

John Stratigopoulos

The Rise and Fall of Realist Theory, *The Consequences of Misunderstood Morality*

William Dean Howells once defined realism as “nothing more and nothing less than truthful treatment of material.” This doctrine of the realistic perspective is adopted twofold by Holmes and Howells in their assessments of social and legal problems. Holmes legal realism and the literary realism that defined Howells writing both examine our engrained sense of morality in a unique intuitive method, the former framed in the legal context and the latter in business. Legal realism addresses the departure in the strict legal sense from moral bearings conscious or unconscious in the law, while the literary nature of the Howells realism allows it to demonstrate the realization of morals by a business minded man that was a product of his industry. Holmes and Howell both employ the realist perspective to seek an understanding of the confusion of legal and literary conventions with morality, as well as examine the emerging system of contract and liability in the moral sense; and the danger of blind precedent and *stare decisis*, by both attempting to depict a clear picture of legal, moral and societal conflict as it was at the time.

Legal realism itself can be defined easily by unraveling the personal mental construct we have of the law. When you close your eyes and think of the legal system the idea of wrong or right inevitably is entertained. Holmes delves into this seemingly moral alcove of thought and questions our understanding of the meaning of our moral language in law as posed in his article *The Path of Law*. Our understanding and opinion

of law is deeply seeded in our moral fiber, the precedent of moral decisions of the past incorrectly understood as a sort of natural law. Yet the moral meaning of words in the law pose us with an immediate fallacy and failure of those words to represent the law as something it so prides itself as, based in logic. This moral phraseology is highly prevalent in the law and according to Holmes, “the mere force of language continually invites us to pass from one domain (legal) to the other (moral) without perceiving it, as we are sure to do...” Holmes declares that nothing but confusion of thought can become from assuming that the rights of man in a moral sense are the rights of man in the eyes of the objective law. In essence the departure from morality is seen as the only true option to end the dilution of law by moral consequence and thus create better and more logically just law.

Literary realism in its essence shares a great deal of ideals with Holmes due to the fundamental fact that the tradition was directly inspired by some of his ideals as stated in his article *The Path of Law*, however the case, literary realism entails a much different application structure than the latter. Instead of being applied to a set of objective statutes, literary realism can embed itself in a whole overriding contextual situation as the mechanism by which the writer is able to build the readers conceptual perception of realism through language supplemented by real situations and exchanges by characters. The formulation of real settings, interactions, transactions and relationships was seen as a key tenant of this style that the author employs to shape the readers mental conception of reality as it really is, “nothing more and nothing less than truthful treatment of material.” The realist belief that fiction poses a “wholly injurious” influence to peoples understanding of the world and their own reality correlates to the

anti-romanticism that realism demonstrates. The author seems convinced that love is what lies as the root of all illogical action, voicing, "People think too much about love, it is not a deciding factor in life." Howell felt that people depended too much on the fictional figments of their romanticized reality and hoped that his work would create a literary world as closely resembled to reality as possible. A main tenant of the style is found in the refusal to exaggerate or employ "creative license" therefore presenting a conceptualized "true canonization of society" through presenting realistic events, interactions and dialogues, as they would actually unfold. Seeing that the realist camp sees romanticism as a departure from morality as "idle lies about human nature," makes it clear that both kinds of realism are not fighting against morality, but against its collusion with the idea of "Law" and the corruption of true morality through the idle fancifulness of romantic thought.

After entertaining these two schools of thought it becomes apparent that the conflict undergone between law and morality is fundamentally based in the misunderstanding or inability of people to separate the idea of moral implication and legal duty in the legal system as it already exists. The average citizen would consider it a right or duty to protect X or do Y in society as a legal duty. Legal consequence is so ensnared in this moral interpretation that the right, duty, or bond does not exist independently as a moral calculus indignant of legal reasoning, but these words assuming their moral sense immediately drop the argument into fallacy. Holmes makes the "Bad-man" argument in his essay *The Path of Law* by demonstrating to the casual reader that the man committing the crime does so from a very different perspective. His understanding of the law is limited to legal duty being only the prescribed punishment

or consequence of an offense and no further. He allies no moral connection (presumably) and is himself (in the eyes of Holmes) exists as the reason that law interpreted in its moral sense becomes ineffective. Holmes feels that as long as this “Bad-man” exists in society that the problems faced in courts and cases tried cannot parallel the moral rights of man with the legal rights of man without the utmost confusion. The failure to examine the proceedings with legal reasoning causes the immediate drop into fallacy as stated before; the law is based in logic in legal theory therefore that cannot be denied of it or it becomes unfit for the needs of society.

The emerging system of contract and liability in Howells *The Rise of Silas Lapham* points to a growing capitalist marketplace full of social mobility and opportunity. Yet what is the relationship of business and morality? Their relationship unlike law and morality is of the polar nature rather than intertwined; conceptually morality standing as the long opposed foe of reason and ethics. Business itself is the epitome of reason and logic, two methods of thought not concerned with the human moral condition or moral consequence. So due to this interpretation, assuming the moral right in a business situation is inherently “good,” and the failure to look after the interests or apply wealth in the most beneficial way to society is morally reprehensible; yet a great business decision. Howells literary realism in effect shows the dangers of falling into such as trap of charity. By the assumption of the realist perspective Howells immediately finds it necessary to skip the rise of a great businessman, the romantic journey of a country boy’s success, in order to set the scene for his demise financially. When interpreted from the realist perspective the financial downturn in Silas’ life is directly linked to the advent of romantic ideas in his family and workplace. These

romantic notions end up ruining him. The logical thing to do was sell the mills to the English and not look back, yet the “moral” Silas cannot go through with it, his romanticized concept of morality got in the way. While this is the converse interpretation of the romantic reader seeing the transition as a moral rise to “righteousness,” the reader must look deeper to see Howells true commentary on the implications of morality as seen from the realist perspective.

This culture of morality in *The Rise of Silas Lapham* also touches on the idea of charity and precedent in the same episode; the Rogers situation. While at the beginning a champion of reason and ingenuity Silas eventually regrets the way he treated Rogers partially at the incessant prompting of such by his wife. He relents eventually and gives in, giving Rogers a considerable loan to which he is provided insufficient collateral for the eventual default. Persis decision acts not only as a romantically corrupted guide, but as the precedent for his further decisions establishing the danger of such actions as they cannot contextually apply to everything; a *stare decisis* to further failure. Howells fundamentally opposes this for he advocated economic calculation by contextual decision-making. Howells complication of morality asks the question; where is the threshold of charity, the dividing line between philanthropy and ruin? He demonstrates the economy of pain philosophy in his literary work by demonstrating that the consequence of the greatest good is often manageable, but has the potential to ruin the businessman. This very utilitarian idea of doing what is best for the greater good parallels the legal realism ideal that objective research leads to moral actions, suggesting that while Howells style was influenced by the writings of Holmes, he also drew from the utilitarian ideas of objectively calculated moral action, the only

kind in his mind that was connected to logic and reason. These ideals lie directly behind the attitudinal conventions (shared with Holmes) that the precedent of prior decisions past cannot exude the logical reasoning of the present judiciary system, a new context means a new decision, not changing a similar decision to fit or assuming that it was contextually identical a hundred years prior in a “blind imitation of the past.”

Both Holmes legal realism and Howells literary realism present a case for a unromanticized system of logic in society. Howell presents us with a call to realism and utilitarianism, a moderate call compared to the realizations of Holmes. By giving us a real character with a family and a dreary day-to-day reality he is able to show that the harms of romanticized morality can ruin someone in society, yet deem them morally palpable. He points to the ambiguity of the line between charity and ruin and the calculated moral actions of a man representative of the romantic fall away from logic. Holmes immediately calls morality into the question by different means. Rather than the application of romantic moral ideas to induce ruin he shows the infiltration that they have already made into our understanding of the legal system. His commentary on the dilution of laws integrity due to moral phraseology points to the conclusion that the law can only justly serve all of society as a canonization of logic, void of all implied moral meaning in its litigious sense. Both authors ultimately desire greater objectivity and reason from society, a transition away from the romanticism of the age and into a new future of contract capitalism.