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THE FOLKLORE OF LEGAL BIOGRAPHY

Mark Fenster*

THURMAN ARNOLD: A BIOGRAPHY. By *Spencer Weber Waller*. New York and London: New York University Press. 2005. Pp. xi, 273. \$40.

INTRODUCTION

What types of lawyers are most worthy of a professional biography? The question requires one to pose a threshold for biographical worthiness, and here is mine: a legal professional whose practice or career path has resulted in a life that even non-family members would find interesting and important. Judging by a list of memorable legal biographies, the types of lawyers most eminently biographable are influential judges,¹ political lawyers (including those who become politicians),² great trial lawyers (especially criminal trial lawyers),³ a few very significant government officials,⁴ and the grand legal academics who define a generation's scholarship.⁵

The list is small for at least two reasons. First, lawyers are agents, rather than principals;⁶ and second, they engage in specialized and highly repetitive work that is typically dull in its quotidian routines and difficult to represent in an engaging manner.⁷ Even appellate judges, who appear to author final,

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1. The judicial biography, the most common type of legal biography, has received the most attention among legal academics, including two symposia since World War II. See Norman Dorsen & Christopher L. Eisgruber, *Preface*, 70 N.Y.U. L. REV. 485 (1995) (introducing the proceedings of a two-day conference on judicial biography); *The Writing of Judicial Biography—A Symposium*, 24 IND. L.J. 363 (1949) (collecting papers delivered at a meeting of the American Political Science Association).

2. For an exemplary biography of an exemplary lawyer who served a significant role as an adviser to a president (and who also served, briefly, as a Supreme Court Justice), see LAURA KALMAN, *ABE FORTAS* (1990).

3. Clarence Darrow stands out as the eminent, and eminently biographable, twentieth century trial lawyer. See, e.g., JAMES EDWARD SAYER, *CLARENCE DARROW: PUBLIC ADVOCATE* (1978); ARTHUR WEINBERG & LILA WEINBERG, *CLARENCE DARROW, A SENTIMENTAL REBEL* (1980).

4. See, e.g., DONALD A. RITCHIE, *JAMES M. LANDIS: DEAN OF THE REGULATORS* (1980).

5. See, e.g., NICOLA LACEY, *A LIFE OF H. L. A. HART: THE NIGHTMARE AND THE NOBLE DREAM* (2004); WILLIAM R. ROALFE, *JOHN HENRY WIGMORE: SCHOLAR AND REFORMER* (1977).

6. See Paul Gewirtz, *A Lawyer's Death*, 100 HARV. L. REV. 2053, 2055–56 (1987).

7. Indeed, corporate lawyers' lives seem rarely to warrant biography. The exception that demonstrates the rule may be John W. Davis, who formed what is now known as Davis Polk & Wardwell, but who had previously served in the House of Representatives and as Solicitor General of the United States, who had run as the Democratic Party's nominee for President against Calvin Coolidge in 1924, and who is the subject of a much-admired biography. See WILLIAM H.

binding versions of the law, lead mostly cloistered professional lives with which biographers must struggle mightily to create something more than a grim, dreary account.⁸ But the small subset of lawyers and judges who make great biographical subjects forge influential careers that are lived in public. They provide engaging narrative arcs, frequently with great heights and calamitous falls, always punctuated by compelling passages and dramatic moments. The subjects of these biographies inspire and teach; they constitute models by which those of us who will never warrant our own biographies measure and lead our lives—perhaps with hopes that we will be like them, or perhaps in order to distinguish ourselves from them. And their lives constitute materials that biographers can use to construct arguments about the past and present, as well as about the value and nature of the biographical subject.

The career and life of Thurman Arnold (1891–1969) may not quite lend themselves to this kind of narrative treatment. From the time of his Harvard Law School graduation in 1914 until his death in 1969, Arnold lived a variety of lawyerly lives: a small-town attorney and politician, a Yale law professor, an assistant attorney general during the latter part of the Roosevelt era, a federal appellate court judge, and a founding partner of what is now known as Arnold & Porter, the powerful Washington firm. Three of these five incarnations—academic, trustbuster, and private attorney—were interesting, if not exactly riveting. His work in those roles was influential and well-regarded, though not world-defining or world-changing. Neither his professional nor his private life was stained by great adversity, defeat, or scandal; they were unmarked by grand triumphs as well. Rather, his varied career was steady, solid, and professional: He was a brilliant, if unfocused and undisciplined academic during the heyday of legal realism. As the leader of the Antitrust Division of the Justice Department, he was unquestionably productive and a vigorous enforcer, though his achievements there were as much bureaucratic and managerial as they were personal and dramatic. He was a beloved presence at his firm and did good while also doing very well. He was happily married for most of his adult life to the former Frances Logan, with whom he raised their two sons. And although he was a heavy social drinker, his drinking was neither debilitating nor significantly beyond the norms of his era. Viewed in sequence, these segments could constitute parts of an interesting life but do not naturally cohere into the kind of narrative one might expect or want from a biography—neither the content of Arnold's life nor the form of its trajectory immediately jumps out of the historical record.

Spencer Weber Waller's *Thurman Arnold: A Biography*⁹ thus faces the problem of making this life stand out, and this Review seeks both to evaluate his rendering—which it does in Part II, after providing more details of

HARBAUGH, LAWYER'S LAWYER: THE LIFE OF JOHN W. DAVIS (1973); Laura Kalman, *The Power of Biography*, 23 LAW & SOC. INQUIRY 479, 497 (1998).

8. See Willard Hurst, *Who Is The "Great" Appellate Judge?*, 24 IND. L.J. 394, 394 (1949).

9. Spencer Weber Waller is a Professor of Law, Loyola University Chicago School of Law.

the raw materials of Arnold's life in Part I—and to use Arnold's ideas to reflect on the endeavor of the legal biography. Although other works bearing on Arnold's life have been available,¹⁰ Waller's competent, readable chronicle will provide an authoritative source of information and satisfy the desires of general readers interested in accomplished legal lives and seeking a straightforward account of Arnold's career. But Waller's book will also dissatisfy legal academics and historians, as well as general readers who want a more in-depth treatment of the man and his work. It does not develop and shape the raw materials of Arnold's life into a meaningful whole; nor does it fully connect Arnold's professional career over the final three decades of his life with the academic works that enabled his permanent move to the heights of legal practice in the federal government and private practice. The book falls short, ultimately, in making the case for why Arnold's career, unlike that of the vast majority of thoughtful, accomplished attorneys, deserves biographical treatment. The highlights of an excellent legal career are well-described in the book; absent, though, is a sense of Arnold as a person and of his place within the broader historical period in which he lived and worked.

Part III identifies and briefly explores an irony underlying any attempt to offer a biography of Thurman Arnold. Arnold's academic and popular writings during the 1930s—which not only critiqued what he saw as the foolishness and ill effects of legal formalism and political conservatism, but also recognized the symbolic authority of legal forms and conservative beliefs and the need for any reform movement to respect and appropriate them—force us to reconsider the entire project of “legal biography.” Arnold's life and work reveal the ways in which the forces of modernity—forces that Arnold celebrated in his work and helped unleash in the New Deal and at Arnold & Porter—call into question the “rugged individual” that biography requires. Arnold's critical realist project sought to uncover the historically contingent and ideological nature of the classical liberal conception of the

10. The two extended accounts of Arnold's life are his autobiography, which strangely eschewed the personal in favor of worldly observations, see THURMAN ARNOLD, *FAIR FIGHTS AND FOUL: A DISSENTING LAWYER'S LIFE* (1965), and a wonderful collection of Arnold's letters that includes an extended biographical introduction, see Gene M. Gressley, *Introduction to VOLTAIRE AND THE COWBOY: THE LETTERS OF THURMAN ARNOLD* 1, 1–94 (Gene M. Gressley ed., 1977) [hereinafter *THE LETTERS OF THURMAN ARNOLD*]. A biographical law review article relies heavily on Arnold's early years as a politician in Wyoming state and local government to claim that his later academic and professional work was inherently conservative and technocratic. See Douglas Ayer, *In Quest of Efficiency: The Ideological Journey of Thurman Arnold in the Interwar Period*, 23 *STAN. L. REV.* 1049 (1971). Finally, a number of academic works that focused on Arnold's writings included biographical information from secondary sources. See EDWARD N. KEARNY, *THURMAN ARNOLD, SOCIAL CRITIC* 39–62 (1970); Warren J. Samuels, *Legal Realism and the Burden of Symbolism: The Correspondence of Thurman Arnold*, 13 *LAW & SOC'Y REV.* 997 (1979) (reviewing *THE LETTERS OF THURMAN ARNOLD*, *supra*). More remotely, some academic articles focus almost solely on Arnold's scholarship. See Neil Duxbury, *Some Radicalism About Realism? Thurman Arnold and the Politics of Modern Jurisprudence*, 10 *OXFORD J. LEGAL STUD.* 11, 12 (1990); Mark Fenster, *The Birth of a “Logical System”: Thurman Arnold and the Making of Modern Administrative Law*, 84 *OR. L. REV.* 69 (2005); Mark Fenster, *The Symbols of Governance: Thurman Arnold and Post-Realist Legal Theory*, 51 *BUFF. L. REV.* 1053 (2003) [hereinafter Fenster, *Symbols of Governance*]; Simon N. Verdun-Jones, *Jurisprudence Washed with Cynical Acid: Thurman Arnold and the Psychological Bases of Scientific Jurisprudence*, 3 *DALHOUSIE L.J.* 470 (1976).

subject who authors his own individual life; but at the same time, the culturalist side of Arnold's work explains why this conception remains necessary, given the symbolic nature of a legal system and the deeply felt needs we have in residual concepts like the historically transcendent individual.

I. THE OUTLINE OF A LEGAL LIFE

Arnold's life, like his career, neatly divides itself into fairly discrete, chronologically organized segments that track his rise from the small-town, turn-of-the-century West to national prominence.¹¹ Born in Laramie, Wyoming, to a prominent local attorney, Arnold ventured east to college (graduating, ultimately, from Princeton) and remained away for law school. He practiced law in Chicago without much success, enlisted in World War I, and then returned to Laramie, where he went into practice with his father and entered local and state politics with varying success (as a Democrat in a state that was overwhelmingly Republican). Accepting an offer from a client and law school acquaintance to become dean at the West Virginia University Law School, Arnold found his niche and breathed life into the law school, its faculty, and the state bar.

While in West Virginia, Arnold quickly caught the eye of Ivy League talent scouts by engaging in research on the hot topic of the moment and by using the hottest methodology of the day—civil procedure, as it was practiced on the ground by state courts and as it was studied by academics through basic quantitative empirical studies. He soon accepted an offer from Yale (in the process turning down offers from Harvard and Wisconsin, the latter for another decanal position), where he joined like-minded legal realists. Arnold's writings during this period, first in academic articles and then in two books (the first of which pieced together the threads of his articles, the second of which reiterated the first book using new examples),¹² were the basis of his academic reputation and, later, his minor fame as a public intellectual of the New Deal. While at Yale, Arnold spent his summers from 1933–36 and then the full academic year in 1937–38 working in various capacities for the Roosevelt administration as an attorney for New Deal agencies and in the Philippines advising Governor General (later Supreme Court Justice) Frank Murphy.

He moved permanently from New Haven to Washington in 1938 to head the Antitrust Division in the Department of Justice, leading the division to unprecedented levels of enforcement activity. In that position, Arnold used public speeches and popular articles to advance his vision of antitrust law as a weapon to protect consumers from the anticompetitive actions of what he

11. Except where otherwise indicated, this section is based on uncontroversial biographical details that appear in both Gressley, *supra* note 10, and Waller's biography.

12. THURMAN W. ARNOLD, *THE FOLKLORE OF CAPITALISM* (1937) [hereinafter ARNOLD, *FOLKLORE*]; THURMAN W. ARNOLD, *THE SYMBOLS OF GOVERNMENT* (1935) [hereinafter ARNOLD, *SYMBOLS*].

characterized as the “bottlenecks of business.”¹³ He lasted in the job until 1943, when he wore out his welcome in the Roosevelt administration by antagonizing two groups whose influence in the White House proved too much even for Arnold’s political and bureaucratic capital: labor unions, whom he tried vainly to prosecute for antitrust violations, and war suppliers, whose business associations with the cartelized industries of Nazi Germany he tried to expose and to use as the basis for antitrust enforcement. The President offered, and he accepted, a seat on the D.C. Circuit Court of Appeals as consolation for his sacking. But after two unmemorable years, he abandoned the deliberative quiet and life tenure of the federal bench for the influence and excitement of private practice.

Despite some initial fits and starts, his departure from government service proved to be an exceptionally good move for Arnold. He partnered with Abe Fortas, his former student at Yale and colleague in the New Deal, and Paul Porter to establish what would ultimately become Arnold & Porter (after Fortas was nominated to the Supreme Court by his friend and client Lyndon Johnson). In addition to recruiting and mentoring young lawyers, Arnold brought some significant clients into the firm (particularly Coca-Cola) and spearheaded the firm’s pro bono defense of federal employees who were prosecuted as “anti-American” for their “ties” to the Communist Party. By the latter decade of his life, Arnold had become a leading Washington attorney as a counsel to the powerful and as a champion of civil liberties, prospering professionally and financially. Upon his death in 1969 and well after it, he was remembered fondly as a scholar, teacher, public servant, and attorney, and as a great raconteur, friend, and unforgettable character.

II. THURMAN ARNOLD AND WALLER’S *THURMAN ARNOLD*

Waller’s task as Arnold’s biographer is to shape and unify these materials within a coherent narrative, and to craft an argument that persuades us as to the value and meaning of the subject’s life.¹⁴ To his credit, Waller admits in his introductory chapter that he lacks training as an historian, that he sees the work of historians as distinct from the “purely academic” work in which he otherwise engages as a law professor, and that his interest in Arnold extends no further than the man and his career (pp. 1–2). Unsurprisingly, then, the vast majority of the book is consumed with describing the main events of Arnold’s public and private lives; it offers limited analysis of Arnold’s historical significance or the historical context of the larger world in which Arnold lived. It is largely a descriptive chronicle of Arnold’s accomplishments.

13. See THURMAN W. ARNOLD, *THE BOTTLENECKS OF BUSINESS* (1940).

14. See IRA BRUCE NADEL, *BIOGRAPHY: FICTION, FACT, AND FORM* 100–01 (1984); PAUL RICOEUR, *Life: A Story in Search of a Narrator*, in *A RICOEUR READER* 425, 432–35 (Mario J. Valdés ed., 1991); SUSAN TRIDGELL, *UNDERSTANDING OUR SELVES: THE DANGEROUS ART OF BIOGRAPHY* 25 (2004).

This is, in part, because the source material for Arnold's life is thin and much of it has long been available.¹⁵ Waller derives the vast majority of his information about Arnold's life before he went into private practice from his collected letters and secondary sources. For the later years, Waller has the benefit of recent oral interviews he and others conducted with Arnold's younger acquaintances who are still alive. It is difficult to say something new about a life when the limited archives have already been plundered. Although there is no evidence that a bounty of unexamined letters and papers sits in an archive somewhere, Waller offers only occasional evidence in the book's endnotes that he has traveled to the archives of Arnold's friends and colleagues to search out the bits and pieces that might be available¹⁶—an issue that will arise below, when I note that he has missed at least a few things that could have deepened his portrait of Arnold's relationships with friends and colleagues. But Waller's problem may also be that besides Arnold's well-publicized and heretofore somewhat well-documented career, there is no unrevealed Thurman Arnold, no private moments of illuminating self-reflection or previously uncovered personal angels and demons that can make a biography surprising and enlightening.

A. *Chronology of a Career*

With these formal and content-based concerns in mind, how well does Waller's biography tell the story of Arnold's life? He structures the book chronologically, following Arnold's life by dividing it into a series of chapters.

1. *Arnold's Early and Academic Years*

The first third of the book, which carries Arnold through his move to Washington, is the weakest. The thinness of his source material, which limits Waller's account of Arnold's childhood and early adulthood, along with Waller's tendency to rely solely on descriptions of events, renders this part of the biography fairly dull and lacking any organizing theme besides the fact that Arnold was a small-town boy from the West who lived a relatively undistinguished life before he began teaching law full-time.¹⁷ A reader interested in this period would be better served by reading Arnold's collected letters from that time, which give a wonderful sense of Arnold's early years and experiences and were written in an engaging, unpretentious style that

15. See THE LETTERS OF THURMAN ARNOLD, *supra* note 10.

16. See, e.g., p. 233 n.92 (citing a document from the Walton Hamilton Collection at the University of Texas); p. 235 n.120 (citing a document from the Franklin D. Roosevelt Library). I discuss this issue below. See *infra* text accompanying notes 41–48.

17. This distinguishes Waller from Douglas Ayer, who found in the little documentary evidence of Arnold's political career the traces of a nascent moralistic technocrat that Ayer asserts also emerged in Arnold's published writings. See Ayer, *supra* note 10.

lacks the knowing, sardonic wit that would come to mark his later writing and correspondence.¹⁸

The biography's account of Arnold's academic years similarly treads familiar ground, again with limited resources beyond his letters and well-known secondary sources. Waller correctly and helpfully focuses our attention on Arnold's brief stay as dean of the West Virginia University Law School with a brief chapter on Arnold's success and frustrations as an administrator. But Waller's chapter on Yale is weak both in its biographical and intellectual details. He adds little to our knowledge of Arnold's experiences at Yale, as the anecdotes he relates are largely lifted from the biographies and autobiographies of others, and he makes no effort to give a sense of what life at Yale was like for a young academic like Arnold.¹⁹ Waller offers somewhat more treatment of Arnold's teaching, but not enough (and certainly not more than was already known) to give a flavor of what Arnold was like beyond the fact that he was entertaining but only vaguely effective in the classroom.

Arnold's written work as an academic is what ultimately propelled him into the public arena, and its success made him something more than just another New Deal advocate in the legal academy. As I have argued elsewhere, although he is typically identified as a legal realist, Arnold was the first post-realist who not only adopted the realist critique of legal formalism, but considered the implications of realist insights for larger political, as well as legal, change.²⁰ While the legal realist critique revealed the historically constructed and contingent nature of the legal forms that legal formalists essentialized,²¹ Arnold instead applied what his contemporary Max Lerner characterized as a "literary anthropology" to the cultural "symbols" and "folklore" of governance.²² Claiming to perform the role of a "diagnostician" who sought to understand and explain the context and pathologies of the political debates of the mid- to late-1930s, and, ultimately, to intervene on the side of the New Deal with the prevalent intellectual tools of his era, Arnold analyzed the conservative political, economic, and legal formalisms that prevented the emergence of a modern industrial America he thought would be able to overcome the Depression.²³ He argued that unless the realists and New Deal proponents understood and sought to engage the deeper

18. See THE LETTERS OF THURMAN ARNOLD, *supra* note 10, at 97–161.

19. For more vivid descriptions of the intellectual lives of the realists, a reader would be better served by turning to LAURA KALMAN, *LEGAL REALISM AT YALE, 1927–1960* (1986); Robert W. Gordon, *Professors and Policymakers: Yale Law School Faculty in the New Deal and After, in HISTORY OF THE YALE LAW SCHOOL 75* (Anthony T. Kronman ed., 2004); and John Henry Schlegel, *American Legal Realism and Empirical Social Science: From the Yale Experience*, 28 *BUFF. L. REV.* 459 (1979).

20. See Fenster, *Symbols of Governance*, *supra* note 10, at 1059–72.

21. The most trenchant recent accounts of the realist movement's output are NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE 65–159* (1995); KALMAN, *supra* note 19; and JOHN HENRY SCHLEGEL, *AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE* (1995).

22. Max Lerner, *The Shadow World of Thurman Arnold*, 47 *YALE L.J.* 687, 688 (1938).

23. ARNOLD, *FOLKLORE*, *supra* note 12, at 205.

spiritual, symbolic forms and practices that shape law as a field of governance, realism would be unable to overcome the legal formalism that it rejected, and the New Deal would be unable to overcome the conservative politics and philosophy that opposed it.²⁴ In brief, realists sought to deflate and overturn legal formalism; Arnold sought to understand and use its symbols to reshape the public's beliefs as part of "not only a science of law but a science about law."²⁵

Although Waller provides a decent summary of Arnold's writings, he foregoes serious study and analysis of them. The two concluding pages of his chapter on Arnold's Yale years display Waller's curious ambivalence about Arnold's work, bestowing on his subject no more praise than the bland claim that Arnold's ideas "resonate in modern legal and political thought" and the unenlightening assertion that his writings are more memorable today than those of his contemporaries because of his greater professional experience (p. 76). Waller characterizes modern efforts to take Arnold's work seriously as "a lively cottage industry" that misses the essential nature of Arnold's "joke" (pp. 76-77)—a "joke" that manifests itself in a comic, cynical irony that may have been "memorable," but that was never intended to be taken as the kind of serious scholarship that Arnold's realist colleagues produced.²⁶

This is a curious move. If Arnold's ideas were neither momentous nor intended to be serious, then Waller's biographical narrative faces a significant stumbling block. The time Arnold spent in the academy managed to change his career—and life-trajectory from obscurity in the mountain west to national prominence. If his years at Yale saw him reach a level of intellectual maturity and professional renown that helped, if not enabled, his later public and private legal careers, then something happened in New Haven that needs explanation. Waller's research exhumes nothing that would explain that transformation or that marks Arnold as inevitably destined for the significance he would soon achieve. The only evidence we have of the liveliness of Arnold's mind is his writings, and Waller inexplicably minimizes their importance to Arnold and to the world.²⁷

24. *Id.*

25. Thurman W. Arnold, Book Review, 36 COLUM. L. REV. 687, 690 (1936).

26. That is, all of his realist colleagues except Fred Rodell, who served with Arnold on the Yale faculty and did not take traditional legal scholarship seriously in the least. See Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936); see generally Neil Duxbury, *In the Twilight of Legal Realism: Fred Rodell and the Limits of Legal Critique*, 11 OXFORD J. LEGAL STUD. 354 (1991). Waller correctly does not analogize Arnold to Rodell.

27. To demonstrate the sloppiness of Arnold's scholarship and the misguided nature of reading too much into it, Waller credits the following statement Arnold made in a letter written a year before his death: "I never read Veblen until after *Folklore* was published. The sole influence on *Folklore* was my experience in Government investigations." P. 228 n.113 (citing unpublished letter). The second statement cannot possibly be correct, unless by "influence" one means direct quotation of a prominent intellectual—and even then it seems implausible. See, e.g., ARNOLD, FOLKLORE, *supra* note 12, at 91-92, 142-45 (quoting the work and citing the insights of the psychologist Edward S. Robinson, to whom Arnold had stated, in *Symbols*, that he owed "principal indebtedness"); ARNOLD, SYMBOLS, *supra* note 12, at v. As to the first sentence, Arnold may not have read Veblen directly in the mid-1930s—although this would contradict a statement he made in 1938, when he

In fact, this move is unfortunate as well as curious. Arnold may well have viewed his academic writings instrumentally, as a way to advance his career—which would merely make him like every other academic in a tenure system—but he also took them quite seriously, even if he was not the most careful writer and scholar.²⁸ Even more significantly, Arnold's publications at Yale, produced at a pivotal point in his life, offer an important analytical benchmark for the remainder of his career. To what extent did his later work as a government official and private attorney either further or undermine the central thesis of his scholarly writings? By failing to analyze Arnold's academic work fully, Waller squanders the opportunity both to use the work as a pivotal moment in his narrative and to test its hypotheses against Arnold's later career in government, on the bench, and in practice.

2. *Arnold's Government Years*

Arnold's work as a "trustbuster" in the Department of Justice explicitly offers such an opportunity, insofar as it represents his moment in the public spotlight, attempting to gain political support for a difficult struggle against powerful, allegedly anticompetitive firms. Waller provides a fine rendering of Arnold's leadership of the Antitrust Division, taking advantage of his grasp of the substantive law in this area and of the history of antitrust enforcement. Because other historians have already described Arnold's efforts in the Antitrust Division,²⁹ Waller provides valuable insight by placing Arnold's government work in the larger context of his life and career³⁰—although one might wish for a bit more, especially on the Senate hearings

cited Veblen as an influence. Malcolm Cowley, *Foreword* to *BOOKS THAT CHANGED OUR MINDS* 3, 8 (Malcolm Cowley & Bernard Smith eds., 1939) (quoting Thurman Arnold). But he was certainly *exposed* to Veblen's work and ideas through his colleague and close friend Walton Hamilton, a leading institutional economist and follower of Veblen, and he was certainly influenced by the institutionalist economists generally, whose work built on Veblen's insights. See Fenster, *Symbols of Governance*, *supra* note 10, at 1089–93 & n.169. In addition, Arnold quoted Joseph Dorfman's then-new biography of Veblen numerous times, and once quite extensively, in *Folklore*. ARNOLD, *FOLKLORE*, *supra* note 12, at 186, 218–20. And as I have argued elsewhere, Veblen's acerbic, caustic wit influenced Arnold's writing style. See Fenster, *Symbols of Governance*, *supra* note 10, at 1098–99. Decades later, when Hamilton and Arnold worked together at Arnold, Fortas & Porter, Hamilton would explain to Arnold the connection between Arnold's work and Veblen's. See *infra* text accompanying note 43.

28. This is clear from letters he wrote later in life, when he enjoyed corresponding with scholars and students who took his work seriously. See, e.g., Letter from Thurman W. Arnold to Professor Warren P. Hill (Mar. 29, 1955), in *THE LETTERS OF THURMAN ARNOLD*, *supra* note 10, at 417–20 (commenting on Hill's recent article connecting two of Arnold's D.C. Circuit decisions to his earlier work); Letter from Thurman W. Arnold to John R. Glenn (June 22, 1960), in *THE LETTERS OF THURMAN ARNOLD*, *supra* note 10, at 437–38 (writing to a law student at Indiana University who had written to Arnold explaining that his note in the *Indiana Law Journal* had been influenced by Arnold's work).

29. See ALAN BRINKLEY, *THE END OF REFORM: NEW DEAL LIBERALISM IN RECESSION AND WAR* 106–36 (1995); ELLIS W. HAWLEY, *THE NEW DEAL AND THE PROBLEM OF MONOPOLY: A STUDY IN ECONOMIC AMBIVALENCE* 431–55 (1966); WYATT WELLS, *ANTITRUST AND THE FORMATION OF THE POSTWAR WORLD* 40–42, 52–89 (2002); Corwin D. Edwards, *Thurman Arnold and the Antitrust Laws*, 58 *POL. SCI. Q.* 338 (1943).

30. See, e.g., pp. 85–87.

regarding his nomination to assistant attorney general, the one great moment of high personal drama in his career.³¹

Likewise, Waller offers a fine summary of Arnold's time on the bench and of his published decisions. Waller focuses, in turn, on Arnold's decisions that cover the areas of patent law (which Waller helpfully connects to Arnold's antitrust work), criminal law, and free speech (pp. 116–21). Yet, it is disappointing that he makes no effort to connect Arnold's judicial output to his earlier academic writings, concluding instead that, unlike Jerome Frank, Arnold showed no interest in considering the role of the judge in a realist or post-realist world (p. 123). To an extent, Waller is correct—Arnold clearly found his time on the bench to be dull and constraining, and he never reflected deeply on the experience.³² But there were instances when Judge Arnold faced issues that Professor Arnold had considered. For instance, two of his decisions, *Holloway v. United States*³³ and *Fisher v. United States*,³⁴ forced him to choose between, on the one hand, legal realism's progressive belief in science and expertise and, on the other, the argument he had made in his writings during the previous decade that the law demands fealty to symbols and form, notwithstanding the current convictions of experts. In both decisions, he decided in favor of "age old conceptions of individual moral responsibility" rather than the uncertain theories and conclusions of psychiatry.³⁵ He thus willfully chose the "symbols" of legal form and stability over modern scientific expertise—illustrating his break from realism, but in doing so, arguably rejecting the progressivism he also seemed to espouse.

31. Pp. 81–83. At the point of his confirmation hearings, Arnold stood on the threshold of public and political prominence, but potentially blocking his way was that his recently published book, *The Folklore of Capitalism*, had mocked antitrust enforcement and one of the senators who was to sit in judgment on the nomination. See ARNOLD, FOLKLORE, *supra* note 12, at 207–29. Could he explain the subtleties of his work to skeptical senators? Would he be forced to apologize for his sarcasm, or at least show some humility? If he did, would he be doing so merely to get the nomination, or would it be heartfelt? Although Waller prepares us for the hearings' dynamics, he spends only one page on the hearings themselves and fails to help us grasp how Arnold could and did apparently reconcile his ambition, his biting wit, and his own ideas in front of senate critics. Pp. 82–83. Part of the problem is that the hearings proved to be far less dramatic than advertised. But why? If Arnold threatened the senators who were most invested in antitrust enforcement, if these threats were apparent in quite recent writing, and if, as Waller notes, "[e]veryone predicted a lively and exciting hearing in the Senate," then why and how were the confirmation hearings so brief and apparently banal? P. 82. A great biography would have seen this moment as one of the singular dramas in Arnold's life and would have either hunted down as many accounts of it as possible or speculated more incisively than Waller does. Unfortunately, Waller leaves us hanging: "Whether or not Arnold's testimony was entirely consistent with his personal beliefs or writings, it was persuasive in the end." P. 82.

32. See ARNOLD, *supra* note 10, at 159.

33. 148 F.2d 665, 667 (D.C. Cir. 1945) (holding that the issue of whether a criminal defendant is mentally impaired and, therefore, not responsible for his actions is a jury question, and the testimony of licensed psychiatrists regarding a defendant's mental state "cannot bind the jury except within broad limits").

34. 149 F.2d 28, 29 (D.C. Cir. 1945) (affirming a trial court's refusal to give an instruction, proffered by the defense, that would have required the jury to consider defendant's "mental, nervous, [and] emotional . . . characteristics" in determining whether he murdered with premeditation), *overruled* by *United States v. Brawner*, 471 F.2d 969, 999–1002 (D.C. Cir. 1972) (en banc).

35. *Fisher*, 149 F.2d at 29.

This leads inexorably to a key question, one raised by Douglas Ayer in an interpretive biographical article from three decades ago: Was Arnold truly a progressive, or was he in fact a deeply conservative jurist (as well as thinker and attorney) who, when pushed, ultimately embraced moralistic conceptions of the law?³⁶ Or did he see himself as merely playing a role in a judicial drama, in which his own political and intellectual commitments must necessarily give way to his institutional position?³⁷ Unfortunately, Waller relegates these decisions to a footnote (p. 238 n.21), despite later academic interest in them and Arnold's own assertion more than a decade later that they were consistent with his theoretical approach.³⁸ As a result, Waller fails to consider fully the paradox presented by Arnold's occasional role as a relatively conservative jurist, notwithstanding his legal realist and New Deal credentials.

3. *Private Practice: Arnold, Fortas & Porter*

The book's final third, which covers Arnold's career in private practice, is the best part of the biography. This is, in part, because the secondary literature covering this part of his life is so meager, as the lives and careers of private attorneys engaged in civil litigation tend not to attract academics or biographers, and biographers often face significant obstacles in attempting to access private files.³⁹ Here, especially in the chapters on the early years of Arnold, Fortas & Porter, Waller makes up for a relative lack of resources with interviews he and others conducted with Arnold's law partners, associates, and friends. In these chapters, Waller gives a better sense both of

36. The latter interpretation, that Arnold was, in fact, a deeply conservative, moralistic proponent of the New Deal, is Douglas Ayer's interpretation of Arnold. See Ayer, *supra* note 10, at 1051-52.

37. This is Neil Duxbury's interpretation of Arnold's brief time on the bench. Duxbury, *supra* note 10, at 35-36.

38. See Letter from Thurman W. Arnold to Professor Warren P. Hill, *supra* note 28, at 417-20. In this letter, Arnold agreed with Hill, who had argued that *Holloway* and *Fisher* clearly adopted Arnold's earlier academic approach. See Warren P. Hill, *The Psychological Realism of Thurman Arnold*, 22 U. CHI. L. REV. 377 (1955).

39. Other than Arnold's autobiography, which is thin on the details of his life, the only secondary source for his career in private practice is Gressley's introduction to the collection of letters he edited. Gressley, *supra* note 10, at 57-94. The collected letters have offered some primary sources, THE LETTERS OF THURMAN ARNOLD, *supra* note 10, at 361-484, as have the additional letters and legal papers contained in a small collection edited by one of Arnold's friends and law firm partners, SELECTIONS FROM THE LETTERS AND LEGAL PAPERS OF THURMAN ARNOLD (Victor H. Kramer ed., 1961). Waller had access to Arnold & Porter files for his account of the firm's role defending accused public servants before the Loyalty Review Board, but that appears to be the only part of the book where he cites to the firm's files. Pp. 242-43 nn.61, 62, 64 & 77. On the general problem of gaining access to private lawyers' files, see Ad Hoc Comm. on Access to Lawyers' Files, *Historians and Access to the Files of Lawyers*, ORG. AM. HISTORIANS, Mar. 7, 1994, <http://www.h-net.org/~law/access.htm>. Biographers have grappled with the issue of access to law firm documents since the beginnings of the modern era in legal biography. See Charles Fairman, *Introduction, The Writing of Judicial Biography—A Symposium*, 24 IND. L.J. 363, 366 (1949) (characterizing these documents as an "untapped source" and hoping that attorneys would begin to make them available "to responsible scholars").

Arnold's day-to-day life and of what Arnold was like as a colleague and boss than he did in the earlier parts of the book.

But this final part of the biography rarely connects the last segment of Arnold's professional career with his earlier academic one.⁴⁰ What would the academic critic of laissez-faire capitalism have said about the lawyer-for-hire whose firm defended large corporations—frequently against prosecution from the same Antitrust Division that Arnold had modernized and energized? Waller alludes to some rather bitter disputes Arnold had with critics (including Ralph Nader and his organization) late in life. But he fails to use these moments to reflect on the irony of Arnold's role in helping to develop a well-organized, Washington-based corporate bar that would aid private corporations seeking to influence or capture the federal administrative state and to limit their regulatory liability. During the New Deal, large corporate firms that preceded Arnold & Porter stood in the way of Arnold's vision of a modern state and were therefore the object of his biting, sarcastic criticism; then, in his latter years, Arnold helped create the modern, post-war corporate bar and profited handsomely from it. Was this hypocrisy or irony—or, alternatively, can this shift be reconciled? And, most importantly, did Arnold make sense of it himself? Unfortunately, Waller helps us neither to uncover Arnold's efforts (if any) to reconcile the contrasts of his careers nor to dwell on their broader historical significance for those of Arnold's generation.

B. *Arnold's Private Life*

As a whole, the book never gets us close to Arnold's private life and relationships. Waller tells us a little of Arnold's relationship with his father, and a little more of his distant relationship with his sons, but the descriptions are of the generic, intergenerational variety; the same holds true of Waller's description of Arnold's relationship with Frances, his wife. Again, Waller was limited in his source material by adult correspondence that was largely limited to his professional relationships, except for his youth and early adulthood when he wrote personal letters home to his parents; and Waller makes it clear that Arnold invested far more of his time and energy in his career than in his family (pp. 176–77).

Because he had limited access to Arnold's personal life, Waller might have done more to illustrate Arnold's relationship with his professional friends. He gives us a few humorous anecdotes and copious memories of Arnold as a fun and charming colleague, but there is little depth to these descriptions, nor are there explanations of the development of his relationships. For example, Waller mentions in passing Arnold's friendship with his Yale colleague, the economist Walton Hamilton, and notes that Arnold brought Hamilton into the Arnold, Fortas & Porter firm despite the fact that

40. Waller does imply—correctly, I think—that Arnold's apparent conservatism at the very end of his life, when he spoke out against anti-Vietnam War activists and student radicals, emanated from the mainstream New Deal liberalism and western populism to which he was long committed. Pp. 188–89.

Hamilton was sixty-five years old and had never practiced law.⁴¹ What precisely was the nature of their friendship and professional relationship that persuaded Arnold to do so? One can find in Hamilton's papers (but no mention of it in Waller's book) a quite insightful and humorous typewritten paper titled, "Scattered Thoughts on Thorstein Veblen," that Hamilton apparently prepared for Arnold during their time together at Arnold & Porter.⁴² The paper ends with the following: "This, I hope, supplies enough material for a bridge from Veblen to Arnold. Once the bridge is half way crossed, Arnold is on his own."⁴³ This is a quite lovely, charming statement between long-time colleagues and friends. Waller's book could have benefited from an attempt to track down this and similar illustrations of the personal nature of Arnold's professional relationships.

Worse, Waller ignores Arnold's decades-long friendship with his constitutional law professor at Harvard and frequent correspondent and mentor, Thomas Reed Powell. Although Powell was not technically a realist—he taught at Harvard and was a generation older than most of the Yale and Columbia realists—both his anti-formalist iconoclasm and sense of humor appealed greatly to Arnold, and Arnold's letters to Powell betray a desire both to please and impress his elder. Waller could have gleaned a good deal about Arnold's personal dealings and his intellectual development from working carefully through this correspondence. And he could have told a fascinating and sad story about Arnold by piecing together the end of this long friendship following an article Powell had written criticizing a Supreme Court decision that Arnold favored.⁴⁴ In a bitter letter of recrimination, Arnold excoriated Powell and accused him of joining the conservative Liberty League—as demeaning a denunciation as Arnold could hurl.⁴⁵ Powell attempted to repair their friendship by responding with reassurances and a defense of his article,⁴⁶ but their correspondence, once regular and filled with plans for their families to see each other in Cambridge, New Haven, and Washington, soon trickled to a stop.⁴⁷ Although

41. P. 125; see Thurman Arnold, *Walton Hale Hamilton*, 68 *YALE L.J.* 399, 400 (1959).

42. Walton Hamilton, *Scattered Thoughts on Thorstein Veblen* (unpublished essay, on file in Walton H. Hamilton Papers, Tarlton Law Library, University of Texas at Austin, Box J29, Folder 3). An educated guess dates this document to the mid-1950s. E-mail from Malcolm Rutherford, Professor, University of Victoria, to author (Apr. 23, 2006) (on file with author).

43. Hamilton, *supra* note 42, at 8.

44. Thomas Reed Powell, *Insurance as Commerce*, 57 *HARV. L. REV.* 937 (1944). The decision Powell criticized, *United States v. Se. Underwriters Ass'n*, 322 U.S. 533 (1944), *superseded by statute*, McCarran-Ferguson Act, 15 U.S.C. §§ 1011–1015 (2000), was in favor of Arnold's efforts in the Antitrust Division.

45. Letter from Thurman Arnold to Thomas Reed Powell (Nov. 4, 1944), in *THE LETTERS OF THURMAN ARNOLD*, *supra* note 10, at 353–54.

46. Letter from Thomas Reed Powell to Thurman Arnold (Nov. 23, 1944) (on file in Thomas Reed Powell Papers, 1905–1955, Harvard Law School Library, Harvard University, Series Box A, Folder A-15).

47. Arnold's letter of November 4 is one of the final letters from him to Powell in Powell's manuscript collection in the Harvard Law Library, and no later letters between them appear in the Gressley collection. See *supra* note 45 and accompanying text. A final, brief letter Arnold sent more

Arnold glowingly quoted a few of Powell's *bons mots* in his autobiography,⁴⁸ which was published ten years after Powell's death in 1955, it is unclear if they ever spoke again.

As a result of Waller's neglect of Arnold's personal relationships with his colleagues and mentors, we miss out on a fuller picture of Arnold in his private moments.

* * *

In the end, Waller has produced a satisfactory, competent biography of a life that offers interesting but limited raw materials—limited both in the lack of extensive or new primary documents available, and in its lack of high drama and grand triumphs. Waller's biography was not meant to break new ground in any way; as he explains in his introduction, the sole theme that he carries through his narrative is that Arnold was a small-town, western populist who ultimately climbed to the very center of public and private power (pp. 2–3)—not a controversial thesis by any means. Waller has provided enough of a narrative form to give us a readable, coherent biography. The genre of biography, as a noted biographer observed in a monograph on the art of biography, is “[t]he last literary genre to be read by a very wide cross-section of people.”⁴⁹ Waller's *Thurman Arnold* will appeal to the cross-section of lay readers interested in learning the details of a leading lawyer-statesman of the post-war Washington bar; and while it may frustrate legal scholars, historians, and others who would have preferred a new, exemplary, or challenging account of Arnold's intellectual or professional work, they will have to be satisfied with a solid and straightforward, if unspectacular, summary of Arnold's career.

III. THE FOLKLORE OF LEGAL BIOGRAPHY

But what is this desire that these diverse audiences have for legal biography, anyway? If the segments of Arnold's career were each influential and compelling but not historically outstanding and world-changing, and if his personal life was staid and average, then why should Waller and his readers care enough to invest the time and energy required to produce and consume Arnold's biography?⁵⁰ In closing, I want to suggest that Arnold's work al-

than a year later stated, quite coldly: “I find in a pile on my desk a letter from you dated way back in November asking me if I want a bunch of your reprints. I don't know why you ask me. Of course I want to see what you are up to. Whether I like it or not, I know it will be interesting.” Letter from Thurman Arnold to Thomas Reed Powell (Jan. 23, 1946) (on file in Thomas Reed Powell Papers, 1905–1955, Harvard Law School Library, Harvard University, Series Box A, Folder A-15).

48. ARNOLD, *supra* note 10, at 20–21, 261.

49. PAULA R. BACKSCHEIDER, *REFLECTIONS ON BIOGRAPHY*, at xiii (1999).

50. The costs of writing a biography are indeed significant. Legal biographies are not projects that are held in high esteem by law schools, nor—outside of trade press biographies of famous lawyers—are they likely to command large advances from publishers or to sell especially well. See Kalman, *supra* note 7, at 482–83; Richard A. Posner, *Judicial Biography*, 70 N.Y.U. L. REV. 502, 515–16 (1995).

lows us to explore popular and academic interest in individual lives. As such, it both challenges Waller's project and helps to explain why Thurman Arnold and *Thurman Arnold: A Biography* draw the interest of contemporary academics, lawyers, and readers.

Both of the books Arnold wrote during the course of his academic career progressed in similar fashion. They begin with bold statements describing the apparent foolishness of prevailing intellectual common sense⁵¹—a foolishness that, during the Depression, celebrated the “rugged individualism” that freed corporations and persons from governmental restraint, while it condemned government intervention to aid industry and people desperately in need of assistance as the harbinger of fascist and communist states.⁵² As the books move forward, they reveal their central insight: that this apparent foolishness is neither merely foolish nor entirely self-defeating—in fact, it is a necessary aspect of human institutions to hold folkloric and symbolic beliefs, and any effort to reform these institutions must recognize and mobilize these beliefs in some fashion.⁵³ Then, in the books' final movements, they exclaim—in a strangely false, artificial tone, given the critical nature of what has come before—that a new age is emerging in which the United States will finally develop a mature social and political personality.⁵⁴ Soon, Arnold asserted, Americans will let go of their foolish ways entirely and embrace the realities of modernity.

The modernity that Arnold called forth in his writings is one that problematizes, and may even be antithetical to, the form and content of legal biography. The new modern age, Arnold argued, no longer bases itself on the individual and the individual's capacity; rather, it is an age in which large-scale public and private institutions, using the greatest advances in technical skill and organization, provide the essential goods and services that enable a country as large as the United States to rebound from something as catastrophic as the Depression.⁵⁵ The time of the “wise men,” the intellectual leaders who develop and refine timeless principles of organization and who stand in the way of modernity by promoting such foolishness as the “rugged individual,” is over. As a result, Arnold explained, the basic unit of study for the modern social scientist should be the *institution*, rather than the individual. Arnold exhorted the descriptive social scientist to study the extent to which the institution has assumed the place and characteristics of the individual,⁵⁶ and he urged the prescriptive social scientist to work

51. ARNOLD, *FOLKLORE*, *supra* note 12, at 21–82; ARNOLD, *SYMBOLS*, *supra* note 12, at 1–17.

52. ARNOLD, *SYMBOLS*, *supra* note 12, at 187–88, 239, 252–53.

53. ARNOLD, *FOLKLORE*, *supra* note 12, at 131, 161, 205; ARNOLD, *SYMBOLS*, *supra* note 12, at 69.

54. ARNOLD, *FOLKLORE*, *supra* note 12, at 393; ARNOLD, *SYMBOLS*, *supra* note 12, at 270–71.

55. ARNOLD, *SYMBOLS*, *supra* note 12, at 265–67.

56. ARNOLD, *FOLKLORE*, *supra* note 12, at 349–53.

toward the generalized humanitarian goal of organizing collective action to achieve maximal wealth across society.⁵⁷

For Thurman Arnold, then, modernity no longer tracks the trajectory of the individual life; instead, it has brought forth the ascendancy of the large institution within an industrial bureaucracy.⁵⁸ In this context, biography does not matter—in fact, it is an outdated, residual form concerned with something that the primacy of the institution has rendered largely irrelevant.⁵⁹ The attorney, for example, is merely part of a large organization or set of organizations—the firm, the government agency, the bar—acting in the context of larger institutions (the criminal justice system, the industrial economy, the regulatory state) whose essential goal is to contribute to the general public good and the optimal production of social wealth. Viewed this way, Arnold's career represents merely a small contribution to the larger institutional workings of legal education, the federal oversight of commercial competition, and high-end private civil litigation. His significance was minimal and was subsumed within the bureaucracies of which he was merely a part.

Nevertheless, Arnold's work also recognized the ongoing significance of the biography, notwithstanding—and perhaps even because of—its apparent irrelevance. Progressives who make a pragmatic effort to instill and gain acceptance for modernity must present ideas in a manner consistent with prevailing conceptions of folklore. Their effort needs to assume the symbolic weight of “a moral force” that does not clash with people's common sense conception of how the world should work; it needs, in the end, what Arnold called “a respectable set of symbols.”⁶⁰ Stories about individuals remain significant symbolic means to provide people with the moral narratives necessary to instill modernity with meaning—meaning that can provide comfort to a public anxious about the changes that modernity itself has wrought.⁶¹

Arnold used Franklin Roosevelt to illustrate this dynamic.⁶² During the mid-1930s, Arnold argued, President Roosevelt had become a symbol of a

57. ARNOLD, SYMBOLS, *supra* note 12, at 236.

58. *Id.* at 261.

59. ARNOLD, FOLKLORE, *supra* note 12, at 353.

60. ARNOLD, SYMBOLS, *supra* note 12, at 236–37.

61. Again, Arnold's approach is quite distinct from that of mainstream legal realism. Most realists were interested in seeking “new paths to impersonal law and social reform by relying on process and professionalism within law and social sciences without,” and employed either quantitative empirical methods to study law in action or jurisprudential efforts to focus on law's social, economic, and political context. J. Woodford Howard, Jr., *Commentary*, 70 N.Y.U. L. REV. 533, 535 n.7 (1995). These approaches would seem to downplay, if not minimize, the role of the individual in changing or shaping legal history. See *id.* Jerome Frank, for example, saw judicial biography as important only insofar as it could reveal how a judge's life experiences influenced his opinions. JEROME FRANK, LAW AND THE MODERN MIND 114–15 (1930). As viewed by legal realists, biography is in part a social scientific effort to explain the results in particular cases through some determinant besides a stable legal rule, and in part a normative, educational project that Frank claimed would enable judges to improve their performance by recognizing and limiting the human element in their adjudication. See *id.*

62. ARNOLD, FOLKLORE, *supra* note 12, at 390–92.

progressive, pragmatic modernity who “expresse[d] for a majority of the public” the hopes of the New Deal.⁶³ Individual defeats in the process of developing and defending his program, such as the Court-packing plan, did not appear to diminish his symbolic importance in representing the New Deal to its hopeful constituents; in this way, FDR represented an emergent historic period, a “highly organized age” that did not yet have its own philosophy but that would soon coalesce around a new, more functional folklore.⁶⁴ The individual life, then, is less important for its material and historical attributes than for its function and utility as a symbolic means to organize the public’s understanding of the world in which they live.

In the same way that literary critics of biography explain the genre’s ongoing popularity as a response to the death, or at least difficulty, of the individual subject in an increasingly complex world,⁶⁵ perhaps we can understand Waller’s and his readers’ attraction to Arnold’s life in light of the death of a conventional conception of the lawyer’s life and career. As Waller explains his reason for writing his book: “Everything I stumbled across [about Arnold] showed me that [he] was not just an important figure of our history but an extremely interesting character far different from the modern button-down legal world” (pp. 1–2). Put aside, for the moment, how I just re-characterized Arnold’s life as that of a small individual in an era of large, modern institutions, and consider the following observations about the current career options for attorneys. Legal practice in the big, elite firm, whose “golden age” spanned the period of Arnold & Porter’s ascendancy and Arnold’s time in private practice, has been transformed into a larger, more fully rationalized, bureaucratized, and compartmentalized business that is, in turn, more formal, atomized, and profit-driven.⁶⁶ New lawyers carry significant debt loads from law school that require many of them to obtain and hold jobs in which they perform tasks that are uninspiring and significantly different from the legal practice they envisioned when they entered law school.⁶⁷ The judiciary serves as an overworked producer of dispute resolutions, one that the public distrusts and reviles, political actors derogate, and litigants should seek to avoid at all costs, and whose output is, as Judge Posner has characterized it, an increasingly “corporate affair” in which much of the significant work is delegated to law clerks.⁶⁸ And the legal academy has become increasingly integrated within a seamless, “inter-” or “multi”-disciplinary, corporate

63. *Id.* at 391.

64. *Id.* at 392.

65. See Mary Rhiel & David Suchoff, *The Seductions of Biography*, in *THE SEDUCTIONS OF BIOGRAPHY* 1, 3 (Mary Rhiel & David Suchoff eds., 1996).

66. See RICHARD L. ABEL, *AMERICAN LAWYERS 182–207* (1989); MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 20–76* (1991); DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 24–30* (2000).

67. See RHODE, *supra* note 66, at 191.

68. Posner, *supra* note 50, at 513.

university and offers its faculties fewer post-academic career options and less influence than during Arnold's time.

All of these conditions mark legal practice as something less than special—as something that appears “lost,” as a field that seems less likely to produce the romantic “lawyer-statesman” that Arnold and some of his peers may have represented.⁶⁹ Accordingly, we like to be, and we may even need to be, reminded either of a past time when such specialness actually existed, or of current instances in which the lawyer transcends the current morass and emerges as an identifiable individual. Popular culture features stories in which lawyers' work is professionally and personally satisfying, and frequently a triumph over adversity. Legal biography does, too. Biography may represent the legal profession's past romantically (as popular culture may represent the legal profession's present unrealistically), but perhaps such romance is as integral to law's symbolic core as the “symbols of government” and “folklore of capitalism” that Arnold sought to reveal.

Waller's competent legal biography of an excellent, if not world-changing, legal career therefore has its pleasures, as well as its function. It reminds us of a different, and perhaps better, button-down legal world. It could have made a better case for Arnold's insights and historical significance, and it could have been written more analytically and artfully. It might thereby have given us a greater sense of Arnold as a human being. These faults will likely diminish, to an extent, the book's readership and the influence it will have on its readers' understanding of Arnold, his era, and the legal profession generally. But along with other legal biographies, it narrates an enduring legal life and so presents us with a symbol of individual agency in the legal profession—an important function upon which the law depends, as Arnold informed us long before his own life became worthy of a biography.

69. See ANTHONY T. KRONMAN, *THE LOST LAWYER* (1993).