Dennis R. Klinck, *The Word of the Law: Approaches to Legal Discourse.* Ottawa: Carleton University Press, 1992. Pp. 458 [$34.95]. Reviewed by James H. Roberts*

On Balance: Lexical Gymnastics and *The Word of the Law*

The shared concerns of two different academic or professional disciplines often prove tantalisingly impervious to clarity of thought or discussion, for when perceptions among different groups diverge radically, fundamental conceptual difficulties arise. One of these difficulties involves the ability to construct a valid argument that satisfies the criteria for thought and action within both disciplines, especially when the conceptual gulf between a professional enterprise and its alleged counterpart seems all too great. Attempts at bridging the two areas can end in the expression of arguments that satisfy only within one of the disciplines under consideration. Even more problematic, some arguments appear valid to neither field of study.

Difficulties like these typify the problems encountered when making analytic connections between the language of literary criticism and studies in the law. At first glance, these two disciplines — law and literature — appear divided by central problems of viewpoint and method. To those unfamiliar with the growing body of scholarly work in this area, even the proposition that literary criticism and the law share certain philosophic or interpretative features is a tenuous one, at best. At worst, this interdisciplinary "marriage" might seem an unholy union, fundamentally flawed and overly simplistic, if not wholly facetious. After all, the traditional realm of the literary engages the interpretation and aesthetic judgment of fictional texts; the law ostensibly involves the interpretation of factual events and social judgment. Given these traditional differences, where can one begin to assess or discuss similarities? Put more concretely, how could a scholarly reading of *Paradise Lost* possibly connect with the judicial interpretation of, say, the *Canadian Charter of Rights and Freedoms*?

To make matters more complex, the legal-literary dialogue itself can be confusing, even to those specialists from either discipline who wish to explore connections more fully. Critical thinkers — legal or literary — must prepare themselves to examine the contentious conceptual issues argued in various legal

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and literary journals, written by commentators as disparate in their thinking as Richard Posner[1] or Stanley Fish.[2] Interdisciplinary preparation like this is no mean feat, for it requires a level of background familiarity with both disciplines that is attained by few readers indeed.

The hazards of the "familiar" in this context cannot be overstated. The simple reliance on one's own discipline, for example, to interpret the other is itself problematic; despite appearances to the contrary, neither the law nor literary theory lends itself to easy definition. Legally informed approaches to the language or the study of law, for example, are not readily accessible to those outside the profession. Moreover, literary theory itself is currently a widely varied and almost amorphous subject: literary theory has arguably become a "catch-phrase", describing only loosely connected professional practices. Theories of literature today incorporate analytic programs that span a lexical and textual gamut from studies of a text's *auteur* to *chaotics*, *linguistics* and even *zoösemiotics*.[3] Furthermore, both areas of study have their own attendant gatekeepers of meaning, and requirements for disciplinary competence are quite jealously guarded, usually by traditional and pedagogical methods.[4]

Still, the problem of joining these two different communal viewpoints makes the interdisciplinary connections that *might* exist — at various levels of analytic thought — all the more intriguing. Both disciplines interpret texts, and both are concerned with language and meaning in various complex contexts. Surely there must be a way to map the *terra incognita* that these two enterprises — mostly unwittingly — share. The problem remains, however: How does one begin to view this common ground across the disciplinary divisions that properly exclude each other by definition?

In this problematic legal and literary milieu, Dennis R. Klinck's recently published work, *The Word of the Law*,[5] provides an excellent overview of the cognitive terrain. Klinck — by training both a professor of literature and an accomplished legal professional — is well-situated to comment on these mat-

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[1]See "Law and Literature: A Relation Reargued" (1986) 72 Virginia L. Rev. 1351.

[2]See the many articles on law and literature in Fish's *Doing What Comes Naturally* (Durham, N.C.: Duke University Press, 1989).

[3]For the fundamentals of "auteur" criticism, especially as it relates to the analysis of film as "text", see J. Monaco, *How to Read a Film*, rev. ed. (New York: Oxford University Press, 1981). "Linguistics" is, of course, a well-known discipline in and of itself, while "chaotics" borrows from investigations in general systems theory and the scientific "chaos" of non-linear systems (see N.K. Hayles, ed., *Chaos and Order: Complex Dynamics in Literature and Science* (Chicago: University of Chicago Press, 1991)). Zoösemiotics, or "the study of signalling behaviour in and across animal species," is a term coined by Thomas Seebiok in "The Notion of Zoösemiotics" in 1963; it has a particular resonance for the emerging "ecocritical" literary field. Seebiok's article is reprinted in J. Deely, B. Williams & F.E. Krause, eds., *Frontiers in Semiotics* (Bloomington, Ind.: Indiana University Press, 1986) 74.

[4]One well-known, historically-based exposition of these problems in an American literary context is Gerald Graff's *Professing Literature* (Chicago: University of Chicago Press, 1987). See S. Fogel, *The Postmodern University* (Toronto: ECW Press, 1988), especially at 143-50, for a more radical (and "irreverent") discussion of the role of the university as arbiter of disciplinary values in a Canadian context.

[5]D.R. Klinck, *The Word of the Law* (Ottawa: Carleton University Press, 1992).

ters. Because of his interdisciplinary training, his work steers clear of some of the problems that make other texts difficult to read from a cross-disciplinary perspective. In short, Klinck provides what has been most often lacking in treatises in this field: a balanced discussion of starting points. Consequently, the book covers a wide range of material, beginning with a philosophic overview of how language affects thought and ending with an analysis of how "good" texts are aesthetically determined in the legal community. While there are always problems with surveys like this one, the balanced viewpoint Klinck brings to long-standing arguments about these issues testifies to his careful preparation and presentation of topics in spite of the complexities of the subject.

Klinck himself states that his work is preliminary and introductory. More precisely, he says that this work will concentrate on the practical analysis of legal texts, and only partially engage theoretical questions:

> My book is, I think, both modest (or naive) and ambitious (or pretentious). It is modest in making no claims to ultimacy, or even, really, to theory. Rather, its main focus is on the kinds of practical observations that can be made about legal discourse of various kinds. Perhaps what makes it significant is the range of ways of looking at texts that it suggests, and its application of those ways of seeing. But it does not go very deeply into the theoretical issues that dog those ways of seeing. Thus, in being in a sense introductory it is also modest. But it is ambitious in looking at a range of topics — topics to any of which others have devoted years of study, and of which I can hope to have only limited knowledge. However, being ambitious in this sense, it may be useful for the non-specialist who wants to see something of the broad spectrum of considerations relevant to the subject "law and language."[6]

Even in his introduction, Klinck's splitting of theory and practice are quite telling for the structure of his own work. On the one hand, *The Word of the Law* analyzes legal texts to show how different views of language can inform studies of the law. On the other hand, Klinck both confronts and neglects the larger, theoretical issues implied by his own analysis. Maintaining the view that "theoretical issues" are secondary to this project, Klinck supplies the warning that *The Word of the Law* will not be like the other works on law and literature, and that his book's value lies in its wide and introductory scope.

With these caveats in mind, it is surprising just how often *The Word of the Law* discusses theoretical issues at the heart of the literary-legal discussion. Beginning with the "common-sense" view of language as a "referential" reflection of things in the outside world, Klinck first notes that this view of language dismisses mis-communications by condemning them to the realm of "mistake": words do not relate to things when they are used imperfectly or imprecisely.[7] Noting, however, that "things" in the world do not necessarily correspond to "moral" feelings or ideas, and that perfect correspondence between word and thing implies a kind of perfect knowledge, Klinck quickly complicates this straightforward view of language.[8] Citing Locke's argument that words relate to ideas, not things, Klinck details the philosophic implications inherent in the

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[6]*Ibid.* at 3.
[7]*Ibid.* at 10.
[8]*Ibid.*

resulting view of language's link with reality. The one-to-one correspondence of language with objective reality is broken down here: ideas interfere with the immediate reference of word to thing.[9]

But if reality is only perceived through our ideas and senses, and then reflected in a language, to what extent does the language we inherit or choose influence those very ideas? In its "extreme" form, the theory that language shapes reality and determines the limits of what we can know or express is the hypothesis of anthropologist and linguistic theorist Benjamin Whorf.[10] And it is to Whorf's claims for a "relativistic" and language-based reality that Klinck directs most of his attention. Throughout his chapter on "Language and Thought", and (implicitly) through the rest of *The Word of the Law*, Klinck constantly counters Whorf's "extreme" claim with other commentators who seek to ground reality in some ultimately knowable form.[11] So, for example, Klinck balances Whorf's claim that language affects the way we divide up the "real" with the notion that "deep" structures of "grammar"[12] give universal form to meaning — regardless of individual language or culture.[13] In other words, for the purposes of analysis, Klinck wants his readers to believe that while language *is* important in shaping thought, the reality to which language (at least partially) refers is still more important.[14]

Given this balanced position, Klinck discusses numerous facets of "weak" linguistic relativity and the law, and in his careful exercise of theory he illuminates many interesting and thought-provoking characteristics of legal expression. For example, in his investigation of the ways criminal law distinguishes between "degrees" of intention, Klinck shows just how legal language forms distinctive patterns of thought about real events:

> A layperson might think in terms of a dichotomy: a person either means or does not mean to do something; perhaps he or she is "careless." But the criminal law

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[9]*Ibid.* at 11-12.

[10]*Collected Papers on Metalinguistics* (Washington: Foreign Service Institute, United States Department of State, 1952) at 21.

[11]It is interesting that Klinck feels he must refrain from siding with Whorf "too strongly", regardless of the fact that most of the trenchant analysis in *The Word of the Law* relies on a "Whorfian" view of language. Perhaps *The Word of the Law* here becomes a little *too* timid in its balanced outlook, for linguistic "relativity" is no more a "threat" to meaning than scientific "relativity" threatens one's use of, say, one's car. There are many constraints on meaning and its use within culture, even if ultimately we have difficulty (to put it mildly) perceiving outside our cultural and linguistic domain. The term "perspectivist" (rather than relativist) may be a better one to use in this context, for it more accurately describes the complex effects of the "Whorfian" framework for meaning. "Perspectivist" itself is borrowed here from neither linguistics nor literature, but from science. See Ludwig von Bertalanffy, who has little trouble with Whorf's views when dealing with complex biology and systems theory, in *General System Theory: Foundations, Development, Applications*, 11th ed. (New York: George Braziller, 1993) c. 10.

[12]This view of "deep structure" is the famous one put forward by Noam Chomsky, and is one which, like Whorf's, has been the subject of controversy (even to the point where Chomsky himself no longer refers to "deep structures" of grammar). For a full discussion of the problems Chomsky's view created in the linguistic community, see R.A. Harris, *Linguistic Wars* (New York: Oxford University Press, 1993).

[13]Klinck, *supra* note 5 at 20.

[14]*Ibid.* at 24.

> attaches a whole range of labels which tend to carve up the continuum of mental states much more finely: "motive," "purpose," "desire," "intention," "knowledge," "wilful blindness," "recklessness," "criminal negligence," "gross negligence," "inadvertent negligence," "thoughtlessness," "carelessness," "wantonness," "simple inadvertence," "accident." Again, these are all terms which co-exist in the ordinary language; but the average speaker's usage dissects reality in a different way from the lawyer's usage. The lawyer sees the world in terms of this linguistic usage.[15]

Despite Klinck's own theoretical misgivings over Whorf's view of language, the analytic tools provided by the theoretical discussion are here particularly apt. In his conclusion to this chapter, however, Klinck again returns to an argument of impartiality, saying that, theoretically, the implications of the arguments he has discussed are "not altogether clear," but that a general "critical sensitivity" to language itself is, perhaps, the best place to begin analysis.[16]

This first chapter of Klinck's text forms the pattern for the remainder of the book. Klinck raises representative arguments, then proceeds to analysis based on *some* of the implications of the theoretical discussion. So for example, when discussing the notion that legal language "signifies" different things in different situations — the semiotics of legal language — he examines first Ferdinand de Saussure's linguistic basis for structural analysis and the semiotic theories of C.S. Peirce and I.A. Richards.[17] Following his discussion of these notions, Klinck then analytically exercises them in a legal context. After developing the idea of "semiotic differences" in legal concepts, Klinck discusses the historical title "defender of the faith" as a legal representation understood (differently, of course) by both King Henry VIII and Pope Leo X.[18] Similarly, in assessing the different ways that "sound-images" of specific words can connote different cultural values, Klinck applies the linguistic distinction to connotative differences between legal forms of language which limit the use of property in a trust.[19] More complex, perhaps, is Klinck's analysis of legal "signs" as derived from Peirce's theories.[20] "Iconic" elements of signs (such as photographs or demonstrations in evidence) communicate through actual physical or cultural resemblance,[21] while the "indexical" elements of a sign (like "blood" signifying a "wound") identify the extent of the event or object.[22] "Conventional" elements of signs (such as specific uses of language forms in the law) are purely "symbolic", for an arbitrary meaning is culturally established between the sign and its concept.[23]

In this kind of detailed analysis, *The Word of the Law* is at its strongest, for Klinck teases out of numerous legal, and a few, surprisingly literary, texts the closely patterned connections of thought manifested in law by its different lex-

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[15] *Ibid.* at 30.
[16] *Ibid.* at 38.
[17] *Ibid.* at 47-62.
[18] *Ibid.* at 60.
[19] *Ibid.* at 63.
[20] *Ibid.* at 69.
[21] *Ibid.* at 72-73.
[22] *Ibid.* at 74-78.
[23] *Ibid.* at 71.

ical and symbolic expressions. Further, for those accustomed to reading literary analyses of American constitutional documents, Klinck's work provides a refreshingly Canadian corrective. *The Word of the Law* continues this analytic inquiry in numerous areas by examining questions of "Interpretation", "Legal Language", "Legal Diction", "Syntax", "Narrative", "Metaphor" and "Critical Evaluation".

For instance, to illustrate how different perspectives provide a variety of grounds for interpretation, Klinck discusses whether the meaning of a text really rests primarily in texts themselves, in the consensus of a group of informed readers, or in the original intentions of the authors.[24] While this interpretative question poses potentially insurmountable problems, Klinck points out that for the writers of a proposed new Canadian *Criminal Code*,[25] a notion of "textualism" governs interpretation:

> Recently, the Law Reform Commission of Canada has been attempting to draft a new Criminal Code. It has included the following interpretation provisions:
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> (a) The provisions of this Code shall be interpreted and applied according to the ordinary meaning of the words used read in the context of this Code.
> (b) Where a provision of this Code is unclear and is capable of more than one interpretation it shall be interpreted in favour of the accused.
>
> These provisions again imply a belief that the meaning of a text can be plain or clear, that there is such a thing as "ordinary meaning." ...
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> Again, my point is simply that, although there may be paucity of defences of textual formalism coming from "sophisticated" academic writers, textual formalism may be alive and well as a theory of legal interpretation — although it may never work when it is tested.[26]

Klinck's analysis, while grounded in a literary and hermeneutic perspective, points to a difficulty rarely seen in purely literary works, for authors of fiction rarely give their readers instructions about how to read their work.

Similarly, Klinck investigates narrative analysis (from a body of work that may be described as "narratological") by analysing the salient structures of a report in the trial, *R.* v. *Townley*.[27] For example, Klinck asks whether or not "durative-descriptive clauses" ("D.D.C.'s" in Klinck's text) — which encode a narrative time that suggests a persistent "state of affairs" — provide a subtly different meaning than "story event clauses" ("S.E.C.'s"), which pinpoint an event at an "instantaneous" moment in narrative time:

> In *Townley* itself we may query whether D.D.C.'s are ever preferred to S.E.C.'s for essentially "artistic" reasons. Thus, we are not told "Townley cut her throat three times" but, rather, "the deceased was found ... with her throat cut in three places." That is, a central event in the narrative — the actual killing — is introduced in a stative, rather than an event clause. Perhaps this manifests no more than a careful

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[24]*Ibid.* at 96.

[25]Law Reform Commission of Canada, *Recodifying Criminal Law* (Report No. 31) (Hull, Que.: Supply & Services Canada, 1987).

[26]*Supra* note 5 at 99 [endnote omitted].

[27](1863), 3 F & F 839, 176 E.R. 384. Klinck provides the whole text of the excerpt in an appendix to his chapter on "Narrative".

> exposition of the evidence, but it might have other motivations — for example, the objectivizing or distancing of the most horrible part of the story (suggested as well by the epithet, "the deceased").[28]

By closely examining the features of "story" that the report tells, Klinck points towards a valuable set of methods for further analysis of the law. Moreover, he also emphasizes the complexities that occur in any story — even in as simple a legal "tale" as a recitation of facts.[29]

But these complex analyses give Klinck some problems on the theoretical front. As previously mentioned, Klinck goes out of his way to qualify his approach, lest he give the impression that he too has been seduced by the charms of linguistic relativism. A sample from the chapter on "Interpretation" shows the extent to which Klinck qualifies his analytic insight:

> I find Moore's view [on the referential nature of language] compelling — but I think that it mistakes the nature of language. Or, at least, it depends on language's being essentially only referential. Whether we like it or not, language — even, probably, legal language — signifies variously. In saying this, I do not adopt a radical linguistic relativism: the fact that language can be used to "skew" our perceptions of things does not mean that there is no objective reality, even ethical reality. But it means that our medium for conveying meaning — language — is inadequate to its task. Moreover, to the extent it approaches adequacy, it must be multidimensional, capable of meaning in different ways — for example, texturally as well as "literally." And appreciating how language means requires becoming sensitive to the complex of factors involved in its use.[30]

In his quest to present an "objectively" argued view, Klinck constantly must balance his desire for stability with the findings of his close and careful readings of legal text.

Consequently — despite Klinck's qualifications — *The Word of the Law* frequently contradicts itself. Paradoxically, the inferential weight of his examples and analytic exercises seems to overpower Klinck's strong intention to keep theoretical problems in the background of his text. All too clearly, the implications of Klinck's analysis of metaphor and the law betray Klinck's own, oft-stated theoretical impartiality. Following Lackoff and Johnson, among others, Klinck notes that

> we make reality manageable by thinking about it metaphorically. But I do think that we have to be aware of these metaphorical structures as metaphorical: they are a shape that we have imposed upon reality. They are inevitably distorting in that they highlight certain concepts while obscuring others.[31]

This conception of metaphor is strikingly similar to the "Whorfian" view of language that Klinck finds so problematic. If we "manage" reality "metaphorically", then isn't that tantamount to suggesting that our use of language determines what we know about reality?

Klinck's own "objective" stance — his difficult "balancing act" — is also implicated in this analysis of metaphor and the law. Klinck goes as far as to sug-

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[28] *Supra* note 5 at 318.
[29] *Ibid.* at 323.
[30] *Ibid.* at 123.
[31] *Ibid.* at 357.

gest that a metaphorical notion of "subjectivism" itself is at the root of the law's "distrust" of metaphor:

> Thus, the law's distrust of subjectivism — as a kind of importation of the alien — may be related to its distrust of metaphor. Ironically, this distrust is expressed in terms of one of the pervasive formative metaphors in the law.
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> Dickson J.'s judgment here can be read for a complex of (I believe) conventional legal metaphors associated with territory. Thus, parties "take up positions," they "carry burdens," they cross thresholds, they have to stay within boundaries, they meet obstacles, they find paths closed, doors open, alternative ways available. What emerges is an image of a person moving not so much through a landscape as through a maze. Perhaps this is the controlling image of the law. We might want to question whether it should be.[32]

Disappointingly, Klinck's text raises this intriguing notion without actually pointing towards ways that this "controlling image" might be challenged. At these junctures in Klinck's text, I wish that he had given up his "introductory" and "balanced" stance, in favour of his own analytic advice, and developed a more fully argumentative position.

Klinck's own adherence to an "objective" metaphor makes *The Word of the Law* less useful as an overview than it promises. The lack of any detailed overview of feminist approaches to language and power, for example, is a particularly glaring omission. To be sure, Klinck does mention feminist approaches to the law, but given the length of this work, these perspectives are tellingly relegated to a supporting role in his view of metaphor: "And much of the work of feminist writers consists of the positing of new or alternative metaphors for social experience."[33] While Klinck's perception is no doubt apposite, it simply doesn't go far enough. Any number of feminist works in literature or the law should have been more fully presented in this text. Noticeable too, is the lack of argument on behalf of the (generally much misunderstood) claims of post-structural analysis. References to Stanley Fish notwithstanding, a whole body of relatively recent research, from Jacques Derrida's work on the "grammatological" structures of meaning to Michel Foucault's historical treatises on language and institutional power are largely — if not completely — ignored in *The Word of the Law*.[34]

Perhaps this is an unfair criticism, because Klinck does not explicitly purport to deal with the theoretical complexities that these thinkers investigate. Still, theory implies practice, and practice in turn informs theoretical perception,

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[32]*Ibid.* at 356 [endnote omitted].

[33]*Ibid.* at 358.

[34]I realize, of course, that a survey cannot include *everything*. And Klinck does mention "deconstruction", but like many (though not Derrida) who use the term, he doesn't ever explain what he means. As is the case with Klinck's (non)incorporation of the feminist viewpoint, a single quote from Derrida's "White Mythology" hardly constitutes either an explanation or an overview of his position. This is all the more strange in that Derrida's work over the last thirty years has arguably influenced literary and philosophic discussion of language more than any other recent thinker. See J. Derrida, *Of Grammatology*, trans. G. Spivak (Baltimore, N.J.: Johns Hopkins University Press, 1976) for a good introduction to his theories on language, semiotics and writing. For a less theoretically — and perhaps more legally — oriented work, see his "Racism's Last Word" in H.L. Gates, ed., *"Race," Writing and Difference* (Chicago: University of Chicago Press, 1986) 329.

as *The Word of the Law* constantly demonstrates. As a result of these omissions, the book is at its most tentative and confusing when it deals with the questions raised by these recent analytic writings. Further — and Klinck acknowledges this shortcoming — the weakest part of the text concerns another "epistemological" discipline: the study of rhetoric.

Klinck, citing Kenneth Burke, investigates rhetoric as a way to "approach legal discourse" as a "structure in the larger sense."[35] This formulation, however, begs the question: But what sort of structure? Rhetoric, as Klinck himself points out in his chapter on "Rhetoric",[36] is one of those terms that requires careful definition, for it means one thing in general use (as in "a politician's promises are nothing but *rhetoric*"), another to the historian and philosopher (as in "the arrangement of 'surface' ornaments of language belong to the traditional study of *rhetoric*") and still another in current "literary"[37] parlance ("*rhetorical* theory ... has come to focus today on the question of the source and status of knowledge"[38]). Some of Klinck's problems emerge from these multiple definitions, for despite his attempt to define *rhetoric* in a quasi-Aristotelian sense, he uses the term inconsistently in his own arguments. Throughout *The Word of the Law*, rhetoric variously stands for "non-formal persuasive argument",[39] "disingenuous argument",[40] or "stylistic ornament".[41] More problematic is Klinck's view of rhetoric as essentially prescriptive. Whether ancient or modern, Klinck discusses rhetoric as if it were *only* a set of guidelines for making effective arguments, whether ethically "true" or misleadingly "false". Consequently, most of Klinck's rhetorical investigations emphasize the arrangement of arguments or figures of speech in text. For example, Klinck finishes his analysis of rhetorical structure in legal documents by stating that the conclusions of a text "indicate that any discourse must end in some way, that it may be worth attending to how a given discourse does end, and asking what justification — rhetorical or 'otherwise' — there may be for such a finishing off."[42] As far as they go, Klinck's views here are accurate, and even appropriate insofar as rhetoric is figured here as a guide for arrangement. For Chaïm Perelman, however, whose rhetorical theories Klinck partially employs, the formal arrangement and nature of arguments are not the main thrust of modern rhetoric. Rather, for Perelman (and many other contemporary rhetorical practitioners) the questions most applicable to a discussion of the law and rhetoric would examine the "adherence" of the audience to a given argument.[43] Certainly, this view of persuasive analysis could

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[35]*Supra* note 5 at 201.

[36]*Ibid.* at 172.

[37]Quotation marks are required here since "rhetoric" as an academic discipline is often "divorced" from literary studies and frequently resides in its own department, or within "Speech and Communication" departments. This is especially the case in the United States.

[38]P. Bizzell & B. Herzberg, eds., *The Rhetorical Tradition: Readings from Classical Times to the Present* (Boston: St. Martin's Press, 1990) at 14.

[39]*Supra* note 5 at 174.

[40]*Ibid.* at 410.

[41]*Ibid.* at 409.

[42]*Ibid.* at 201.

[43]See C. Perelman & L. Obrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation*, trans. J. Wilkinson & P. Weaver (London: University of Notre Dame Press, 1969) at 511.

yield fascinating insights for examining any legal debate, juried or not, public or private. Interestingly, Klinck moves towards this broader sense of rhetorically-based criticism in the conclusion of his chapter on "Evaluation of Legal Texts":

> Indeed, what this exercise may demonstrate in the end is a kind of "perceptualism" — my saying, "here are features of this text to which I wish to draw your attention; you should see it in this way." In doing this, I believe that I have at least had to look closely at the texts, to explain my evaluations in some detail; perhaps I have set an example of looking at texts more sharply, even though ultimately my value judgments cannot be "logically" justified.[44]

Klinck is clearly arguing "probable" values here and expects to win audience approval for his evaluative efforts. But if his arguments are not a logical or formal justification, then what sort of rhetorical "adherence" does Klinck expect from his audience? Why are legal judgments convincing, after all?

Perhaps it's not surprising that in his final analysis of the confluence of "literary theory" and the law, Klinck almost apologizes for "losing his balance". In concluding *The Word of the Law*, Klinck acknowledges that the weight of his analysis supports the "relativist" view of language and its use in law, and again "qualifies" his support for the implications of his own analysis.[45] Here this relativist view of language is called a "nominalist position":

> I feel some uneasiness, in retrospect, because so much of what I have written implies a nominalist position. Indeed, if one wants to give prominence to language, as I have done, it is in one's interest to adopt a nominalist stance. Realism inevitably assigns to language — to any system of signs — a subordinate role. But nominalism says, in effect, "The word's the thing." Much of my study may appear to take this position.[46]

Klinck fears this stance might lead his readers down a philosophically limiting path — one which might go by the name, though Klinck doesn't name it, of "postmodern nihilism". In place of these alleged problems and complexities, Klinck calls for a view of text that is fully objective in its new manner of accounting for meaning:

> Finally, I suppose, I would prefer an account of the word as the incarnation of meaning, the mode in which the meaning is figured forth. In such an account, the sign is not autonomous, because it does incarnate *something*. At the same time, that something cannot do without the sign, because only by incarnation in the sign can it be figured forth.[47]

Leaving aside for the moment obvious figurative problems with his call for an "incarnation", and his problematic insistence on a fully "pragmatic" stance, it is evident from this passage that Klinck acknowledges, if only implicitly, the limitations of the binary oppositions he constructs with his categories of "objective reference" and "nominalist despair". In fact, he wants to stop "balancing" the two altogether and proceed to a different kind of analysis.

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[44]*Supra* note 5 at 400.
[45]*Ibid.* at 410.
[46]*Ibid.* at 409.
[47]*Ibid.* at 411.

And here I can partly agree with Klinck, even if I don't endorse his nearly theological resolution and desire for "immediate" meaning in legal text. In his call for a different framework and another beginning for analysis, he recognises that there are other ways to continue the fruitful analysis of law and literary theory. Rhetorically speaking, we argue about legal theories — and literary ones — because the way these concepts form part of our larger cultural context is important.

The use of these different languages affects us — individually and in communities — and efforts to persuade us, though not based on some ultimate or "incarnate" verity, have a real impact on our thought, our actions and our lives. Furthermore, rhetoric, or how we argue about what is relatively important, does not disappear in an undefined and transcendent "everything" in this view of language, as Klinck implies in his conclusion.[48] Argument has its limits and discussions stop, even in a "relativist" world: there is no "rhetorical" language in the face of mathematic proof or at the point of a gun.[49] In this rhetorical view, language and legal text, argument and discourse play a large and complex role in maintaining the possibility for open discourse and effective action.[50] In his final call for a recognition of the complexities of language situations, Klinck seems to be urging research towards precisely this kind of complex rhetorical and semiotic analysis. A new analysis of the words of the law would extend beyond the analytic exercises — as intriguing as they may be — of Klinck's present, introductory work.

On balance, then, *The Word of The Law* is a valuable survey of starting places, and the book can provide a necessary training ground for those who seek to understand more critically some of the issues involved in legal-literary discourse. Klinck's excellent analytic exercises, as far as they go, examine many "first principles" of language and the law. Still, Klinck's rhetorical desire for an "impartial" and ultimately "balanced" view seems excessive in light of recent theoretical issues and his own analysis. For my part, I know my own ways of reading Klinck have been undoubtedly altered by my training in rhetoric and literary theory. Speaking rhetorically, then, I wonder what the introductory overview provided by *The Word of the Law* might achieve — technically and artistically — in the eyes of another judge.

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[48]*Ibid.* at 410.

[49]Though, of course, how we perceive and consequently argue about these non-persuasive elements of life is still arguably rhetorical.

[50]See K. Burke, *On Symbols and Society*, rev. ed. by J.R. Gusfield (Chicago: University of Chicago Press, 1989) for a good overview of some of the complexities in this rhetorical enterprise.