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BOOK REVIEWS

Insights into the Woes of a Profession

REVIEW OF *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds*,
by Jean Stefancic & Richard Delgado.

REVIEWED BY THERESA M. BEINER*

In their recent book, *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds*,¹ law professors Jean Stefancic and Richard Delgado attempt to account for the widespread professional misery reportedly experienced by many of today's lawyers. Although Professors Stefancic and Delgado are not the first academics to explore this issue, they do so in a novel manner by comparing the lives of and describing the relationship between two major American figures: poet Ezra Pound and "lawyer-poet-public-servant" Archibald MacLeish. Looking at the plight of the modern American lawyer through the lens of the lives and relationships of these historic men adds a richness to the authors' discussion that reveals that the difficulties faced by today's lawyers are uniquely American. Specifically, Professors Stefancic and Delgado lay blame for the current dissatisfaction with the practice of law in America on formalism, the predominant jurisprudential theory employed in American law schools and used in practice.

Formalism is a type of legal reasoning developed by Langdell, the influential former Dean of Harvard Law School. Formalism posits that law is a science through which "lawyers c[an] derive correct legal judgments from a few fundamental principles and concepts."² In the context of modern lawyering, it generally means that lawyers and judges can come to consistent results by applying abstract legal rules to fact patterns without considering any social policy issues, including knowledge gained from other sources such as social science.³

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1. JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* 3 (Duke University Press 2005).

2. Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1, 5 (1983).

3. In this review, I will refer to these sources as "extra-legal" sources of knowledge.

The book leads its readers to the conclusion that formalism is to blame for lawyer dissatisfaction (and makes some transformative suggestions) through a series of seven chapters, broken into two distinct parts. Part I chronicles the lives of Ezra Pound and Archibald MacLeish as they relate to the authors' overall thesis. The authors explain how formalism influenced the lives as well as the work of these two important—and very different—men. Part II details the problems modern lawyers face in law school and practice, suggesting that the root of lawyer discontent flows from the formalistic approach taken to learning and working with the law. In addition, Professors Stefancic and Delgado discuss the medical profession as a point of comparison to the modern legal profession.

All in all, the book may well raise as many questions as it answers. It does, however, offer lawyers, academics, and those who live or work with lawyers, an alternative and novel theory for what plagues lawyers and the legal profession.⁴ While it is not clear that formalism bears all or even the majority of fault for lawyers' misery, it provides an intriguing way of looking at the numerous problems of modern legal practice. Furthermore, the idea that formalism is at the root of these problems may contain a kernel of truth. As studies of law students described later in this review suggest, the authors appear to be onto something with their thesis.⁵

Although the book speaks more in generalities and thus does not tell lawyers precisely what to do to improve their plight, it does provide a point of departure for further discussion about what ails lawyers and how they might move toward bettering their profession. The generalities the authors speak in are not a weakness, however, as it would have been a folly for them to attempt to solve such a complex problem in so short and readable a volume.⁶ Indeed, one strength of this book is that busy lawyers are likely to have time to read it and consider its implications for their lives.

In the end, however, Professors Stefancic and Delgado fail to present a convincing case that formalism is to blame for the misery experienced by some lawyers. The problem of modern lawyer unhappiness is more multi-faceted than they account for and may well be the result of an aspect of legal practice that lawyers—and the public—would be loathe to change: the adversary system itself. Further, evidence suggests that lawyers may not be as miserable as commonly believed, and to the extent that they are, this misery may well be a result of the personality traits common among those attracted to the legal profession rather than attributable to any specific externality. Finally, the nature of the business of law has no doubt changed over time, making at least some lawyers' lives more difficult. Yet, the link between lawyers' business practices and formalism is

4. Law professors have suggested various other theories for lawyer misery, including the business nature of the modern legal profession. For further discussion of other theories, see *infra* Part IV.

5. See *infra* notes 134-157 and accompanying text.

6. The book is a mere 85 pages long.

tenuous at best. All this leads one to conclude that a host of social, economic, and personal circumstances might play a part, along with formalism, in explaining lawyers' misery.

I. FORMALISM AS THE PROBLEM

Professors Stefancic and Delgado begin their book by proposing that the root cause of lawyers' unhappiness is formalism. As they describe:

In law, formalism is connected to the rule of precedent and conservative judging. In legal education, formalism manifests itself in teaching of rules and doctrines at the expense of social implications and policy. It exalts internal values such as consistency over ambiguity, rationality over emotion, rules over social context or competing interests and narratives.⁷

Formalism limits other disciplines and, in the times of Ezra Pound and Archibald MacLeish, had implications for literature, including poetry. Hence, Professors Stefancic and Delgado use the lives of the poet Pound and of the lawyer-turned-poet-turned-statesman MacLeish as a starting point for examining the limitations that formalism imposes on its adherents, or, perhaps, its "captives." Here, the authors are on sure ground, and write forcefully and eloquently.

II. POUND AND MACLEISH

Part I of the book examines the lives of and relationship between Pound and MacLeish. By the end of this section of the book, Pound emerges as an imperfect anti-formalist, while MacLeish is perceived as someone who was plagued by formalism in both law and—at times—in his poetry. Professors Stefancic and Delgado use the lives of these men as a compelling backdrop and point of comparison for their overall thesis that formalism is to blame for much of lawyers' misery.

They begin with the story of the poet Ezra Pound. Pound's life appears at first to have little to do with the practice of law or what it is about that practice that makes lawyers miserable. The authors explain how Pound traveled to and lived in London, Paris, and finally Italy, where he became a fan of Mussolini and of fascism.⁸ His sympathies for Mussolini led him to deliver a series of radio broadcasts critical of United States officials⁹ that later formed the basis of his indictment in the United States for treason. Eventually, U.S. authorities caught up with Pound after World War II and returned him to the United States, where a

7. STEFANCIC & DELGADO, *supra* note 1, at xi.

8. *Id.* at xiii.

9. *Id.* at 9.

court tried him and found him to be of unsound mind.¹⁰ He was subsequently confined to a psychiatric hospital for ten years.¹¹ MacLeish eventually came to Pound's aid and was instrumental in his release from prison.¹²

So what does Pound's life reveal about formalism and its limitations? The authors explain that Pound rejected the formalism popular in the poetry of his time. He challenged conventions in poetry. He advised those who asked him to "write simply and in their own voices."¹³ Still, Pound was a problematic figure and an inadequate anti-formalist role model. An anti-Semitic racist supporter of fascists, Pound hardly seems like a likely role model (as the authors acknowledge) for lawyers who have "lost their way."

MacLeish, on the other hand, was trained at Harvard Law School where he was indoctrinated in formalism, the predominant mode of legal reasoning employed during his time and, as the authors explain, still used today. After graduation, MacLeish spent three years practicing with a Boston law firm doing work that he found deadening. As MacLeish explained:

The law is crowded—interesting—& full of despair. It offers its own rewards, but none other. Nothing that I would gladly be or have promises through its development. As a game there is nothing to match it. Even living is a poor second. But as a philosophy, as a training for such eternity as the next hour offers it is nowhere—a mockery of human ambitions.¹⁴

MacLeish finally gave up law firm practice and moved to Paris to write poetry full-time. It is during this time that he sought the advice of Ezra Pound. MacLeish considered Pound "an agent of change who was ushering in a new form of poetic organization."¹⁵ Yet, Pound was extremely critical of MacLeish's poetry, apparently finding it too affected.¹⁶

Some years later, MacLeish returned to the United States and landed a position at *Fortune* magazine.¹⁷ While at *Fortune*, he wrote a Pulitzer Prize winning poem called *Conquistador*.¹⁸ After eight years with the magazine, MacLeish entered government service in the Roosevelt administration.¹⁹ Just as MacLeish was settling into his government job, Pound was making anti-American broadcasts in Italy. While MacLeish continued to admire Pound the poet, he held Pound the

10. *Id.* at 10.

11. *Id.*

12. *Id.* at 25-26.

13. *Id.* at 6.

14. *Id.* at 15 (quoting Letter from Archibald MacLeish to the MacLeish Family (Aug. 1921), in ARCHIBALD MACLEISH, LETTERS OF ARCHIBALD MACLEISH, 1907 TO 1982, at 85 (R. Winnick ed., 1983)).

15. *Id.* at 17.

16. *Id.*

17. *Id.* at 18.

18. *Id.*

19. *Id.* at 21.

political actor in “contempt,”²⁰ and did nothing to stop Pound’s initial court-ordered hospitalization.

MacLeish finally did intervene—and intervene effectively—on Pound’s behalf, although it took ten years. So, why did MacLeish, an avid anti-fascist and loyal public servant, step in to help the anti-formalist Pound? Professors Stefancic and Delgado consider two common theories: sympathy and public calling.²¹ Ultimately, they find neither explanation satisfying. Instead, they posit that “[i]n rescuing Pound, MacLeish rescued himself, attaining psychological and personal integration and a sense of closure.”²² In a sense, by helping Pound, MacLeish found a way to bring meaning to the dreary practice of law. With the threat of fascism a thing of the past, it simply looked bad for the United States to incarcerate its most noted poet. With shifting sentiments, it became acceptable for MacLeish, a member of the liberal political establishment of his time, to argue for Pound’s release.²³

With the lives and relationship of these men as a backdrop, Professors Stefancic and Delgado argue that lawyers’ discontent has two components: “a conceptual dimension, concerned with how they understand what they do, and a phenomenological one that embraces the felt experience of law and lawyering.”²⁴ The authors suggest that lawyers still struggle today with these effects of formalism, as MacLeish did decades ago. The authors posit: “Here we are half a century later. Are we doing much better?”²⁵ In the chapters that follow, they answer that question with a resounding, “No.”

III. THE “DISCONTENTS”: MODERN LAWYERS

In Part II of the book, entitled “Discontents,” the authors attempt to make the case that lawyers are miserable because of formalism. A large portion of this section of the book is spent describing the many aspects of modern legal practice—from high billable hours to the drudgery that is the routine nature of the work—that make it miserable. Professors Stefancic and Delgado lay blame for these unfortunate aspects of the legal profession in formalism, which they describe in Chapter 3. They do this by using MacLeish’s legal world as the backdrop for a discussion of the lives of today’s lawyers. Yet, the reader is left wondering whether today’s lawyers, whose practice is so dependent on technology and the “bottom line,” are really as similar to those of MacLeish’s day as Professors Stefancic and Delgado’s thesis suggests.

In developing the link between lawyers’ discontent and formalism, the authors

20. *Id.* at 22.

21. *Id.* at 26.

22. *Id.* at 27.

23. *Id.* at 28.

24. *Id.* at 29.

25. *Id.* at 30.

admit that they are not making their case rigorously. As they tell the reader, “[w]e paint here with a broad brush, seeking not perfect proof but rather a story or narrative that will resonate with the reader, who may have encountered something similar in his or her life.”²⁶ To the formalist lawyer, this admission is less than satisfying. But the authors explain that the proof of their thesis—or, as they put it, “at least, persuasion”²⁷—will become evident in subsequent chapters in which they detail the many ways lawyers are dissatisfied with modern legal work. True to their approach to jurisprudence,²⁸ Professors Stefancic and Delgado use “a story or narrative that will resonate with the reader.”²⁹ In this manner, the remainder of the book emerges as an example of an anti-formalist approach to the problem of lawyer discontent. The authors are, in a sense, practicing what they preach. They are using nontraditional legal tools, whether social science studies or stories, to describe the problem they identify. To a lawyer who finds more comfort in formalism, the “proof” provided by the authors may seem merely anecdotal.

Professors Stefancic and Delgado concisely and effectively define their terms in this portion of the book, telling the reader what formalism is and how it became the dominant jurisprudential theory that is used in the law school classroom. As they explain, “[l]egal formalism is associated with a form of education that emphasizes doctrines and cases and minimizes external factors, such as justice, social policy, and politics. It imagines law as an autonomous discipline existing apart from others; it is not at all interdisciplinary.”³⁰ After the authors define formalism, they describe the evolution of jurisprudence through legal realism and its successor movements (such as critical legal studies, radical feminism, and critical race theory). They explain how through this evolution, formalism endured, keeping “a strong hold on legal education” and the court system itself.³¹ While the authors acknowledge that the Warren Court, for a brief period, was willing to consider factors outside of the formalist tradition,³² the authors note that more recently the courts have returned to the “black letter” approach to the law, “even when deciding cases of great social importance.”³³

Interestingly, the authors explain that at the same time the Warren Court was considering the transformative possibilities of law, legal practice was becoming

26. *Id.* at 33.

27. *Id.*

28. Professors Stefancic and Delgado often employ critical race theory, which has a tradition of relying on narratives. See Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461, 462 (1993). This bibliography contains reference to several articles by Professor Delgado.

29. STEFANCIC & DELGADO, *supra* note 1, at 34.

30. *Id.* at 35.

31. *Id.* at 38.

32. Stefancic and Delgado explain that the Warren Court considered “equity, evolving standards of conscience, [and] the historical background of a case” in making its decisions. *Id.* at 38.

33. *Id.*

more “disciplined, routinized, compartmentalized, and result-driven; lawyers, highly accountable for their time.”³⁴ The authors indicate that this was the same period when law firms became more hierarchically structured—the work of many associates propping up the extravagant lifestyles of partners. Yet, this seems out of sync with a Supreme Court (and one would assume, lower federal courts that would be following suit) that was more open to creativity in legal argument and the expansion of rights. The authors provide no explanation as to why at the time when the Court was becoming less formalistic, law firms adopted what Professors Stefancic and Delgado view as a more formalist approach to the practice of law. This is one of several questions this book raises but leaves unanswered.

The politics of formalism, Professors Stefancic and Delgado explain, tend toward conservatism. This makes sense. If formalism in law eliminates extra-legal forms of knowledge, change is likely to be slower. As the authors point out, formalism limits courts to legal doctrine as the source of answers to legal questions. This limits other considerations, such as “equity, mercy, economics, and class relations,” from the calculation and gives legal reasoning a “bloodless quality,” ignoring, as the authors eloquently explain, that “courts write in a field of pain and death.”³⁵ The authors acknowledge the teachings of legal realism, which counsel that law is much more indeterminate than the formalist approach suggests. Instead, judges have a range of approaches to use in deciding a given case and are informed by background factors, such as class and personal preferences, in doing so. Certainly, political scientists have shown that, for the federal judiciary, the political affiliation of the appointing president appears to influence the decision making of individual federal judges.³⁶

The authors use several famous Supreme Court cases to illustrate the formalist approach in legal decision making, including *Plessy v. Ferguson*, *Lochner v. New York*, and *Brown v. Board of Education*.³⁷ The use of *Brown* is particularly interesting, as it can be interpreted as a case in which the Court was willing to consider extra-formalist arguments in an effort to dismantle segregation in public schools. For example, the controversial footnote 11 of the opinion, in which the Court relied on social science data to support its argument that segregation leads to a sense of inferiority in African American children, illustrates how the Court

34. *Id.* at 39.

35. *Id.* at 40.

36. See generally Theresa M. Beiner, *The Elusive (But Worthwhile) Quest for a Diverse Bench in the New Millennium*, 36 U.C. DAVIS L. REV. 597, 600-01 (2003) (describing political science theory and studies supporting the attitudinal model of decision making). Stefancic and Delgado are wise to acknowledge legal realism—a jurisprudential movement that, in attacking formalism, allowed lawyers to use policy in making legal arguments. For a general description of legal realism, see ROY L. BROOKS, *STRUCTURES OF JUDICIAL DECISION MAKING FROM LEGAL FORMALISM TO CRITICAL THEORY* 89-109 (2d ed. 2005).

37. STEFANCIC & DELGADO, *supra* note 1, at 40-44 (citing *Plessy v. Ferguson*, 163 U.S. 537 (1896), *Lochner v. New York*, 198 U.S. 45 (1905), and *Brown v. Board of Education*, 347 U.S. 483 (1954)).

relied on extra-legal arguments and data in reaching the outcome of that case.³⁸ However, the overall aftermath of *Brown* provides yet another example of formalism. As the authors explain, the decision did very little to desegregate schools. Instead, many white parents simply placed their children in all-white private schools. The authors explain the aftermath of *Brown* as the inevitable outcome of formalism: “[i]f the blacks are free to send their children to the school they choose, these parents seemed to reason, so are we: Legal Formalism 101.”³⁹

In spite of the formalist ramifications of *Brown*, the authors acknowledge the non-formalist reasoning that in fact underlies the case. As they note, legal academics were quick to condemn the decision as unprincipled from a legal standpoint. Certainly, with *Plessy* as the outstanding precedent on the issue, no legal principle required public schools to be desegregated. But, as the authors suggest, that is not the point:

One could examine cases and doctrines forever and not find one disclosing that sending all the black children to school in a closet would be socially damaging. It is social knowledge that tells us this; everyone who lives in our world knows it. “The life of the law is not logic, but experience,” Oliver Wendell Holmes, an early realist, once wrote Sometimes law must look to other sources of information, intuition, common sense, and prudential knowledge.⁴⁰

Unfortunately, formalism does not permit the use of “other sources of information,”⁴¹ but instead relies on a “cookie-cutter” approach to legal analysis, whereby the lawyer purportedly plugs the facts into the legal standard and out pops the answer. This does not permit lawyers to consider other knowledge they possess that might affect the outcome and therefore makes the practice of law a “deadening” endeavor. This is especially problematic today, Professors Stefancic and Delgado suggest, because formalism is experiencing a resurgence. Both legal education and the Supreme Court have resorted once again to the formalist tradition. To support this proposition, the authors note the prominence of the MacCrate Report in legal education which emphasized skills training, and discuss an influential article written by Federal Judge Harry Edwards, who criticized legal academic scholarship as being too theoretical and not practical enough to be helpful to those who practice law.⁴² The authors suggest that their

38. *Brown*, 347 U.S. at 494 n.11.

39. STEFANCIC & DELGADO, *supra* note 1, at 43.

40. *Id.* (quoting Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897)).

41. *Id.*

42. *Id.* at 44 (citing Harry Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 58 (1992)). A recent Westlaw citing references search revealed that the Edwards article has been cited or discussed in one hundred law review articles. Similarly, another Westlaw search revealed that the MacCrate Report is mentioned, cited, or discussed in 876 articles. The MacCrate Report is also the subject of 62 law journal articles. See, e.g., Gary Laser, *Significant Circular Developments: The MacCrate Report and Beyond*, 1 CLINICAL L. REV. 425 (1994); Wallace Loh, *Introduction: The MacCrate Report – Heuristic or Prescriptive?* 69 WASH. L. REV. 505 (1994).

publication discouraged those who were interested in exploring theory, including critical scholars and postmodernists, from doing so.

Likewise, the United States Supreme Court, after the 1960s and 1970s, became populated with what Professors Stefancic and Delgado call “technocrats”: judges who are “more formalistic, technical, and otherworldly than usual.”⁴³ Reasoning that is reminiscent of the *Lochner* era has re-emerged, with judges relying on federalism, original intent, and extreme textualism in an effort to narrow the scope of progressive federal legislation. They cite examples—*Wards Cove Packing Co., Inc. v. Antonio*, *City of Richmond v. J.A. Croson Co.* as well as other affirmative action precedent, and *McClesky v. Kemp*⁴⁴—all of which limited the law’s transformative potential and maintained the status quo. The authors reason that legal practice has evolved much the way that the legal reasoning employed by the modern Supreme Court has: as the Supreme Court’s reasoning has become more formalized and rigid, so has legal practice itself. Modern legal practice has mirrored modern Supreme Court jurisprudence and become routine.⁴⁵

A. UNHAPPY LAWYERS

With this backdrop on the nature and evolution of legal reasoning in place, Professors Stefancic and Delgado present a grim picture of the life of today’s lawyer. Aside from an equally grim look at the lives of doctors in Chapter 6, Chapters 4-7 read like a cautionary tale for anyone who might be considering law school or law as a career.

In the first chapter in this series, the authors make a direct link between lawyers’ unhappiness and legal formalism. As they explain:

In law, formalism is connected to the rule of precedent and conservative judging. In legal education, it manifests itself in the teaching of rules and doctrines at the expense of social analysis. Formalism exalts internal values, such as ironclad consistency over ambiguity, sterile rationality over multifarious interpretations, rigid rules over social context and competing perspectives. In legal practice, it appears in the form of narrow specialization, hierarchical organization of the law firm, the relentless pursuit of billable hours, and elephantine briefs addressing every conceivable eventuality and line of authority.⁴⁶

While Professors Stefancic and Delgado are quick to acknowledge that formalism does have some advantages—it allows for some actions that should be routine to be completed in a routine manner and “enables the rapid delivery of a

43. STEFANCIC & DELGADO, *supra* note 1, at 45.

44. *Id.* (citing *Wards Cove Packing Co., Inc. v. Antonio*, 490 U.S. 642 (1989), *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), and *McClesky v. Kemp*, 481 U.S. 279 (1987)).

45. *Id.* at 46.

46. *Id.* at 48-49 (footnotes omitted).

product”⁴⁷—they explain that “if taken to an extreme, [formalism] can draw all spirit out of work, robbing it of richness, detail, juice, and anything else that might render it sustaining.”⁴⁸ Linking this aspect of formalism to the discontent that MacLeish experienced as a lawyer (and incidentally the problems with his poetry, which reflected the formalism of his literature training at Yale), the authors use Pound, who eschewed the formalism in poetry of his era, for contrast.⁴⁹

Professors Stefancic and Delgado then devote many pages to describing the unhappy state of today’s lawyers. Relying on social science and popular media surveys, they reveal lawyers to be seriously discontent human beings who experience high rates of divorce, burnout, mental illness, and drug and alcohol addiction. However, the authors are not satisfied with merely providing a description of lawyers’ profound unhappiness—they point out that the public does not like lawyers either.⁵⁰

But why are lawyers so unhappy? The authors indicate that the discontent stems in large part from the long hours lawyers are forced to spend engaging in repetitious, boring work in order to satisfy their minimum billable hours requirement. In addition, the authors identify a variety of law firm practices that exacerbate these problems, including specialization, the impersonal nature of large law firms, the lack of collegiality and general competitiveness of these firms, the business orientation of most modern law firms which increasingly measure lawyers’ success quantitatively, and the lack of opportunities for lawyers to do meaningful pro bono work. The authors explain that lawyers’ bad reputation with the public does not help matters and that many lawyers become so dissatisfied that they consider leaving the profession. Like MacLeish, the authors explain, lawyers find practice dull with little opportunity to be creative.⁵¹ Professors Stefancic and Delgado end Chapter 4 by asking whether MacLeish and today’s lawyers might not just be whiners—well educated folks who are not terribly sympathetic, given their high earnings and status. In Chapter 5, however, the authors suggest that lawyers have good reason for being unhappy.

Professors Stefancic and Delgado delve further into the root of lawyers’ unhappiness and explain that it starts in law school, which they describe as an ultra-competitive environment that is stressful and does little to meet human needs.⁵² They indicate that law students end up having the same types of problems that practicing lawyers have—physical and mental illness, relationship

47. *Id.* at 49.

48. *Id.*

49. *See id.* at 50.

50. *Id.* at 51.

51. *Id.* at 61.

52. *Id.* at 63.

problems, weight control problems, and chemical dependencies.⁵³ The authors highlight the psychological toll that law school has on students who are constantly faced with contradictions and dichotomies, such as that there is a “right” answer to a legal question while learning that many legal decisions may be supported by nothing more than the whim of the particular judge and that everyone is equal before the law while learning that race is a predictive factor in whether someone will receive the death penalty.⁵⁴ It is no wonder that law students become disillusioned when confronted with three years of such inconsistencies.⁵⁵ The authors explain that the problems first presented in law school continue once lawyers enter practice as they vie for partnership opportunities and are pressured to meet high billable hour requirements. In this world, the authors lament, marriages break up and lawyers encounter psychological problems twice as frequently as the general population.⁵⁶

Unlike the practitioners of formalism, Professors Stefancic and Delgado make effective use of extra-legal data to support their theory that lawyers are indeed miserable for some very good reasons. They point out that modern lawyers have no time to do much other than work and that work-balance issues predominate, giving lawyers little time for exercise or proper nutrition. From this, the authors conclude, the deterioration of lawyers’ physical health is to be expected. One of the more disturbing statistics the authors cite is that female lawyers “who worked more than forty-five hours per week were three times more likely to suffer a miscarriage than those who worked less.”⁵⁷ Based on this statistic alone, it seems obvious that the modern practice of law takes a remarkable physical and emotional toll.

According to the book, today’s lawyers also run a high risk of alcohol and drug abuse. Professors Stefancic and Delgado explain that “[l]awyers as a group are very heavy drinkers, even more than undergraduates, law students, or the population at large.”⁵⁸ And, in addition to having problems with substance abuse, the authors indicate that today’s lawyers commonly have marital problems. The book states that the divorce rate among female lawyers is twice that of doctors.⁵⁹ Incidentally, the book also points to studies that show that marriage is a source of happiness and wellness for people while divorce is yet another source of stress.⁶⁰ The authors conclude that the extent to which lawyers experience more divorce than other adult members of the population contributes to their physical

53. *Id.*

54. *Id.*

55. In my experience, I find it perhaps more disturbing that students are willing to accept these dichotomies as unstoppable and how quickly law students become cynics.

56. *Id.* at 64.

57. *Id.* at 65-66.

58. *Id.* at 67.

59. *Id.* at 68.

60. *Id.*

problems.⁶¹ Furthermore, lawyers also suffer from disproportionate psychological problems, including a higher incidence of depression than that experienced by people with non-legal occupations. The book describes studies that show that law students likewise are depressed.⁶² The worrisome result of this, as the authors lament, is that many lawyers are left burnt out and eventually even drop out of practice altogether.⁶³

After presenting these issues, Professors Stefancic and Delgado consider whether the real cause of pervasive lawyer unhappiness is simply life in large law firms. To explore this idea, Professors Stefancic and Delgado look to the satisfaction levels among lawyers in smaller firms and are unable to draw a meaningful conclusion, pointing out that the evidence is mixed: some surveys suggest small firm lawyers are happier, while others show that their experiences are not all that different from those of large firm lawyers.⁶⁴ Professors Stefancic and Delgado note that small firm work is often repetitive and posit that, if formalism is indeed the cause of lawyer discontent, it is hard to see how the size of the firm could make much difference.

After comprehensively discussing current dissatisfaction among lawyers, the authors explore aspects of the medical profession as a point of comparison. They suggest that while formalism may be the cause of lawyers' unhappiness, doctors draw their discontent from a different external source: the advent of managed care and HMOs.⁶⁵ The authors indicate that like law, medicine has become a routine, or "cookie-cutter," practice.⁶⁶ They further describe studies showing that, similar to its attitude towards lawyers, the public is becoming increasingly antagonistic towards doctors.⁶⁷ Furthermore, the same problems of stress, drug abuse, and specialization plague doctors.⁶⁸ And, similar to the genesis of lawyers' discontent, the authors indicate that doctors' problems begin in medical school, where they are taught to view cadavers as an instrument for scientific learning rather than as a human being and therefore learn to be—and, in fact, are expected to be—detached and objective from day one.⁶⁹ The authors suggest that as the practice of medicine becomes less about helping people and more about learning a trade, career changes and disenchantment within the medical profession grow.

61. *Id.*

62. *Id.* at 68-69.

63. *Id.* at 70.

64. *See id.* at 71.

65. *Id.* at 72.

66. *Id.*

67. *Id.* at 73.

68. *See id.* at 74-75.

69. *Id.* at 75.

B. THE SOLUTION TO LAWYERS' WELL-PAID MISERY

The authors conclude the book with a chapter entitled, "High-Paid Misery." In it, they suggest different approaches to law practice that might alleviate some of lawyers' unhappiness. As they explain:

The link is easily stated: if you allow yourself to think of what you do in crabbed terms, you are apt to find yourself working in a crabbed workplace as well. Another way of putting it is that if you allow your repertory of thoughts, ideas, and categories to atrophy you are likely to end up thinking and working in sterile settings. Or, unless you fight against external forces pressing you to reduce what you do to a formula, those forces will make you do it faster, cheaper, and with less room for discretion and autonomy. Work recapitulates thought.⁷⁰

But, how should lawyers implement this advice? Professors Stefancic and Delgado suggest that "[d]ismantling needless regimentation, excessive specialization, and the insane pursuit of more and more billable hours in the workplace frees the mind to consider new ideas."⁷¹ However, they do not explain how lawyers can actually do this within the context of today's "businesslike" practice of law. Rather, the authors pose a series of probing rhetorical questions: "When lawyers, doctors, and others are freed from needless regimentation, what will they do with their freedom? What will they think about? How will they practice? Which initiatives will they sponsor?"⁷²

In this regard, the book is less satisfying. One can just envision a new associate in a large law firm trying to explain to a partner that she can not work that weekend on a case because she needs time to explore personal pursuits and to "consider new ideas." She would likely be laughed out of the office. The reader cannot help but wonder how lawyers are actually expected to accomplish what the authors suggest. How can lawyers avoid the traps of formalism and change their practice for the better?

The simple act of identifying what makes lawyers (and doctors) miserable is the crucial first step in the battle to reclaim the legal profession for thoughtful individuals. And, if Professors Stefancic and Delgado have correctly identified the root cause of lawyer misery as formalism, they have contributed a great deal to helping lawyers attack the problem. It is elementary that a problem must be identified before it can be solved.

The authors concede that there have been numerous attempts by scholars and others to figure out what it is about the practice of law that makes lawyers miserable.⁷³ However, Professors Stefancic and Delgado's approach is novel

70. *Id.* at 77-78.

71. *Id.* at 78.

72. *Id.*

73. *See id.* at 47-48.

because it blames what happens to lawyers on the predominant jurisprudential theory used in legal practice. If the authors are correct, there is room for others, including perhaps the authors themselves, to contribute suggestions about practical ways to ameliorate the misery.

So what, according to Professors Stefancic and Delgado, is the solution? Are they suggesting that lawyers and the practice of law be less disciplined? No. The authors are quick to point out that lawyers must be disciplined.⁷⁴ In this regard, they criticize Pound “whose mind raced from one crackpot theory to another.”⁷⁵ They explain that MacLeish had something that Pound did not: “a rigorous mind and attention to detail,” which he learned in law school.⁷⁶ At this point, the authors come artfully full circle: they return to the stories of Pound and MacLeish and how their lives might inform today’s practice of law.

In this regard, the authors place the Langdellian formalist approach to legal education⁷⁷ in the context of greater social movements occurring at the same time.⁷⁸ In particular, the rise of industrialization was synonymous with the rise of the “robber barons” who needed a corps of lawyers to defend them against all manner of claims brought by the masses—workers, consumers, innocent bystanders who were maimed, or organized labor.⁷⁹ Thus, just as industrialization led to standardization in industry, it led to standardization in law. In addition, the authors explain that scientific method was in its heyday during MacLeish and Pound’s time, with Darwin’s publication of the *The Origins of Species* and the pioneering work of Alexander Graham Bell, Thomas Edison, and Henry Ford.⁸⁰ It is easy to understand, given the influence of these great scientific minds, that legal minds like Langdell would attempt to incorporate the scientific method into legal analysis. The jurisprudential result was, of course, formalism.

Acknowledging that legal realism and other critical theories dominated over formalism for a period of time, Professors Stefancic and Delgado see modern theoretical movements such as law and economics as a “new version” of formalism.⁸¹ The authors also indicate that growing law firms, the MacCrate report, and judges such as Harry Edwards told law schools to produce lawyers who were ready to practice in the highly routine technical practice that was taking hold of the nation’s law firms. Professors Stefancic and Delgado posit that it was

74. *Id.* at 78.

75. *Id.*

76. *Id.* at 78.

77. Langdell led the move to formalism at Harvard Law School during MacLeish’s time. He introduced the idea that law was science and developed the case study method used in law schools. As Professors Stefancic and Delgado explain, “[s]tudents were expected to distill principles of law out of masses of case material, in the manner of an empirical science.” *Id.* at 78-79.

78. *Id.* at 79.

79. *Id.* at 79.

80. *Id.*

81. *Id.* at 80.

during the 1960s, when formalism was on the skids in the courts thanks to the progressive Warren Court, that lawyers had more career options. During this era, a lawyer could become a Thurgood Marshall-type reformer or even a “revolutionary” like Oscar “Zeta” Acosta.⁸² It is not surprising therefore that this period also produced new legal theories and the expansion of rights as lawyers were freer to be creative, thinking beings. It was during this time, when formalism was ebbing, that lawyers were more free and able to be more creative. Lawyers could be more like Pound.

The authors are quick to point out that this does not mean that lawyers reading the book should try to become “Ezra Pound.” As they explain, “[w]e certainly do not need more of Pound’s disorder and indiscipline.”⁸³ However, the authors do not provide lawyers with any role model other than Pound. Instead, they speak in generalities, noting that “our civilization needs to afford its thinkers, teachers, lawyers, physicians, and ordinary citizens more room to experiment, grow, and breathe.”⁸⁴ This approach is in line with some provocative economic thinking that suggests that the United States is moving from a service economy to a “creative” economy, whereby the country will thrive, or sit in economic stagnation, depending on its ability to attract and maintain a society of creative people.⁸⁵ This theory accounts for the economic prosperity of such places as the San Francisco Bay Area and Austin, Texas.⁸⁶ What distinguishes these places from other parts of the country is the freedom with which people living and working there are allowed to experiment with ideas and lifestyles. Professors Stefancic and Delgado note that the need for such freedom extends beyond professionals like lawyers and doctors. Everyone, including factory workers, needs this creative space. Exactly how such space is to be created in the context of the practice of law, or even of factory work, is left to the mind of the creative lawyer and line worker. To their credit, Professors Stefancic and Delgado have a few suggestions for the factory worker as well.⁸⁷

Throughout the book, the practice of law is illustrated in contradistinction to what poets do. While poets try to convey reality, lawyers are asked to fit a factual scenario into existing legal rules. In legal practice, facts that have no bearing on the application of the particular rule at issue are deemed irrelevant, even though

82. Acosta is perhaps best known as the pal of Gonzo journalist Hunter S. Thompson during the writing and living of *Fear and Loathing in Las Vegas*. For a discussion of Mr. Acosta’s defense strategies, see Mary Romero, *Brown is Beautiful: Reviewing Ian F. Haney Lopez’s Racism on Trial: The Chicano Fight for Justice*, 39 *LAW & SOC’Y REV.* 211 (2005).

83. STEFANCIC & DELGADO, *supra* note 1, at 81.

84. *Id.*

85. See RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS* 44-66 (2002).

86. See *id.* at 215-17, 237 tbl. 13.1.

87. STEFANCIC & DELGADO, *supra* note 1, at 81 (suggesting that workers should be allowed to change jobs periodically, take exercise breaks, have a voice in how the workplace is structured, be offered classes in how the product is made and marketed, and learn how the machines run).

average human beings might believe that these “irrelevant” facts should have something to do with the outcome of the case. As the authors indicate, “[e]ven when correct within its narrow system, this is always a kind of world-killing exercise—in less polite language, a lie.”⁸⁸ Poetry, therefore offers advantages over the modern practice of law.

Yet, the authors also state that not all lawyers should be poets. They explain that,

[m]any lawyers might well be happier if their lives contained more poetry—if they could slow down and read, or even write, a poem sometimes. But thousands more would benefit if their lives contained more leisure, more contemplation, more time to think seriously about what they do, and, even, enjoy it.⁸⁹

In this way, Professors Stefancic and Delgado provide a glimpse at a solution to the lack of creativity problem, but stop short of providing a complete answer and therefore may leave the average lawyer-reader dissatisfied. More time to think is very attractive, but the difficulty of attaining it in the current paradigm of law practice is undeniable. Perhaps the authors are asking lawyers to challenge that paradigm and ultimately reject it. However, what that “new” practice of law that throws off the constraints of formalism might look like remains elusive even at the end of the book. Given the difficulty of employing many of the vague suggestions alluded to by the authors, exactly what is the unhappy modern lawyer to do, short of leaving practice altogether?

IV. IS FORMALISM REALLY THE PROBLEM?

Strict formalism no doubt leaves modern law practice with little creativity and the law itself with less potential for transformation. It is unclear, however, whether the practice of law is actually as boring and void of creativity as the authors suggest. For example, there appears to be an increasing interdisciplinary aspect to the practice of law. This should make legal argumentation more creative and increase law’s transformative potential, making the practice of law more satisfying. In addition, some studies suggest that the extent of lawyer misery may well be overstated.⁹⁰ Finally, it remains unclear whether the things that make lawyers miserable necessarily stem from an internal problem with the practice itself that may be attributable to formalism, or whether the misery associated with today’s lawyers comes instead from the evolution of legal practice into a business that is increasingly driven by the bottom-line. I believe that the links between formalism and the transformation of law into more of a business rather than a

88. STEFANCIC & DELGADO, *supra* note 1, at 83.

89. *Id.* at 84.

90. *See infra* notes 111-21 and accompanying text.

profession are weak. Instead, the business nature of law, which makes practice less satisfying, may reflect one of the weaknesses of a capitalistic economic system in which actors are encouraged to make money as an end in and of itself.

A. IS THE PRACTICE OF LAW REALLY THAT ROUTINE?

To begin with, it appears that in many ways the practice of law is already interdisciplinary and has led to more creative legal arguments and practice. The Law and Society Association, which emphasizes interdisciplinary studies in law, was founded in 1964 and continues to be a vibrant organization that nurtures many interdisciplinary legal scholars today.⁹¹ Furthermore, evidence of the vibrancy of the interdisciplinary aspect of modern legal practice can be found in the many amicus briefs filed in United States Supreme Court cases each year. These amici weigh in on issues before the Court with views from a variety of disciplines other than law—such as psychology, psychiatry, etc.—about the reality of the law’s implications for the lives of people affected by the Court’s decisions.⁹² A study by political scientists Spriggs and Wahlbeck found that 64% of amicus briefs filed in the United States Supreme Court’s 1992 term included information that was not found in the briefs for the parties.⁹³ As they note, “[f]requently, this additional information presents the dispute from another legal perspective, discusses policy consequences, or comments on norms governing the interpretation of precedent or statutes.”⁹⁴ In addition, amicus briefs are “[t]he most common method of introducing social science evidence to the Court.”⁹⁵

Commentators point out that the use of social science in the court system is a direct result of the legal realist movement⁹⁶—a movement that Professors Stefancic and Delgado laud as an antidote to formalism. While use of extra-legal evidence at the appellate level has its detractors,⁹⁷ it is likely on the rise.⁹⁸ Indeed, the “number of amicus briefs submitted to the Court has increased dramatically since the 1960s.”⁹⁹ And, while not all lawyers have the luxury of writing amicus briefs to the United States Supreme Court, the increasing use of extra-legal

91. See The Am. Pol. Sci. Ass’n, *The Law and Society Association*, www.apsanet.org/content_8638.cfm.

92. See, e.g., *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989); Paul M. Collins, Jr., *Friends of Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation*, 38 *LAW & SOC’Y REV.* 807 (2004) (describing the influence of amicus curiae on litigation success and finding that this influence is best explained by amici providing additional information that helps the Court determine the case).

93. James F. Spriggs, II & Paul J. Wahlbeck, *Amicus Curiae and the Role of Information at the Supreme Court*, 50 *POL. RES. Q.* 365, 372 (1997).

94. *Id.* at 372.

95. Michael Rustad & Thomas Koenig, *The Supreme Court and Junk Social Science: Selective Distortion in Amicus Briefs*, 72 *N.C. L. REV.* 91, 94 (1993).

96. See *id.* at 101-03.

97. See *id.* at 114-19.

98. See *id.* at 111-14 (describing cases since *Brown v. Board of Education*, in which the Supreme Court relied on social science).

99. Collins, *supra* note 92, at 810, 811 fig. 11.

sources in the briefs that are filed suggests that the highest Court itself considers more “creative” and less “formalistic” approaches when making important legal determinations. This phenomenon should trickle down to some extent to the lower levels of the practicing bar, making the practice of law as a whole more inspired. Indeed, it was no accident that Professors Stefancic and Delgado looked to the United States Supreme Court in Chapter 3 for examples of formalism. The Supreme Court sets the tone for the entire federal judiciary.

While extra-legal knowledge and argumentation do not always persuade a majority of the members of the Supreme Court, it is clear that in some instances they do have persuasive effect.¹⁰⁰ Thus, lawyers would do well to make such arguments and rely on such extra-legal sources. The decision making of the Supreme Court is often influenced by this extra-legal information and, even when it is not (Professors Stefancic and Delgado cite to *McCleskey v. Kemp* as such a case),¹⁰¹ that does not mean that this evidence will not be persuasive in other venues open to lawyers and legal argumentation—such as the legislature.¹⁰²

The authors rely on *McCleskey v. Kemp* to argue that the Court does not take relevant extra-legal knowledge into account in its decision making.¹⁰³ In *McCleskey*, the Court was presented with an attack on the capital sentencing system in Georgia. McCleskey, an African American man who had been sentenced to death for murder, argued that the decision in his case was infected with racism in violation of the Equal Protection Clause and Eighth Amendment.¹⁰⁴ In making this argument, McCleskey relied on the Baldus Study, a thorough study of patterns of sentencing in Georgia’s death penalty system.¹⁰⁵ This study revealed that African American defendants who killed white victims were most likely to get the death penalty.¹⁰⁶ The Court ultimately rejected the relevance of the study to McCleskey’s case, reasoning that McCleskey needed to show that racial bias infected his own sentencing.¹⁰⁷ A general statistical study was insufficient to raise an equal protection violation in his particular case.

While Professors Stefancic and Delgado are correct that the Court refused to take the Baldus Study into account in making a decision in McCleskey’s case, the

100. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (citing Brief for American Educational Research Association et al. as *Amici Curiae*); *COMPPELLING INTEREST: EXAMINING THE EVIDENCE ON RACIAL DYNAMICS IN COLLEGES AND UNIVERSITIES* 1-21 (Mitchell J. Chang et al. eds., 2003); *DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION* 1-27 (Gary Orfield & Michael Kurlaender eds., 2001).

101. STEFANCIC & DELGADO, *supra* note 1, at 118 n.42 (citing *McCleskey v. Kemp*, 481 U.S. 279 (1987)).

102. Indeed, members of the Court in *McCleskey* suggested that the arguments made there were better made to the Georgia legislature. See *McCleskey*, 481 U.S. at 319.

103. STEFANCIC & DELGADO, *supra* note 1, at 118.

104. *McCleskey*, 481 U.S. at 291-92.

105. *Id.* at 292. The Baldus study was published separately. David C. Baldus, Charles Pulaski & George Woodworth, *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. CRIM. L. & CRIMINOLOGY 661 (1983).

106. *McCleskey v. Kemp*, 481 U.S. 292 (1987).

107. *Id.* at 297.

Court did suggest that the Study is relevant to law. The opinion suggests that the arguments made by McCleskey are better made to the Georgia legislature, which has the authority to make the sweeping changes that the study suggests.¹⁰⁸ This case therefore encourages students to consider other avenues for legal reform outside the adversary system—such as lobbying for legislative change. Along with focusing on statistical studies about Georgia’s administration of the death penalty, the case also allows students to consider where change best takes place—in the courts or legislatures. While views may differ on the outcome of this case as a matter of law, the formalistic approach taken by the Court presents an opportunity for students to critique formalism and consider other jurisprudential theories that may be used to decide a case. *McCleskey* thus opens avenues for student creativity. In effect, it encourages consideration of alternatives to formalism.

While Professors Stefancic and Delgado argue that the disconnect between what students’ instincts tell them about what would be a just outcome and the dictates of formalism leads students to angst, I have found that law students are often reluctant to embrace indeterminacy in law and instead want formalism—a more certain and “cookie-cutter” approach to the law. One need only look to the robust market for hornbooks, black letter treatises, and nutshells for proof of this. However, even *McCleskey v. Kemp* presents an opportunity to explore the problems with formalism and the important role of extra-legal sources of information in modern legal practice, despite the fact that the Court employed a more formalistic approach.

In contrast, other scholars have argued that extra-legal knowledge is part of what has made law practice problematic. As George L. Priest has noted, “[a]s a legal scholar becomes serious about some behavioral science and sophisticated in its practice, he is pulled away from law as a distinct subject and even as an interesting subject.”¹⁰⁹ This leads to law, in and of itself, being less of a subject for study. Yet, law divorced from the reality of people’s lives would be a poor tool for managing society. Thus, the use of social science, including psychology and other disciplines, helps lawyers understand the behaviors that the law seeks to regulate. The advantage of social science in the legal system is that it is the result of scientific study, which, under proper circumstances, is admissible in court. This makes it an all the more effective and creative tool for lawyers.

Thus, extra-legal knowledge does play a role in lawyering—in both practice and law school. This is evidenced by the rise in the number of amicus briefs by organizations that are concerned about the implications of law on their disciplines, such as psychology and medicine. While arguments based on such knowledge may not always carry the day in court, as they clearly did not in

108. *Id.* at 319.

109. George L. Priest, *Social Science Theory and Legal Education: The Law School as University*, 33 J. LEGAL EDUC. 437, 438 (1983).

McCleskey, the court's consideration of such information allows lawyers to draw on other areas of knowledge in making arguments. It also provides a lens through which students who study such cases can evaluate the efficacy of formalism in addressing widespread problems with the legal system as well as consider other avenues for furthering broad policy concerns. This should result in lawyers and law students finding avenues for creativity that can make law school and legal practice more interesting.

B. ARE LAWYERS REALLY THAT MISERABLE?

Another potential problem with the book lies in one of its underlying premises: that lawyers are miserable. If one were only to look at the portrayal of law practice by the mass media, it would appear that this premise is unassailable.¹¹⁰ However, a closer examination of some of the sources relied upon by Professors Stefancic and Delgado to make this argument challenges their assumption, or at least makes it unclear whether lawyers are more miserable than other modern professionals.

Professors Stefancic and Delgado rely on the work of law professor (and former law firm partner) Patrick Schiltz to make their claim that lawyers as a whole are miserable. In his 1999 article, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, Professor Schiltz makes a compelling case that lawyers, especially big firm lawyers, are miserable.¹¹¹ Many of the points made by Professor Schiltz rang true to me. However, after researching other scholarship on this topic, it appears that lawyers may not be that miserable after all.

In the same issue of the *Vanderbilt Law Review* in which Professor Schiltz's article appears, there is a responsive article written by sociologist Kathleen Hull.¹¹² Hull sets forth evidence that lawyers may not be as miserable as commentators like Schiltz suggest. She indicates that the misery accounted for in this literature may be the result of skewed studies. As she explains, "upon closer inspection it becomes clear that the most valid, well-designed research has produced little if any support for the notion that lawyers are unhappy in their work."¹¹³ Emphasizing the nature of many of the studies relied upon by Schiltz and others, Hull argues that lawyer satisfaction studies are marred by reliability problems. Specifically, some of the surveys commonly cited do not use random

110. See, e.g., Diana Nelson Jones, *Legally Unhappy Experts Worry About Growing Tide of Lawyers Abandoning Careers*, PITTSBURGH POST-GAZETTE, May 4, 2005, at E1.

111. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999); see STEFANCIC & DELGADO, *supra* note 1, at 56-59, 66, 68-70.

112. Kathleen E. Hull, *Cross-Examining the Myth of Lawyers' Misery*, 52 VAND. L. REV. 971 (1999).

113. *Id.* at 971.

samples, and hence may produce biased results.¹¹⁴ She points out that other studies have low response rates, which likewise undermines the studies' validity.¹¹⁵

Hull further explains that some studies rebut the presumption that lawyers are indeed miserable. For example, she cites American Bar Association surveys from 1984 and 1990 showing that, in those years, 81% and 76% of lawyers were satisfied or very satisfied with their jobs.¹¹⁶ Similarly, Hull refers to a 1990 study by the *National Law Journal* that found "31% of responding lawyers 'very satisfied' and 48% 'somewhat satisfied' with their careers."¹¹⁷ Studies of graduates of the University of Michigan law school and three Minnesota law schools found percentages ranging from 82% to 94% of lawyers who were satisfied (at least somewhat) with legal practice.¹¹⁸ Hull cites a study of Toronto lawyers likewise finding high rates of lawyer satisfaction.¹¹⁹ These studies had higher response rates, making them more reliable than studies with lower rates. Hull criticizes Schiltz, stating "[d]espite the high quality of their data, the Minnesota and Toronto studies are relegated to a footnote in Schiltz's discussion of lawyers' satisfaction."¹²⁰ Likewise, Professors Stefancic and Delgado leave these studies largely unexplored in footnotes.¹²¹

Hull has reason to be familiar with such studies. She, along with John Heinz and Ava Harter, analyzed lawyer satisfaction data from Chicago lawyers collected by the American Bar Foundation. This data revealed that 84% of these lawyers reported being either satisfied or very satisfied with their jobs.¹²² Thus, there are studies suggesting that at least some lawyers are satisfied with their work. However, there may be other demographic factors that have implications for exactly which lawyers are happy.

Studies suggest, as Stefancic and Delgado point out,¹²³ that female lawyers

114. *Id.* at 971-73.

115. *See id.* at 972.

116. *Id.* at 972-73 (citing Am. B. Ass'n, Young Lawyers Div., *The State of the Legal Profession 1990*, at 1-6, 52 *tbl.* 66 (1991)).

117. *See id.* at 973 (citing Margaret Cronin Fisk, *Lawyers Give Thumbs Up*, *NAT'L L. J.*, May 28, 1990, at S2).

118. *See id.* at 973 (citing David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 *LAW & SOC. INQUIRY* 251, 260, 275 (1989) and Paul W. Mattesich & Cheryl W. Heilman, *The Career Paths of Minnesota Law School Graduates: Does Gender Make a Difference?*, 9 *LAW & INEQ. J.* 59, 63, 95 (1990)).

119. *See id.* (citing JOHN HAGAN & FIONA KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS' LIVES 169* (1995)).

120. *Id.* (citing Schiltz, *supra* note 111, at 884 n.92).

121. *See generally* STEFANCIC & DELGADO, *supra* note 1.

122. John P. Heinz, Kathleen E. Hull & Ava A. Harter, *Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar*, 74 *IND. L.J.* 735, 736 (1999); *see also* Marilyn Tucker, Laurie A. Albright & Patricia L. Busk, *Whatever Happened to the Class of 1983?*, 78 *GEO. L.J.* 153, 164 (1989) (survey of graduates of a law school class of 1983 indicated that 70% enjoyed their work).

123. STEFANCIC & DELGADO, *supra* note 1, at 52-53.

may be more dissatisfied with their careers than men. In their study of the class of 1983, Tucker, Albright, and Busk found that, while men and women reported roughly the same levels of satisfaction (67% and 65%, respectively), more women than men reported being dissatisfied with their jobs (26% of women as opposed to only 15% of men).¹²⁴ However, other studies found no gender differences.¹²⁵ In their study of data gathered from Chicago lawyers, Heinz et al. found no overall gender differences in work satisfaction, but instead that women were more dissatisfied with certain aspects of their jobs, including “their level of responsibility, recognition for work, chances for advancement, organizational policies and administration, salary, and control over the amount and manner of work.”¹²⁶ Other studies suggest that African American lawyers are more dissatisfied as well. The Heinz et al. study revealed that 17.9% of black lawyers in their sample were dissatisfied or very dissatisfied whereas only 6.1% of white lawyers responded likewise.¹²⁷ Thus, perhaps dissatisfaction with practice is more common for women and members of minority groups. This of course is a serious problem that requires a more in-depth look at how legal practice affects women and members of minority groups.

Still, it is hard to take issue with the many studies cited by Professors Stefancic and Delgado which indicate that lawyers are using unhealthy means to deal with the stress of practice.¹²⁸ High divorce and substance abuse rates among lawyers seem highly indicative of a profession that is unhealthy for its practitioners. Indeed, Hull’s criticism of Schiltz’s article does not extend to his analysis of these factors.¹²⁹ To the extent that lawyers suffer higher rates of divorce, substance abuse, and mental health problems, it would seem obvious that members of the legal profession are in trouble.

1. IS IT THE PEOPLE OR IS IT THE PRACTICE?

Interestingly, the book makes little mention of studies that suggest that law practice itself may not be totally at fault for lawyer misery. Some studies indicate that it may be the nature of the people who are attracted to the practice of law that accounts for the profession’s high rates of depression and the general unhappiness among lawyers. Work by psychologist Martin Seligman and his colleagues suggests that pessimists make effective lawyers.¹³⁰ While pessimism can be a

124. Tucker et al., *supra* note 122, at 164; *see also* Heinz et al., *supra* note 122, at 738-39 (describing studies showing women lawyers more dissatisfied than men).

125. *See, e.g.*, Heinz et al., *supra* note 122, at 740-41, 743 (recounting studies, including their own of the Chicago Bar, which reflect no gender differences).

126. *Id.* at 746-47.

127. *Id.* at 752.

128. *See* STEFANCIC & DELGADO, *supra* note 1, at 65-69 and studies cited therein.

129. *See* Schiltz, *supra* note 111, at 874-81.

130. Martin E. P. Seligman et al., *Why Lawyers Are Unhappy*, 23 *CARDOZO L. REV.* 33, 40 (2001).

detriment in many walks of life, Seligman posits that this is not the case when it comes to lawyers. In fact, studies have shown that there is a notable correlation between success in law school and pessimism.¹³¹ As Seligman and his co-authors explain:

These data suggest that what is labeled as pessimism is not a detriment and may even be a virtue for lawyers. Pessimism encompasses certain “positive” dimensions; it contains what we call—in less pejorative terms—“prudence.” A prudent perspective, which requires caution, skepticism and “reality-appreciation,” may be an asset for law or other skill-based professions. It is certainly a quality that is embraced in legal education. Prudence enables a good lawyer to see snares and catastrophes that might conceivably occur in any given transaction. The ability to anticipate a whole range of problems that non-lawyers do not see is highly adaptive for the practicing lawyer. Indeed clients would be less effectively served if lawyers did not so behave, even though this ability to question occasionally leads to lawyers being labeled as deal breakers or obstructionists.¹³²

While pessimism may well be a good quality in a successful lawyer, it may not lead to a “happy human being.”¹³³

Despite the findings set forth in Seligman’s article, studies of law school students suggest that law school creates much of the psychological distress that law students feel. Surveying studies of law students, Lawrence Krieger argues that law professors “might like to believe that future lawyers arrive at law school with these predispositions [towards psychological distress], but research and our own eyes tell us otherwise.”¹³⁴ Krieger describes studies showing that law students enter law school psychologically “normal,” but quickly shift to psychological distress during the first year of law school.¹³⁵ While Krieger suggests it is law school that causes this distress, it seems more like a classic “the chicken or egg” dilemma: do people who are attracted to law have a predisposition to depression or does learning and practicing law depress its practitioners? There does not appear to be a definitive answer to this question, but it certainly merits further consideration and study.

Along with suggesting that successful lawyers may well possess the type of personality that makes them less happy, Seligman et al. suggest that some aspects of the practice of law make it an inherently unhappy profession. In particular, they indicate that low “decision latitude” and the zero-sum game nature of

131. *Id.* at 40.

132. *Id.* at 41.

133. *Id.*

134. Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 115 (Mar./June 2002).

135. *See id.* at 114 (citing Matthew Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 61 (1999)).

practice make law a difficult profession. Seligman and his colleagues write, “[d]ecision latitude refers to the number of choices one has or, as it turns out, one believes one has.”¹³⁶ People in jobs that allow them little or no control over their work are at risk for depression and other health problems. As Seligman et al. explain, “[t]here is one quadrant particularly inimical to health and morale: high job demand combined with low decision latitude.”¹³⁷ They further indicate that along with nurses and secretaries, “junior associates at major law firms have been added to the list” of persons who occupy this quadrant.¹³⁸

While these researchers believe it is the lack of control that associates have over their lives and practice that gives them low decision latitude, it can be argued that lawyers as a general matter have low decision latitude. This makes sense. Litigators lack control over case outcomes due to the nature of the adversary system. In addition, lawyers generally lack control over how cases proceed, often finding themselves in defensive postures, forced to respond to what adversaries or courts have done. Even corporate lawyers who do not go to court are subject to the changing desires of clients, adversaries in the deal making process, and the forces of an ever-changing economy. Thus, it may be that the adversarial and uncontrollable nature of legal practice itself gives lawyers little control over their clients’ (and therefore their own) destinies.

Along with this “uncontrollable” aspect of legal practice, the zero-sum game nature of the adversary system, Seligman et al. argue, likewise produces unhappiness. By zero-sum game they refer to the fact that the net result of any litigation is zero: there is always one winner and one loser with no resulting net gain.¹³⁹ This is an inherent characteristic of the adversary system. As Seligman et al. explain, “[w]hen the practice of law is tied up with a large number of zero-sum games, it will produce predictable emotional consequences for the practitioner, who will be anxious, angry and sad much of his professional life.”¹⁴⁰ While acknowledging that mediation might make for happier lawyers, Seligman and his colleagues also understand that the adversary system provides a social benefit and should not be readily abandoned.¹⁴¹

The upshot of all this for Professors Stefancic and Delgado’s thesis is that rather than the formalism making lawyers unhappy, a root cause of lawyer misery may be the people attracted to law and the nature of the adversary system itself. The profession seems to be populated with individuals who may be predisposed (because of their pessimism) to be unhappy and who are naturally drawn to work in a system that will lead to more unhappiness given the lack of control that it

136. Seligman et al., *supra* note 130, at 41.

137. *Id.* at 42.

138. *Id.*

139. *Id.* at 46-47.

140. *Id.* at 47.

141. *Id.* at 48.

allows its practitioners over cases and outcomes.

In contrast to the theory that unhappiness comes from within the types of people attracted to the legal profession, emerging research on law students suggests that there is something about law, and not the people who practice it, that creates unhappiness. Law professor Lawrence Krieger and psychologist Kennon Sheldon have studied law students at two law schools, analyzing the students' sense of well-being throughout their law school careers. Their study reveals that there is something wrong with law school—not the students who enter the legal profession. They found that “incoming students were happier, more well-adjusted, and more idealistic/intrinsically oriented than a comparison undergraduate sample.”¹⁴² This led Krieger to conclude that problems of unhappiness and discontent in law school and the legal profession as a whole may not be the result of the personalities of people who chose law as a career, as the previously mentioned studies by Seligman et al. indicate.¹⁴³

Instead, Krieger and Sheldon argue that the nature of law school and the conflicts it causes for individuals result in lowered self-esteem, life satisfaction, and well-being in law students. They write, “the intense pressures and competitive success norms at most law schools begin a process that reorients students away from positive personal values and towards more superficial rewards and image-based values, leading to a loss of self-esteem, life satisfaction, and well-being.”¹⁴⁴ Krieger and Sheldon distinguish between “intrinsic motivations,” whereby “a person engages in an activity because she finds it interesting and enjoyable,”¹⁴⁵ and “extrinsic motivations,” which include “activity undertaken as a means to an end, rather than as an end in itself.”¹⁴⁶ Extrinsic motivations are associated with negative subjective well-being (“SWB”), whereas intrinsic motivations are associated with positive SWB.¹⁴⁷ Sheldon and Krieger opine that students begin law school with intrinsic motivations, but move toward extrinsic motivations, leading to a decline in SWB.¹⁴⁸ Thus, students begin law school with idealistic motivations, desiring to help others or to improve themselves personally, but eventually succumb to extrinsic motivations, such as “impressing

142. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 433 (2005); see also Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. L. 261, 270 (2004).

143. Krieger, *supra* note 142, at 433; see also Sheldon & Krieger, *supra* note 142, at 271.

144. Sheldon & Krieger, *supra* note 142, at 263. Earlier studies likewise have shown that law students have higher rates of psychiatric distress than those in the general population. See, e.g., Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 69 (1985); G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 241, 246.

145. Sheldon & Krieger, *supra* note 142, at 263.

146. *Id.*

147. *Id.* at 264.

148. *Id.*

others, or gaining status and affluence,” and end up disillusioned with the legal profession overall.¹⁴⁹

The findings of their study bear this out. They surveyed students throughout their law school careers, beginning with orientation, and found that “participants experienced large reductions in positive affect, life satisfaction, and overall SWB, and large increases in negative affect, depression, and physical symptoms” during their first year of law school.¹⁵⁰ Importantly, this correlated with declines in intrinsic value motivation. As they explain, “[d]eclines in intrinsic value orientation . . . were significantly associated with decreases in positive affect, life satisfaction, and aggregate SWB.”¹⁵¹ While the correlations cannot prove causation, these findings do support their theory. Examining these students later in their law school careers revealed that the “declines in SWB and intrinsic valuing . . . remained constant.”¹⁵² Interestingly, “*all* types of valuing decreased between the end of the first year and the middle of the second year, a pattern” that continued through the third year surveys.¹⁵³ While acknowledging that this phenomenon requires further study, they noted that it was consistent with the notion that lawyers “have no values.”¹⁵⁴

Sheldon and Krieger replicated much of these results in a study of a second law school. Students in Study 2 “evidenced strong declines in positive affect, life satisfaction, and aggregate SWB, as well as strong increases in negative affect.”¹⁵⁵ However, “the overall change in relative intrinsic value orientation was not significant” in the second study.¹⁵⁶ Similar to Study 1, “reductions in self-determination were correlated with reductions in SWB . . . as were reductions in intrinsic value orientation.”¹⁵⁷ This research suggests that there may not be some common trait among those who choose law as a career, but instead that there is something about the law school experience itself that creates negative effects in law students. And, if in fact the general causes of lawyer discontent begin in law school, Professors Stefancic and Delgado may be onto something with their theory that formalism begins causing misery in law school. Although they do not explore these studies in their book, it would seem that the formalistic approach to teaching the law may be the first step towards law student dissatisfaction, which later leads to the dissatisfaction experienced by so many American lawyers.

149. *Id.*

150. *Id.* at 272.

151. *Id.* at 273.

152. *Id.* at 274.

153. *Id.* at 282.

154. *Id.*

155. *Id.* at 278.

156. *Id.* at 279.

157. *Id.*

2. IS THE NATURE OF LAW FIRMS THE PROBLEM?

Another issue raised by this book is whether small firm lawyers are more satisfied than large firm lawyers. While Professors Stefancic and Delgado are somewhat equivocal on this point, noting that studies point in both directions, it is unclear whether large firm lawyers are more unhappy than small firm lawyers or sole practitioners.¹⁵⁸ This is a key question that begs an answer. The American Bar Association (“ABA”) tracks statistics regarding the nature of lawyers’ practices. In the year 2000, the ABA found that of the 74% of lawyers who were in private practice, the vast majority were sole practitioners or practiced in small firms.¹⁵⁹ Indeed, 48% were sole practitioners.¹⁶⁰ Of those who practiced with others, 76% practiced in firms of 2-5 lawyers.¹⁶¹ On the basis of these statistics and if in fact lawyers in small firm practice are happier, it seems plausible that much of the blame for general lawyer unhappiness can be placed on the nature of large firm practice, which tends to be the focus of much study and scholarly discussion.¹⁶² Yet, the ABA data reveals that only 14% of lawyers in private practice are at firms of 101+ lawyers and that only 4% of these lawyers practice in firms of 51-100 lawyers.¹⁶³ Thus, if misery is more common in large firms, it may be far less common in lawyers overall.

Indeed, some lawyer complaints detailed in Professors Stefancic and Delgado’s book seem to be those of the big firm lawyer. For example, the authors cite the common complaint that law firms are too hierarchical and lack mentoring opportunities.¹⁶⁴ However, these issues should be less of a problem in a smaller firm. The authors also discuss in detail the competitive nature of large firm practice, where associates vie for attention from powerful partners in their quest for a shot at partnership. However, this too should not be a significant problem in small firms. While the work in all law firms—large or small—may be equally routine, being in a smaller firm with less hierarchy and less competition should reduce the overall stress of law practice and result in relatively happier lawyers. Thus, given that the majority of today’s lawyers work in small firms, it is not clear that the problems detailed in Professors Stefancic and Delgado’s book are as common for most lawyers as they suggest.

However, it is similarly not clear that working in a small firm environment is the cure for lawyer misery. Indeed, a 1990 ABA study suggests that sole

158. See STEFANCIC & DELGADO, *supra* note 1, at 71.

159. See ABA Lawyer Demographics (2006), available at www.abanet.org/marketresearch/lawyer_demographics_2006.pdf [hereinafter ABA Lawyer Demographics].

160. *Id.*

161. *Id.*

162. See, e.g., Schiltz, *supra* note 111, at 940 (criticizing large firms and describing advantages of small firms).

163. ABA Lawyer Demographics, *supra* note 159.

164. STEFANCIC & DELGADO, *supra* note 1, at 57, 59.

practitioners are the least happy of all lawyers.¹⁶⁵ However, attorneys in large firms in the West and Northeast surveyed in this study also registered considerable unhappiness.¹⁶⁶ When asked why they liked practicing law, lawyers responding to this survey most often answered “intellectual stimulation.”¹⁶⁷ This response is somewhat at odds with a survey of Alabama lawyers cited by Professors Stefancic and Delgado in which 94.5% of lawyers surveyed reported that they were “least satisfied with the challenge and stimulation of their jobs.”¹⁶⁸ Interestingly, the happiest lawyers were Midwestern corporate lawyers, Southeast government agency lawyers, and Western lawyers in mid-size firms.¹⁶⁹ Heinz et al.’s study of Chicago lawyers found that large firm lawyers were less likely to respond that they were “very satisfied” with their jobs, but were also less likely to be dissatisfied with their jobs.¹⁷⁰ Instead, it was government lawyers who were most likely unhappy—“11% of them were either dissatisfied or very dissatisfied.”¹⁷¹ Thus, exactly which lawyers are unhappy and the extent of that unhappiness remain largely a mystery that deserves further study by the bar and social scientists. And, it appears that at least some lawyers are happy and find their jobs intellectually stimulating.

C. IS THE REAL PROBLEM WITH THE BUSINESS OF LAW?

In thinking back on my years as a lawyer, I never felt that my law practice was boring. Instead, the parts of it that bothered me were primarily driven by the business model under which large firms operate. Put simply, the amount of time I had to put in to make my billable goals was unreasonable. And it was obvious to me that partners lined their pockets at my expense. In one telling moment, the managing partner of my firm explained at an “all firm” meeting that he would not be satisfied until there was a “new BMW in every lawyer’s garage.” Like many young lawyers, I looked at the partners’ lives and found them lacking. The goal of making partner did not seem worth attaining. The material goods I would be able to afford if I did become a partner did not seem to be worth missing my daughter’s first steps or foregoing the opportunity to teach her to ride a bicycle.

165. Thirty percent reported being dissatisfied. *See Fisk, supra* note 117, at S2.

166. *See id.*

167. *Id.* Seventy-five percent of lawyers responded in this manner. Fifty-eight percent responded that it provided them with an opportunity to use their skills. *See Tucker et al., supra* note 122, at 163 (survey of class of 1983 revealed that 71% of respondents found their assignments “challenging,” whereas only 9% found them “dull”).

168. *See STEFANCIC & DELGADO, supra* note 1, at 57 (citing Keith B. Norman, *The Alabama State Bar Quality of Life Survey Results*, 55 ALA. LAW. 152, 153 (May 1994)). I use the term “somewhat” because the questions posed by these two studies are different. Lawyers may like the intellectual stimulation of their jobs while having little opportunity to engage in the type of work that causes such stimulation.

169. *See Fisk, supra* note 117, at S2.

170. *See Heinz et al., supra* note 122, at 745.

171. *Id.*

Perhaps the real problem with law practice therefore lies not in formalism or in the inherent nature of the people drawn to the practice of law, but rather is the result of the business model under which most firms operate—a model (like most in our capitalistic economic system) that is driven by profit and ultimately greed.¹⁷² Indeed, in one of the books that Professors Stefancic and Delgado discuss, Professor Mary Ann Glendon acknowledges that many lawyers believe that the problem with law is that it has become a business, that it has become “commercialized.”¹⁷³ While Glendon ultimately does not accept this as the source of what ails the legal profession, much of her argument suggests that this is a significant problem. She writes about the lack of client loyalty and the rise of one-up-manship among partners, who want to make huge salaries to “keep up with the Joneses.”¹⁷⁴ Gone are the days of the wise lawyer/counselor who would tell a client that what he or she wants to do might be marginally legal, but ultimately violated the spirit of the law or, more simply, was immoral.¹⁷⁵ Glendon lays part of the blame for this unfortunate transformation on clients, who began to shop around for lawyers instead of doing all their business with one trusted firm.¹⁷⁶ Glendon concludes that perhaps it is not the business of law that is directly the problem, but that lawyers have lost the ability to understand how to function as both business people and lawyers.¹⁷⁷ While this suggests that Professors Stefancic and Delgado would agree with Glendon’s conclusion, overall they reject it.

As Professors Stefancic and Delgado point out, for Glendon, the “problem is rapid social change leading to loss of faith in the common law heritage, coupled with ‘romantic judging’ that has replaced respect for the rule of law.”¹⁷⁸ Indeed, Glendon takes issue with the “creativity” in law that Professors Stefancic and Delgado suggest would promote both the happiness of lawyers as well as the potential for law to be just, especially, from Glendon’s viewpoint, when that creativity is practiced by judges.¹⁷⁹

However, others would place the problem more squarely with the business that law has become.¹⁸⁰ Some lay blame more specifically on the rise of the billable hour.¹⁸¹ As one survey revealed, “[e]xcessive hours are the leading cause of

172. Deborah L. Rhode, *The Profession and its Discontents*, 61 OHIO ST. L.J. 1335, 1344-46 (2000).

173. MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 69-71 (1994).

174. *Id.* at 25, 30.

175. *Id.* at 25, 30.

176. *Id.* at 25.

177. *Id.* at 70-71.

178. STEFANCIC & DELGADO, *supra* note 1, at 48 (citing *id.* at 152).

179. See GLENDON, *supra* note 173, at 152-73.

180. See Rhode, *supra* note 172, at 1344-46.

181. See Carl T. Bogus, *The Death of An Honorable Profession*, 71 IND. L.J. 911, 922-28 (1996); Rhode, *supra* note 172, at 1345-46.

professional dissatisfaction among surveyed female practitioners.”¹⁸² Deborah Rhode points out that “the preoccupation with profit is at the root of the problem” of lawyer discontent along with an increase in competitiveness in the profession.¹⁸³ Indeed, it may not be that law is being viewed as a business that is a problem but instead the type of business model law firms have adopted. As Deborah Holmes suggests, “In fact, many of [the decisions individual lawyers make] are bottomed on old-fashioned greed, and calling them ‘businesslike’ is unfair to business.”¹⁸⁴

The link between formalism and the business of law, while intriguing, is the most tenuous part of Professors Stefancic and Delgado’s argument, particularly when one considers that unhappiness began in the 1960s—at the height of what the authors acknowledge as a non-formalist movement in the Supreme Court.¹⁸⁵ Yet this is the same time period when formalism in law firms begins to take hold. Why were law firms engaging in a more “cookie-cutter” approach to practice during a time when the courts began to allow for more creative legal argument? It becomes difficult to see how the business model under which law firms operate results from formalism. Instead, the business that law has become appears to be the result of client demands and the desire for more money by lawyers at the top of the law firm hierarchy. While Professors Stefancic and Delgado argue that formalism plays a role in the piecemeal, routine nature of law firm practice, in some ways that routine may be comforting to lawyers. At least, one would assume they would be less stressed than lawyers confronting new issues on a daily basis. Indeed, there have always been aspects of lawyers’ jobs that have been routine. The link between the routine nature of some aspects of law practice and formalism is, perhaps, apparent; the link between this routine and lawyer unhappiness is not.

V. CONCLUSION

Professors Stefancic and Delgado’s book has given lawyers and those who train lawyers something to think about. Their inquiry is a provocative one: does something in the nature of legal formalism, which, they assert, is taught in law school and dictates the structure of modern legal practice, make lawyers unhappy? It would be nice if formalism were in fact the sole cause of lawyers’ discontent. If it were, the root of this pervasive problem would be identified, and there would only be one problem to solve. However, as this review has indicated,

182. Rhode, *supra* note 172, at 1345 (citing *Women in the Law Survey: Analyzing Job Dissatisfaction*, CAL. LAW., Jan. 1990, at 84).

183. Rhode, *supra* note 172, at 1338-39; see ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 370 (1993).

184. Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 384-85 (1996).

185. STEFANCIC & DELGADO, *supra* note 1, at 45.

the misery that plagues today's lawyers is likely more complex than the authors admit. Their unhappiness may stem from the business into which law has evolved. Or, it may have come from the very nature of the individuals who become lawyers. Or, it may have something to do with the very nature of our adversary system, which creates nothing but winners and losers. While formalism may be one source of lawyers' unhappiness, it is unlikely the sole cause.

The way in which Professors Stefancic and Delgado approach the problem of lawyer misery is certainly intriguing and has merit. By framing their thesis around the story of the lives and work of Pound and MacLeish, Professors Stefancic and Delgado open yet another window into an important subject and pose a question that will likely resonate with many frustrated humanists who also happen to practice law.

Critical Legal Ethics

REVIEW OF *Lawyers Ethics and the Pursuit of Social Justice: A Critical Reader*,
edited by Susan D. Carle,† foreword by Robert W. Gordon.‡

REVIEWED BY PAUL R. TREMBLAY*

I. INTRODUCTION

These days, it is not easy being a progressive lawyer—one of those noble folks who choose to work with disadvantaged clients and underserved communities. Not because of the low pay or the diminished status that such lawyers may hold within some professional circles—although both certainly could be considered drawbacks. And not because the job is too tough; being a progressive lawyer is no doubt hard work, but it is certainly far more gratifying than most of the alternatives.¹ No, being a progressive lawyer is tough because of the increasing uncertainty that progressive lawyers encounter as they try to make sense of the responsibilities inherent to their role. In the olden days, it seemed like lawyers for poor people had a pretty well-defined role in life. They went to court and fought hard to win important rights for their clients. Of course those lawyers faced some hard choices—for example, whether to focus on individual client work or on bigger, and often sexier, law reform work—but, for the most part, public interest and poverty lawyers were, first and foremost, good, creative litigators on behalf of their clients.

These days, things are not so simple, but they are a whole lot more interesting. Thanks to waves of critical scholarship produced over the past 25 years about progressive lawyering and the role that law and legal institutions generally play in our society, most of the simple role conceptions and understandings about public interest and poverty law work have been (if you'll excuse the phrase) deconstructed and obliterated. Over the past several years, thoughtful scholars have rigorously reexamined how lawyers and clients might best work together and how power in their working relationships ought to be identified and negotiated. Critical thinkers have conceived alternative visions of lawyering

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1. See Jean Koh Peters, *Habit, Story, Delight: Essential Tools for the Public Service Advocate*, 7 WASH. U. J.L. & POL'Y 17 (2001) (recounting the joys, and travails, of a lawyer working in a public interest setting).

practice, visions that embrace a greater respect for the power of community;² deeper attention to the influences of race, gender, class, and culture on the practice of law as well as on the relationship between the professional and her client;³ and more honest acknowledgement of the special tensions inherent in lawyering for disadvantaged peoples.⁴ Today, virtually all of the previously accepted understandings about what it means to “practice law for poor people”⁵ are contested in some fashion. And, importantly, the traditional dogmas have not yet been replaced by new ones. The sophistication and diversity of the arguments surrounding the role of progressive lawyers have prevented new understandings from coalescing. The newer developing wisdoms are tentative, and the explorations continue apace. It is therefore a great time to be a progressive lawyer, even if the role may not be an entirely comfortable one.

The scope of the literature about critical lawyering⁶ is vast. With so much written and so many ideas in play, interested readers would benefit a great deal from anthologies presenting representative samples of prominent works in the field. Unfortunately, few such focused collections exist.⁷ Professor Susan Carle, a

2. For a sampling of this scholarship, see Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88) [hereinafter Alfieri, *Antinomies*]; Susan D. Bennett, *Lawyering for a New Democracy: Little Engines That Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469; Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Zenobia Lai, Andrew Leong & Chi Chi Wu, *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 ASIAN PAC. AM. L.J. 1 (2000); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000).

3. See, e.g., John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space and Poverty*, 67 FORDHAM L. REV. 1927 (1999); Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585 (1997); Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443 (1996); David B. Wilkins, *Identities and Roles: Race, Recognition and Professional Responsibility*, 57 MD. L. REV. 1502 (1998); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997).

4. See, e.g., Anthony V. Alfieri, *Theoretics of Practice: The Integration of Progressive Thought and Action: Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 768 (1992); Edgar S. Cahn, *Reinventing Poverty Law*, 103 YALE L.J. 2133 (1994); Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO. J. LEGAL ETHICS 369 (2004); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1994) [hereinafter Simon, *Dark Secret*]; Ann Southworth, *Lawyers and the “Myth of Rights” in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469 (1999); Louise G. Trubek, *Embedded Practices: Lawyers, Clients and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415 (1996); Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813 (1998).

5. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1049-59 (1970).

6. In this review I use the terms “progressive” and “critical” interchangeably, recognizing that in some other contexts the terms might acquire differing meanings.

7. A few important collections offer some exposure to the progressive lawyering and cutting edge clinical scholarship. See, e.g., CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold eds., 1998); CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS (Alex J. Hurder, Frank S. Bloch, Susan L. Brooks & Susan L. Kay eds., 1997) [hereinafter CLINICAL ANTHOLOGY];

legal historian and ethicist from American University Washington College of Law, has finally prepared one such compilation. Her textbook, *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader*,⁸ is a welcome and illuminating contribution to the world of critical lawyering scholarship.

Carle's textbook assembles forty excerpted articles, essays, and book chapters, each critically appraising some specific aspect of lawyering or legal education.⁹ Several of the articles Carle includes are well-known classics, and while some others are less familiar, at least to me, they are no less valuable. Each selection makes an important contribution to the rich and sophisticated debate currently underway regarding the proper role of lawyers who confront the injustices of contemporary society.

Carle ostensibly focuses on *legal ethics* in this compendium, but her reach is in fact broader than that, and happily so. Her book has very little—indeed, almost nothing—to do with the “typical” subjects of legal ethics scholarship including the *Model Rules of Professional Conduct*,¹⁰ the *Restatement of the Law Governing Lawyers*,¹¹ and the substantive law of lawyering. Instead, Carle's book focuses on tough questions about lawyers practicing as noble, justice-seeking actors in a system grossly tilted in favor of entrenched and powerful interests. If this is part of what we talk about when we talk about legal ethics,¹² then her book is indeed an ethics text. But instead of relying on the typical

LAW STORIES (Gary Bellow & Martha Minow eds., 1996); MARTHA R. MAHONEY ET AL., SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW: CASES AND MATERIALS (2003). Several important freestanding books develop discrete critical lawyering ideas in depth. See, e.g., GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1988); DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000); STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING (2004); WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS (1998).

8. LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER (Susan D. Carle ed., 2005) [hereinafter *LAWYERS' ETHICS*].

9. All but one of the excerpts were previously published elsewhere. The exception is the splendid contribution of David Luban. See David Luban, *Making Sense of Moral Meltdowns*, in *LAWYERS' ETHICS*, *supra* note 8, at 355.

10. MODEL RULES OF PROFESSIONAL CONDUCT (2004) [hereinafter *MODEL RULES*].

11. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS (2000).

12. See Stephen Gillers, *What We Talked About When We Talked About Ethics: A Critical View of the Model Rules*, 46 OHIO ST. L.J. 243 (1985) (borrowing his title from RAYMOND CARVER, *WHAT WE TALK ABOUT WHEN WE TALK ABOUT LOVE* (1981)). One scholar recently has suggested a very narrow definition of “legal ethics”: “Legal ethics, however, is much more circumscribed [than religious and theological ethics]. Its core is in codes and rules; it is a technical subject in which one learns, for example, the intricacies of conflicts and of reasonable fees; it is tested on multiple choice exams.” Leslie Griffin, *The Relevance of Religion to a Lawyer's Work: Legal Ethics*, 66 FORDHAM L. REV. 1253, 1253 (1998). For a more expansive view, and a disagreement with Professor Griffin on her definition, see Thomas D. Morgan, *The Relevance of Religion to a Lawyer's Work: Legal Ethics—A Response to Professor Griffin*, 66 FORDHAM L. REV. 1313, 1317 (1998); see also Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, 2 VA. J. SOC. POL'Y & L. 75 (1994), reprinted in *LAWYERS' ETHICS*, *supra* note 8, at 271 [hereinafter Menkel-Meadow, *Portia Redux*] (“broadly defined ‘legal ethics’” includes “leading our lives as lawyers, making decisions about our clients, our opponents, ourselves, and our families, searching to be ‘good lawyers’ as well as ‘good people’”).

doctrines that most legal ethics textbooks do, Carle's work digs deeply into emerging lawyering praxis theories and jurisprudential questions about the nature of social justice in a way that few law school texts have attempted.

Part II of this Review describes the essays and the viewpoints Carle has chosen to include in this collection and distills some of the critical messages that she hopes students will take away from her text. Carle has chosen wisely, both in terms of the content of the selections and in how she presents them. Most of the important progressive lawyering critiques find some air time in her book, and their messages are subtly spread among otherwise unconnected readings. Part III revisits three of the book's more prominent themes, all intertwined cross-currents within the writings. The three chosen in this Review for closer scrutiny are (1) the contours of client-centeredness as an orientation for lawyer-client associations, (2) the challenges of what we might call community or "rebellious" lawyering, and (3) the persistent problem of moral activism. Part III of this Review reveals how deftly Carle has highlighted these and other contested lawyering theories, but also points out the inevitably introductory nature of a compilation like this. Part IV wraps up with some thoughts about how teachers might make the best use of this rich and valuable resource.

II. THE READINGS

Carle organizes her essays¹³ in an unexpected but ultimately useful way. Her editing of the original works is superb.¹⁴ Each chapter begins with a very helpful introduction by Carle about her goals in including the selections in that chapter and how they might relate, followed by a series of questions for the reader to consider. She organizes the readings into two broad parts: one labeled "Theory and History" and the other "Contemporary Critical Approaches"; the former reads somewhat as background to the spirited debates found in the latter. As is true with so much of this book, the segments intersect in intriguing ways. Important themes that emerge in the historical background section play a key role in the later discussion of the contemporary struggles about proper lawyering roles and responsibilities.¹⁵

13. For simplicity's sake, in this Review I shall often refer to each of the excerpted selections as an "essay," even though few of them would have been labeled essays in their original versions. With Carle's distilling the lengthy pieces into 7-12 pages of insight and argument, the extracts as they appear in the book read as essays.

14. Carle's ability to cull small fragments of longer pieces and leave a coherent, readable product is indeed impressive. While any reader familiar with a piece's full text can quibble about what ideas Carle has chosen to include and what parts she has omitted, for the most part (there are a couple of exceptions) the edited readings flow gracefully and articulately.

15. In preparation of this Review, I have opted to read the essays as they appear in their abridged form in Carle's book, and not to read each piece in its original text. I had read many of the original articles or books in the past, but certainly not all of them, and any previous reading tended to be some years ago. I chose to focus exclusively on Carle's edited selections in order to situate myself as close to the role of a new reader as possible, and to discern from the excerpts what Carle has presented for us. Some of my comments below will reflect that

Within “Theory and History,” Carle first offers four articles that critically appraise the legal profession’s regulatory schemes and the justifications for its monopoly status. She begins with a classic, and quite cynical, commentary by Richard Abel,¹⁶ who argues that the American Bar Association’s ethics codes and rules serve no purpose other than to reinforce and legitimate the profession’s monopoly power. Carle balances the Abel argument with a somewhat more hopeful, if still critical, sociological argument from Terence Halliday,¹⁷ who argues that lawyer regulation and monopoly reflect “an implicit concordat between states and established professions,” by which the professions agree to provide important public services in return for their notable advantages.¹⁸ With those divergent orientations in place, Carle then offers David Wilkins’s account of four types of lawyer regulation and his assertions about the essential role of *context* in any consideration of controls over lawyer behaviors.¹⁹ This theme of contextual reasoning remains a central one for the remainder of the book.

Another pivotal focus of the book’s remaining essays appears in Lucy White’s article about structuralist and Foucaultian visions of power relationships.²⁰ Following three essays explicitly about professional regulation, White’s meditation at first seems out of place, but it is hardly so. By introducing Foucault’s theories about the shifting, unpredictable quality of power, challenging more simplistic traditional visions of the powerful on one side and the powerless on the other, White’s article begins a process of unsettling accepted wisdoms and resisting categorical thinking that becomes quite important later in the book.

Carle next turns to historical accounts of the profession’s development from the early 19th century to the present. Some of these essays present essentially

orientation, as, for instance, when I evaluate a piece’s limited explication of a certain point without acknowledging whether the original text had offered more depth.

16. Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?*, 59 TEX. L. REV. 639 (1981), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 18. As I refer to each of the pieces in this anthology, I shall cite to its original source and thereafter refer to it in its form and location within Carle’s book.

17. TERENCE C. HALLIDAY, *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment*, in *BEYOND MONOPOLY: LAWYERS, STATE CRISES, AND PROFESSIONAL EMPOWERMENT*, reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 25. I found the Halliday piece to be one of the two least accessible pieces in the collection—not because of a shortcoming in Carle’s editing skill, but because of Halliday’s cramped writing style, at least to my eye. (As we see below, the other similarly challenging essay is the selection by Anthony Alfieri. See *infra* note 159.)

18. *Id.* at 29.

19. David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799 (1992), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 31.

20. Lucie E. White, *Seeking the Faces of Otherness*, 77 CORNELL L. REV. 1499 (1992), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 41 [hereinafter White, *Seeking the Faces of Otherness*]. In this essay White describes and defends “a new field of critical reflection on advocacy and pedagogy—a ‘theoretics of practice,’” *id.* at 43, which, emerging from theories developed by Clifford Geertz and Michel Foucault, establishes the fluidity of power and the possibility of collaboration resistance among those otherwise deemed powerless. White suggests that progressive lawyers may learn a great deal from the theoretics of practice movement about navigating the power relationships between the professional and her clients, and between those clients and the structural institutions affecting their lives.

descriptive history, including pieces by Clay Smith,²¹ Susan Carle,²² and Genna Rae MacNeil²³ about the lawyers and the tactics of the early NAACP. Carle also includes two articles that discuss important Black women lawyers in the early 20th century by Virginia Drachman²⁴ and Kenneth Mack²⁵ and two other articles by Jerold Auerbach²⁶ and Carrie Menkel-Meadow²⁷ which offer a sociological view of the stratification and power imbalances in the profession in the past centuries. Other offerings in this section of the textbook are best labeled as intellectual histories—or glimpses thereof. Four essays address historical understandings of the “republican”²⁸ vision of the role of a lawyer. Russell Pearce argues that early legal ethics writing was quite republican in its ethos,²⁹ while

21. J. Clay Smith Jr., *Emancipation*, in EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944 (1993), reprinted in LAWYERS' ETHICS, *supra* note 8, at 109.

22. Susan D. Carle, *Race, Class, and Legal Ethics in the Early NAACP (1910-1920)*, 20 LAW AND HIST. REV. 97 (2002), reprinted in LAWYERS' ETHICS, *supra* note 8, at 114.

23. Genna Rae MacNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights*, in GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS (1990), reprinted in LAWYERS' ETHICS, *supra* note 8, at 120.

24. Virginia G. Drachman, *The New Woman Lawyer and the Challenge of Gender Equality in Early Twentieth-Century America*, 28 IND. L. REV. 227 (1995), reprinted in LAWYERS' ETHICS, *supra* note 8, at 85.

25. Kenneth W. Mack, *A Social History of Everyday Practice: Sadie T.M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925-1960*, 87 CORNELL L. REV. 1405 (2002), reprinted in LAWYERS' ETHICS, *supra* note 8, at 92.

26. JEROLD S. AUERBACH, *A Stratified Profession*, in UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 40 (1976), reprinted in LAWYERS' ETHICS, *supra* note 8, at 79.

27. Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification, and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621 (1994), reprinted in LAWYERS' ETHICS, *supra* note 8, at 99 [hereinafter Menkel-Meadow, *Culture Clash*].

28. As used in the historical chapters of this book, the phrase “civic republican” tends to correspond to the more contemporary phrase “moral activism,” in connoting a vision of lawyering committed to the virtuous ideals of a community and resistant to individual client claims when those claims portend harm to the larger community. Writers often employ the phrase in that general spirit, although at times with emphases different from those found here. See, e.g., Stephen M. Feldman, *The Persistence of Power and the Struggle for Dialogic Standards in Postmodern Constitutional Jurisprudence: Michelman, Habermas, and Civic Republicanism*, 81 GEO. L.J. 2243, 2249 (1993) (describing a similar notion of civic republican thought as “the potential for virtuous citizens to engage in a political dialogue that generates public values and identifies a common good”); Peter Margulies, *The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education*, 88 NW. U. L. REV. 695, 696-97 (1994) (stressing the importance of narrative in civic republican conceptions and noting “[c]ivic republicanism is a political theory based on popular participation in dialogue about the common good”). Feldman’s description of civic republicanism correlates well with another prominent theme of the Carle book, that of the power of narrative as a source of ethical meaning. Compare Feldman, *supra*, at 2248 (“Dialogic politics . . . generates or produces public values and legal norms: politics, in short, is jurisgenerative.”), with Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991), reprinted in LAWYERS' ETHICS, *supra* note 8, at 295, 304 (“We must actively engage the full breadth and depth of [our clients’] narratives to honestly and effectively further our analysis. What we will come to know as a result of this inquiry will be altered by the contextualized process through which we have come to know it . . . [S]uch a theory-building practice is a distinctly ethical project.”).

29. Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 6 GEO. J. LEGAL ETHICS 242 (1992), reprinted in LAWYERS' ETHICS, *supra* note 8, at 53 [hereinafter Pearce, *Rediscovering the Republican Origins*].

Norman Spaulding is less persuaded.³⁰ Robert Gordon connects the early republican visions of civic virtue to the lawyer elites, whose wealth and power permitted a more independent professional philosophy, one less tied to client self-interest.³¹ And Clyde Spillenger acknowledges a republican strain in the work of Louis Brandeis, but with a more critical eye than one usually encounters in writings about Brandeis.³²

The remaining two “historical” pieces in this section of Carle’s book are landmark writings about the tensions inherent in public interest work. The first, by Derrick Bell, criticizes the ethical choices made by desegregation lawyers in the 1960s and 1970s for their disconnection to client community viewpoints.³³ The second is a classic essay by Gary Bellow and Jeanne Kettleon (now Jeanne Charn) which canvasses ethical frictions that emerged within the poverty law movement of the 1970s.³⁴ These two selections presage later discussions in the textbook about client-centeredness, moral activism, and community lawyering.

The second section of Carle’s textbook is more inclusive than the first. Her label, “Contemporary Critical Approaches,” serves as an umbrella for everything else she wants to include after the historically-focused introduction. Carle explores a number of important critical perspectives under this second heading. She opens with a subchapter that she calls “Clinical Approaches,” by which she means perspectives arising from the experiences of clinical law professors and their developing scholarship.³⁵ The label is of course broadly flexible, as clinicians have been writing about nearly every aspect of lawyering theory and practice over the past 30 years. But the inclusion of these perspectives is a welcome acknowledgement to the always-underappreciated clinical world.

30. Norman W. Spaulding, *The Myth of Civic Republicanism: Interrogating the Ideology of Antebellum Legal Ethics*, 71 *FORDHAM L. REV.* 1397 (2003), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 61.

31. Robert W. Gordon, *The Independence of Lawyers*, 68 *B.U. L. REV.* 1 (1988), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 66 [hereinafter Gordon, *Independence of Lawyers*].

32. Clyde Spillenger, *Elusive Advocate: Reconsidering Brandeis as People’s Lawyer*, 105 *YALE L.J.* 1445 (1996), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 72. Commentators frequently cite Brandeis favorably for his early championing of a more socially responsible lawyering ethic. See, e.g., LUBAN, *supra* note 7, at 237-38 (praising the “Brandeisian vision of moral activism”); John S. Dzienkowski, *Lawyers as Intermediaries: The Representation of Multiple Clients in the Modern Legal Profession*, 1992 *U. ILL. L. REV.* 741, 744; David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 *VAND. L. REV.* 717, 720-35 (1988); Thomas L. Shaffer, *The Legal Ethics of Radical Individualism*, 65 *TEX. L. REV.* 963, 980 (1987); William H. Simon, *Babbitt v. Brandeis: The Decline of the Professional Ideal*, 37 *STAN. L. REV.* 565, 565-66 (1985).

33. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 128.

34. Gary Bellow & Jeanne Kettleon, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 *B.U. L. REV.* 337 (1978), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 136. The Bellow and Kettleon article is an important contribution and easily warrants inclusion in Carle’s collection, but its placement within the “historical” chapter seems odd. While the article was written many years ago (close to thirty years as I write), it neither describes a historical development nor captures the profession at a particular moment in time. Indeed (and this may be a sobering realization), the issues raised so elegantly by Gary Bellow and Jeanne Charn in 1978 remain just as relevant today and have not been resolved to anyone’s satisfaction.

35. *LAWYERS’ ETHICS*, *supra* note 8, at 145.

Carle presents two such clinical approaches in this subchapter. The first, which Carle calls “client-centered/collaborative lawyering,” includes excerpts from four well-known articles, each offering a general embrace and constructive critique of the client-centeredness model of lawyer-client interaction.³⁶ Robert Dinerstein examines the interpersonal and ethical underpinnings of the deep-rooted client-centered stance.³⁷ Lucy White³⁸ and Binny Miller³⁹ each use affecting client stories to test the practice of collaboration. In the final excerpt, Michelle Jacobs criticizes the neutral, autonomy-focused qualities of client-centered counseling for marginalizing clients of color.⁴⁰ Collaborating *with* clients, rather than lawyering *for* clients, is an important characteristic of progressive clinical scholarship, and these four pioneering pieces afford students a few important glimpses into the unsettling challenges of such a seemingly simple prescription.⁴¹

The second clinical approach explored in Carle’s book represents a strand of scholarship that may be in tension with the “client-centered/collaborative” model. Carle calls this approach “community/rebellious lawyering,”⁴² and, as its name implies, its adherents resist much of the client-centeredness model of lawyering which, they argue, places too much emphasis on the individual client. The book includes three excerpts here, starting with a chapter from Gerald López’s pioneering work, *The Rebellious Idea of Lawyering Against Subordination*, which established “rebellious lawyering” within the lexicon of the critical

36. While thoughtful critics have continued to refine its understandings, the central premise of client-centeredness—that lawyers ought to respect the ultimate choices of their clients, rather than seek to impose their own choices, on questions of legal objectives as well as tactics—has become established doctrine within the academy. See Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 370-71 (2006) (“[T]he client-centered approach remains the predominant model for teaching lawyering skills [I]t is not an exaggeration to say that client-centered representation is one of the most influential doctrines in legal education today.”). Client-centeredness as a model for lawyering work is widely attributed to the pathbreaking work of David Binder and Susan Price. See DAVID BINDER & SUSAN PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

37. Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990), reprinted in *LAWYERS’ ETHICS*, supra note 8, at 151.

38. Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990), reprinted in *LAWYERS’ ETHICS*, supra note 8, at 157 [hereinafter White, *Sunday Shoes*].

39. Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994), reprinted in *LAWYERS’ ETHICS*, supra note 8, at 169.

40. Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997), reprinted in *LAWYERS’ ETHICS*, supra note 8, at 181.

41. I explore this particular topic at greater length in Part III of this Review.

42. *LAWYERS’ ETHICS*, supra note 8, at 187. Carle notes that many scholars in this area understand the terms “collaborative” and “community” lawyering as referring to the same approaches. *Id.*, Introduction, at 5. See, e.g., Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541, 544-45 (2006) (choosing “collaborative” to capture the terms “community,” “mobilization,” and “rebellious”). Carle is correct to separate the labels, though, as the comparison between the White and Miller pieces and the López piece in this book tend to show. See *infra* text accompanying notes 89-148.

scholarship world.⁴³ López distinguishes those good faith, earnest, but ultimately ineffectual *regnant* lawyers who use their considerable skill and dedication to try to achieve legal advances for their disadvantaged clients, from the more creative, community-based *rebellious* lawyers who eschew traditional litigation and legislative advocacy in favor of organized resistance and lay advocacy.⁴⁴ López's piece is followed by two more focused examples of community lawyering, one by Christine Zuni Cruz describing lawyering stories from the Pueblo of Isleta in New Mexico⁴⁵ and the other by Victor M. Hwang telling a tale of organizing and advocacy within the Hmong communities of Northern California.⁴⁶ Whether either of these excerpts in fact presents a truly "rebellious" vision of lawyering is a question that students will want to consider carefully, and one which this Review addresses below.⁴⁷ In addition to offering students concrete examples of alternative visions of working with and for discrete communities, the Cruz and Hwang essays reprise a significant topic for progressive legal practice—one developed in the earlier essay by Michelle Jacobs⁴⁸—namely the role of cross-cultural competence in effective lawyering.⁴⁹

Carle's next chapter—which she labels "Critical Theories" in recognition of the influences of Critical Legal Studies, Critical Race Studies, and the body of work popularly referred to as "LatCrit"⁵⁰ and "FemCrit"⁵¹ studies upon the

43. Gerald P. López, *The Rebellious Idea of Lawyering Against Subordination*, in REBELLIOUS LAWYERING, *supra* note 7, reprinted in LAWYERS' ETHICS, *supra* note 8, at 187.

44. *Id.*

45. Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999), reprinted in LAWYERS' ETHICS, *supra* note 8, at 201.

46. Victor M. Hwang, *The Hmong Campaign for Justice: A Practitioner's Perspective*, 9 ASIAN L.J. 83 (2002), reprinted in LAWYERS' ETHICS, *supra* note 8, at 210.

47. See *infra* text accompanying notes 128-48.

48. Jacobs, *supra* note 40.

49. The Jacobs, Cruz, and Hwang essays in their distinctive ways argue for cultural sensitivity when working with different clients, for the development of cultural competence, and for a healthy wariness of stereotyping and "essentializing" at the same time. (The book's essay by Angela Davis, discussed below (see *infra* text at note 56), addresses essentialism in feminist legal theory, as does Lucy White (see White, *Seeking the Faces of Otherness*, *supra* note 20, at 43).) Carle does not, though, include in her selections any in-depth discussion of how lawyers (or students) manage that balance in their daily client work. For two sources that attempt such practical advice, see Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 99 (2001); Paul R. Tremblay & Carwina Weng, *Multicultural Lawyering: Heuristics and Biases*, in THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (Marjorie A. Silver ed., 2006).

50. See, e.g., Espinoza & Harris, *supra* note 3.

51. See, e.g., Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School."* 38 J. LEGAL EDUC. 61 (1988). For an assessment of the emerging subgroups within Critical Legal Studies, see Jerry L. Anderson, *Law School Enters The Matrix: Teaching Critical Legal Studies*, 54 J. LEGAL EDUC. 201 (2004) ("[T]he [Critical Legal Studies] movement has now fragmented, to a large extent, into various interest groups of 'outsiders'—RaceCrits, LatCrits, QueerCrits, FemCrits, and so on—that in many ways have differentiated or distanced themselves from the core principles of the original CLS theorists.").

development of “subversive,”⁵² cutting edge visions of lawyering practice and ethics—consists of nine essays. Carle chooses two essays from the substantial body of scholarship belonging to the field known as Critical Legal Studies (CLS). While the first, a classic work by Peter Gabel and Paul Harris,⁵⁵ clearly fits within the CLS label, the other, William Simon’s groundbreaking article on ethical discretion in lawyering,⁵⁴ is a less obvious member of the CLS genre.⁵⁵ Carle follows her CLS offerings with three Critical Race Theory pieces by Angela Davis,⁵⁶ Bill Ong Hing,⁵⁷ and Anthony Alfieri.⁵⁸ Each of these articles addresses the connection between race-consciousness and actual lawyering practice.

Carle completes her review of critical theories with four essays labeled “Feminist Theory/Legal Praxis,” despite the fact that all of the critical theory essays, indeed most of the offerings in the book, touch on “legal praxis” themes.

52. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 283.

53. Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369 (1982-83), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 230.

54. William H. Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083 (1988), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 238 [hereinafter Simon, *Ethical Discretion*].

55. While William Simon’s scholarship may comfortably entitle him to membership in the CLS club, *see, e.g.*, Simon, *Dark Secret*, *supra* note 4; William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469 (1984); William H. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487, 551-59 (1980); William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29 (1978); *see also* Duncan Kennedy, *The Limited Equity Coop As A Vehicle For Affordable Housing In A Race And Class Divided Society*, 46 HOW. L.J. 85, 115 (2002) (describing Simon as a “critical legal theorist”), his most famous article may seem to some too allied with mainstream legal values to qualify for CLS status. In *Ethical Discretion in Lawyering*, Simon advocates a “professional duty” and a “substantial responsibility for vindicating substantive merits” in legal disputes. Simon, *Ethical Discretion*, *supra* note 54, at 238, 243. The “justice” championed by Simon is reflected in the substantive legal merits of a dispute, and is not dependent, Simon insists, upon a lawyer’s “moral” assessment of the circumstances. *Id.* at 243-44. Simon’s arguments therefore imply an acquiescence in mainstream legal obligations, in ways different from the common CLS views describing substantive law’s inclination “to legitimize a social order that most people find alienating and inhumane” (Gabel & Harris, *supra* note 53, at 231), and arguing that “the legal system works . . . to shape popular consciousness toward accepting the political legitimacy of the status quo” (*id.*). Scholars have critiqued that quality of Simon’s jurisprudence, which relies significantly on the philosophy of Ronald Dworkin. *See* David Luban, *Reason and Passion in Legal Ethics*, 51 STAN. L. REV. 873, 901 (1999) (believing Simon might have “too much faith in law”); Robin West, *The Zealous Advocacy of Justice in a Less Than Ideal Legal World*, 51 STAN. L. REV. 973, 984 (1999) (“Do we really want lawyers, as professionals, to identify the demands of justice with even an idealized, deep-digging interpretation of extant law? Is our law really that good?”).

Simon does expressly credit his “ethical discretion” ideas not just to Dworkin’s influence, but also to the arguments developed by the CLS scholars. *See* Simon, *Ethical Discretion*, *supra* note 54, at 247. Bradley Wendel acknowledges Simon’s crediting of CLS but finds it inconsistent with Simon’s Dworkinian faith in law’s determinate nature. W. Bradley Wendel, *Institutional and Individual Justification in Legal Ethics: The Problem of Client Selection*, 34 HOFSTRA L. REV. 987, 1028 (2006) [hereinafter Wendel, *Client Selection*].

56. Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 FORDHAM L. REV. 13 (1998), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 245.

57. Bill Ong Hing, *In the Interest of Racial Harmony: Revisiting the Lawyer’s Duty to Work for the Common Good*, 47 STAN. L. REV. 901 (1995), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 258.

58. Anthony V. Alfieri, *(Er)race-ing an Ethic of Justice*, 51 STAN. L. REV. 935 (1999), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 265 [hereinafter Alfieri, *Ethic of Justice*].

Her selection of feminist theory essays includes an excerpt from Carrie Menkel-Meadow⁵⁹ on feminism and the developing an “ethic of care” in lawyering (contrasted with a more traditional “ethic of justice”), Angela Harris’s deliberation on how gender essentialism risks silencing the voices of black women,⁶⁰ Lani Guinier’s review of her empirical study of women’s experiences with traditional law school training,⁶¹ and Phyllis Goldfarb’s elegant linking of feminist jurisprudence with the contextual ethical stance emerging from clinical education experiences.⁶²

The Critical Theories chapter teases the reader with an assortment of subversive ideas—or, ideas that at least seem subversive relative to conventional professional responsibility teachings. The authors included in this chapter illuminate the importance of contextual, rather than categorical, thinking. They rebel at the notion that there are simple right answers to the problems faced by lawyers and at the idea that there are universal rules for lawyers to learn and follow. Each demands frank attention to the effects of power, race, sex, and class in lawyering, but the authors refuse, for the most part, to suggest or define rigid protocols to which lawyers ought to adhere in their practice,⁶³ a not surprising conclusion given their resistance to categorical approaches to the fluid and often messy world of practice. These authors, like others featured in the book, intimate a deep skepticism about traditional zealous advocacy roles for lawyers out of a concern either for the lawyers’ clients—who may prefer or prosper under an alternative, less adversarial stance—or for those third parties on the receiving end of adversarial tactics, notwithstanding the clients’ preferences. They also imply an approach to moral truth which favors dialogue and care over a hierarchy of rules and principles.⁶⁴

Carle follows these critical theory selections, which make up the most substantial segment of the book, with three shorter chapters that veer away from the critical. Instead, these chapters offer insights about lawyering practice from important contemporary perspectives. The title of Chapter 6, “Legal Ethics

59. Menkel-Meadow, *Portia Redux*, *supra* note 12, at 274.

60. Harris, *supra* note 52, at 283.

61. Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1 (1998), reprinted in *LAWYERS’ ETHICS*, *supra* note 8, at 289.

62. Goldfarb, *supra* note 28, at 295.

63. The exception might be Angela Davis and Bill Ong Hing, two writers considered Critical Race Theorists, each of whom proposes new rules for lawyers requiring explicit attention to race in certain lawyering settings. See Davis, *supra* note 56, at 246 (proposing “the use of racial impact studies in prosecution offices to advance the responsible, nondiscriminatory exercise of prosecutorial discretion”); Hing, *supra* note 57, at 261-62 (proposing “a specific set of rules and guidelines that lawyers would be obligated to follow in cases involving, or potentially involving, racial and ethnic tension,” including requiring alternative dispute resolution in cases where the parties “are of different racial or ethnic groups”).

64. Carol Gilligan’s work, not surprisingly, is an important, but critically appraised, influence within this book. See CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (1982), referred to in Menkel-Meadow, *Portia Redux*, *supra* note 12, at 274; Goldfarb, *supra* note 28, at 297.

Exploration through Literature, Myth, and Popular Culture,” is a rather ambitious heading for two pieces. The first of these is Paul Bergman’s entertaining frolic through classic films about redemptive legal practice,⁶⁵ the second is an important article by Rob Atkinson that connects Kazuo Ishiguro’s *The Remains of the Day*⁶⁶ (the book, not the movie) to themes emanating from the moral activism debate percolating within various strains of legal ethics literature.⁶⁷ Neither of these essays specifically addresses the interplay between popular culture’s visions of lawyers and the roles that lawyers adopt in their working lives—although Bergman’s piece comes close.⁶⁸ Instead, these pieces serve to connect themes that appear elsewhere in Carle’s book—including client-centeredness, moral activism, and justice—to the stories encountered in the films and literature explored by Bergman and Atkinson.

Chapter 7 confronts a topic that is increasingly debated within the legal ethics community: the role of religious commitment on the proper functioning of a good lawyer. In this chapter, entitled “Legal Ethics and Religious Commitment,” Carle presents three essays by Stephen Carter,⁶⁹ Russell Pearce,⁷⁰ and Thomas Shaffer.⁷¹ The essays she has chosen are interesting, readable, and provocative. Each addresses an important question about good lawyering, but none grapples directly with what seems to be a most important question within this realm: whether *religious* values are in some way independent of, or add to, the *moral* values attendant to the lawyering questions explored in each essay.⁷² It is also noteworthy, although perhaps not unexpected given the book’s commitment to social justice from a progressive perspective, that Carle has included three essays from the left of the political spectrum, and none from the right, whose views would have the potential and propensity to use religious commitment to develop

65. Paul Bergman, *The Movie Lawyers’ Guide to Redemptive Legal Practice*, 48 UCLA L. REV. 1393 (2001), reprinted in LAWYERS’ ETHICS, *supra* note 8, at 309.

66. KAZUO ISHIGURO, *THE REMAINS OF THE DAY* (1990).

67. Rob Atkinson, *How the Butler Was Made to Do It: The Perverted Professionalism of THE REMAINS OF THE DAY*, 105 YALE L.J. 177 (1995), reprinted in LAWYERS’ ETHICS, *supra* note 8, at 317.

68. Carle cites to some articles offering that perspective in her Appendix, for students’ further reading on this topic. See Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527 (1986); Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes and Political Discourse*, 66 U. CIN. L. REV. 805 (1998); Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Character and Acts*, 48 UCLA L. REV. 1305 (2001).

69. Stephen Carter, *Panel Discussion: Does Religious Faith Interfere with a Lawyer’s Work?*, 26 FORDHAM URB. L.J. 985 (1999), reprinted in LAWYERS’ ETHICS, *supra* note 8, at 329.

70. Russell G. Pearce, *The Jewish Lawyer’s Question*, 27 TEX. TECH. L. REV. 1259 (1996), reprinted in LAWYERS’ ETHICS, *supra* note 8, at 339 [hereinafter Pearce, *Jewish Lawyer’s Question*].

71. Thomas L. Shaffer, *Should a Christian Lawyer Serve the Guilty?*, 23 GA. L. REV. 1201 (1989), reprinted in LAWYERS’ ETHICS, *supra* note 8, at 343.

72. For an insightful article touching on the relationship between Jesuit training and teaching good lawyering, see Gregory A. Kalscheur, *Law School as a Culture of Conversation: Re-Imagining Legal Education as a Process of Conversion to the Demands of Authentic Conversation*, 28 LOY. U. CHI. L.J. 333, 366-70 (1996).

some very different conceptions of good lawyering.⁷³

The book's final chapter joins the ongoing debate about legal ethics and the posture of lawyers working for powerful corporate interests. Entitled "Future Challenges: Corporate Power and Lawyers' Counseling Role," Chapter 8 includes two essays about Enron authored by two of the leading lights in the academy, David Luban and Robert Gordon. Luban's essay⁷⁴ revisits some of the arguments about moral responsibility that he first developed more than twenty years ago, but within the framework of the sobering practical experience of the corporate scandals of the past decade, all of which involved lawyers in central ways. Luban persists in his defense of activism, of course, but he recognizes that powerful institutional and psychological forces operate to undercut its practical usefulness.⁷⁵ In the other essay, Gordon⁷⁶ meditates on the special fiduciary role of corporate counsel and offers a bold suggestion, which he fears may be an "idle dream."⁷⁷ Gordon envisions "a separate professional role for a distinct type of lawyer, the Independent Counselor, with a distinct ethical orientation, institutionalized in a distinct governance regime" of particularized duties, rules and court practices.⁷⁸ This Review will discuss both Luban's and Gordon's arguments below in more detail when it considers the activist messages presented by Carle's textbook.⁷⁹

With this varied and eclectic mix of 40 essays by 38 scholars, Carle offers her readers important but unsettling glimpses into most of the topics that a sustained focus on the progressive pursuit of justice requires. None of her topics are developed in great depth in the book, however, and Carle no doubt accepts that necessary limitation. In the end, her book is a manageable read, and the essays are edited down to accessible, though still challenging, excerpts. Because any one of the essays excerpted in the book could serve as the source of serious, sustained deliberation and examination, 40 such articles would result in an unwieldy,

73. See, e.g., John J. Fitzgerald, *Today's Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity?*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 245, 245 (2001) ("the Catholic law schools that train future lawyers have a fundamental responsibility to take up Christ's call so that they may in turn inculcate a sense of Christian mission in their students"). Fitzgerald opposes Catholic law schools' teaching in support of "contraception, the morality of homosexual acts, and the ordination of women." *Id.* at 253-54; see also David L. Gregory, *The Bishop's Role in the Catholic Law School*, 11 REGENT U. L. REV. 23, 27 (1998-1999) (suggesting "that resolute proponents of capital punishment or abortion—the secular champions of the culture of death—[should] no longer be allowed a platform for such gravely immoral activities directly within the Catholic law school").

74. Luban, *supra* note 9.

75. *Id.* at 365-68. For an understanding of Luban's earlier defense of the activist conception, see LUBAN, *supra* note 7; David Luban, *Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann*, 90 COLUM. L. REV. 1004 (1990).

76. Robert W. Gordon, *A New Role for Lawyers?: The Corporate Counselor After Enron*, 35 CONN. L. REV. 1185 (2003), reprinted in LAWYERS' ETHICS, *supra* note 8, at 371 [hereinafter Gordon, *Corporate Counselor*].

77. *Id.* at 383.

78. *Id.* at 381.

79. See *infra* text accompanying notes 149-60.

excessively dense book. The risks Carle assumed in offering abridged versions of the essays were therefore worthwhile. At the same time, as Part III of this Review describes, students using Carle's textbook will no doubt benefit from having a teacher or discussion leader who can mine the numerous insights and cross-current themes that emerge through the excerpts and, by helping students make connections between these themes, support the students' development of a deeper appreciation for the subtle and sophisticated arguments presented in each work. Focusing on three of the more prominent themes that emerge in Carle's book, the next Part of this Review will now try to make some of those connections.

No reader can finish a book like this without wishing that his favorite topic received more attention, and I am no exception. I would have liked greater attention to the challenges about the effective delivery of legal services to those who cannot afford to pay for them—a “pursuit of social justice” theme if there ever was one. The Bellow and Kettleson essay⁸⁰ hints at the extent of the access to justice problems, but does little more than that, and while some of the rebellious lawyering essays suggest deprofessionalization as one way to reduce the need for lawyers' services, none explores this idea in depth. In that same vein, readers encounter nothing here about the professional ethical struggles that surround lay advocacy,⁸¹ or proposals for “unbundled” legal practices⁸² and other cutting edge devices to assist pro se litigants,⁸³ or the ethics of triage within public interest and legal services practice.⁸⁴ The book also offers very little inquiry into the recent transformation of the large law firm and the emergence of an “eat what you kill” ethos within large, high-status legal practice settings.⁸⁵

80. Bellow & Kettleson, *supra* note 34.

81. *See, e.g.*, RHODE, *supra* note 7.

82. *See, e.g.*, Mary Helen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 *FORDHAM L. REV.* 2617 (1999); Mary Helen McNeal, *Redefining Attorney-Client Roles: Unbundling and Moderate-Income Elderly Clients*, 32 *WAKE FOREST L. REV.* 295 (1997); Robert Bickel, Note, *Limited Legal Services: Is It Worth It?*, 39 *COLUM. J.L. & SOC. PROBS.* 331 (2006).

83. *See, e.g.*, Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 *FORDHAM L. REV.* 1987 (1999); Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 *CAL. L. REV.* 79 (1997).

84. The several discussions of the ethical stance involved in “impact lawyering” in the readings come close to the questions of triage, but they do not deal with the question, noted in passing by Bellow and Kettleson, of how lawyers who have too many clients might properly and ethically choose among them. *See* Bellow & Kettleson, *supra* note 34, at 137. For a discussion of the ethics of triage, see Martha Minow, *Lawyering for Human Dignity*, 11 *AM. U. J. GENDER SOC. POL'Y & L.* 143, 148-61 (2002); Paul R. Tremblay, *Acting “A Very Moral Type of God”: Triage Among Poor Clients*, 67 *FORDHAM L. REV.* 2475 (1999) [hereinafter Tremblay, *Triage Among Poor Clients*]; Wendel, *Client Selection*, *supra* note 55, at 1030-32.

85. Some references to that phenomenon appear in Menkel-Meadow, *Culture Clash*, *supra* note 27, at 102, and implicitly in Luban, *supra* note 9, at 361-62. For some careful exploration of the emerging patterns within modern law firm culture, see MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991); MILTON C. REGAN, JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* (2004).

Carle has reported that space limitations required her to cut some of those very topics;⁸⁶ a future edition may allow her the opportunity to address them.

III. THREE RECURRENT THEMES

This Part of the Review assesses what significant themes students might ultimately appreciate from Carle's textbook. Part II offered a flavor of the disparate points of view that are presented in the book. However, that Part simply introduced these points of view without elaborating further. These disparate points of view thus deserve more elaborate consideration. As noted above, there is simply too much material and too many complex and sophisticated arguments covered in the textbook for most readers to come away from it satisfied. A thorough reading of each essay will no doubt provide insight, but also raise important questions, and even cause the reader hesitations, doubts, and disagreements. Each piece is by necessity incomplete: each provokes, but does not resolve.⁸⁷

Three themes surface often enough in the book to warrant deeper examination. This examination will ideally enable me to tease out the strands of meaning that accumulate slowly over the course of the book. The three themes explored here are client-centeredness, rebellious/community lawyering, and moral activism.⁸⁸ This Part will consider how those themes are presented through Carle's selections, and examine whether readers who might otherwise be new to those themes are likely to leave the text with an adequate understanding of the themes' nuances.

A. CLIENT-CENTERED LAWYERING

In compiling a textbook on legal ethics and the pursuit of social justice, Carle cannot avoid confronting some delicate questions about what it means for lawyers to practice in a client-centered way. Her book apports considerable

86. *LAWYERS' ETHICS*, *supra* note 8, at 7-8 (sharing in the Introduction her publishers' space restrictions and her need, regretfully, to eliminate readings on invidious discrimination, mandatory pro bono, and unauthorized practice restrictions).

87. This is a theme developed by Robert Gordon in his Foreword to the Carle book. See Robert W. Gordon, *Foreword to LAWYERS' ETHICS*, *supra* note 8, at xiii-xvi [hereinafter Gordon, *Foreword*].

88. The three areas I chose to discuss are not the only ones I could have identified, although they are perhaps the most prominent over the course of Carle's book. Another prevalent perspective in the book is one of the contingency and fluidity of power, a message developed here with homage to the teachings of, among others, Michel Foucault and Audre Lorde. See, e.g., *LAWYERS' ETHICS*, *supra* note 8, at 2; Goldfarb, *supra* note 28, at 304; Harris, *supra* note 52, at 285; López, *supra* note 43, at 198; Mack, *supra* note 25, at 97 (quoting Audre Lorde: "Can the master's tools dismantle the master's house?"); White, *Seeking the Faces of Otherness*, *supra* note 20, at 42; White, *Sunday Shoes*, *supra* note 38, at 166. Carle's book also evidences a less prominent but still frequent questioning of the propriety of lawyers violating some rules in the interests of some greater, justice-driven good. See *LAWYERS' ETHICS*, *supra* note 8, at 149; Bell, *supra* note 33, at 130; Gabel & Harris, *supra* note 53, at 234; Hwang, *supra* note 46, at 222; Menkel-Meadow, *Portia Redux*, *supra* note 12, at 280.

space to this issue, which was a sensible decision. Although Carle includes a sub-chapter labeled “Client-Centered/Collaborative Lawyering,”⁸⁹ client-centeredness ideas show up in many other parts of the book as well. The book’s message is decidedly ambivalent about this model of lawyering, and for generally wise and good reasons.

Let us begin with a brief précis about this lawyering orientation, the acceptance of which is soundly established within clinical teaching and lawyering scholarship.⁹⁰ In its crude formulation, client-centeredness rests on simple truths about the agency, and moral, relationship between a lawyer and her client.⁹¹ As Mark Spiegel pointed out many years ago, it is incoherent to look for meaningful distinctions between substance and procedure in lawyering work.⁹² The traditional liberal notion that clients choose the ends in their legal relationships, and lawyers choose the means, is unsustainable.⁹³ As first crafted by David Binder and Susan Price, the client-centered model rejected that traditional formulation and allocated essentially *all* lawyering decisions to clients, except those which are purely functionary and logistical.⁹⁴ That conception makes good sense, at least until several problematic nuances arise. For example, lawyers are agents and clients principals. Principals hire the agents and direct their work. Therefore, according to the nature of their agency relationship, lawyers can never know clients’ preferences and wishes as well as clients themselves do.⁹⁵

Carle’s essays do not develop fully the primitive model of client-centeredness just described.⁹⁶ And although students using this text in a clinical program will almost assuredly have encountered that rudimentary formulation, those studying it in a professional responsibility course may not have done so. What readers of Carle’s book will discover, instead, are several questions that critical scholars pose about the apparently sensible client-centeredness orientation.

89. LAWYERS’ ETHICS, *supra* note 8, at 145 (including the essays by Dinerstein, *supra* note 37; Jacobs, *supra* note 40; Miller, *supra* note 39; and White, *Sunday Shoes*, *supra* note 38).

90. See Dinerstein, *supra* note 37, at 152; Jacobs, *supra* note 40, at 181; Kruse, *supra* note 36, at 370-71.

91. See Mark Spiegel, *Lawyering and Client Decisionmaking: Informed Consent and the Legal Profession*, 128 U. PA. L. REV. 41, 67 (1979). Client-centeredness emerges from traditional agency conceptions because, as an agent for her principal, a lawyer owes a fiduciary duty to follow the principal’s wishes. See RESTATEMENT (SECOND) AGENCY § 385 (1958); James Cohen, *Lawyer Role, Agency Law and the Characterization “Officer of the Court,”* 48 BUFF. L. REV. 349, 403 (2000). It also emerges from the moral commitment to the client’s right to autonomy and to be free from unwanted paternalism. See Kruse, *supra* note 36, at 400.

92. Spiegel, *supra* note 91, at 71-72.

93. Dinerstein points out that this false distinction survives in the rules about allocation of decisionmaking. Dinerstein, *supra* note 37, at 155-56; see MODEL RULES R. 1.4.

94. BINDER & PRICE, *supra* note 36. David Binder and Susan Price have refined their ideas in two later editions of that classic text. See DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991); DAVID BINDER, PAUL BERGMAN, SUSAN PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004).

95. See Kruse, *supra* note 36, at 378 (summarizing that position).

96. See Dinerstein, *supra* note 37, at 152-53.

As previously indicated, the essays in this book collectively underscore the significance of context, contingency, and skepticism in lawyering and in relationships.⁹⁷ That theme is quite apparent in the book's treatment of client-centeredness. Robert Dinerstein, in the excerpt Carle includes in her book, highlights at least two important doubts about a straightforward, non-contextual vision of client-centeredness. The early commitment to client-centeredness emerged from progressive criticism of the traditional lawyer-dominated model of client counseling, an approach that withheld from clients a respectful equality and a share of power in the relationship.⁹⁸ But, as Dinerstein reminds us, the commitment to client-centeredness for lawyers working with powerful clients translates easily into a "hired gun" paradigm which amplifies power to those interests "so powerful as not to need further empowerment."⁹⁹ He hints that lawyers ought to *withhold* client-centeredness from powerful clients, who have less need for autonomy and who—the argument implies—will use any autonomy to further injustice.¹⁰⁰ Dinerstein does not demonstrate in this brief excerpt how lawyers might accomplish that feat, and indeed the suggestion seems rather visionary. But his suggestion alludes to a second, related criticism of client-centeredness, a critique that will tie into a later theme of Carle's book that this Review will next examine: that of moral activism.

Client-centeredness serves as a vehicle to enhance a client's autonomy—the right of the client to control her life and her affairs. However, that reality can trigger important moral questions when clients opt to use their lawyers' services for unjust ends. Any defense of client-centeredness must craft a distinction between respect for a client's *preferences* (which are idiosyncratic to the client) and respect for the client's *moral choices* (which are decidedly not, unless one accepts a purely relativist outlook). Dinerstein perceives this concern, but does not elaborate on it in the excerpt provided by Carle in the book. In the excerpt, Dinerstein does imply that lawyers ought to be humble in their moral assessment of client choices, lest lawyers "impos[e] their values" on their clients.¹⁰¹ This argument invites, but does not receive in the book, a spirited rejoinder.¹⁰²

97. See *supra* text accompanying notes 63-64.

98. See Kruse, *supra* note 36, at 375; Spiegel, *supra* note 91, at 49-72.

99. Dinerstein, *supra* note 37, at 154.

100. *Id.*

101. *Id.* at 156.

102. Dinerstein's resistance to lawyers' imposition of values on clients materializes in his criticism of William Simon's *Ethical Discretion in Lawyering*. See *id.* at 156 (citing Simon, *Ethical Discretion*, *supra* note 54. His criticism as it appears here is not fully persuasive, however. Dinerstein worries about Simon's lawyers' "denying [clients] the opportunity at least to seek vindication of hypothetically legal interests." Dinerstein, *supra* note 37, at 156. If by "hypothetically" Dinerstein means "unmeritorious," then Simon indeed would suggest such a denial, but for good reason. If by "hypothetically" Dinerstein means "possibly justified," then he mischaracterizes Simon's position, which calls for the exercise of ethical discretion only when, in the lawyer's judgment, the lack of legal merit is clear. See Simon, *Ethical Discretion*, *supra* note 54, at 239-40. Simon also does not argue that lawyers should "impose" any "values" on clients, although he does argue that lawyers must

In addition to highlighting worries about the client-centered approach's propensity to support powerful interests and to sustain immoral enterprises, Carle's book exposes its readers to the cultural imperialism that some client-centered literature invokes. Michele Jacobs warns about that danger:

The irony of the [client-centered] models is that they were constructed to return the client to the centrality of the lawyer's work. Yet, even with the best of intentions, lawyers most concerned with preserving the autonomy of client decision-making have, *by adopting the "client-centered" model* of counseling, continued to place the client, especially the client of color, out at the margin.¹⁰³

Jacobs's excerpt presents a critical, but seemingly misleading, message for its readers. Her essay demonstrates elegantly, even in its abridged version, how race-neutral models for interviewing and counseling are apt to disappoint and to marginalize clients of color. More puzzling, however, is her argument that *by adopting client-centered models* lawyers contribute to that wrongdoing.¹⁰⁴ Is Jacobs suggesting that lawyers ought to reject client-centered approaches, in favor of a more paternalistic stance, in order to lawyer more effectively across cultures? That cannot be, and in fact is not, her argument. However, the segment quoted above, which is central in the excerpt provided by Carle, tends to mischaracterize her message.

Jacobs's disagreement is not so much with the baseline idea of client-centeredness, or with its premise that lawyers ought to respect the preferences of their clients. Indeed, the thrust of her argument advocates more respect for, and greater efforts to understand, what the client holds dear, especially (but not exclusively) when the lawyer and the client are from different cultures.¹⁰⁵ Jacobs's objections surface not from the commitment to respecting client values, but from the "neutral skills"¹⁰⁶ training that early editions of the most prominent interviewing and counseling texts seemed to advocate.¹⁰⁷ Those books might have been read to assume that clients are largely fungible. Jacobs persuades her

share the value of respect for the legal merits of a dispute. *See id.* at 244 (resisting what Simon calls "the specious law-versus-morality characterization" of moral activism).

103. Jacobs, *supra* note 40, at 181 (emphasis added).

104. *Id.*

105. *Id.* at 184.

106. *Id.* at 182.

107. In her original article, Jacobs reviewed the messages, implicit and explicit, of two leading interviewing and counseling textbooks at that time. *See Jacobs, supra* note 40, at 353-61 (reviewing BINDER, BERGMAN & PRICE, *supra* note 94, and ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* (1990)). No doubt in response to reviews like Jacobs's, later skills texts have attempted to address the question of cross-cultural lawyer-client interactions. *See, e.g.*, BINDER, BERGMAN, PRICE & TREMBLAY, *supra* note 94, at 34-38, 287, 395; JOHN M.A. DIPPIA, ROBERT F. COCHRAN & MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* (2d ed. 2006); STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS* 49-57 (2d ed. 2003).

readers they assuredly are not, and that dimensions of class, race, gender, and ethnicity influence the attorney-client conversation in important ways.

Jacobs's homage to cultural competence as a critical lawyering skill supports, rather than undercuts, the central client-centeredness commitments, as long as those commitments include a robust and contextual understanding of the client and her community. The theme of cross-cultural awareness appears frequently throughout Carle's book. The essay by Christine Zuni Cruz¹⁰⁸ emphasizes her special connections to her Pueblo community and its traditions and sources of meaning. The excerpts from Lani Guinier,¹⁰⁹ Angela Harris,¹¹⁰ Bill Ong Hing,¹¹¹ Victor Hwang,¹¹² Phyllis Goldfarb,¹¹³ and Rob Atkinson¹¹⁴ each reflect, albeit in different ways, the importance of attending to race, ethnicity, gender, culture, and class in the development of effective lawyering theory.

One last client-centeredness complication presented by Carle's book deserves some attention. The selections presented in the book when read together highlight the contrast between crude notions of client-centered lawyering and more thoughtful conceptions of lawyering strategy and argument, as developed in the essays by Lucie White and Binny Miller. As they relate to strategic decisionmaking, the crude formulations look something like this: lawyers best understand the risks and implications arising from lawyering alternatives, but responsibility for selecting among those alternatives must rest with the client who best understands his risk-aversion, preferences, "values," and the like. The lawyer's assigned undertaking is to describe, neutrally (lest she unnecessarily influence the client), the terrain, the alternatives, and the likely consequences of the representation, and to assist the client to make choices based on the client's personal predilections. The lawyer's job therefore includes "the identification and assessment of alternatives and consequences, and assist[ing] client[s] in making decisions based on [the clients'] unique priorities, values and objectives."¹¹⁵ Absent some morally unacceptable ambitions by the client, each actor in this relationship has a clearly defined, and separate, role to play.

Lucie White and Binny Miller, adherents of a "collaborative" model of lawyering, complicate this elegant if sterile role-assignment scheme. They complicate the role designations in a way characteristic of so many essays in Carle's book—by introducing the contexts and contingencies of class, race, culture, sexual orientation, and power dynamics, reflected in the client's (and his

108. Cruz, *supra* note 45.

109. Guinier, *supra* note 61.

110. Harris, *supra* note 52.

111. Hing, *supra* note 57.

112. Hwang, *supra* note 46.

113. Goldfarb, *supra* note 28.

114. Atkinson, *supra* note 67, at 326.

115. Laura Cohen & Randi Mandelbaum, *Kids Will Be Kids: Creating a Framework for Interviewing and Counseling Adolescent Clients*, TEMP. L. REV. (forthcoming 2006).

or her community's) narrative. Carle offers us Lucie White's evocative story of the welfare fraud hearing for Mrs. G., a black mother of five children,¹¹⁶ and Binny Miller's compelling account of her students' representation of Jay, a black (and gay?) man charged with the crime of resisting arrest after a shoplifting allegation.¹¹⁷ Both narratives engender conflicting notions of lawyering and client autonomy that may perplex student readers.

The White and Miller excerpts demolish the neat role distinctions just described. Lucy White's essay depicts a true encounter in which she, as a legal services lawyer, and Mrs. G, as White's client, prepared for and attended a welfare hearing. The essay illustrates the limits of sensitive, client-focused advocacy. Despite her lawyer's creative and thoughtful legal strategies, Mrs. G. defied the dictates of her role as "client," and supplied her own theory of the case at the hearing. One of White's claims is that, as she writes, "Mrs. G. was a better strategist than the lawyer—more daring, more subtle, more fluent—in her home terrain."¹¹⁸ White's narrative extols collaborative lawyering, but also unsettles any simplified visions of that alliance. Particularly interesting is White's message that collaborative lawyering may serve both the end of client empowerment and the goal of effective legal advocacy.¹¹⁹

Miller's story is similarly ambiguous and disquieting for adherents of a simplified client-centeredness approach. Miller "urge[s] lawyers to set aside their own stories in favor of client stories,"¹²⁰ and to "incorporat[e] client narratives in litigation,"¹²¹ especially into what clinical teachers describe as developing a persuasive theory of the case.¹²² In assessing her client's case, Miller offers insightful reflections about how her students' understanding of the role of race,

116. White, *Sunday Shoes*, *supra* note 38, at 157.

117. Miller, *supra* note 39, at 169.

118. White, *Sunday Shoes*, *supra* note 38, at 167.

119. White's story and analysis are ambiguous about a seemingly important instrumental consideration. White recounts that Mrs. G. flaunted White's careful if conventional strategic planning in favor of her own tactics, and, as noted in the text, White admires Mrs. G.'s nimble read of the terrain. White also reports that Mrs. G. ultimately won her hearing in the end (after losing before the official who presided at the hearing). An implication from the *Sunday Shoes* story is that a collaborative lawyer will respect her client's choices *and* win more cases as a result. It is not hard to imagine a dissenting argument—that the collaborative approach instead offers a poignant trade-off between those two goals. The lawyer may be instrumentally better trained to manipulate mainstream legal processes, but her technical training may lead her to misrepresent her client's life and diminish the client's power in the process. I developed that point in an earlier article. See Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. Rev. 123, 126-27, 129 (1992).

120. Miller, *supra* note 39, at 169.

121. *Id.* at 170.

122. Traditional clinical training has emphasized the importance of developing a "theory of the case" around which to organize strategic planning. See, e.g., GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* 273-429 (1978); John B. Mitchell, *Narrative and Client-Centered Representation: What Is a True Believer to Do When His Two Favorite Theories Collide?*, 6 CLINICAL L. REV. 85, 105-06 (1999); Albert J. Moore, *Inferential Streams: The Articulation and Illustration of the Trial Advocate's Evidentiary Intuitions*, 34 UCLA L. REV. 611 (1987). Miller makes clear her goal of developing effective *lawyering* theory, one that does not lose sight of the trier of fact:

and perhaps of sexual orientation, in the client's story can make the litigation arguments much more persuasive, while acknowledging that her client had chosen not to present that particular case theory. While urging lawyer reticence toward imposing narratives on clients and constructing litigation themes for them, Miller implies that her client might have benefited from the insights that she and her students had developed about his case.¹²³ Although White's essay suggests the prospect that clients' strategic choices might be more effective as litigation devices than their lawyers' ideas (a contention which law students paying \$40,000 per year for three years of training will surely resist), Miller's essay appears more conflicted on that score.

Like White's earlier piece in Carle's book,¹²⁴ and the essays by Mack,¹²⁵ Harris,¹²⁶ and Goldfarb,¹²⁷ the Mrs. G. and Jay stories evoke the interplay of race, class, gender, sexual orientation, and oppression on ordinary lawyering theories and teachings. While championing the role of client narrative in everyday legal case development, these excerpts provoke important questions about the instrumental implications of doing so. The simplified teachings of the crude client-centeredness models may be easier for students to learn, but the lessons from the essays by White and Miller strike me as more genuine.

B. REBELLIOUS/COMMUNITY LAWYERING

A second cross-current running throughout Carle's book is that of "rebellious," or community, lawyering. Students of legal ethics in a conventional classroom setting are unlikely to encounter the conception of community lawyering because it is a developing (and contested) theory not closely connected to typical private law firm practice.¹²⁸ Even students learning legal ethics within clinical programs

My aim is to articulate a theory of case theory that is truer to the client's life experience and to what it is that lawyers actually do. By defining case theory as an explanatory statement linking the case to the client's experience of the world, we create a context for seeing what we might not otherwise see Case theory makes actions seem quite reasonable that at first seemed unreasonable, and it allows us to accept the client's story and at the same time have a plausible explanation for other stories.

Miller, *supra* note 39, at 176. Miller's assertions may depart from White's claims about the instrumental effectiveness of the collaboration. See *supra* note 20.

123. Miller, *supra* note 39, at 177 ("Why did [Jay] tell a story at the trial that avoided the question of race? If we had discussed these issues, Jay might have been more hopeful about his case or might have better understood the implications of a race theory.")

124. See White, *Seeking the Faces of Otherness*, *supra* note 20, at 44-45.

125. Mack, *supra* note 25, at 97.

126. Harris, *supra* note 52, at 283.

127. Goldfarb, *supra* note 28, at 304-05.

128. Most professional responsibility casebooks do not address this aspect of critical lawyering. One exception is the casebook by Deborah Rhode and David Luban, which addresses these tensions within public interest law and excerpts articles by Shauna Marshall and Stephen Wexler. See DEBORAH L. RHODE & DAVID LUBAN, *LEGAL ETHICS* 846-53, 862-71 (4th ed. 2004) (excerpting Marshall, *supra* note 2, and Wexler, *supra* note 5).

may not confront literature describing the phenomenon.¹²⁹ Carle's book therefore offers students an important introduction to this progressive notion of lawyering.

In conventional conceptions of the lawyer/client interaction, the lawyer serves as a helpful expert who aims to solve a client's problems using the lawyer's hard-earned proficiency in the specialized world of law, regulation, and procedure. Client-centered lawyers use that proficiency in ways directed largely by their clients. Progressive lawyers often operate in that same fashion, but with a goal of protecting civil rights or resisting oppressive state or corporate powers, even if the client is not paying for the legal services. Whether progressive or mainstream, client-centered or lawyer-directed, the interaction looks as one would expect, with a client hiring a lawyer to accomplish some defined goal that is important to the client.

In contrast, the community or rebellious lawyering conception disclaims this ordinary understanding. As introduced most prominently by Gerald López,¹³⁰ but explored by a host of other critical scholars,¹³¹ community lawyering refuses to privilege the individual client as the source of direction for the lawyer or as the one who can alone define the goals of the legal representation. This model also refuses to privilege legal strategy as the product of the working relationship between lawyers and their clients. Rather, community lawyering, as its name implies, urges lawyers to respect the energy and the commitments of community members working together and to collaborate with them for meaningful change, emerging from political and grass-roots movements rather than from clever advocacy efforts by smart lawyers in suits. López calls the well-meaning, instrumental lawyer-driven work produced by progressive lawyers on behalf of disadvantaged clients "regnant lawyering."¹³² In his view, regnant lawyering is certainly good, but rebellious lawyering is a far more effective way for lawyers to work with subordinated populations.¹³³

Carle's book is certainly not a "rebellious" treatise; it does not aim to present community lawyering as the preferred way lawyers ought to practice with disadvantaged communities. The readings Carle presents in this section include many suggestions which could fairly be considered "regnant." But Carle offers her student readers some beginning understandings about this orientation. Her book provides enough of a taste to inspire some healthy curiosity about this model while at the same time, and inevitably, leaving a number of questions unexplored.

129. Only one textbook developed for clinical courses includes any serious exposure to community or rebellious lawyering. See CLINICAL ANTHOLOGY, *supra* note 7.

130. López, *supra* note 43.

131. See, e.g., Anthony Alfieri, *Antinomies*, *supra* note 2; Cummings & Eagly, *supra* note 2; Gabel & Harris, *supra* note 53; William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994).

132. López, *supra* note 43, at 193.

133. *Id.* at 196.

Carle offers community lawyering lessons directly through three essays explicitly labeled as such, and indirectly through allusions in other readings. The López excerpt¹³⁴ provides a lively, entertaining overview of the kind of lawyer who works in a rebellious way, but the excerpt goes no further than that.¹³⁵ The essays by Cruz¹³⁶ and Hwang¹³⁷ present examples of lawyering within and for disadvantaged communities, but neither fits exactly what I believe López envisions in his piece as true community lawyering. Cruz acknowledges that “[c]ommunity lawyers grapple with the tension between ‘zealous representation’ of individual clients and community concerns,”¹³⁸ but the short excerpt in Carle’s book offers no rich example of lawyering (or organizing) work where a powerful community need trumps an individual client’s interests or wishes—which I understand to be what Cruz refers to as the “tension” of community lawyering.¹³⁹ At the same time, Cruz’s essay underscores the importance, as noted in the Jacobs essay,¹⁴⁰ of cultural competence and sensitivity.

Hwang’s essay describes wonderfully creative, energetic, but perhaps regnant lawyering, if we apply López’s definition of that phenomenon. His essay vividly captures, even if it does not (in Carle’s excerpt, at least) develop or try to resolve, some of the conflicts inherent in the rebellious stance. At times, Hwang writes skeptically of the rebellious scholars:

The problem is that while we can debate the intangible but real harms caused by the chasm between progressive theorists and practitioners, we cannot ignore the daily injuries done to our communities by orchestrated assaults on their rights and by barriers to the pursuit of legal recourse. Families that are being unlawfully evicted, working in hazardous sweatshops, facing deportation, or being denied basic life-sustaining benefits do not care whether the change is temporary or systemic. They are concerned with the realities of food shelter, health and employment.¹⁴¹

134. *Id.*

135. López’s book, of course, explores those lawyers’ practices in great depth. See LÓPEZ, *supra* note 7.

136. Cruz, *supra* note 45, at 205.

137. Hwang, *supra* note 46.

138. Cruz, *supra* note 45, at 205.

139. Cruz does offer an example that implies a sacrifice of personal interests in favor of community interests. She describes a jurisdictional tension between the state courts of New Mexico and the Pueblos’ tribal court system over family law matters. The tribal court system will not provide for divorce decrees, only legal separation orders for well-entrenched cultural and faith grounds. Cruz reports that her legal clinic has a policy (which seems to be firm and independent of any individual client desire) not to use the state courts for any family law result except to accomplish the divorce order which is unavailable in the tribal courts. Limiting access to the state court system affords the clinic’s clients some justice “with the greatest respect being accorded to exclusive tribal jurisdiction.” *Id.* at 208. Cruz observes: “The Pueblo stance on not providing for divorce is deeply embedded in religion, yet the need for individual relief cannot be ignored. It presents a classic conflict of community and individual interests . . .” *Id.*

140. Jacobs, *supra* note 40.

141. Hwang, *supra* note 46, at 211.

This passage represents the deepest triage-driven critique of the rebellious stance—that lawyers who work for the long-term mobilization of the community must ineluctably sacrifice the short-term needs of those community members.¹⁴² If Hwang sounds rather regnant in the passage just quoted, he seems not to want that label as evidenced by his later admiration for López's rebellious ideas and his effort to connect those ideas to the narrative he shares.¹⁴³

Hwang presents a rich story of lawyering, organizing, and legislative lobbying with and on behalf of the Hmong community to change certain federal Social Security and welfare laws which excluded many disabled Hmong immigrants from income and health care benefits. His narrative serves as a provocative exemplar from which to evaluate the competing lawyering theories running throughout Carle's textbook. On the one hand, the creative work Hwang describes seems quite lawyer-driven; on the other hand, because it engaged substantial community input, relying on protests and similar mobilization efforts within the Hmong neighborhoods, the action appears very community-driven. In the end, the grass-roots campaign effected some significant change in federal legislation and regulation, which *sounds* regnant given its focus on changing discrete substantive law.¹⁴⁴ At the same time, the Hmong struggle with Washington legislators and bureaucrats may serve as a satisfying example of the best of community lawyering because of its reliance not on arguments made by honey-tongued lawyers to judges, but instead on organized political pressures from the community members themselves.¹⁴⁵ In this way, Hwang's essay serves as a valuable resource through which student readers can begin to appreciate and critique the conception of rebellious lawyering and its contrasts to good, effective, instrumental regnant work.

The community lawyering themes found in Carle's book highlight one more tension, which I will describe briefly before moving on. I noted above that a rebellious, community lawyering stance is not always comfortably client-centered. Long-term community goals are not always congruent with short-term community residents' interests. Conflicts inevitably arise within the community, calling for accommodation and reconciliation on the part of lawyers and leaders.

142. See Gabel & Harris, *supra* note 53, at 234-35 (suggesting that long-run gains ought to be preferred over the short-term benefits of instrumental lawyering work). For a description of the triage-based worry, see Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 963 (1992). Hwang's ideas remind us, as Cruz noted above, that community lawyering is not necessarily consistent with the commitment to client-centeredness. See Cruz, *supra* note 45, at 205.

143. Hwang, *supra* note 46, at 211-12.

144. See Gabel & Harris, *supra* note 53, at 230 (describing how regnant lawyers (but not using that term, as the authors wrote before López) "discover that the expansion of legal rights has only a limited impact on people's lives, and that even those limited gains can be wiped out by a change in the political climate").

145. See Bellow & Kettleon, *supra* note 34, at 140 ("In the long run, public interest lawyers cannot win such games [of litigating for marginal victories] for their clients. Political organization and activity by disadvantaged groups will be necessary to maintain, expand, and assure full implementation of any benefits and rights that lawyers might establish.").

Lawyers must choose some members within the community with whom to work, as good faith representatives of the larger membership. Choosing some, of course, means excluding others. The simplified construct of a lawyer neutrally respecting the autonomy and values of her client therefore ill fits the more nuanced work life of a community lawyer.

Readers of Carle's collection of essays will appreciate those tensions. The uncomfortable interplay between respect for client wishes and protection of community interests is especially well evoked in the excerpt from Derrick Bell's memorable article, described earlier in this Review, which criticized desegregation lawyers in the 1960s and 1970s for pursuing litigation strategies with which at least some members of the black community disagreed.¹⁴⁶ Bell's essay is powerful and trenchant, but its central argument—that the NAACP lawyers should have exhibited greater respect for what Bell calls “the client's current interests” when they differed from “the long range good of [the lawyers'] clients”¹⁴⁷—is not sufficiently developed or defended in the short selection in the book given the power of available responses to it.¹⁴⁸ Careful readers of Carle's book will note the richness of the tensions raised by Bell and relate them to the competing arguments and reflections presented by several other authors in the collection.

C. MORAL ACTIVISM

A third recurring theme in Carle's textbook is that of moral activism. The

146. Bell, *supra* note 33. Bell's essay is found not within the client-centeredness or the community lawyering subchapters of the book, but instead in the historical section.

147. *Id.* at 134.

148. To the extent that Bell argues that the NAACP lawyers chased their own glory with little regard to the interests—long term or short—of the client community generally (*see id.* at 129 (noting Dr. Andrew Watson's worry of the influence of “narcissistic gratification” on the work of public interest lawyers)), then his critique is of course a straightforward one. But from the excerpt presented here, the landscape is plainly more complicated than that. If the lawyers (and the NAACP) believed in good faith that the long term interests of the black communities were better served by their desegregation strategy even over the opposition of some present members of that same community, it is not at all self-evident that the latter interests ought to trump the former, or that the lawyers should not have respected the views of the NAACP leadership. For a discussion of this point, see Tremblay, *Triage Among Poor Clients*, *supra* note 84, at 2477-79. For a recent revisionist historical review of the lawyering and political stances of pre-Brown black lawyers, see Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before Brown*, 115 *YALE L.J.* 256 (2005).

Bell's essay, as presented here, also leaves readers with some unresolved questions as he critiques the role of the bar and professional regulators in discouraging the kind of overreaching about which he worries. Bell argues that an approach found in the former *Model Code of Professional Responsibility*, “urging the lawyer to ‘constantly guard against the erosion of his professional freedom’ and requiring that he ‘decline to accept direction of his professional judgment from any layman,’ is simply the wrong answer” to the problem of lawyer overreaching. Such admonitions, in Bell's words, are “difficult to enforce.” Bell, *supra* note 33, at 133-34. A few paragraphs later, though, Bell offers his own suggestion that “civil rights lawyers come to realize that the special status accorded them by the courts and the bar demands in return an extraordinary display of ethical sensitivity and self-restraint.” *Id.* at 134-35. Readers of this excerpt may find it hard to reconcile Bell's *Model Code* criticism with his own, equally unenforceable, proposal.

notion that a good lawyer has a professional responsibility to attend to justice and fairness concerns in her work, and not solely to the wishes and interests of her own client, appears as a topic of discussion, centrally or otherwise, in at least 19 of the 40 essays in Carle's book. Virtually all of the discussion of this conception appears in a favorable light. One therefore comes away from a reading of the anthology with the understanding that moral activism tends to be a progressive orientation—that the left, by and large, supports an activist stance and, by implication, that the right would likely defend a more individualist, client-focused stance, committed to zealous advocacy, moral nonaccountability, and neutral partisanship. Although that perception may not be a terribly controversial one,¹⁴⁹ it is probably an imperfect one.¹⁵⁰

Student readers of this book may not sufficiently appreciate how contested the notion of moral activism remains among thoughtful scholars of legal ethics and lawyering theory, although admittedly some objections to moral activism do surface in a few of the essays. Upon reading the book students may also under-appreciate some of the complications about what it means to adopt the activist stance in day-to-day practice, and to live this philosophy as a lawyer—although the delightful essay by David Luban covers some of that ground.¹⁵¹

Carle's collection canvasses historical debates about the prominence, or not, of "civic republican" visions of professional responsibility (which I read as a variety of moral activism¹⁵²) in the legal profession of the 19th and early 20th centuries.¹⁵³ She includes two essays demonstrating how the writers' religious commitments and teachings support their discomfort with an individualist,

149. Among the most prominent moral activist scholars are David Luban, Deborah Rhode, and William Simon, all comfortably progressive in their lawyering theory scholarship. *See, e.g.*, LUBAN, *supra* note 7; RHODE, *supra* note 7; Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589 (1985); SIMON, *supra* note 7; Simon, *Ethical Discretion*, *supra* note 54. By contrast, an early pioneer of the neutral partisanship formulation (which resists moral activism) was Charles Fried, a noted conservative scholar, former Republican administration official, and former Justice of the Massachusetts Supreme Judicial Court. *See generally* Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060 (1976).

150. One thinks, for instance, of progressive critics of moral activism such as Stephen Ellmann, Abbe Smith, and Bradley Wendel. *See, e.g.*, Stephen Ellmann, *Lawyering for Justice in a Flawed Democracy*, 90 COLUM. L. REV. 116 (1990) (reviewing LUBAN, *supra* note 7, and resisting many of its activist arguments); MONROE H. FREEDMAN & ABBE SMITH, *UNDERSTANDING LAWYERS' ETHICS* (2d ed. 2002) (defending a zealous, partisan posture); W. Bradley Wendel, *Legal Ethics and the Separation of Law and Morals*, 91 CORNELL L. REV. 67 (2005) [hereinafter Wendel, *Separation of Law and Morals*]; W. Bradley Wendel, *Civil Obedience*, 104 COLUM. L. REV. 363, 364, 399 (2004) [hereinafter Wendel, *Civil Obedience*] (developing what he terms the "authority conception," a form of "wide positivism" which may support much of the "loophole lawyering" decried by role critics). The Anthony Alfieri essay included in this book contains some oblique criticism of William Simon's activism from this critical scholar as well. *See Alfieri, Ethic of Justice*, *supra* note 58, at 266-68.

151. *See* Luban, *supra* note 9.

152. *See supra* note 28.

153. *See* Gordon, *Independence of Lawyers*, *supra* note 31; Pearce, *Rediscovering Republican Origins*, *supra* note 29; Spaulding, *supra* note 30; Spillenger, *supra* note 32.

zeal-driven lawyering ethos.¹⁵⁴ Two other essays attempt to apply an activist orientation in a practical way to the ethical challenges presented by the recent corporate scandals such as Enron.¹⁵⁵ Another captivating, but at the same time somewhat perplexing, essay connects the activist debate (with some development of the nonaccountability position) to the moral tensions developed in Kazuo Ishiguro's novel *The Remains of the Day*.¹⁵⁶

Carle's book includes one essay directly aimed at articulating and defending one version of the activist project—William Simon's defense of a lawyer's professional duty to exercise "ethical discretion" and to seek justice.¹⁵⁷ However, the book does not include any scholarship directly arguing the opposite proposition.¹⁵⁸ Two essays on topics other than activism pointedly disagree with Simon's thesis, but neither in a very elaborate or even very persuasive way.¹⁵⁹

154. See Carter, *supra* note 69, at 329; Pearce, *Jewish Lawyer's Question*, *supra* note 70, at 340.

155. See Gordon, *Corporate Counselor*, *supra* note 76; Luban, *supra* note 9.

156. Atkinson, *supra* note 67. Here is why I describe Atkinson's piece as "perplexing," at least as it gets excerpted here. Atkinson seems rightly critical of Stevens, the butler in the Ishiguro novel (think Anthony Hopkins here), whose commitment to his role responsibilities permits him to carry out the order from his employer, Lord Darlington, that he fire the two Jewish servants working on the employer's estate because the servants are Jewish. He compares Stevens's reasoning in the novel to that of the supporters of neutral partisanship in lawyering theory. *Id.* at 321. Atkinson is evidently more sympathetic to the posture of Stevens's compatriot, the former head housekeeper Kenton (think Emma Thomson), who voices her outrage at Stevens's bureaucratic response to what she recognizes as clear injustice. Atkinson likens her response to that of the moral activists. *Id.* at 324-25. The fictional account, then, sets the stage for some lessons about lawyers' duties. In assessing the "two competing approaches open to contemporary American lawyers in such a situation," Atkinson concludes that "[e]ither answer, standing alone, is inadequate, but the story itself presents a more satisfactory, but by no means perfect, response . . . [But] Stevens and Kenton failed to choose that alternative." *Id.* at 320. Intriguing, right? But the excerpt here does not depict the unchosen, "more satisfactory," alternative. The most apparent reading is that Atkinson refers to the telling of stories itself as the "more satisfactory" alternative he prefers. In that case, readers are left without a convincing explication of exactly how the telling of stories affects (or effects) the moral landscape—and, notably, the moral *decisionmaking*—inherent in the order from Lord Darlington.

157. Simon, *Ethical Discretion*, *supra* note 54.

158. The extensive literature on activism versus neutral partisanship reads something like an ongoing, sophisticated contest of ideas. For one early, noteworthy point-counterpoint presentation of that contest, see Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, a Problem, and Some Possibilities*, 1986 AM. B. FOUND. RES. J. 613 (1986); David Luban, *The Lysistratian Prerogative: A Response to Stephen Pepper*, 1986 AM. B. FOUND. RES. J. 637 (1987). In recent years, Bradley Wendel has added a deeply thoughtful, intricate, and quite philosophical perspective to this conversation. See Wendel, *Civil Obedience*, *supra* note 150; Wendel, *Separation of Law and Morals*, *supra* note 150.

159. See Dinerstein, *supra* note 37, at 156 (criticizing Simon's proposal for its encouragement of lawyers' "imposing values" on clients and for "fail[ing] to provide a satisfactory answer to the problem of lawyer power"). Simon's defenders would disagree with Dinerstein's critique. The only "values" Simon suggests lawyers ought to pursue are those of legitimate legal merits; anything resembling "imposition" occurs only when clients wish their lawyers to take advantage of system failures to achieve illegitimate gains; see also Alfieri, *Ethic of Justice*, *supra* note 58, at 268 (accusing Simon of "a crabbed notion of the 'public dimension' of client-group loyalty" of "offer[ing] little guidance in the effort to reintegrate [the values of family, group, and community] into a richer conception of other-regarding loyalty relevant to the support of 'third party and public interests,'" of "reinvigorat[ing] . . . the vitality of legal liberalism," and of idealizing the lawyer who "may simply reenact his own private moral preference at the expense of a client-community participatory resolution"). Alfieri's criticism is harder to assess, if only because Alfieri's writing is itself more difficult to

The result of all this is that Carle's book is generally supportive of a justice-driven, activist stance for lawyers, highlighted frequently in many essays but not subjected to serious, reflective scrutiny. Given the inevitable compromises that any compilation such as this will reflect, as its editor aims for a comprehensive but also manageable reader,¹⁶⁰ Carle's selection and editing choices may have been the very best available. Intrigued but skeptical students will easily find a trove of insightful scholarship on the activist project and, if a book such as this spurs a serious investigation into the merits of that project, it is hard to be unhappy with Carle's approach.

IV. SITUATING CARLE'S BOOK IN THE CURRICULUM

I end this Review with a few thoughts about how Carle's valuable book might find its way into the hands of law students. First, it is worth emphasizing that this book does deserve a prominent place within the law school curriculum. Carle notes in her introduction that the book should serve as a versatile, relatively inexpensive supplement to, rather than replacement for, a traditional legal ethics or professional responsibility casebook for use in a conventional legal ethics course.¹⁶¹ I hope Carle is right but worry that her aspirations may be too ambitious. My concern, of course, is that her book is too rich and too intricate to fit that bill. In light of the many themes the book seeks to cover and to connect with one other, it will be rather challenging for students to appreciate its nuances if they read selected passages as a break from the doctrinal law of lawyering found in more traditional legal ethics casebooks. Given the increasing complexity of the doctrinal developments within the field of lawyer regulation and liability, it is hard to imagine that this book will earn the consideration it deserves as an add-on to the usual lessons covered in a traditional legal ethics course.¹⁶² It would, however, be wonderful to accomplish that feat, and, as the legal academy is full of talented teachers, I do not wish to discourage anyone willing to try.

follow and understand fully. Simon's purposivist proposals may reinvigorate liberal legalism, see *supra* note 55, but his notion of justice may incorporate more community norms than Alfieri is willing to concede. See William H. Simon, *A Brief Rejoinder to Comments on the Practice of Justice*, 51 STAN. L. REV. 991, 1003-04 (1999) (responding to Alfieri's criticism); West, *supra* note 55, at 982-84 (crediting Simon with a broader view of "legal merits" than implied here).

160. Its editor tells us she agrees wholeheartedly. See *LAWYERS' ETHICS*, *supra* note 8, at 7 ("The hardest part of editing this book has been deciding what to leave out.").

161. *Id.* at 6. Robert Gordon echoes that sentiment in his Foreword. See Gordon, *Foreword*, *supra* note 87, at xv.

162. Here's one teacher's story: I have taught this semester a three credit classroom course (four if a student elects to write a separate paper) called simply Professional Responsibility. My students read the newest edition of Stephen Gillers's bountiful and witty casebook. See STEPHEN GILLERS, *REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS* (7th ed. 2005). I have found it difficult to cover in a three-credit course enough of the developing doctrine governing the legal profession, including expanding liability theories, multijurisdictional and multidisciplinary practice innovations, Sarbanes-Oxley implications, and so forth. Adding enough of Carle's book to do it justice in a course like mine would be challenging, it seems.

My sense is that Carle's book fits more comfortably in two other settings in law school. The first, and more obvious one, is for use in a specialized seminar or classroom course, perhaps called something like "Legal Ethics and the Pursuit of Social Justice." A professor teaching such a course could easily use Carle's book to introduce students to virtually all of the significant intellectual and political visions developed by critical scholars of legal ethics over the past few decades. The professor could effectively use Carle's book in conjunction with the full text of some of the essays or other related readings—which Carle's Appendix helpfully references.¹⁶³ That's a seminar I would love to teach, and indeed would love to take. The other potentially well-suited use for this book is in the seminar component of a clinical course, especially in clinics that aim to teach students as much about the broad themes of a lawyer's role, ethics, and justice as they do about substantive law or skills training. When considering this book as a supplement in a clinical setting, some risks inevitably arise: namely, that the richness of the readings and their interrelatedness might call for more in-depth discussion than the clinic seminar might ordinarily permit. However, while a more traditional legal ethics course will tend to cover much doctrine and regulation that is absent from Carle's anthology, the curriculum of many clinic courses is likely to focus on precisely the issues presented so well in Carle's book.

V. CONCLUSION

Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader is impressive both in its scope and in its elegance. Carle presents a rich compilation of insightful and innovative scholarship in a way that is at once accessible and challenging. Her book is therefore a welcome addition to the prolific field of scholarship about progressive legal ethics and lawyering theories. The book is more directly relevant to students' inquiries about these theories and models than are some of the more sociologically or philosophically focused collections that address cause lawyering. And, thanks to Carle's careful editing, this book is more approachable than many others covering similar themes. Its limitations are apparent and not unexpected. Carle has chosen breadth over depth, and it is hard to quibble with that judgment call. Readers new to the contested terrain concerning progressive lawyering will come away from this book with many unanswered questions, some vigorous skepticism, and, importantly, a hunger for a deeper understanding of the complexities of good and noble lawyering. Those readers will perhaps be more disquieted after reading this book than before, but they will be more enlightened and more wise.

163. *LAWYERS' ETHICS*, *supra* note 8, at 385-98.