REVIEW ESSAY: COMPETING VISIONS OF ANGST AMONG ELITE LAWYERS

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This review essay contrasts the explanations provided in two recent books for the existential anxiety suffered by many lawyers in top national law firms. Jean Stefancic and Richard Delgado's How Lawyers Lose Their Way: A Profession Fails Its Creative Minds*, and Milton Regan's* Eat What You Kill: The Fall of a Wall Street Lawyer*, provide provocative case studies of different aspects of schizoid alienation at the highest rungs of the legal profession. Stefancic and Delgado explore the complex relationship between elite attorney Archibald MacLeish and Imagist poet Ezra Pound to demonstrate that top lawyers have struggled for many decades with the conflict between the demands of corporate law and the desire for self-fulfillment. Regan provides a riveting account of the downfall of John Gellene, a leading bankruptcy specialist in a top New York corporate law firm. While Stefancic and Delgado locate the core of the spiritual malaise among top corporate lawyers in the ideological cage resulting from the conceptual blinders of legal formalism, Regan takes a more economic-based perspective, portraying the hypercompetitive elite law firm as a soul destroying work environment.*

How Lawyers Lose Their Way: A Profession Fails Its Creative Minds, by Jean Stefancic & Richard Delgado. Duke University Press, 2005.

Eat What You Kill: The Fall of a Wall Street Lawyer, by Milton Regan. University of Michigan Press, 2004.

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> In the nineteenth century the problem was that *God is dead*; in the twentieth century the problem is that *man is dead*. In the nineteenth century inhumanity meant cruelty; in the twentieth century it means schizoid self-alienation. The danger of the past was that men became slaves. The danger of the future is that men may become robots.
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> Erich Fromm, *The Sane Society*[1]

I. INTRODUCTION

American society is obsessed with lawyers. MSNBC's Dan Abrams, Fox News's Greta Van Susteren, and Court TV's and CNN's Nancy Grace use the high-profile trials of defendants such as Scott Peterson, Robert Blake, and Michael Jackson to entertain U.S. audiences. American history has been repeatedly transformed by path-breaking cases such as the Salem witchcraft trials, *Brown v. Board of Education*, *Roe v. Wade*, *Bush v. Gore*, the impeachment trials of Andrew Johnson and William Jefferson Clinton, the criminal trial of O.J. Simpson, and the Guantanamo detainees litigation, to name just a few.[2]

Yet the power and prestige that elite lawyers possess does not seem to make them happy. Despite the great interest in lawyers and the unprecedented numbers of applications to law schools, lawyers are deeply conflicted about whether legal practice fits their aspirations, values, abilities and needs.[3] The 1990s produced a crop of studies of the frustrations of elite attorneys who are disenchanted with their lucrative legal careers.[4]

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1. ERICH FROMM, THE SANE SOCIETY 360 (1955).

2. *See generally* ALAN M. DERSHOWITZ, AMERICA ON TRIAL: INSIDE THE LEGAL BATTLES THAT TRANSFORMED OUR NATION (2004).

3. THANE ROSENBAUM, THE MYTH OF MORAL JUSTICE (2004) (arguing that the root of alienation in our legal system is the emotionally detached, overly logical, and technically narrow way that legal disputes are resolved).

4. *See, e.g.*, MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994) (arguing that lawyers are motivated more by client interests than professional ideals); SOL M. LINOWITZ WITH MARTIN MEYER, BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994) (writing about the victory of the corporate mentality over traditional roles of lawyers as true counselors over the past fifty years); *cf.* ROBERT GRANFIELD, MAKING ELITE LAWYERS (1992) (examining the resocialization that prepares Harvard law students for elite law practice); RICHARD D. KAHLENBERG, BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL (1992); DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM 221 (2004) (denouncing the narrowness of elite legal education and contending that "there is a lot of radical legal scholarship and scholarly activity still around for the student who is willing to look for it, even if there is not the sense of an all-inclusive, open movement to join or rebel against. It's time for something new here too"); ROBERT V. STOVER & HOWARD S. ERLANGER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (1989) (describing the role of legal education in undermining public interest commitments). For a general discussion of the perceived loss of community in the contemporary legal profession, see Eliot Freidson, *Professionalism as Model and Ideology*, *in* LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATION IN THE AMERICAN LEGAL PROFESSION 215 (Robert L. Nelson et al. eds., 1992).

Legal commentators frequently maintain that there was a "golden age" of lawyering, when society prized prominent attorneys for their good judgment and their devotion to public service rather than for their moneymaking ability.[5] Anthony Kronman, former Dean of Yale Law School, laments the passing of a golden age when lawyers found intrinsic satisfaction in legal practice.[6] He blames the malaise among high-achieving attorneys on the collapse of the ideal of the lawyer-statesman. Kronman contends that the elite lawyer has lost his soul because of subservience to the interests of corporate America. He contrasts the material success of large-firm corporate lawyers with their profound sense of personal dissatisfaction:

> [W]hatever external goals they aim to achieve through the practice of law, most lawyers also hope that their work will be a source of satisfaction in itself. Indeed, many hope that the intrinsic satisfactions it affords will be important enough to play a significant role in their fulfillment as human beings.[7]

Elite lawyers, in Kronman's opinion, have been reduced to corporate tools, who are valued for their technical expertise rather than for their informed judgment.[8]

Anthony Kronman's description of the decline of the lawyer-statesman stresses the ways in which values and ideals have been compromised by the pursuit of technical competence and big money. This professional crisis is, in essence, a crisis of morale; the product of growing doubts about the capacity of a lawyer's life to be fulfilling. Financial prosperity has come at the price of personal and professional autonomy. Elite-firm lawyers who yearn "to be engaged in some lifelong endeavor that has value in its own right can no longer be satisfied in their professional work."[9]

The German American philosopher and psychologist Erich Fromm coined the term "schizoid self-alienation" to refer to the psychological conflict caused by the failure of our career path to fit with our aspirations and dreams.[10] Numerous research studies confirm that lawyer dissatisfaction and malaise are widespread, even among the most financially suc-

5. The belief in a lost "golden age" in which all leading lawyers shared "fundamental values" and a respect for public service is widespread. *See, e.g.*, Monroe Freedman, *The Golden Age of Law That Never Was*, TEXAS LAWYER (Jan. 7, 1991), *reprinted in* THE LAWYER AS A PROFESSIONAL (Timothy W. Floyd & W. Frank Newton eds.), http://www.txethics.org/resources_lawyerprofessional.asp?view=2Freedman (last visited Sept. 27, 2005) (lampooning the tendency of speakers at law school graduations and legal conventions to bemoan the passing of a "golden age" when "the law was an esteemed and honored calling and the lawyer was a member of a respected and dignified profession.")

6. ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 2–3 (1993).

7. *Id.* at 2.

8. *Id.* at 4 (criticizing the displacement of the "lawyer-statesman ideal" by law firms and bureaucratic courts).

9. *Id.* at 3.

10. FROMM, *supra* note 1, at 1234 (describing alienation as a condition in which "man does not experience himself as the active bearer of his own powers and richness . . . .").

cessful. Practicing lawyers[11] and law students[12] report high levels of burnout. Despite their affluence, elite attorneys suffer from a "spiritual crisis that strikes at the heart of their professional pride."[13]

The two books examined in this review essay provide provocative case studies of different aspects of dissatisfaction at the highest rungs of the legal profession. Jean Stefancic and Richard Delgado's *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds* uses the complex relationship between elite attorney Archibald MacLeish and poet Ezra Pound to demonstrate that top lawyers have struggled for many decades with the conflict between the demands of corporate law and the desire for self-fulfillment. The authors employ the morality tale of these conflicted public personalities to explore why successful lawyers are plagued by alcoholism and drug addictions, divorce, depression and suicide, not to mention a "justifiable paranoia" that people are out to get them and that the public regards them with disdain. This detailed case study is emblematic of a larger story about the ways that legal epistemology and formalism gnaw away at creativity in law and lawyering.[14] The early decades of the twentieth century, when MacLeish practiced law, provided more personal satisfaction than the contemporary large firm environment, but it was definitely not a golden age.

Milton Regan's *Eat What You Kill* is a riveting account of the fall of John Gellene, a leading bankruptcy specialist in a top New York corporate law firm. Gellene sold his soul for the lucrative legal fees offered by corporate America. His ethical lapses reflect a larger pattern of spiritual emptiness among high-status lawyers who define themselves exclusively by their ability to make money. Gellene's hypercompetitive personality brought him to the top of his profession, but led to his disgrace, disbarment, and imprisonment in a federal penitentiary.

These two books complement each other: Regan emphasizes the greed-driven nature of corporate law as a business while Stefancic and Delgado focus on the dehumanizing impact of law practice on the individual.

II. THE SPIRITUAL CRISIS DURING LAW'S GOLDEN AGE

In their close study of the correspondence between Ezra Pound, America's greatest Imagist poet, and lawyer/statesman/playwright

11. DEBORAH L. ARRON, RUNNING FROM THE LAW: WHY GOOD LAWYERS ARE GETTING OUT OF THE LEGAL PROFESSION 2–3 (1989).

12. Peter G. Glenn, *Some Thoughts About Developing Constructive Approaches to Lawyer and Law Student Distress*, 10 J.L. & HEALTH 69, 69 (1995–96); *see also* Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 66 (1995–96) (noting that many first-year law students become overwhelmed by "failure anxiety").

13. KRONMAN, *supra* note 6, at 2.

14. JEAN STEFANCIC & RICHARD DELGADO, HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS 29–30 (2005).

Archibald MacLeish, Professors Stefancic and Delgado explore the causes and consequences of lawyer unhappiness by connecting the personal with the political. They use the complex—and unlikely—relationship between the "All-American" Archibald MacLeish and the brilliant but mentally unstable Pound to explain the conceptual straitjacket created by legal formalism.[15] The tension between Pound and MacLeish symbolizes the personal dilemma facing contemporary elite lawyers. Many idealistic young persons become alienated when they enter into the formalistic world of corporate law practice.[16] For many lawyers, legal careers become iron cages, constraining their aspirations and values, and diminishing their overall joy of life.

As Marc Galanter and Thomas Palay demonstrate in their study of the top hundred American law firms, elite lawyers can only thrive by adopting a win-at-any-cost ethic.[17] The most successful elite law firms prevailed because they socialized their lawyers to mercilessly compete in both internal and external "tournaments."[18] Galanter and Palay view the alienating world of corporate law firm practice in the modern era as inimical to personal development.

Milton Regan's case study of the fall of John Gellene sheds additional light on the hypercompetitive world of corporate law practice.[19] Large-firm attorneys inhabit a Social Darwinist world where many are called, but few are anointed as partners. Only the "rainmakers" who bring well-heeled corporate clients into the fold are likely to reach the vaunted status of partnership.[20] John Gellene worked "fiendishly hard," but lacked the social skills necessary to recruit new clients.[21] Lawyers who flourish in this ruthless environment are those who organize into highly lucrative specialty groups that employ sophisticated marketing techniques.

The exclusive Boston Brahmin law firm that employed Archibald MacLeish in the 1920s was not as ruthlessly efficient and profit-driven as

15. Legal formalism emerged in the late nineteenth and first decades of the twentieth century and was in its heyday when Archibald MacLeish was a student. The school of legal formalism emerged at Harvard Law School under the leadership of Dean Christopher Columbus Langdell. The formalists believed that

> the law was comprised of principles—including definitions, concepts, and doctrines—broad in their generality, few in their number, and clear enough to permit answers to the questions of law to be more or less directly deduced. The formalists also believed that the law generally is, and should be, unresponsive to particular factual contexts and circumstances.

Gerald B. Wetlaufer, *Systems of Belief in Modern American Law: A View From Century's End*, 49 AM. U. L. REV. 1, 10–12 (1999).

16. *See generally* ROBERT GRANFIELD, MAKING ELITE LAWYERS (1992).

17. *See generally* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991).

18. *Id.* at 100 (describing the "promotion-to-partner tournament" where all associates in an entering class compete for partnership).

19. MILTON C. REGAN JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (2004).

20. *Id.* at 7.

21. *Id.* at 53.

the modern law firm. After graduating from Harvard Law School, MacLeish spurned an offer from Dean Roscoe Pound to teach, opting instead for law practice with Boston's Choate, Hall & Stewart.[22] But he resigned from this white shoe law firm on the same day that he was awarded partnership.[23] MacLeish did not find personal satisfaction in legal practice because his cases were "about whether $900,000 belonged this way or that, and not particularly socially useful."[24] Archibald MacLeish found elite law firm practice to be "grubby," making his life "miserable."[25]

If MacLeish was miserable in the patrician world of a small elite firm, he would have run screaming from today's megacorporate firm as depicted in Regan's book. Through the story of John Gellene, a bankruptcy attorney in the New York law firm of Milbank Tweed, Hadley & McCoy, Regan portrays modern corporate law practice as an "eat what you kill" environment.[26]

At the time of his fall from grace, Gellene was at the top of his game, with an annual salary of more than $600,000 plus bonuses, and was an honored member of the bankruptcy bar. Drawing upon trial transcripts from the bankruptcy of the Bucyrus-Erie Corporation and John Gellene's criminal trial, Regan highlights the ethical dilemmas often found in the high stakes world of corporate law. Gellene, Regan claims, is not merely a rogue corporate lawyer but is emblematic of a wider malaise of big firm practice. His willingness to risk everything for short-term gain is a value that was fostered by the firm's aggressive culture. Gellene worked hard—he once billed 3,100 hours in a year, or nearly sixty billable hours every week. His willingness to subordinate every other part of his life to his work allowed Gellene to attain partnership, despite not being a rainmaker.

John Gellene has the distinction of being the first lawyer to be convicted of violating the disclosure requirement of Rule 2014 of the United States Bankruptcy Code.[27] He was charged under federal criminal statutes with committing perjury and using a false document while representing a rust belt manufacturing company undergoing Chapter 11 reorganization.

Class, status, and power interact in complex ways in the world of the elite lawyer. Like MacLeish's Boston law firm, contemporary elite law firms such as Milbank Tweed recruit almost all of their associates from a handful of renowned law schools. Gellene's mentor was one of the very

22. STEFANCIC & DELGADO, *supra* note 14, at 14.
23. *Id.* at 15.
24. *Id.*
25. *Id.*
26. REGAN, *supra* note 19, at 59.
27. *Id.* at 143 (noting that Rule 2014 required Gellene to "file a declaration with the court describing, among other things, all of [his and Milbank's] connections with the debtor, creditors, or any other party in interest").

few partners who had graduated from a lower-tier law school, St. John's University Law School. Milbank Tweed's hiring partners preferred associates who had been on the elite track since their prep school days at exclusive institutions such as Choate, St. Andrew's or Westminster.[28]

If John Gellene had joined Milbank Tweed a decade earlier, he would have found himself in a legal environment that operated within the same genteel ethos experienced by Archibald MacLeish. However, when he was hired as an associate, this old-line law firm was undergoing a profound transformation from a mild-mannered organization serving the upper class into a highly profitable complex organization that valued Gellene solely for his money-making skills. Regan explains that big firms originated when solo practitioners were unable to perform the increasingly complex legal work of corporate America. In MacLeish's day, social polish was necessary to impress clients. Under this new approach, associates needed extraordinary business acumen to succeed in the firm. Elite legal credentials, high academic achievement, and social eminence were no longer the keys to partnership.

The New York City law firm of Cravath, Swaine & Moore[29] pioneered the legal organization model which ensured integrated and continuing business relationships with large corporations.[30] Milton Regan considers Cravath to be the bellwether firm because of its practice of attracting the most talented graduates of the most elite law schools and then subjecting them to a calculated "up or out" rule in which most associates are doomed to failure.[31] The process is not as harsh as it sounds because those who fail to become partners invariably land on their feet, finding top placements in government, legal education, corporations, other national law firms or as permanent associates at the firm. John Gellene's law firm was following in Cravath's footsteps in order to compete in the highly aggressive world of elite legal practice.

Unlike MacLeish, Gellene was a workaholic loner whose value to the firm lay in his technical and business rather than social skills. While Gellene was an associate, the law firm adopted a more dynamic marketing plan that aggressively pursued the most lucrative clients, even if it meant skating close to the ethical line.[32] One of the firm's bankruptcy

28. G. WILLIAM DOMHOFF, WHO RULES AMERICA? POWER, POLITICS & SOCIAL CHANGE 225–26 (5th ed. 2006) (listing America's most exclusive private schools and other "indicators of upper-class standing").

29. Cravath, Swaine & Moore's Martindale-Hubbell legal profile notes that the firm was founded in 1819 and maintains offices in New York and London. The firm's description centers on its expertise in "corporate and tax practice includ[ing] all types of public and private financing and financial transactions in the United States and international securities and commercial banking markets, as well as mergers and acquisitions, lease and project financing and real estate." LEXISNEXIS MARTINDALE-HUBBELL LAW DIRECTORY NYC 278B (2005), *available at* http://www.martindale.com/xp/Martindale/Lawyer_Locator/Search_Lawyer_Locator/search_result.xml?PG=0&STYPE=F&FN=cravat&CN=&CTY=&STS=&CRY=1&FSZ=.

30. REGAN, *supra* note 19, at 19–20.

31. *Id.* at 21.

32. *Id.* at 59.

partners, for example, had close connections with investment banks, which would inevitably raise ethical conflicts in representing clients undergoing corporate reorganizations.[33] The "go-go" lawyers in the bankruptcy department lacked the "patience and flexibility" necessary to resolve these conflicts of interest.[34]

Regan describes the conflicts that arose among Milbank Tweed partners when a new compensation structure was enacted. As a partner at Milbank Tweed, John Gellene was critical of what he viewed as a stodgy failure of the firm to be sufficiently competitive, but he also argued that the new compensation structure might be unfair to bankruptcy lawyers because of the difficulties of building a steady client base in this specialty.

Bankruptcy has few repeat players and therefore does not offer the same client opportunities as other corporate law specialties. Profits in the field of bankruptcy ebb and flow with economic forces, and are therefore less responsive than other specializations to marketing efforts by partners.[35] In his "eat what you kill" world, Gellene was always worried about "where his next meal was coming from."[36]

Milbank Tweed's managing partners and executive committee did not adopt this hard charging business plan without serious soul-searching and consideration of its ethical pitfalls. The partners were aware of potential risks in what they were doing, but most felt that they had little choice but to accept these possible hazards if the firm were to remain viable in the increasingly competitive Wall Street legal environment.

The warning signs that Gellene was a possible source of trouble went unheeded. His evaluations praised his steadfast work ethic but cautioned that Gellene had problems cooperating in teams, accepting help, and delegating authority.[37] One partner expressed concern that Gellene would get into trouble working so hard, but his fanatical work ethic also received praise.[38] Gellene's single-minded pursuit of his legal work created a kind of "tunnel vision that obscured anything he saw as not immediately relevant to the task at hand."[39] He failed, for example, to keep proper billing records or to spend time mentoring summer associates.[40] After passing the New York bar examination, Gellene was too preoccupied with his work to bother filing the thirteen-page application with the New York state bar authorities.[41]

33. *Id.* at 68.
34. *Id.*
35. *Id.* at 58.
36. *Id.* at 60.
37. *Id.* at 56–57.
38. *Id.* at 57.
39. *Id.* at 54.
40. *Id.*
41. *Id.* at 60–61.

Gellene proved such an invaluable player in Milbank's revitalized bankruptcy department that supervising attorneys overlooked his increasingly serious lapses.[42] When the bar association discovered that Gellene was practicing law in New York without a license, he was rescued by the intervention of other elite lawyers and federal judges who vouched for his character. Shortly after the New York licensing debacle, Gellene was appointed as debtor's counsel to Bucyrus, a rust-belt manufacturing company in dire financial straits. He assisted the troubled Wisconsin manufacturer by devising complex financial transactions that ultimately destroyed the company.[43]

Bucyrus issued junk bonds to finance a leveraged buyout (LBO) that left the holding company stuck with unsecured notes.[44] This LBO was a calculated gamble for a capital-intensive company that had a profitable foundation but troubles with cash flow.[45] This risky transaction was not an isolated event; it was typical of the creative financing that corporate law firms orchestrated in the deregulated 1980s. Eventually, the dominoes fell because the holding company was a house of cards that was unable to generate enough revenue to service the company's debt.[46]

Milton Regan contends that Gellene's downfall was no anomaly, but rather a structural consequence of a new hypercompetitiveness emerging in big firm corporate law practice. Gellene's disbarment was not simply a function of his one-dimensional personality, but was related to larger social forces that were radically transforming Wall Street. Gellene became a Milbank Tweed associate at a time in which the old order was rapidly crumbling.[47] New lawyers could no longer assume that partnership was preordained after a set period of years.[48] Regan concludes that Gellene's ethical violations were situated "within the broad context of the market for legal services."[49]

Regan does a fine job of providing a textured, multileveled case study of the downfall of a Wall Street lawyer, but does not go far enough in explaining the larger social context that made Enron, Global Crossing, WorldCom, and many other recent corporate criminal schemes possible. Other researchers should build upon Regan's study to provide a macroanalysis of the structural factors transforming elite legal careers.[50] The

42. *Id.* at 62–63.
43. *Id.* at 72–73.
44. *Id.* at 77.
45. *Id.*
46. *Id.* at 78.
47. *Id.* at 54.
48. *See id.*
49. *Id.* at 358.
50. *See* Lisa Girion, *Calls for Lawyers to Blow the Whistle*, L.A. TIMES, Mar. 24, 2002, at C4 (discussing attempts by lawyers to convince the American Bar Association to alter the ethical code by requiring attorneys to protect the public from financial misdeeds of their clients); Patti Waldmeir, *A Failure to Squeal*, FIN. TIMES, Jan. 24, 2002, at 11 (asking whether "competition has eroded ethical standards beyond the power of the ABA to repair"); *see also* Wilson Chu & Barrett R. Howell, *Deal-Maker or Deal-Killer?: Ethical Dilemmas . . . and More*, 6 THE M&A LAWYER 10, 12 (2002) ("Model

modern law firm has evolved into a multi-tiered, highly efficient, money-making organization that locks too many young lawyers inside an unforgiving iron cage of profit-seeking rationality.[51] Regan calls for law firms to foster a more ethical ethos that emphasizes "respect, integrity, communication, and excellence,"[52] but provides no practical methods to achieve these laudable goals. This new ethical environment will not emerge unless other features of the organizational culture change.[53]

The profit motive was never completely subordinated to the social good even during the "golden age of the Wall Street firm."[54] However, before the 1980s, Regan observes, "[c]ompetition among partners was muted by reliance on seniority as the primary basis for compensation in most firms."[55] In this genteel world of lockstep advancement, there was more collegiality since partners were not in competition with each other.[56]

While Regan argues that the alienation of elite lawyers is a consequence of an economic organizational structure that negatively impacts personal relationships, Stefancic and Delgado focus on the conceptual limitations of legal formalism as the key source of lawyer dissatisfaction. Formalism "tak[es] the life out of work and the professions, depriving them of juice, richness, concreteness, and anything else that might render them of human interest."[57] Archibald MacLeish was rebelling against formalism as much as against his professional role of representing the narrow interests of wealthy clients.[58]

Delgado and Stefancic describe the realist revolution as a product of the 1920s, when this new ideology[59] "swept aside the reigning mechanical jurisprudence."[60] In the 1920s, legal realist professors restructured the law school curriculum at Columbia, incorporating social sciences and fact-based inquiries into every course.[61] Felix Cohen denounced legal formalism as a desiccated science where concepts seem-

Rule 1.6 provides that lawyers are prohibited from revealing confidential client information to outsiders except when we reasonably believe that disclosure of the information is necessary to prevent imminent death or substantial bodily harm.").

51. *See* Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85, 94 (1994). *See generally* ROBERT NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988).

52. REGAN, *supra* note 19, at 359.

53. *Id.*

54. *Id.* at 29.

55. *Id.* at 25.

56. *Id.*

57. STEFANCIC & DELGADO, *supra* note 14, at xi.

58. *Id.* at 15.

59. "The realists . . . doubted that judges could or should decide cases according to the dictates of legal logic. They had little or no tolerance of artifice, fictions; real and apparent irrationalities. Law was a working tool, an instrument of social policy; and it had to be *seen* in that light." LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 546 (3d ed. 2005).

60. *Id.* at 33.

61. WILLIAM TWINING, KARL LLEWELLYN AND THE REALIST MOVEMENT 54–55 (1973).

ingly descend from the legal heavens.[62] Legal realists situated law in its societal context and argued that the focus of legal analysis must be on empirical studies, not abstract doctrine.[63]

MacLeish received his training at Harvard decades before the influence of Legal Realism. Perhaps MacLeish would have had a more satisfactory experience with law school had he waited to go to Yale Law School at the advent of Legal Realism in the 1920s and 1930s.[64] Researchers such as Yale's Charles E. Clark, William O. Douglas, Dorothy Swaine Thomas, Emma Corstvet, and James Rowland Angell conducted empirical studies of the law in action which departed from the formalistic doctrinal studies that dominated the American legal academy.[65] The realist Herman Oliphant denounced much of formalist legal scholarship as bogged down by a "belated scholasticism" and a "blighting medieval prepossession."[66] In Oliphant's 1928 *ABA Journal* article, he argued that the courts were still devoting too much attention to the language of prior cases and should focus instead on what was actually decided in legal opinions.[67]

The case law method that was taught at Harvard during MacLeish's student days eschewed social justice in favor of "rules, principles, and cases laid out in abstract, orderly systems."[68] Not until the 1920s did legal realism begin to challenge the bedrock principle of *stare decisis* embraced by formalism. The legal realist reforms that undermined the hegemony of legal formalism, unfortunately, came too late to shape MacLeish's law school experience, leaving him without a personally satisfying intellectual framework.

III. MACLEISH AS ELITE BENEFACTOR OF THE MAD POET EZRA POUND

Professors Stefancic and Delgado use the intriguing story of the decades-long relationship between Archibald MacLeish and Ezra Pound

62. *See* Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 809 (1935) (comparing legal formalism to a "heaven of legal concepts" where concepts descend from heavens rather than from society).

63. *See* Karl Llewellyn, *Some Realism About Realism—Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1234 (1931) (presenting legal realism as "movement in thought and work about the law" within which certain points of departure are common); *see also* Roscoe Pound, *The Call for a Realist Jurisprudence*, 44 HARV. L. REV. 697, 697 (1931) (discussing approach of legal realists as requiring "faithful adherence to the actualities of the legal order as the basis of a science of law").

64. *See generally* Morton J. Horwitz, *Justice, Democracy, and Humanity: A Celebration of the Work of Mark Tushnet*, 90 GEO. L.J. 131, 131 (2001) (describing Yale Law School as a center of legal realism in the 1920s and 1930s).

65. JOHN HENRY SCHLEGEL, AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE 81–82, 98–99 (1995).

66. H. RESUSCHELIN, JURISPRUDENCE—ITS AMERICAN PROPHETS: A SURVEY OF TAUGHT JURISPRUDENCE 281 (1951) (citing OLIPHANT & HEWITT, INTRODUCTION TO J. RUEFF, FROM THE PHYSICAL TO THE SOCIAL SCIENCES xxvi (1929)).

67. Herman Oliphant, *A Return to Stare Decisis*, 14 A.B.A. J. 71, 72 (1928).

68. STEFANCIC & DELGADO, *supra* note 14, at 33.

to answer the question of why lawyers are so unhappy.[69] Ezra Pound was not only a literary genius but also a manic conspiracy theorist, whose racist and anti-Semitic broadcasts in support of Mussolini landed him in St. Elizabeths Hospital for the Criminally Insane after World War II. As a young man, Pound enrolled at the University of Pennsylvania, and aspired to be a poet, "affecting flagrantly unconventional manners and dress."[70] His eccentric behavior and ideas offended the gentlemen's club culture—his fellow students gave him a literally chilly reception by tossing him into a campus pond.[71] He soon transferred to Hamilton College, then a more tolerant school.[72] Pound graduated from Hamilton and then returned to the University of Pennsylvania to earn his Master's Degree.[73]

After graduation, Pound went on to become the architect of a major literary movement, influencing such luminaries as T.S. Eliot, Robert Frost, Rabindranath Tagore, and William Butler Yeats.[74] These rebellious poets administered a good "pounding" to the self-satisfied, overly ornate world of Victorian literature.[75] Ezra Pound's critique of Victorian poetry prefigured Roscoe Pound's sociological jurisprudence that dismantled the formalists' abstract manner of viewing law.[76] Ezra Pound led a troubled, but much splendored life, learning eight languages by his early twenties.[77] He was fired from his first teaching job at Wabash College after moving a stranded female circus performer into his rented room; an act that highlighted Pound's willingness to flaunt social conventions.[78] In 1908, Pound settled in London,[79] where he produced four col-

69. *Id.* at xi–xiv. The authors drafted part of the book in Italy where they gained access to documents about Pound's Italian fascist period. *Id.* at ix–x, xii. They also base their book on unpublished material from the Pound and MacLeish collections at the Library of Congress. *Id.* at ix. The authors draw upon E. Fuller Torrey's account of Pound while he was committed to St. Elizabeths Hospital for the Criminally Insane in Washington, D.C. after World War II. *Id.* at 11 & nn.90–93; *see e.g.*, C. DAVID HEYMANN, EZRA POUND: THE LAST ROWER: A POLITICAL PROFILE (75); HENRY MEACHAM, THE CAGED PANTHER: EZRA POUND AT ST. ELIZABETHS (1967). *See generally* E. FULLER TORREY, THE ROOTS OF TREASON (1984).

70. STEFANCIC & DELGADO, *supra* note 14, at 5–6.

71. *Id.* at 6.

72. Hamilton College's tradition of tolerance remains controversial. The college was recently in the news for inviting Professor Ward Churchill of the University of Colorado as a panel speaker. Professor Churchill is the author of "Some People Push Back: On the Justice of Roosting Chickens," that argued that the September 11, 2001 victims bore some responsibility for the terrorist attack because they were indirect participants in America's imperialist policies. The college cancelled his appearance after threats of violence, but defended Churchill's right to speak. "However hateful, [Churchill's opinions] were essentially political speech of the kind that, as part of a sound liberal education, students must learn to confront intellectually and, if so inclined, to dispute." Hamilton College Statement, *First Amendment/Free Speech/Academic Freedom in Relation to the Ward Churchill Affair* (Mar. 3, 2005), http://www.hamilton.edu/news/wardchurchill/amendment.html (last visited Sept. 22, 2005).

73. Jean Stefancic & Richard Delgado, *Panthers and Pinstripes: The Case of Ezra Pound & Archibald MacLeish*, 63 S. CAL. L. REV. 907, 910 (1990).

74. *Id.* at 909–11.

75. *Id.* at 912.

76. Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12, 18 (1910).

77. Stefancic & Delgado, *supra* note 73, at 909–10.

78. *Id.* at 910.

lections of poetry in only two years.[80] After World War I, he relocated to Paris and joined the famous literary crowd that included Gertrude Stein, Ernest Hemingway, T.S. Eliot, and James Joyce.[81]

In the 1930s, Pound fell under the spell of rabidly anti-Semitic ideas such as those expressed in *The Protocols of the Learned Elders of Zion*.[82] World events such as the 1929 stock market crash confirmed for him the existence of an elaborate Jewish conspiracy.[83] Pound embraced a number of other bizarre theories and denounced the domestic as well as foreign policies of the United States.[84] By the early 1940s, he had become an ardent supporter of the Italian fascist dictator Benito Mussolini.[85]

During World War II, Pound gave more than 125 talks on *Radio Rome*, criticizing the U.S. government and its role in World War II.[86] In one broadcast, he castigated his old friend Archie MacLeish for supposedly handing out "four billion dollars in excess profits . . . to a dirty gang of kikes and hyper-kikes on the London gold exchange firms."[87] As the war was ending, U.S. forces arrested Pound and jailed him for several months at Pisa before flying him to the United States. There, a jury declared him "of unsound mind" after only three minutes of deliberation.[88] Pound was institutionalized in St. Elizabeths Hospital for the Criminally Insane for twelve years until MacLeish intervened on his behalf.[89] He died in Italy in 1972.

IV. ARCHIBALD MACLEISH: EVERYBODY'S ALL-AMERICAN

Archibald MacLeish grew up in Illinois, the son of a prosperous retail store manager and trustee of the University of Chicago.[90] Like the University of Pennsylvania that Pound experienced, the Yale of MacLeish's undergraduate days was more a gentlemen's club than a place of higher learning.[91] After graduating from Yale, MacLeish chose Harvard Law School as a default, largely because it was a more desirable choice than going into business or teaching.[92]

79. A. Walton Litz, *Ezra Pound*, *in* THE JOHNS HOPKINS GUIDE TO LITERARY THEORY & CRITICISM, (Michael Groden & Martin Kreiswirth eds.), http://www.press.jhu.edu/books/hopkins_guide_to_literary_theory/ezra_pound.html (last visited April 2, 2005).
80. Stefancic & Delgado, *supra* note 73, at 910.
81. STEFANCIC & DELGADO, *supra* note 14, at 8.
82. *Id.* at 9.
83. *Id.*
84. *Id.*
85. *Id.* at 9–11.
86. *Id.* at 10.
87. *Id.*
88. *Id.*
89. Litz, *supra* note 79.
90. STEFANCIC & DELGADO, *supra* note 14, at 12.
91. *Id.*
92. *Id.* at 13.

Harvard Law School had long been a stronghold of the governing elites. While Harvard did not offer courses in legal studies until 1817, ninety percent of the new lawyers admitted to practice in Boston from 1780 to 1817 were Harvard College graduates.[93] By the end of the nineteenth century, the method of legal education had been transformed from apprenticeship under the guidance of experienced attorneys to formal law schools. But the old ways offered advantages that are only now being realized. The American Bar Association's MacCrate Report concluded that the clerk/mentoring system found in MacLeish's day has been replaced by an overreliance on the "Langdellian appellate case-method, which views the study of law as an academic science."[94]

MacLeish's training at Harvard Law School was a radical departure from the older apprenticeship system that had socialized Brahmin lawyers of an earlier era. Christopher Columbus Langdell's new case law system emphasized a "scientific" process[95] through which students deduced legal principles from judicial opinions written by distinguished jurists. Students read books filled with cases and prepared briefs, which condensed the rules of law and legal reasoning. They learned to think like lawyers through intensive "Socratic" dialogues with their professors.[96]

Archibald MacLeish enjoyed law school, discovering his legal studies to be far more challenging than his undergraduate education. Finding himself "pinned by far more experienced minds on the Socratic mats of the law school," he became completely absorbed in his studies and finished his first year courses with all "A" grades.[97] The Harvard Law School that MacLeish attended was a comfortable training ground for the legal intelligentsia whose skills would oil the wheels of corporate capitalism.

The Harvard Law School of MacLeish's day was already allied with big business, having substantial holdings in the munitions industry, the railroads, the utilities, and United Fruit of Central America.[98] Harvard lawyers orchestrated the financial affairs of the great families of Boston—the Lowells, the Saltonstalls, the Lodges, and other blueblood dynasties. With the birth of the large corporations, Harvard lawyers of

93. CHARLES WARREN, A HISTORY OF THE AMERICAN BAR 194–95 (1913).

94. *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, at Introduction.

95. Gerald P. Moran, *A Radical Theory of Jurisprudence: The "Decisionmaker" as the Source of Law—The Ohio Supreme Court's Adoption of the Spendthrift Trust Doctrine as a Model*, 30 AKRON L. REV. 393, 410 (1997) (describing Langdell's "scientific" case method developed at Harvard Law School).

96. The case law system displaced the older pedagogy in law schools outside of Harvard as well. With the assistance of Dean Langdell's student disciples, men like "John H. Wigmore took the case method to Northwestern; Eugene Wambaugh to the State University of Iowa . . . and Kenner [who] stormed the citadel at Columbia." FRIEDMAN, *supra* note 59, at 470–71.

97. STEFANCIC & DELGADO, *supra* note 14, at 13.

98. UPTON SINCLAIR, THE GOOSE-STEP: STUDY OF AMERICAN EDUCATION 67–93 (1923).

MacLeish's generation moved from drafting wills and settling trusts to incorporating and serving the railroads, streetcar companies and the emerging industrial and financial giants.[99] The sociologist Thorstein Veblen chided Harvard's President Lowell for acting like a "captain of erudition;" a pawn of industry, who changed universities into cartel-like organizations.[100]

Legal formalism was the dominant discourse during MacLeish's law school years and in his legal practice. MacLeish's inner struggle about law practice was revealed in letters to his friends. By the end of law school, MacLeish was already feeling hemmed in by the study of law, yearning for an opportunity to fulfill what he described as his personal "misplaced ambition to write."[101] Upon graduation from Harvard Law School, MacLeish worked for three years as an associate at Boston's Choate, Hall and Stewart.[102] He found corporate law practice to be suffocating and not "socially useful."[103] He wrote to his friend Dean Acheson, later to be U.S. Secretary of State, that he had a "profound suspicion of the practice of law."[104] Finally, MacLeish made the decision to resign from his pillar-of-the-establishment law firm. When he learned that he had just been voted as a partner, it did nothing to dissuade him from leaving law practice. MacLeish and his family sailed off to Europe to enter the same expatriate community that Pound had joined a few years earlier.[105] MacLeish sought Pound's approval but was told in no uncertain terms that he would never be more than a journeyman poet unless he incorporated a fresh perspective into his writing.[106]

MacLeish's legal training, however, diminished his ability to incorporate Pound's suggestions into his poetry. While creativity is possible in law as well as in poetry, breaking with the established system requires a degree of nonconformity that subjects one to criticism. Creativity can spring from persons of all social classes, but it always requires a fresh perspective in order to advance beyond received notions.

A highly cautious man, MacLeish was most comfortable around people whose backgrounds were similar to his own. While he rejected the security of Boston law firm life, MacLeish still was drawn to the well-to-do world of high society. Much was revealed about MacLeish's personality when he noted that a favorite part of visiting Europe was spending time with Gerald and Sara Murphy, the dauntingly rich and cultured couple celebrated later in Calvin Tompkin's *Living Well Is the Best Re-*

99. *See generally* PETER FRENCH, THE LONG REACH: A REPORT ON HARVARD TODAY (1962).
100. THORSTEIN VEBLEN, THE HIGHER LEARNING IN AMERICA 155 (1918).
101. STEFANCIC & DELGADO, *supra* note 14, at 15 (quoting from letter to MacLeish's friend).
102. *Id.* at 14.
103. *Id.* at 15.
104. *Id.*
105. *Id.*
106. *Id.* at 17.

venge.[107] He and his wife, MacLeish admitted, were not very good Bohemians when they were living among the *literati* in Paris.[108] And although Stefancic and Delgado label MacLeish a "good man,"[109] he was an indifferent father and a flagrant womanizer.[110]

After Pound was institutionalized in 1945, MacLeish did "nothing to help Pound, nor did he visit him" for many years.[111] By 1949, MacLeish was the Boylston Professor of Rhetoric and Oratory at Harvard, and was in a position to defend the value of Pound's work before the literary academy.[112] Even though MacLeish supported Pound for a major American literary prize,[113] he secretly arranged for poet Robert Frost "to get credit for the release of Pound after the latter's 13-year confinement."[114] Undoubtedly MacLeish feared that he might be stigmatized if it became known that he had helped to free a former enemy of America.

MacLeish was not a person of great moral courage who was willing to openly defy the establishment. His half-hearted efforts on Pound's behalf came only after Joseph McCarthy was censured in the U.S. Senate and it was politically safe to help his old friend. MacLeish never utilized his considerable intellectual gifts and his privileged social standing to employ the law as an instrument of social justice.

MacLeish's sedate gentility also limited his poetry. Pound told MacLeish that he would never become first-rate unless he first "knocked free of the old mortar, pried loose from the old nails."[115] Pound urged MacLeish to go far beyond making a show of novelty, telling MacLeish that he would never be truly creative until he shed his Brahmin perspective.[116] Nevertheless, throughout his life as a poet and playwright, MacLeish never strayed far from his patrician roots, despite occasionally displaying sympathy for the underclass. While MacLeish was sunk in a sea of despair over the lack of personal fulfillment in his elite legal career, his more creative and courageous contemporaries were challenging

107. *See generally* CALVIN TOMPKINS, LIVING WELL IS THE BEST REVENGE (1971); *see also* AMANDA VAILL, EVERYBODY WAS SO YOUNG: GERALD AND SARA MURPHY AND THEIR CIRCLE (1998).

108. The Murphys' circle contained celebrities from literature, film, art, music and high culture.

> Elegant, attractive, wealthy, cultured, affectionate, the Murphys had gathered around themselves at their home in France a brilliant group of American writers and artists, among them Fitzgerald, Hemingway, Cole Porter, Dorothy Parker, John Dos Passos, Archibald MacLeish, Robert Benchley, Alexander Woollcott, and Philip Barry; in addition they numbered among their friends some of the most prominent figures of the European modernist movement, such as Pablo Picasso, Jean Cocteau, Fernand Lėger, and Igor Stravinsky.

VAILL, *supra* note 107, at 5.

109. STEFANCIC & DELGADO, *supra* note 14, at 30.

110. *Id.* at 68; *see also* VAILL, *supra* note 107, at 152 (describing MacLeish's illicit affair with his best friend's wife and his erotic poetry dedicated to Sara Murphy).

111. STEFANCIC & DELGADO, *supra* note 14, at 22.

112. *Id.* at 23–24.

113. *Id.* at 24.

114. Charles Guenther, *Parini's Fine Work Justifies Another Frost Biography*, ST. LOUIS POST-DISPATCH, May 16, 1999, at C5.

115. STEFANCIC & DELGADO, *supra* note 14, at 17.

116. *Id.*

the status quo through the courts. MacLeish never struck out against the power elite like social reformers and commentators such as John Dos Passos, Upton Sinclair, and F. Scott Fitzgerald.

Stefancic and Delgado blame MacLeish's timidity on the conceptual prison of legal formalism. His inability to break out of this paradigm was a self-imposed iron cage that constrained his creativity.[117] The authors, however, place undue emphasis on legal method and epistemology as the source of Archibald MacLeish's unhappiness. During MacLeish's era, many opportunities awaited lawyers eager to be creative in the law, but they required making a leap of courage. Clarence Darrow, for example, took a position as corporate counsel for the Chicago and Northwestern Railroad after graduating from the University of Michigan, but resigned this high-status position to "defend Eugene V. Debs, president of the American Railway Union, and other union leaders who had been arrested on a federal charge of contempt of court over difficulties arising out of the Pullman strike of 1894."[118]

Could MacLeish ever have been a great poet? Perhaps, but he certainly had the legal training and the talent to have been a truly great progressive lawyer had he chosen to take on the elites of his day. Fifteen years before MacLeish resigned from his Boston law firm because of boredom, another Harvard Law School graduate, Louis Brandeis, was already serving as a "People's Attorney," often clashing with Boston's State Street and New York's Wall Street.[119] Brandeis, later to serve as a U.S. Supreme Court Justice for twenty-three years, was never afraid to challenge the corporate moguls, and his work led to serious social reforms such as the establishment of savings bank life insurance.[120]

Brandeis was a lawyer for the people who used the law as a tool for social change.[121] In *Muller v. Oregon*, for example, the U.S. Supreme Court considered the constitutionality of an Oregon statute that limited the number of daily and weekly work hours of female employees in "mechanical establishments," factories, or laundries.[122] A Portland laundry was charged with violating the Oregon statute when the owner ordered a laundress to work for more than ten hours in one twenty-four period.[123]

117. *Id.* at 30.

118. Eastland Memorial Society, *Clarence Darrow*, http://www.inficad.com/~ksup/darrow.html (last visited April 10, 2005).

119. THE READER'S COMPANION TO AMERICAN HISTORY: BRANDEIS, LOUIS D. (Melvin I. Urofsky ed.) *available at* http://college.hmco.com/history/readerscomp/rcah/html/ah_012300_brandeisloui.htm.

120. *Id.* (noting that Brandeis "not only exposed the high rates insurance companies charged workers for limited coverage but came up with a solution—savings bank life insurance—which he saw through to its establishment in 1907"); *see also* ALPHEUS THOMAS MASON, BRANDEIS: A FREE MAN'S LIFE 154–59 (1946).

121. ALLON GAL, BRANDEIS OF BOSTON 46–65 (1980) (describing Brandeis as an attorney for the people).

122. Muller v. Oregon, 208 U.S. 412, 416 (1908).

123. *Id.* at 417.

Muller was fined a mere ten dollars but appealed his conviction to the Oregon Supreme Court, which affirmed the lower court's decision.

The U.S. Supreme Court heard the appeal and affirmed the Oregon Supreme Court's decision, upholding the statute.[124] Brandeis, representing the defendant in error, devoted only two pages of his brief to legal precedent, implicitly conceding that established precedents protected the laundry owner's right to set hours. Ninety-seven percent of Brandeis' brief consisted of sociological, empirical, and social scientific reports.[125] He abstracted all available studies on women workers conducted by the governments of the United States, France, Germany, Italy, and other Western industrial nations. Brandeis's creative use of empirical findings demonstrated that the Oregon statute was a reasonable safeguard against workplace hazards. Brandeis not only persuaded the Court to view the Constitution as a changing entity, but he convinced the Court to consider statistical data and sociological jurisprudence that revealed harsh workplace conditions.[126]

Brandeis applied his legal imagination to demonstrate to the Court that it was unrealistic to presume that laundresses freely bargained with laundry owners over their terms of employment. His focus went beyond deductive legal reasoning to the world of experience. In Brandeis' book, *Business: A Profession*, he stated his unique perspective on the law of the workplace:

> Politically, the American workingman is free—so far as law can make him so. But is he really free? Can any man be really free who is constantly in danger of becoming dependent for mere subsistence upon somebody and something else than his own exertion and conduct? Men are not free while financially dependent upon the will of other individuals.[127]

Even though Brandeis practiced law at the height of legal formalism, his vision went far beyond the law-in-the books to the more pragmatic world of scientific data and the law-in-action. The "Brandeis Brief" later became an important tool in challenging racial discrimination and other social injustices.[128] Nothing held Brandeis back from making a great societal contribution by challenging oppressive working conditions. MacLeish occupied the same legal circles as Brandeis and certainly would have been familiar with his social reform proposals, but chose not to follow in Brandeis' footsteps.

124. *Id.* at 423.

125. PHILIPPA STRUM, BRANDEIS: BEYOND PROGRESSIVISM 60–61 (1993) (noting that fifteen pages of Brandeis' brief summarized state and foreign laws protecting women from excessive work hours and the remaining ninety-five pages presented empirical research showing that long hours of work are bad for women).

126. *Id.* at 61.

127. LOUIS BRANDEIS, BUSINESS: A PROFESSION 53 (A. Kelley ed., 1971) (1914).

128. THE READER'S COMPANION TO AMERICAN HISTORY, *supra* note 119 (observing that the "Brandeis brief became the prototype for later reform litigation").

To be creative, whether in law or poetry, requires a willingness to take on the establishment. Poetry and pinstripes do not easily mix. MacLeish was constrained by his own inner self-doubts and character flaws, as much as by the conceptual limitations of legal formalism. Stefancic and Delgado's argument about the distorting effect of formalism on MacLeish's career finds little support in their own scholarship. MacLeish was simply too comfortable in his cocoon of privilege to write great poetry. While he did spurn partnership in his Boston Brahmin law firm, he lacked the courage to take on the robber barons and their establishment allies. He left law practice because of boredom with corporate legal work, not because he was embracing a counter-hegemonic social vision.

Legal epistemology cannot take all of the blame for having quashed MacLeish's creativity. He was a smug prince of privilege, unwilling to abdicate his social standing for a world without a guaranteed succession of prestigious jobs. He did not fail to become a creative poet because of the ideological blinders created by formalist thought, but because his own alienation trapped him. The real reason for his ultimate inability to achieve his promise as a poet or as a lawyer was his refusal to eschew comfort for the perilous world of poetry and social change.

MacLeish's entire career was charmed and privileged. During World War II, he was appointed Librarian of Congress and director of the Office of War Information.[129] After the war, MacLeish served as chair of the American delegation conference that organized UNESCO.[130] MacLeish used his influence to save Pound's life in the waning days of World War II when Pound was captured by the U.S. military and threatened with summary execution. MacLeish convinced the military to imprison but not execute Pound.[131] A decade later, when the political climate was milder, MacLeish helped Pound to win his release from St. Elizabeths Hospital for the Criminally Insane.

Why did MacLeish work to free Pound from the mental hospital, given how callously Pound had attacked MacLeish as a willing tool of the Zionist conspiracy in his radio broadcasts? Neither sympathy nor partisan politics explains MacLeish's interest in Pound's release.[132] Stefancic and Delgado offer the provocative argument that MacLeish's assistance should be seen more as a backlash against legal formalism than as an expression of personal sympathy.[133] They argue that MacLeish's engagement prefigures the narrative school of antiformalist legal scholarship.[134]

129. STEFANCIC & DELGADO, *supra* note 14, at 21.
130. *Id.* at 22.
131. *Id.* at 21.
132. *Id.* at 26–27.
133. *Id.* at 28–30.
134. *Id.* at 29.

Professors Stefancic and Delgado present a hypothetical case of "Georgina," a new associate at an elite law firm who complains about her work but is unwilling to quit because of the need to pay off her loans and buy a new condominium.[135] Surprisingly, Stefancic and Delgado, both prominent critical legal theorists, barely mention the existence of hierarchy in legal education as well as in the legal profession. The crisis of self-actualization faced by this hypothetical associate, as well as the real life boredom that led Archibald MacLeish to leave his law firm, must seem self-indulgent to the graduates of the typical law school.

The average lawyer never has the opportunity to bemoan the loss of creativity caused by the "golden handcuffs" of lucrative, elite practice. It is a luxury to debate whether self-realization is more important than a six-figure income, which may reach seven figures when supplemented by the annual bonus. Most lawyers never receive the opportunity to suffer the moral *angst* of being forced to choose between a life of luxury and a sense of personal authenticity.

The unhappy associate depicted in Stefancic and Delgado's hypothetical makes pages of notes documenting her unhappiness while working in the upper reaches of the legal profession. Her joyless life comes to light in diary headings such as "Billable Hours," "Pressure," "No Time for Myself," "Boring Work," and "Whatever Happened to That English Major I used to Be?"[136] What is missing from this hypothetical gripe list is the associate's moral struggles of the type that led to John Gellene's downfall.

Robert Granfield and Thomas Koenig's study of the disenchantment of Harvard law graduates quotes a real-life associate who left her comfortable elite position rather than accommodate to an unhappy role:

> Less than one year after graduating from Harvard Law School, Gloria resigned from the legal profession. The precipitating incident was Gloria's success in obtaining a crucial admission from a poorly educated woman who had been permanently disabled in a pressing machine accident. As she described the case:
>
> > When [the disabled woman] walked into the room, she and I were the only women in the room. All the other lawyers and experts were male. She just immediately felt that she and I were on the same side because we were both women. Well, [because she didn't understand the situation] she just spilled her guts. She told me that she and her employer had cooperated together to disconnect the safety features. You could not make your quota with the safety system in place. The outcome of the case was that the woman didn't get anything. The whole thing made me sick. I felt—and this is not the attitude of a lawyer but the attitude of a

135. *Id.* at 47.
136. *Id.* at 85.

> human being—that we should have just given her the money [that the company paid the law firm] and told her to go home. It's hard to be a human being and a lawyer![137]

Granfield and Koenig use empirical data about the ideological compromises made by young elite lawyers to conclude that, like Stefancic and Delgado's "Georgina," law firm associates are often unhappy because of the cognitive dissonance they experience in corporate practice due to the conflict between their personal values and their role as defenders of the special interests.[138]

The painful reality is that, as Professor Regan's account shows, survival in the supercompetitive modern law firm is no longer possible without a single-minded focus on fulfilling the firm's profit-seeking mission. The structural constraints of large-firm practice are ultimately more important sources of alienation than the failure of legal education to provide counter-hegemonic alternatives to legal formalism.[139] Still, Granfield and Koenig's research shows that Stefancic and Delgado are correct in arguing that legal ideology blinds young associates from thinking clearly about the self-alienating nature of their legal practice.[140] When fledgling elite lawyers were asked whether or not they had experienced "ethical dilemmas" in their work, they overwhelmingly replied "no."[141] However, when later asked whether they had worked on cases "that bothered them personally," the young law firm attorneys talked at length about distasteful activities they were forced to undertake to advance corporate interests.[142]

Legal education and elite practice taught the respondents that their *angst*, which arose from advancing the interests of their powerful clients rather than crafting balanced outcomes to legal conflicts, was a sign of personal weakness rather than the visible tip of a vast ethical iceberg.[143] "Ethical dilemma" has been redefined by the legal profession to refer to technical matters such as the conflict of interest that trapped Gellene, rather than moral discomfort and alienation. Ideological blinders, organ-

137. Robert Granfield & Thomas Koenig, "*It's Hard to be a Human Being and a Lawyer:" Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495–96 (2003).

138. *Id.* at 520.

139. *See* KAHLENBERG, *supra* note 4, at 236–38 (contending that Harvard Law School's ideological purpose was to strip young elite law students of their idealism and commitment to social justice); Robert Granfield, *Constructing Professional Boundaries in Law School: Reactions of Students and Implications for Teachers*, 4 S. CAL. REV. L. & WOMEN'S STUD. 53, 68–71 (1994) (documenting the transformation of Harvard Law School student attitudes from idealism to cynicism about law and lawyering).

140. Granfield & Koenig, *supra* note 137, at 519 (presenting data indicating that young Harvard-educated lawyers have internalized the ethical ideology of the legal profession, define themselves as highly moral, and view legal practice as socially neutral).

141. *Id.* at 512, 519.

142. *Id.* at 512–19.

143. *Id.* at 522. "Most of the attorneys we interviewed had absorbed the ethical code of their workplace—a set of values that allowed them to make the compromises necessary to be professionally successful while viewing oneself as a moral individual." *Id.*

izational conditions of legal practice, and personality flaws all play an interacting role in producing the high level of discontent among elite lawyers.

Legal education provides little training in dealing with moral ambiguity because of its undue emphasis on "abstract, decontextualized encounters with faceless clients."[144] In the words of Austin Sarat, law students "have learned little about encountering people in situations of stress and fashioning solutions to their problems in ways that are responsive to the human as well as legal dimensions."[145] More empirical research is needed to explore the ways that attorneys deal with the inconsistencies between their personal values and their professional role of zealously advocating for the privileged. As both of these books show, elite law firms are filled with conflicted human beings, not cheerful robots.

V. CONCLUSION

Both Stefancic and Delgado's *How Lawyers Lose Their Way: A Profession Fails its Creative Minds*, and Regan's *Eat What You Kill: The Fall of a Wall Street Lawyer* present excellent, nuanced accounts of the conflicted lives of high level lawyers. However, the authors neglect the roles that class, status, and power play in the legal profession. Professors Stefancic and Delgado focus exclusively on the *angst* experienced by elite lawyers in top-flight law firms, ignoring the *angst* experienced by those in the lower branches of the legal profession. Stefancic and Delgado's positive prescriptions for ending the problem of lawyer discontent, however insightful, do not address the life circumstances of the majority of lawyers and law students. Just as there are major inequities within American society,[146] the U.S. legal profession is hierarchically divided in terms of prestige, power and financial rewards. In the words of Harvard Law Professor Duncan Kennedy:

> Law firms are ranked just as law schools are . . . . The lawyers in the "top" firms make more money, exercise more power and have more

144. *Id.*

145. *Id.* (quoting Austin Sarat).

146. Former Vice Presidential Candidate John Edwards' famous campaign speech, *Two Americas*, stated:

> Today, under George W. Bush, there are two Americas, not one: One America that does the work, another that reaps the reward. One America that pays the taxes, another America that gets the tax breaks. One America—middle-class America—whose needs Washington has long forgotten, another America—narrow-interest America—whose every wish is Washington's command. One America that is struggling to get by, another America that can buy anything it wants, even a Congress and a president.

Senator John Edwards, Two Americas (Dec. 29, 2003), http://www.mintruth.com/wiki/index.php?Two%20Americas (last visited Oct. 17, 2005).

> prestige than lawyers in the next rank, these lawyers lord it over those below them, and so forth to the bottom.[147]

It has been more than eight decades since Archibald MacLeish spurned Choate-Hall's offer of partnership. If MacLeish ever noticed that Boston had a larger and more diverse law school than his alma mater, it was probably because he saw the garish neon sign advertising Suffolk Evening Law School across the Charles River in Boston. While Archibald MacLeish was studying law at Harvard, the very entrepreneurial founder of Suffolk, Gleason Archer, offered legal education at night to a nontraditional market composed of working class Jews, Asians, Blacks, Poles, Italians, Greeks, Slavs, Irish immigrants and even Native Americans.[148] Archer's business partner and friend, Arthur MacLean, founded Portia Law School, now New England School of Law, the first law school exclusively for women.[149] Evening law schools were great levelers, allowing individual upward mobility for the ambitious. George Fingold, a former Attorney General of Massachusetts recalled his days at Suffolk Evening Law School:

> At the end of a day's work, I'd hop on one of the trains and ride to North Station. I'd run up Beacon Hill in my overalls with greasy hands. I'd change clothes in the men's locker room in the basement of the Archer Building. I'd wash and change into clean clothes and then run to class. For me, Suffolk Law School was my last hope to make something of myself.[150]

Today's legal hierarchy is a reflection of a historical social conflict reaching back to MacLeish's era. Even though Suffolk has been fully "Harvardized" and occupies a luxurious $70 million building, the top law firms continue to recruit disproportionately from a handful of historically elite law schools. When John Gellene was working on bankruptcy reorganizations at Milbank Tweed, he would have met few attorneys from local or regional law schools such as Suffolk or New England School of Law.

Professors Stefancic, Delgado, and Regan all ignore the *angst* experienced by legal practitioners and students from this second legal world. The graduates of the most prestigious law schools continue to thrive in a relatively charmed legal environment in which many lucrative opportunities materialize, even for those students who are not selected

147. KENNEDY, *supra* note 4, at 51–52. For supporting information, see Thomas Koenig & Michael L. Rustad, *The Challenge to Hierarchy in Legal Education: Suffolk and the Night Law School Movement*, *in* 7 RES. IN LAW, DEVIANCE AND SOC. CONTROL 189, 196–97 (Steven Spitzer & Andrew T. Scull eds., 1985). *See generally* JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982) (demonstrating empirically the pervasiveness of social stratification in the organized bar).

148. Michael Rustad & Thomas Koenig, *The Impact of History on Contemporary Prestige Images of Boston's Law Schools,* 24 SUFFOLK U. L. REV. 621, 635–36 (1990).

149. *Id.* at 630.

150. Koenig & Rustad, *supra* note 147.

for law review.[151] In contrast, ambitious young attorneys from the "other legal world" compete for a limited number of top-level positions in a work environment more analogous to a Hobbesian struggle of war of all against all.[152] Stefancic and Delgado's focus on the straightjacket of elite law practice misses an opportunity to carve out a broader theory of *angst* in the legal profession. Similarly, Professor Regan's exclusive focus on the Wall Street firm deflects attention away from the psychological stresses and ethical conflicts experienced by solo practitioners, government lawyers, trial lawyers, and public interest attorneys.

Neither book acknowledges the continuing impact of legal hierarchy on all lawyers' aspirations and practice opportunities. Stefancic and Delgado point to legal formalism, corporate legal practice, and the decline of legal professionalism as reasons for burnout and lack of creativity.[153] An alternative hypothesis is more psychological in nature, akin to Fromm's concept of schizoid self-alienation. The golden handcuffs of a national law firm partnership require lawyers to surrender their autonomy and creativity in exchange for prestige and financial security. Professor Regan's book may be more on the money when he describes how the relentless pursuit of profit characterizes modern elite law practice at the expense of the lawyer-statesman ideal.

Both of these books do much to advance our understanding of the stress and ethical conflicts confronting successful corporate lawyers. Further research is needed on the *angst* experienced by lawyers and law students in nonelite settings. A broader theory of self-alienation within the profession requires a greater recognition of the impact of class, race, gender, income inequality and hierarchy on legal careers.

151. Robert Granfield & Thomas Koenig, *Pathways into Elite Law Firms: Professional Stratification and Social Networks*, 4 RES. IN POL. & SOC'Y 325, 327–28 (1992) (concluding that the key difference between elite law schools and those lower in the law school hierarchy are social networks useful in placement in top firms).

152. *See generally* JOHN P. HEINZ ET AL., THE NEW SOCIAL STRUCTURE OF THE BAR (2005) (summarizing the results of a comprehensive empirical study of hierarchy and differentiation among Chicago attorneys).

153. STEFANCIC & DELGADO, s*upra* note 14, at 64–65.