

Faculty Write About Lovesick Japan, Losing It, and Law Quad Benefactor Cook

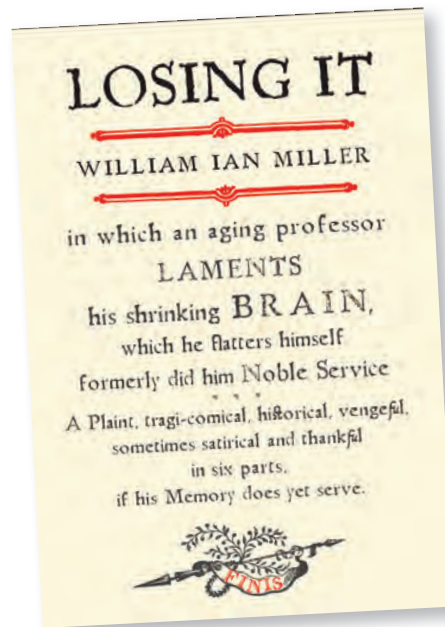
Professor William Miller is losing it. “What of my clearly decaying scholarly capacities? Of being unable to continue learning or, if able, then unable to retain what I have recently learned? I can’t even come up with words like *refrigerator* or *kitty litter* and must endure my wife’s hand gesture of irritated contempt to ‘get on with it,’” he writes in his new book, *Losing It* (with a subtitle so long that we don’t have room for it in the magazine).

Professor and Associate Dean for Academic Affairs Mark West assumed he would discover through research that by-the-book Japanese judges “do not concern themselves with legally trivial matters of the heart.” Instead, he found out that “love mattered mostly in criminal cases, not in cases about marriage and divorce, in which love is trotted out for the sake of showing its unattainability,” he writes in *Lovesick Japan: Sex*Marriage*Romance*Law*.

Longtime director of the law library Margaret Leary, who recently retired from the post, grew fascinated with William W. Cook, 1882, the benefactor of the first buildings on the Law Quad, as she learned more about his life and times. “This man remains unknown to the thousands who have benefited from his wealth. In my opinion, this is wrong. Cook deserves wider recognition for all he accomplished,” she writes in *Giving It All Away: The Story of William W. Cook & His Michigan Law Quadrangle*.

Here, we excerpt the three new books and their references to Saturn devouring his son, judges as arbiters of emotions, and a man perceived—wrongly, some would say—as prickly and prejudiced. Enjoy.

For video interviews with the authors, visit www.law.umich.edu/quadrangle.



Losing It

By William Ian Miller
Yale University Press, New Haven, Connecticut, 2011

A competently socialized person knows that a welcome has a half-life; he senses when to leave, graciously saving the host from having to hint that it is time to do so. The adept actor anticipates a hint before it needs to be given. But we make mistakes, and sometimes misread the situation. It is one thing to misread by ten minutes when we should have left a dinner party, and quite another to misread by ten years when we should have left the job, or by thirty years when we should have left off breathing. Since age takes its toll on our perceptual acumen, we may lose the capacity to discern even the heaviest handed of hints, nor are we in any mood to take the hints we do perceive. Instead of taking our leave we mobilize politically and demand third and fourth helpings, to be put up for the night too, thirty more years of nights, our bodies still insisting on staying long after our minds have lost the ability to know we have put our hosts in the poorhouse.

To hell with taking polite leave: there are more of us merry old souls than ever before, and we vote, which the young, whom we fleece, are less likely to do, and will be outnumbered even if they do show up at the polls, mightily armed as we are with obedient mortality tables. The withered hands of the old are now rather more powerful than they were in earlier times; it does not take much strength to feed a ballot into a voting machine, or to send in an absentee one if your arthritis is acting up.

As western populations age the costs of maintaining the old could justly activate in the young an image of the old as so many Cronuses and Saturns, devouring their offspring. (The myth or truth of the cannibalistic old is of long standing.) The riotous and stoned youths of the sixties, now in our sixties, who did much to pave the way for our no-gratification-left-behind culture, take to this mythic role with no shame, cramming our craw with everything in sight, not caring that it is chunks of our children and grandchildren that are the tenderest meat on our well-presented plate.

Me Cronus? Occasionally I flatter myself that I am earning my keep, contributing more than I am consuming. And unlike those football players and boxers who do not know when to quit, professors, like me, cannot be cut. Tenure and age discrimination laws let us keep working, which somehow does not seem the right word. Besides, there are always a couple of lazy colleagues whose real contribution to the enterprise is to make less lazy ones

feel like we deliver value for the price. Never mind that my keep would fund four entry-level scholars in history or anthropology who are now unemployed: I still have kids of my own to feed, though I might be feeding them with someone else's. Self-deception and wishful thinking, looking on the bright side in a self-interested way, keep us conveniently colorblind to our real value, seeing black when the ink is red. Or simply not caring if it is red, when we see it.

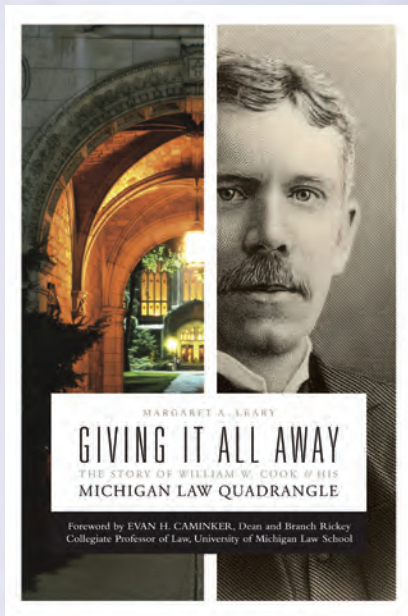


Saturn Devouring His Son,
by Goya, c. 1819–1823

What of my clearly decaying scholarly capacities? Of being unable to continue learning or, if able, then unable to retain what I have recently learned? I can't even come up with words like *refrigerator* or *kitty litter* and must endure my wife's hand gesture of irritated contempt to "get on with it." Can I ever get lost in a book again without my mind wandering? I have always been suspicious of those parents who claim that their dull normal and badly behaved children are really geniuses suffering from Attention Deficit Disorder and need to be dosed with Ritalin. But now it seems, in some kind of poetic justice, that I have ADD, the only difference being that I really do have it. My doctor actually prescribed Ritalin for me, which, as it turned out, my health insurance refused to cover for anyone over 18. Not willing to pay the unsubsidized price, my avarice, itself an attribute of old age, has kept me Ritalin-free.

Everything distracts me. Being interested in something has become unmoored from my ability to attend to it. Ambient noise, intrusive trivial thoughts, email, stock prices, Green Bay Packer blogs, variously and predictably plague me. Ambient quiet is distracting too and sent me to the Internet to buy a white-noise machine. I interrupted the writing of this paragraph to play a game of Solitaire, and then when I lost, I allowed myself to play until I won, and then one more in case I won two in a row, and then I kept on until I won two in a row. Says the ancient rabbinical *Pirke Avot*, *The Ethics of the Fathers*, some 1800 years ago, "If a man is walking by the way and is studying and then interrupts his study and exclaims: 'How beautiful is this tree? How beautiful is this plowed furrow?' Scripture considers that it is to be regarded as if he has forfeited his life (or as if he bears guilt for his soul)."

Has Nemesis gotten even with me for the contempt I did not quite disguise for the dead wood of twenty years ago, by making me petrified wood in the eyes of my younger colleagues? You see them, don't you, giving signals that they want to break off the conversation you are holding them to almost out of spite, but desperately too, telling them, oh, just one more thing, but talking faster as a concession to your perceiving in some primitive part of your brain that you are boring them silly, which they can perceive that you can perceive and so on in an infinite regress. You even find yourself following them down the hall as they head for the hills, still chattering at them, self-destructively unable to break off.



Giving It All Away

The Story of William W. Cook & His Michigan Law Quadrangle

By Margaret A. Leary
The University of Michigan Press, Ann Arbor, 2011

Why is Cook, the donor of these extraordinary buildings, all but unknown? Shreds of misinformation about him appear sporadically: he was “prejudiced” and “attached strings” to his gifts to Michigan. He was “prickly,” “peculiar,” “stubborn,” and kept himself isolated from the world. He made his fortune by being “paid with stock,” implying little effort on Cook’s part. These views of him are inconsistent with Cook’s most important acts, which were generous, high-minded, and the result of hard work and intense focus.

A more accurate perception comes from Shirley Smith, secretary of the university from 1908 until 1945, and from 1930 forward, also vice president. The Regents entrusted Smith with business decisions, and during the interims between presidents he was given additional responsibilities. Smith had Cook’s absolute respect and trust in any negotiations with the university, and Cook liked him personally, admired the way he handled things, and spoke favorably of any visits Smith made to New York.

Smith wrote of Cook that he was “a strange composite of the urbane and the tyrannical, the generous and the suspicious, the dreamer and the dictator.” Harry B. Hutchins, a law school dean who became a University of Michigan president, and who will loom large in this story, was one of many who praised Cook’s wonderful powers of concentration and endurance.

Cook not only gave away money, he inspired (or “flogged,” to use his word) his architects to do their finest work for him. What did he hope to achieve with his generosity? Who was this man? Who did he love? What did he read? Who were his friends? How did he make his fortune? How did a native of tiny and remote Hillsdale, Michigan, come to be a wildly successful Manhattan lawyer who would make the largest personal gift ever to the University of Michigan? Finally, why is it that he often traveled to Hillsdale to visit his family but never once returned to Ann Arbor after his 1882 law school graduation? Cook was never in the physical presence of the buildings that came to grace the University of Michigan campus through his passionate efforts and generous gifts. Is it possible to understand this man?

Cook, who earned Michigan undergraduate (1880) and law (1882) degrees, was a shrewd strategic thinker and indefatigable workaholic who had dual careers as a lawyer and a writer before he became a sophisticated and visionary donor. He was an early giant in the field of corporation law. With the help of Cook’s pioneering work, the corporation became the driving force behind America’s capitalist industrial expansion. He accomplished this through his job with the Mackay telegraph and cable companies and as a major writer of his time on corporation law.

Cook shaped the development of the first global telegraph and cable system. His widely published scheme for the reorganization of America’s railroads became a bill that was considered but never passed by Congress. His ideas about the future of legal research have proven accurate, for the most part, and have made possible an ambitious, effective research program at Michigan Law. Cook believed that the law book of the future would be written by scholars, not practitioners, and that the best way to improve the law was by restating the accumulation of centuries of case law.

Cook’s primary motivation was his desire to preserve American institutions. He also wanted to demonstrate the value of private giving. His crowning accomplishment was his gift to Michigan, valued in 1931 as one-third of all the university’s financial support from sources other than public funds or student fees. The road from his original vision to success, however, held many obstacles: financial, psychological, interpersonal, legal, economic, and institutional. How Cook overcame those barriers gives us the story line of his biography. This man remains unknown to the thousands who have benefited from his wealth. In my opinion, this is wrong. Cook deserves wider recognition for all he accomplished.

Lovesick Japan: Sex* Marriage*Romance*Law

By Mark D. West
Cornell University Press, Ithaca, New York, 2011

In this book, I use a comprehensive body of evidence—2,700 publicly available court opinions—to explore a particular vision of love, sex, and marriage in Japan. The opinions are from diverse areas such as family law, criminal law, torts, contracts, immigration, and trusts and estates. They reveal an important, official perspective on how real individuals in Japan confront the painfully human issues that surround love, sex, and marriage.

Court opinions usually contain facts, analysis, decisions, and commentary. Sometimes judges' views of love, sex, and marriage emerge from the presentation of the facts. Among the recurring factual elements in the case law are work-induced commuter marriages, abortions forced or at least prompted by men, compensated dating, late-life divorces, termination fees to end affairs, sexless couples, Valentine's Day heartbreak, "soapland" bath-brothels, and home-wrecking hostesses. In many cases, these elements are irrelevant to the judgment, and yet judges choose to include them in the narrative anyway.

Sometimes it is the nonfactual elements of the opinions that are most revealing. Especially when combined with the facts, these portions—analysis, decisions, commentary—often suggest broad problems in love, sex, and marriage. Love, for instance, is highly valued in Japan, but in judges' opinions, it usually appears as a tragic, overwhelming emotion associated with jealousy, suffering, heartache, and death. Other less debilitating emotions and conditions, including "feelings," "earnestness," and "mutual affection," appear in unexpected areas of the law such as cases of underage sex and adultery. Sex in the opinions presents a choice among (a) private "normal" sex, which is male-dominated, conservative, dispassionate, or nonexistent; (b) commercial sex, which caters to every fetish but is said to lead to rape, murder, and general social depravity; and (c) a hybrid of the two in which courts commodify private sexual relationships. Marriage usually has neither love nor sex; judges raise the ideal of love in marriage and proclaim its importance, but virtually no one in the cases achieves it. Instead, married life is best conceptualized as the fulfillment of a contract.

Taken as a whole, the judges' opinions describe a Lovesick Japan. By "lovesick," I do not mean languishing with love as a teenager might pine for a sweetheart. Nor do I use lovesick as a substitute for loveless (lacking love) or lovelorn (the pain of unrequited love), though aspects of each apply. In this book, I use the word "lovesick" to describe a society in which a complex set of chronic and evolving problems is revealed in the ways people conceptualize and discuss love and the related components of sex and marriage. In the court opinions, lovesickness most often appears as a presupposed absence of physical and emotional intimacy, affection, and interconnectedness in personal relationships, an absence that stands in stark contrast with courts' clear recognition of the value and significance of other emotions.

As I analyze *Lovesick Japan*, I also explore the role that law plays there. In a previous book, *Law in Everyday Japan*, I showed the extensive role of law in everyday scenarios such as employee working hours, lost and found, and karaoke noise complaints. Those findings contrasted sharply with the traditional view of Japan as a place where law takes a backseat to harmony, hierarchy, and relationships.

In this book, I show that the influence of law in Japan is more pervasive still, and in a very important arena: Japanese judges, who have significant discretion, play a surprisingly direct role as arbiters of emotions in intimate relationships. Take love. We tend to think of love as a warm, spontaneous emotion that lies on the opposite end of the spectrum from cold, calculating law (and lawyers?). Law is about rules; love (and for that matter betrayal, forgiveness, tragedy, endurance, and the rest of the spectrum) is natural and free.

But the cases show that love is inextricably linked with law. In case after case, Japanese judges opine on, and in one type of case actually are required by statute to determine, whether a person is in love, what other emotions a person is feeling, and whether those emotions are appropriate for the situation. In some cases, judges even determine whether a person's love is "natural," as opposed to some other kind of love. When judges eschew formalistic legal analysis and conduct a more visceral examination of emotions, they highlight the illusory nature of the line between what we think of as "law" and what we think of as "nonlaw" in an area that is central to being human.

These findings emerged from the cases to my surprise. I began this project after a discussion in my Japanese law class as to whether the Japanese Supreme Court in an important divorce case should have considered the love (or lack thereof) of the spouses. To follow up, I searched Lexis's online database of approximately 200,000 Japanese cases for cases involving love. I assumed I would find that by-the-book Japanese judges do not concern themselves with legally trivial matters of the heart.

I was wrong: I found love in the cases. But I found that love mattered mostly in criminal cases, not in cases about marriage and divorce, in which love is trotted out for the sake of showing its unattainability. I then expanded my search beyond love to marriage and divorce cases to see what, if not love, informed and motivated judges' decisions in those areas. That examination, and in particular an exploration of a long line of adultery-related marriage and divorce cases, led me to broaden my search to cases involving sex, as I found that the three concepts—love, sex, and marriage—were so intertwined in the cases that they needed to be examined together for each to make sense. 