

Introduction

WHY ARE LAWYERS SO UNHAPPY?

This book names and confronts an overabundance of formalism, which was first identified in the law but now appears almost everywhere. Formalism is a habit of mind and a type of social organization that attempts perversely to narrow one's focus beyond that which a situation requires to render justice to it. The ideational analogue of the crass industrialization that D. H. Lawrence deplored, formalism—the regimentation of thought and reasoning—operates in a similar fashion, taking the life out of work and the professions, depriving them of juice, richness, concreteness, and anything else that might render them of human interest. If taken to extremes, it can mean the death of inquiry, the atrophy of cultural diversity, and a loss of opportunities for intellectual and disciplinary cross-fertilization.

In law, formalism is connected to the rule of precedent and conservative judging. In legal education, formalism manifests itself in the 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. In literature, it appears as the pinched desire to restrict study to the traditional western canon. In literary interpretation, it focuses attention on the text and its meaning, rather than on the author or the setting in which it was written. In history, it limits inquiry to wars and great men and excludes the stories of immigrants, women, and laborers. In public policy debates, it is associated with the anti-immigrant impulse and the desire to keep the nation demographically pure.

Formalism is satisfied with, does not even question, narrowly defined views of life and knowledge. It eliminates the intellectual independence of feisty lawyers, questioning doctors, and critical scholars who wish to think outside disciplinary boxes. It tries to make into a machine that which

cannot be a machine—a person. Harmful for society and deadening to the soul, formalism sets us up for cooptation by bureaucracies, large corporations, and the state. More often than not, we do not know when and how this happens.

This book begins by recounting a single, arresting example of a good mind who confronted formalism and suffered as a result. In part I, we tell the story of the unexamined relationship between two eminent literary figures, Ezra Pound and Archibald MacLeish. Pound, this country's foremost modernist poet and one of the most innovative in the twentieth century anywhere, was manic and given to excess. A womanizer and social provocateur, he nevertheless befriended many young writers, both in the United States and abroad, earning a devoted discipleship. In midlife, while living in Rapallo, Italy, he embraced bizarre economic theories and became an admirer of Mussolini and Italian fascism, on behalf of which he made a series of wartime propaganda broadcasts.

MacLeish was Ezra Pound's direct opposite. Well-bred and educated at elite schools, he practiced law during his early years, but maintained a lifelong fascination with poetry. Indeed, while pursuing a career in law and journalism, he published a number of collections of poetry and verse plays, and toward the end of his career was appointed to a chair of rhetoric at Harvard. In between he held high positions in government and the Eastern establishment. He was a statesman's statesman, avoiding scandal at all costs.

As the reader will see, MacLeish, a young blue-blood lawyer writing poetry in his spare time and toying with the idea of a literary career, sought out Pound for advice. Pound counseled MacLeish about his writing, sometimes mercilessly. After an arduous period spent trying to develop his talent in Paris in the 1920s, MacLeish returned to the States where he became a writer for *Fortune* magazine and pursued a career in government service during the Roosevelt era. Yet, despite the outward appearance of happiness, MacLeish was unfulfilled, always wondering what he might have been had he pursued his other calling wholeheartedly. Years later, MacLeish came to Pound's rescue after Pound had been incarcerated for ten years at St. Elizabeths Hospital for the Criminally Insane in lieu of a treason trial. Working with others, he arranged that Pound be retried and acquitted with the understanding that he would soon leave the United States for his beloved Italy. As it turned out, just as MacLeish earlier needed

the anarchic spirit of Pound, Pound later benefited from the orderly elegance of the lawyer MacLeish.

From this extraordinary relationship, we draw lessons about the plight of dissatisfied lawyers, and perhaps other professionals, trapped in worlds that give them power, prestige, and affluence, but not personal satisfaction, much less creative fulfillment. Building on both personality theory and contemporary critical thought, we show how the story of our country's most eminent lawyer-statesman-poet and its most brilliant imagist poet exposes tensions that modern civilization produces, but to which it has yet to find a solution. With the increasing turn to technology and the routinization, specialization, and narrowness of many professional lives, the urgency of these problems can only increase.

In part II, we show that the problems MacLeish struggled with as a young lawyer have not abated. Even though progressive movements in the law, such as critical legal studies, feminism, and critical race theory have made inroads, making law more humane and broad-gauged, many lawyers today are miserable, and for many of the same reasons that haunted MacLeish. Separate chapters summarize the professional discontents of contemporary lawyers—the high rates of dropout, burnout, alcohol and drug addiction, divorce, and suicide that many of these high-paid professionals display. This dissatisfaction begins, for many, with law school, and the demands of legal practice—billable hours, narrow specialization, and the pressures of achieving partnership—simply amplify that discontent. Lawyers' unhappiness with their own work lives finds a counterpart in the public's disenchantment with lawyers, whom their clients are apt to see as driven, self-absorbed individuals who do not return phone calls and like nothing better than to fight and drive up the cost of any legal transaction.

Drawing on the story of Archibald MacLeish and Ezra Pound, we show that lawyers' unhappiness contains both a conceptual dimension, concerned with how they theorize what they do, and a phenomenological one that embraces the felt experiences of law and lawyering. But the misery, as well as the habit of mind that seeks regularity, routine, orderliness, and formulaic resolution of problems are not limited to law. In particular, chapter 6 illustrates how many of the miseries that bedevil physicians stem from many of the same sources that plague lawyers.

Need we say it? We are interested in broad systemic forces that plague

lawyers because of the nature of their work—that are, in short, inherent in lawyering and, perhaps, other forms of work. Just as unhappy families can be unhappy in infinitely many ways, so can lawyers: this one because he hates his managing partner, that one because he dislikes his commute, another one because her husband does not understand her. We are interested in structural forces that impinge on the lives of all lawyers, making their work narrower, less creative, and more pressured than it needs to be.

Human minds and spirits are not machines. They rebel, knowing that something is wrong when given work to do, and ways to think about it, that assure failure and eliminate much that is most interesting, vital, and unique. Although our story is mainly about lawyers, it carries implications for all of society. Just as we need feisty, thoughtful, independent lawyers as a counterweight to excessive statism and overbearing corporations, we need caring physicians, happy in their work, who are able to place their patients' well-being above paperwork and managed care. We need teachers who do not teach to standardized tests, and university administrators willing to back curricular experiments without worrying constantly about accountability.

The final pages of the book enlist cultural history to sketch how our predicament began and suggest a few means by which we might counter it. If, as we suspect, the habit of mind that is formalism is like a self-replicating virus, endlessly seeking new hosts, the human spirit will eventually suffer irreparable harm. We write this book with the hope of helping to ward off that result.