between 1960 and 1980, all the way to 7% between 1981 and the present.

3. The growth rate of personal *interest* income surpassed that of wage and salary income, between 1979 and 1988. In 1988, this imbalance in the growth rate added an extra \$69 billion to personal *interest* income.

4. The present Japanese prime rate is 3.38%, the German prime is 6.5%, and our prime is 11%. Almost 20% of the 1988 trade deficit of \$135 billion was \$25 billion of *interest* on the National Debt paid to foreigners.

The Congress should urgently consider the following remedial steps before it is too late:

- The creative use of pension funds against which the government could borrow to refinance the National Debt (starting with refinancing the \$325 billion of National Debt owned by *foreigners*), and thereby reduce the budget deficit by \$470 billion over ten years.
- A 'windfall profits' tax on personal *interest* income to be paid by taxpayers whose gross yearly income from all sources exceeds \$100,000.

In 1989, we must draft America's financial resources, not her citizens. In the 3rd World War raging around us the weapons are currency exchange rates and prime interest rates. Patriotism is the critical ingredient needed to reassert our financial strength and ensure long-term prosperity.

For further information on these issues, write to David Krebs, President, Uncommon Sense, 230 Park Avenue, Suite 954, New York, New York 10017.

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assertion of power and pride that may have permanently destroyed the acoustics of one of the world's great concert halls.

So successful, though, have these events become that gradually the Institutional Performance, like some fast-multiplying parasite, is appearing throughout ordinary concert life. There is no longer any need for a special occasion to mount one. They can be found nearly every night of the week in almost any concert hall or opera house. The extravagant productions of Zeffirelli have found such favor at New York's Metropolitan Opera—at least until the budget crunch was on—because they permit splendid Institutional Performances on ordinary subscription series. The mere rise of the curtain on the opulent collection of objects and cast members is cause for gasps and applause, as if some door were opened by Monty Hall on "Let's Make a Deal."

But even the style of an ordinary performance can be institutional, correct and overtly impressive, without risk or imagination. The music becomes simply an appendage to some other object—the musician's career, a subscription series, a recording project. The accepted international style for performance, in fact, is the institutional style. Compare nearly any recording made during the last five years by a major record company of a major repertory piece with any recording made five decades ago of the same piece, and you can hear the difference between individual style and institutional style, between music as personal meditation and music as public production. To a certain extent, even our repertory has become an institution of sorts.

ATENTION IS now beginning to focus on what lies behind all these Institutional Performances, namely, the performance of the institutions themselves. In New York, within the space of a few months, it was announced that the leadership of each of the three major musical institutions in Lincoln Center was going to change. First, Beverly Sills is stepping down as general director of the New York City Opera, having put the company on a firm financial footing if not a glorious aesthetic one. Her replacement is to be Christopher Keene, whose workmanlike conducting in the past does not provide encouragement for the future. Then Bruce Crawford—the general manager of the Metropolitan

Opera, the man who brought this nation's premiere opera company out of the red, and who brought the artistic direction of James Levine under the sway of the Met's business department—resigned to become president of the nation's largest advertising firm, leaving behind him a vacuum that only a similarly equipped CEO can fill. Finally, Zubin Mehta, the music director of the New York Philharmonic, announced that he would not be returning after the 1990-91 season. That will make him the Philharmonic conductor with the longest tenure on record—and one of the least distinguished. Mehta's successor is yet to be chosen, though lists of eligible candidates are being avidly drawn up.

There is much, no doubt, that is promising in all these developments. Unpredictability is a virtue when predictability has become a vice. But the likelihood is that the predictability of repertory and performance will continue, partly because the musical culture as a whole has long since settled into regularity, but primarily because in each of these cases, the individual has been successful in serving the interests of the institutions themselves.

BEFORE Beverly Sills, the City Opera was provincial and second rate and broke. Now it has become a sort of post-modern pop opera house, packaging opera as if it were Broadway and Broadway as if it were opera, while tapping into some of the aura of the pop "avant-garde" with operas by Philip Glass (*Akhnaten*) and Anthony Davis (*X*). The viewer could count on competent versions of classic operas with moderately accomplished conducting and direction, but the main energy has come from staging the likes of *Brigadoon*. Before Crawford, the Met was becoming fiscally pale with deficits of almost \$8 million; now cheeks are rosy, a mini-Met for chamber opera has been announced at the Brooklyn Academy of Music, and all the administrative wheels are well greased. Before Mehta, the middle-of-the-road Philharmonic listener had been driven out of the halls by the cool smarts of Pierre Boulez. Now subscriptions are said to be fairly steady, and several orchestral grand tours have been taken to all regions of the globe.

Each institution, that is, has succeeded in becoming more institutionally secure through the labors of these leaders. But in none of these cases has artistic achievement been distinguished. Of

course there were bright spots, along with occasional forays into new repertory. But apart from the exceptions—required for press attention and status if not conviction—artistic issues have fairly consistently been put aside in the service of business concerns.

THE CASE of the Philharmonic is particularly instructive, in part because a change in that position is likely to have the most direct effect on performance itself. The Philharmonic has not led a charmed life in its 147 seasons. During the last century it was under attack for its neglect of American music, a refrain still heard today. At the turn of this century, when the Philharmonic's economic future was guaranteed by a panel of patrons, the goal was "to reconcile the commercially possible with the artistically desirable," a goal still unreached. And nearly every change of the conductorial guard in this century has been marked by debate and controversy. In 60 years there were more than 11 music directors—not a way to build a great orchestra or a coherent musical tradition. (Compare New York's experience with the concentration that Koussevitzky brought to Boston over 25 seasons, followed by Charles Munch for another 13 seasons.)

But even given the conflict that marks the history of this orchestra, something has obviously changed in recent years. Mahler, when he led the Philharmonic during the first decade of this century, was far from universally loved, but he wanted the orchestra to be "the best in the country and the equal of any in the world." And by all accounts he marked a transition in its status. Toscanini was blamed in the early 1930s for all sorts of limitations, but there was little doubt that he left the organization more musically sophisticated than he found it. Virgil Thomson thought that Artur Rodzinsky did far more during his brief reign, turning the Philharmonic into the "equal of the Boston and Philadelphia orchestras and possibly their superior."

So the complaints of an earlier era must be put in perspective. It is hard today to feel too much sympathy for those who regretted that the main choices for music director in 1949 were Stokowski and Mitropoulos, that during the mid-'50s there was too much conducting by George Szell, Bruno Walter, and Guido Cantelli. The one thing that everyone can now agree on—even those who

scorned his conducting style at the time—is that a golden era was inaugurated by Leonard Bernstein in the late '50s. He turned the position of music director into the single most important post in American musical life, by devoting himself to American music, by approaching his audiences as an engaged and engaging pedagogue, by planning intriguing programs, and by making use of the electronic media to spread his message. There is probably not a single music listener today over the age of 30 who was not deeply affected by Bernstein's presence on television and radio and in concert.

It even makes some sense that, after Bernstein, the Philharmonic gambled on the avant-garde tastes and energies of Pierre Boulez. Flush with the energies of the Bernstein years, and with the royalties from Bernstein's 200 or so recordings (they were selling 400,000 copies a year by 1969), the Philharmonic properly felt it could take a chance. Boulez's appointment may have been inspired by the aggressive antinomian aesthetic of the late '60s—Boulez was outspokenly "avant-garde"—but in practice he turned out to be an extraordinarily serious musician, whose ear and taste had substantial influence on a significant minority of listeners. Boulez treated some of the mainstream repertory with scorn, dryly running through the Romantic symphonies that are the main fare of Philharmonic societies. But in structurally intricate and intellectually concentrated works by Beethoven or Wagner, he was as revelatory as he was with 20th-century repertory, cleansing scores of mannerism and indulgence, leaving them transparent and refined.

IT IS difficult to imagine what will be remembered from the Mehta years. In 1983 I wrote a report for the *New York Times* about extensive discontent within the orchestra itself about Mehta's musicianship and achievement, about his economic failure as a recording artist (Mehta's recordings essentially have no market), and about the critical consensus that had become clear: Mehta's tenure had been a failure. Despite changes in personnel and in orchestral management, the orchestra's tone was strained, dynamics were uncontrolled, phrasing perfunctory. Apart from some performances of Bruckner and Mahler, whose large-scale energies seemed to awaken a slumbering spirit, the music generally seemed sodden and lifeless,

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missing a sense of line and balance and purpose. The criticisms were widespread. But Mehta's contract was extended through 1991: an institutional countermove, a public assertion of faith in Mehta's powers. Institutional authority was re-established, regardless of the consequences for the music itself. So some skepticism that there are any massive transformations planned in New York is certainly in order.

OUR MAJOR musical organizations came into existence during the 19th century, along with the repertory that still forms the core of their circulatory systems. As these organizations have become institutions in this century, their relationship to the art has changed, possibly permanently. During the first 60 years of its life, between 40 percent and 60 percent of the New York Philharmonic repertory was by living composers; that figure is now generally under 20 percent, with the other 80 percent receding fast into distant history. By my count, only two dozen compositions out of more than 120 in the current season are by living composers, with nearly half of those by Bernstein. Our musical institutions are still essentially 19th-century musical institutions; the only difference is that they tend to be larger, richer, and more insecure than their ancestors.

But let me try to be at least a little fair. It is difficult to lead a musical institution at this moment. The immense amounts of money needed to run any of these houses is given by government as well as private donors. Funding is generally based on how many people are being served and how often they return, not primarily on the basis of artistic adventure. This is an awkward system at best. It treats these institutions as if they were profit-making instruments of democratic taste. It certainly does not encourage refined decision-making. But it is also difficult to defend a style of idiosyncratic patronage: millions of dollars of public monies should not be expended so that just a few thousand people can occasionally sit in the Met indulging their eccentric preferences, no matter how artistically distinguished they might be.

So institutions are trapped into supporting themselves with large audiences. New compositions—even the most significant ones—really are of negligible importance to them; other organizations can serve that repertory. It would be foolish, for example, to expect the New York Philharmonic to begin playing Lu-

toslawski and Adams and Carter—composers who do appear occasionally on its current programs—with the same avidity with which it played the music of its contemporaries a century ago, Schumann and Liszt and Wagner and Brahms. The future of our institutions simply does not lie with the music of our time. The reasons for this cannot simply be audience rejection or compositional esotericism. Nineteenth-century repertory defines our institutional life because it satisfactorily serves the public function that music has taken on in our culture. Contemporary music has entirely different concerns. It is less involved in presenting grand mythic narratives or in speaking to a large undifferentiated public.

WHAT CAN an institution do except become a curator, find a sociological or aesthetic niche and exploit it? In New York some institutions have succeeded in doing just that. The Brooklyn Academy of Music has decided to serve a particular aesthetic—the one now called “avant-garde”—and it has done so with great élan. The 92nd Street Y also knows firmly what it is about: it presents world-class artists in its concert hall along with major dancers, poets, and artists; but it is an educational and community institution as much as an artistic one.

What is the mission of our other institutions? What, for example, can we hope for from the Metropolitan Opera? Surely not a vital contemporary operatic repertory: 50 years of the 19th century probably provide 90 percent of the repertory of all major opera houses in the world. The same repertory problems face the Met as the Philharmonic, leaving this season's presentation of Bartók's *Bluebeard's Castle* and Schoenberg's *Erwartung* as a token representative from a lost world. We might hope, perhaps, for a production of Schoenberg's *Moses and Aaron*, or Sessions's *Montezuma*, or Thomson's *Lord Byron*, but again, as with the Philharmonic, this is not where the Met will make its mark.

Moreover, the problems of international casting and voices are legion; they furnish the ultimate alibi for mediocrity. So we must hold out for more flights of imagination in traditional programming, more responsibly creative direction, more emphasis on ensemble values. The coming chamber opera theater of the Met offers some hope: once the bounds of grand opera are crossed, the possibilities for contemporary and Ba-

roque works multiply considerably.

Actually, though, the most we can hope for from the Met and the City Opera and the Philharmonic is robust routine. It is not likely that the Philharmonic, for example, will be able to find a musical director who will startle us into hearing the symphonic repertory anew. What conductor on even the short list of candidates for the job can possibly transform or sustain musical life on the basis of extraordinary interpretation? And what conductor can hope to have the sort of mandate, control, and tenure that will allow the creation of an astonishing musical instrument like Karajan's Berlin Philharmonic? Revelation and exploration and refinement are more properly the goals of smaller, more independent orchestras.

BUT IT IS not foolish to expect that the next conductor of the New York Philharmonic take a place in American musical life the way Bernstein did: as its single most significant spokesman and representative, who is articulate about the meanings of the great music of the past, about the issues that face musical life today, about the possibilities music holds for the future. During the '20s the Philharmonic officially began what it called an “educational policy.” Without slighting aesthetic goals, such a policy should again take a top priority. This does not mean producing more middle- and low-brow television broadcasts that are presented as “entertainment.” It does not mean programming down to wider audiences. It means the contrary: both narrowing sights and raising ambitions. The young people's concerts should move back into the center of our musical experience, not be some appendage to the regular season. The programming should have a point and a bite, with compositions scheduled to “talk to each other.” The compositions could share a theme—works inspired by *Faust*, for example; or they could be playfully allusive—works containing secret programs, such as those by Elgar and Berg; or they could be unusual demonstrations of national style—such as American symphonic music of Dvořák's “New World” vintage.

Of course, the next conductor should also be a showman, able to make convincing statements out of Beethoven's Fifth and Tchaikovsky's Sixth without succumbing to cliché. And the next conductor should be able to make use of television the way some of the European

conductors have, with video now becoming as important to home musical experience as radio once was. But we are already leaving behind the realm of plausibility. Is there such a visionary figure, and American to boot, let alone

three or four of them, to make New York a truly vital musical city? Such questions would be easier to answer if more were involved in the performance of institutions than the mere production of Institutional Performances.

OBJECTION OVERRULED

Law and Literature: A Misunderstood Relation

by Richard A. Posner

(Harvard University Press, 371 pp., \$25)

Can lawyers help us understand works of literature with legal themes? Can literature teach lawyers something about the nature of the law? Is literary theory helpful in interpreting statutory and constitutional texts? Is literary criticism useful for analyzing the style of judicial opinions? Richard Posner's answers to these questions are, respectively: no, not really, absolutely not, and about as useful as you would expect. These are good answers. On the other hand, the questions are not very good questions.

Law and literature is a recognized academic "movement"—although like, say, literature and philosophy, and unlike, say, law and economics, it has not moved in any particular direction until very recently. In surveys of the field, it is customary to identify two general categories of inquiry: "law in literature" and "law as literature." Work in the first category considers (obviously) literature that makes use of legal themes and situations (trial scenes, characters who are lawyers, reflections on crime and punishment, and so forth). Work in the second category regards legal texts from a literary critical point of view.

It is fair to say that until recently the great bulk of the writing produced under these heads has been extremely friendly, even to the point of obsequiousness, to both disciplines. The general sentiments have been that literature is a humanizing, consciousness-raising thing that most lawyers could profit by a good deal more exposure to; and, returning the compliment, that a well-written legal opinion is an admirable, self-consciously crafted thing that literary critics might fruitfully pay a little more respectful attention to.

About ten years ago, this rather genteel enterprise suddenly, in consonance

with a number of similar transformations in the academy, grew teeth. The most aggressive of the recent writing has indeed started to look like a coherent movement traveling in an identifiable direction: away from liberal legalism, and toward some holistic conception of legal thinking. This writing, most of it by law professors, uses literature in three ways: to undermine the idea that contemporary American law is an autonomous and internally consistent body of doctrine through the rhetorical, structural, or "deconstructionist" analysis of legal texts; to make or resolve difficulties about the interpretation of legal texts by reference to various theories of literary interpretation; and to argue that some works of literature, by virtue of their superior insight into behavior, expose the limitations of traditional legal categories.

This is where Richard Posner enters the picture. Currently a judge of the U.S. Court of Appeals for the Seventh Circuit, Posner is widely known as the author of *The Economic Analysis of Law*, one of the principal texts of the Chicago school of the law and economics movement, and as a champion of the free market ideals of classical liberal theory. In 1985 Posner's work was the subject of a *Harvard Law Review* article by Robin West, who argued that the notion that free choice always conduces to well-being, a notion on which Posner's legal theory is heavily dependent, fails to account for apparently uncoerced choices that do not enhance well-being—choices that arise out of masochistic, obsessional, or other self-destructive patterns of behavior. To illustrate this broader view of human nature that she claimed Posner's theory ignores, West counterposed the work of Kafka.

Before West's article appeared, Posner

had taken "no interest," he says, in the law and literature movement. Three years later we have *Law and Literature*, the first book, in Posner's words, "to attempt a general summary and evaluation of the field of law and literature, [and] to organize, augment, and redirect . . . scholarship in the field." Posner confesses, in his introduction, to a few lacunae—he does not discuss, for instance, the depiction of law in detective fiction—but as far as the major issues are concerned, his book certainly aims at completeness. *Law and Literature* is closely argued, makes extensive reference to literary and legal texts, and is accompanied by the staggering undertext of footnotes that law professors seem to favor no matter what the subject at hand.

Posner takes up in turn the topics of literature with legal themes, the interpretation of literary and legal texts, and the consideration of judicial opinions as literature. And he adds—as a kind of bonus, since the subject does not really fall within the traditional purview of law and literature scholarship—a section on "The Regulation of Literature by Law," which weighs the efficiency of defamation, obscenity, and copyright laws. It is an impressive effort from a full-time judge whose main academic interest lies in an area of legal scholarship that is not exactly overlapping.

All this research and thought is undoubtedly intended as a token of Posner's respect for the law and literature enterprise. But although he does not quite say so, the truth is that Posner does not buy a single one of what he takes to be the major premises of contemporary law and literature scholarship. When all has been said and done, he concedes only two areas in which a law and literature scholar might have some legitimate business to do: the stylistic analysis of judicial opinions as a way of understanding their effectiveness, and the evaluation of copyright, defamation, and obscenity laws in the light of a knowledge of the nature of literature. He also warmly endorses efforts to expose more lawyers, judges, and law professors to literature—particularly, as a way of broadening their cultural awareness, to literature that represents the legal practices of other times and places (continental law in Camus's *The Stranger*, for instance). The effect, in short, is to turn the law and literature movement squarely around and march it straight back in the direction of its origins.

The great weakness of academic inter-

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