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Law's Two Lives: Humanist Visions and Professional Education


Austin Sarat

In his famous parable, "Before the Law," Franz Kafka describes a man from the country who innocently seeks "admittance to the Law." "Law, he thinks, should be accessible to every man and at all times." As generations of fascinated readers know, in this parable admission is deferred although never denied, and law turns out to be rather more inaccessible than accessible, more absent than present. The story of the man from the country is, however, not a story of lost innocence or of frustrated aspiration; it is, instead, a story of innocence deepened and aspiration undiminished in the quest for meaning and understanding. In Kafka's parable, the man from the country grows more innocent as time goes by and as his desire for admittance to law increases. He remains unsophisticated and uncorrected even as he sits transfixed with his life moving inexorably toward its end.

This man dies "before the law" without ever gaining the admission which he naively expected and to which he felt entitled. Yet law, in Kafka's parable, is always present as an immortal "radiance" that holds the man from the country (and us) transfixed by its elusive promise and aspiration. It is precisely in the elusiveness of that promise and aspiration, as much as in the promise or the aspiration themselves, that the power of law is to be found.

3. This argument is advanced forcefully by Drucilla Cornell, "From the Lighthouse: The Promise of Redemption and the Possibility of Legal Interpretation," Cardozo Law Review 11 (1990): 1687.
Suppose one were to rewrite Kafka's parable not as a contemporary story of a single innocent's search for law, but as a story of the quest of thousands to acquire admission to law school and to acquire, through that admission, greater nearness to the immortal radiance of law. And suppose further that one were to imagine what it would be like on the other side of the door in the corridors of law. Kafka himself gives a hint of how we might proceed in such an imaginative rewriting when he suggests that just beyond every door to law stands yet another door, and the closer one gets to law the more difficult the task of attaining it.

Reading Goodrich's *Anarchy and Elegance* and Kahlenberg's *Broken Contract* is like taking a journey through at least one of the open doors to law, not in acts of imagination, but in accounts of real experiences with legal education by two men who seem at first glance to be very different from Kafka's man from the country. Goodrich was, at the time he went to Yale Law School for a one-year Master of Studies in Law, a thirty-year-old, freelance journalist, who himself had graduated from Yale College. Kahlenberg was, perhaps more typically, a recent graduate of Harvard College, who having spent a year in Africa on a fellowship, enrolled in the J.D. program at Harvard. What both find in their law

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5. Perhaps this difficulty explains the current state of legal scholarship, in which a now well-established legal academy finds itself awash in grand theories all of which proclaim that their perspective is the “rosetta stone” which will finally and fully capture the essence of law’s radiant immortality. With the slow accretion of academic knowledge of law, the stakes in professional legal education get higher and the difficulty of making a mark requires ever escalating claims to have broken through another door to law. David Luban illustrates this development in legal education in the following story about the testimony of Yale Professor George Priest at the confirmation hearings of Robert Bork. Priest, Luban writes, contended that “Bork’s academic writings are slashing. They are hypercritical. They are extreme. . . .” Nevertheless, Priest maintained, these writings should not be taken as an indicator of Bork’s judicial temperament. The reason, according to Priest, lies in the difference between the role of the scholar and that of the judge. The judge must be open-minded, moderate, and respectful of previous authority. Since World War II, however, “there has been a vast change in the style of modern legal scholarship. . . . Those scholars competing in the front rank on the frontiers of legal scholarship have very self-consciously adopted the style of research and scholarship of the natural sciences. . . . The competition among these scholars is over who will announce and who can confirm some dominant theory of the law, and these scholars compete much like athletes seeking records or much like 17th and 18th century explorers seeking new discoveries. They compete to promote new theories and new ideas around which new fields of law will be reorganized. . . .” See “Introduction: We Copernicans,” unpublished manuscript, 1992, 1-3.

In this condition, the legal academy is divided into warring camps, fads develop and pass with increasing rapidity, and, as the periods of rotation grow shorter, more and more energy gets invested in making this or that small distinction seem to be of monumental importance. In this condition, some might sometimes wish that, like the man from the country, they had never crossed the threshold of law.

6. When I enrolled in law school friends urged me to “keep a diary” and write a book to replace *The Paper Chase* as the definitive “expose” of the life and times of the law student. See John Jay Osborn, *The Paper Chase* (Boston: Houghton, Mifflin, 1971). I resisted, in part, because I couldn’t figure out who would read such a book. Now I find myself confronting that question again, only this time in the guise of a reviewer of the work of two people who gave into the very temptation I had resisted. Yet again, I wonder who actually reads books like *Anarchy and Elegance* and *Broken
school experiences is in many ways quite unsurprising, a testimony perhaps to their own rather unexpected innocence and to the innocence of American legal culture. In other ways it is quite revealing of some of the dilemmas of modern law and legal education, such as the persistent dialectic of formalism and realism and the continuing power of corporate capital in shaping the nature of the legal profession.

Yet *Anarchy and Elegance* and *Broken Contract* tell two rather different stories. The former is entirely devoted to the first year experience. At the core of its concerns is “the effort to trace the development of the legal frame of mind” (p. 5). This book is written by someone whose experience in law school was not tethered to a projected future in law. Kahlenberg’s book, in contrast, is mostly about issues of personal commitment and vocational choice that face someone wanting to practice law. The central dramatic movement of his book is captured in the fact that while 70 percent of his classmates entered Harvard Law School wanting to practice public interest law, only 2 percent of them actually do so. We watch Kahlenberg himself wrestle with the question of whether he will end up as one of that 2 percent. Kahlenberg argues that most other “what it is really like in law school” books concentrate on the first year experience. His book, in contrast, shows that what is “remarkable” about Harvard Law School is “not the rigor of its first year, but the transformation that takes place in the second and the third” (p. 5).

Both Goodrich’s and Kahlenberg’s stories, however, are ultimately personal stories of lost innocence. Their stories rely on vivid images of inside and outside, of lives led before law school which are lost on the inside, of what I call a “humanist” vision of learning or service defeated by the requisites of professional education. In this vision, what is prized in law is its capacity to cultivate our humanity and our capacity to engage in moral action. In this vision, it is “impossible fully to understand law without a deep and sympathetic knowledge of the liberal arts.

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*Contract*. Do they have a wide public appeal? Do they cater to a deeply felt, voyeuristic curiosity about what law schools do to their students? Are they read mostly by anxious undergraduates trying to decide whether they want to go to law school? Or are they really just cultural artifacts, of keenest interest to scholars of the legal profession and historians of legal education?

I really cannot imagine that the public could get too excited trying to figure out the role of law schools and the meaning of legal education. Or that there is much public interest in whether law schools should seek, through their educational methods and practices, to transform the practice of law and the profession, or should seek instead faithfully to reproduce its operating premises. Or that the public really is invested in figuring out to what extent legal educators should take seriously the discomforts and disappointments of their students, if, at the same time, what their students find disconcerting and disappointing is precisely what readies them to succeed in the profession? Yet no matter who is reading such “my years at law school” books, these questions are as old as law schools themselves and are debated in an expansive ocean of articles, books and conferences into which this essay will gently fall.


But that knowledge cannot be just background, it must be a fundamental part of legal scholarship.9 The humanist vision seeks to “restore to legal studies a proper place for the question of values.”10 In both Anarchy and Elegance and Broken Contract one sees, once again, the distance between professional education and the humanities, between the schooling of a lawyer and schooling which seeks to cultivate character and humane judgment. If at schools like Harvard and Yale the professional model is so strong, and the influence of the humanities so slight, one can imagine what the situation is like at law schools more divorced from the university as a whole, as well as those with less intellectual pretension.11

By reading Goodrich’s and Kahlenberg’s accounts of personal change and transformation, of discomfort and surprise as they confront the stark realities of professional schooling, we learn as much about the image of law in popular culture as we do about the law itself.12 Indeed I often found myself asking how could such clearly intelligent men as Goodrich and Kahlenberg come to law school with such naive and unformed expectations. And if they—graduates of Yale and Harvard Colleges—have such expectations, what about the rest of the population?13

While sometimes Goodrich and Kahlenberg sound like latter-day Holden Caulfields, and while sometimes their tone is one of self-indulgent, whiny dissatisfaction, they help us understand why it is that legal education survives in its current form even as they describe the disappointment, boredom, and disillusionment which generations of law students have endured. Indeed, I will argue that it is precisely what Goodrich and Kahlenberg criticize that accounts for the staying power of the current form of legal education. As a result, the question that these books raise is whether the humanist vision can be reconciled with the prevailing model of professional education or whether a new institutional vehicle is needed to nurture and sustain it.

I. SEARCHING FOR THE LEGAL MIND

Perhaps the oldest idea about law school is that it is a place where students learn to think like lawyers rather than to practice law. Goodrich in Anarchy and Elegance puts the idea that law schools teach their stu-
dent a distinctive style of thinking at the center of his story. He goes searching for the legal mind and discovers *positivism*, the view that law is distinct, self-contained, and bears no necessary connection to any ethical values, and *realism*, the belief that legal rules and decisions are not compelled by logic but are rather the products of artful manipulations, skillful interpretive moves, plays of rhetoric, and political motivations.

Goodrich is both surprised and disappointed by these discoveries. His surprise tells us something about the state of our legal culture, and his disappointment tells us something about his own expectations and beliefs. It is, I think, somewhat amazing that a well-educated American could go to law school thinking that law, as it is currently practiced, is both an instrument of moral justice and a hermeneutic system in which rules, once arrived at, compel the decisions of judges. As pervasive as positivism and realism are in the legal academy, neither seems to have taken hold in the broader culture. Students come to law school as innocents, uneducated or undereducated about law, only to be taken aback by what they find there.

This suggests that part of the problem of legal education is that it is, in fact, ghettoized in law schools and that so little systematic attention to law is found in our schools, colleges, and universities. At least if students were acquainted with the way law works before law school, their choices to enter the legal academy might be better informed and some of the stresses and strains of professional education might be minimized. In this sense there may be a great unmet potential for a partnership between law schools and colleges in which law schools encourage and support the development of systematic education in law at the undergraduate level.

Throughout his year at Yale Goodrich encounters the systematic privileging and rewarding of particular kinds of arguments while others are systematically dismissed or stigmatized. He describes at length a class in Civil Procedure with Geoffrey Hazard, a class in which both positivism and realism were vividly on display. The positivism of legal education was revealed to him in the way that "Hazard's approach to law seemed to empty it of moral content. He glossed over the social context of *Swann* [the case under discussion]; he seemed more interested in the case's legal maneuvering than the justice of his clients' position" (p. 39). In Goodrich's first taste of realism, Hazard taught:

If you think law supports your side, you try to show how neatly the

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17. For a discussion of the appalling lack of legal education and understanding in the general population, see A. Barlett Giamatti, "The Law and the Public," *The Record* 34 (1982).
law’s pegs, round or not, correspond to your case’s round holes; if you think it doesn’t, you whittle the law’s pegs, or chisel the fact’s holes, to look square. Often, and if properly done, you can distort the facts or the law... just enough so the case turns not on the dispute in question but on your skill as an advocate... The ability to read the minds of judges and other lawyers seemed more important... than the rights and values at stake (p. 39).

In a classic moment of understatement Goodrich says, “It sounded awfully manipulative to me” (p. 39).

Goodrich tells other vivid, wonderful stories about his teachers, his classes, the mundane details of doing his first library research assignment, and writing his first memo and brief. Each of these experiences reinforces the positivist and realist assault on Goodrich’s humanist vision of law. Among the most interesting of these is the story he tells of his first assignment in Constitutional Law, Bowers v. Hardwick. He recalls listening as his teacher unraveled Bowers and paid particular attention to its relevance to the controversy about abortion. Goodrich describes how he came to understand the way Justice White framed the issue to be decided and the way that framing of the issue was essential to the result of the case. This experience was both distressing and exhilarating. As Goodrich puts it, “I felt angry, almost ill, when I understood that Hardwick’s prosecution had been reduced to a game of strategy” (p. 28). At the same time, he says that he felt “awe” at being able to understand the subtext of the decision (p. 28). He “saw for the first time the deep seduction of the law. How could you witness that power, analyze it, walk around it, and not want to harness it yourself?” (p. 29).

Goodrich presents a nice comparative reading of the rhetorical strategies of Bowers and Marbury v. Madison. Chief Justice Marshall’s opinion, he concludes, was an apt precursor for Justice White and for much of legal education in that it was both “brilliant and brilliantly deceptive” (p. 59). Goodrich argues that:

[Marshall] could have said right off that the Supreme Court had no jurisdiction in Marbury, but he didn’t, because he had other fish to fry. He had the chance, he realized, to make the Supreme Court the ultimate referee of law, and that the best way to ensure that result was to decide that both the plaintiff and the defendant were wrong. . . . Marshall, in Marbury, had acted like a Greek god during wartime. He helped one side, then the other, all the while enjoying the combatants’ false conviction that they are following their own free will. . . . It remained a ‘great case,’ to be sure—not because it

eliminated politics from the law, however, but because it buried politics so deeply within it (pp. 59-60).

When, several weeks after these encounters with Professor Hazard, Justice White, and Chief Justice Marshall, Goodrich faced the challenge of writing his first legal memorandum and drafting his first brief, he found himself able and willing to do exactly what he had so recently found "awfully manipulative." "I had achieved the ability," Goodrich says, "basically, to impose a characterization on the Dove County case as disingenuous as Justice White's characterization of Bowers. . . . I had begun to read the world in legal terms, to believe it was not only right but necessary to impose my views on other people. If life is a jigsaw puzzle, the lawyer's job is to place a handful of pieces on the table and convince his viewers they saw a complete picture—even though the lawyer, more than anyone, knows the picture is fragmentary" (p. 95).

Anarchy and Elegance is at once an homage to, and a critique of, positivism and realism in legal education. As we have already seen, Goodrich found himself seduced by the legal mind, in awe of the way lawyers are taught to think. He tells us that he "felt addicted to law. Law was so thrillingly empowering" (p. 115). Like Kafka's man from the country, Goodrich was fascinated by law's awe-inspiring power even if, at the same moment, he knew that power to be dangerous and destructive. As he masters the skills of legal research, he writes, "Give an attorney a library, a pen, and paper, and he could tame chaos. It was a power of amazing proportions—and only just beyond my grasp" (p. 55). He himself reports that he was "drawn to law's power as much as repulsed by its effects" (p. 57).

Yet, if there is any dramatic tension in the book it is found in the question whether Goodrich will be able to learn to think like a lawyer without, at the same time, losing his soul. "Law," Goodrich writes, "made me less human, asked that I dismiss my moral center as a dangerous, incomprehensible Pandora's box" (p. 115). As he puts it, "My year at law school convinced me that legal education has a way of replacing everyday human values with what I can only call 'legal' values—values that sustain the system of law rather than the people that system was created to serve" (p. 4). He reports his own sense of "pride" in "being able to do battles with lawyers on their own turf" (p. 95), even as he ardently proclaims both his fidelity to the humanist vision that "law had meaning beyond that manufactured in lawyers' heads" (p. 97), and his fear that giving in to positivism and realism would "kill something important in me" (p. 97).

On his account, law schools, like other "total institutions," are quite successful at desocializing and then resocializing their "inmates."19

While legal education is "deeply transformative" (p. 5), there are, in fact, several episodes where Goodrich seems on the verge of being fully consumed by the style of thinking he learns at Yale only to be rescued by a strong dose of self-knowledge. One episode in particular caught my attention. In this episode, Goodrich goes home to San Francisco for fall break, after approximately six weeks of law school. He is invited to dinner with two long-time friends and reports that

... our relationship, now, was qualitatively different from what it had been before; this time around I found myself attempting to establish a pecking order right off the bat. Mark and I talked football, as we had always done during our regular Sunday brunches, but I soon decided the conversation was trivial and insufficiently challenging. I didn't want to share a moment of friendship; I wanted to lock horns, to show my stuff, even to intimidate. I told Alice that her cooking reminded me of... (an) issue that had come up in Torts—the different levels of care someone owes to social guests, business visitors, and trespassers. Did Alice recall what standard applied should I hit my head on an open kitchen cabinet?... Could Mark's barbecuing be classified as an "attractive nuisance"... And what if Alice's flank steak killed me?... (W)hy did I insist, now, on making myself feel different, superior? It was a new habit of mind, one I had picked up since going to Yale Law... (I)n emphatically fostering students' intellectual selves, law school gives them—me, in this case—license to ignore the more problematic, uncontrollable, emotional aspects of life... Law school hadn't turned me into a jerk, but it told me that if I felt the need to be a jerk, I should be a first-rate jerk... and not feel guilty about it (pp. 111-113).

Here Goodrich suggests that law school is less deeply transformative than it is enabling; it makes available to law students and lawyers tools with which to express their own worst selves. And some occasionally give in to the temptation to use those tools.

But if one were to grant Goodrich his argument that law school is, in fact, "deeply transformative," one might immediately ask both what law school transforms and into what. Goodrich is less clear about what it is to which legal education is opposed than he is about what it produces. As to the former, the enemy of legal education seems to be moralism and moral judgment. Students, Goodrich argues, learn to think like lawyers by being made suspicious of their own moral intuitions and beliefs. Those intuitions and beliefs are treated either as an inadequate basis for legal decision-making or as simply irrelevant. Legal education at Yale, despite its distinctive pedagogical traditions and its deeply intellectual culture, nonetheless empties law of "moral content" and makes law into a sterile "intellectual exercise" (p. 39). It seeks to eliminate "all nonlegal points of reference" (p. 40). This emptying of moral content and elimination of nonlegal reference points becomes the model for the lawyer who is able
to represent positions and make legal arguments on all sides of a question regardless of the intrinsic moral worth and value of those positions and arguments.

Learning the positivist and realist orthodoxy of legal education is essential if one is going to be successful as a lawyer in the current climate, and it helps explain why lawyers have a "substantially different outlook on life than nonlawyers" (p. 6). That outlook is "hyperrational, adversarial, and positivistic" (p. 4). It is this that is the great discovery of Goodrich's one year at Yale. The "immortal radiance" of law turns out not to be justice, but intellect, not moral commitment, but technical competence. Instead of being a temple of justice, law school turns out to be merely a place where smart people learn to wield the weapons of legal argument. Legal education devalues those parts of the self which do not measure up even as it emphasizes truths which once discovered turn out, in Goodrich's view, to be "beside the point" (p. 5).

It is, of course, precisely the capacity of law schools to impart those truths and help students acquire those tools that is, from the point of view of the organized profession, responsible for their survival and influence. Law schools equip their graduates to participate in what David Luban calls the "dominant picture" of the lawyer's role. What students like Goodrich find alienating (as well as fascinating) is precisely what law schools need to teach if they are to be regarded as useful by the profession. Law schools provide support for a dominant conception of professionalism in which lawyers accept a segregation of "role" morality from common morality. In this conception, lawyers acting as lawyers "may be morally required to do things that seem immoral." In addition, in the dominant conception, the existence of an adversary system of justice heightens the duty of lawyers to their clients while diminishing their duty to respect the interests of "adversaries or of third parties." This is well illustrated in the following account of a well-known lawyer's response to a hypothetical dilemma posed as part of the Public Broadcasting System's series on Ethics in America.

... in a case of murder... the killer claims that he killed reluctantly; he seeks counsel, and every lawyer extends, to this client, the protection and shield of his confidence. Particularly adamant here was Mr. James Neal from Tennessee. The killer finally reveals to Mr. Neal that he was responsible for yet another inadvertent killing; that another man had been convicted for his crime; and that the man who was wrongfully convicted was about to be executed. Mr. Neal held his ground; he would not yield up informa-

21. Ibid., xx.
22. Ibid.
tion, even to save the life of an innocent man... Would he really let an innocent man be executed? "Absolutely... people die every day. It may sound harsh, but we have values to serve." 23

Both role morality and what Luban calls the "adversary system excuse" contribute to Neal's willingness to let an innocent die in the name of "values" which he does not name and could not defend. His is a conception of professionalism that "identifies professionalism with extreme partisan zeal on behalf of the client and the 'principle of nonaccountability,' which insists that the lawyer bears no moral responsibility for the client's goals or the means used to attain them." 24

Mostly Goodrich's story is one of disorientation and disappointment as he encounters and learns the lessons of positivism and realism. But the news for loyal Yalies is not all bad. Goodrich notes that the first year of Yale Law School was "among the most rewarding [experiences of his]... life" (p. 3). Of course, after reading the book, and hearing about the depth of his first-year frustrations and confusions, if the year at Yale Law ranked so high in his life one is tempted to wonder about the kind of life Goodrich has led. But there are rewards amply demonstrated in Anarchy and Elegance.

Goodrich glimpses the "humanist" vision of law in the orientation for first-year students when Dean Guido Calabresi urged students to "love and take care of one another" and warned that "excellence was a necessary part of becoming a good lawyer, but without humanity and decency, skill in law was worthless" (p. 18). This, Goodrich writes approvingly, was "law with a human face" (p. 19). What Goodrich subsequently describes is the process by which that human face becomes a lawyer's face. But, at least for one moment, another possibility presented itself.

That possibility was also at least occasionally glimpsed in Calabresi's Torts class. In that class, Calabresi was able to teach the lessons of realism without fully embracing positivism. "Guido," Goodrich reports, "continually frustrated the class by defining a rule only after talking about its effects.... [H]e adopted this approach in order to impress upon us the enormity of the temptation to apply a known rule to a new situation, regardless of its fit." At the same time, Goodrich says that Calabresi's approach to law "fought complacency" by insisting that "lawyers were duty-bound to ensure that the laws they implemented worked no harm, however hidden that harm might be" (pp. 79-80).

Goodrich catches a third glimpse of the humanist vision in a seminar entitled Images of Law. In that class legal texts were juxtaposed to literary texts. Students were asked to confront directly law's exclusion of sympathy, its devaluation of the human, and its elevation of the elegance

24. Luban, supra note 20, xx.
of logical solutions to legally-framed problems over the anarchy of life itself. This was the one class in which Goodrich found that the professor "didn't want us to 'think like lawyers' but to think for ourselves. If the professor had an agenda, it was to help students get in touch with their own values. . ." (p. 223). In this class "students could talk openly about feeling and belief" (p. 226). It was this class that became, for Goodrich, a mechanism "through which to reclaim legal education" (pp. 226-227).

In the end, Goodrich seems not to have succeeded in that reclamation project. An exhortation at orientation, an inspiring Torts professor, and one law and literature class do not amount to a revolution in legal education. The dominant conception of lawyering requires what legal education provides and the lesson legal education teaches, namely to submerge "common beliefs about justice beneath the legal system's rules of justice, even though those rules may ensure justice is not done" (p. 266). If the humanities encourage an insistent curiosity and an unwillingness to foreclose the life of the imagination, law school offers up its graduates to the profession as less curious, less imaginative, but more ready to attain "power, money, and prestige" in return for a "Faustian diminishment of the soul" (p. 284). If the liberal arts liberate, legal education turns out, on Goodrich's account, to be "an expensive kind of straightjacket" (p. 284).

II. SELL OUT NOW, BEAT THE RUSH

The Big Chill was, in my view, one of the signal pop culture events of the eighties. This cynical, trashing, vapid, yuppie movie about the agonies of dying passions and lost dreams seemed to say to a generation "sell out now, beat the rush." The question of whether and when to sell out is, for Richard Kahlenberg, author of Broken Contract, the defining issue of his law school experience. The Faustian bargain which Goodrich describes at the end of his book turns out to be, on Kahlenberg's account, the key to understanding legal education. Learning to think like a lawyer has its parallel in the choice of what kind of law to practice, and it turns out that the vocational lessons of legal education are the same as its classroom pedagogy, namely to renounce idealism, conform to standard professional aspirations, and, in so doing, separate one's professional life from one's personal commitments.25 Thus Kahlenberg says that his book will try to explain "how is it that so many students can enter law school determined to use law to promote liberal ideals and leave three years later to counsel the least socially progressive elements of our society" (p. 5).

In his application to Harvard Law School, Kahlenberg said that he

wanted to dedicate a career in law to "public service... to work within the law to make life a little more fair for people" (p. 3). In Broken Contract he describes himself as "an upper-middle class, educated, good-government liberal..." (p. 14). Kahlenberg enters law school as a carrier of the humanist vision; "... I wished the [law school] curriculum were broader and less trade-oriented—a continuation of a liberal arts education..." (p. 132); "I had come to law school expecting it to be a continuation of a liberal arts education" (p. 140). And while he, like Goodrich, caught glimpses of that vision in legal education (for him Robert Coles' course, Dickens and the Law, plays a role similar to the role Images of Law played for Goodrich), by his second year Kahlenberg's reliability as a carrier of the vision is substantially in doubt. At that point he no longer believes what he said in his application. "All the application rhetoric sounded silly... I had come to believe that the right career move, whatever your ultimate goal, was to work for a powerful corporate law firm" (p. 4). His book is devoted to describing what he labels the "insidious pressure" (p. 5) which made his application's rhetoric seem silly and which undermined his class's commitment to public interest work.

The most important components of that insidious pressure are, according to Kahlenberg, "power, prestige, and convention" (p. 7). The legal profession pays honor to those who do work that is "respectable" rather than those who do work that is "admirable" (p. 7). Salary becomes the arbiter of achievement and Kahlenberg suggests that even progressive forces honor this sociological logic. Democratic Presidents rely on Lloyd Cutler and Clark Clifford, not Marian Wright Edelman and Ralph Nader, for advice and counsel. So the lesson seems clear: "sell out now, beat the rush."

Like Goodrich, Kahlenberg went to law school in search of law's "immortal radiance" with a vision that law could and should express one's deep moral and political commitments. He went to "do good," only to find that the environment encouraged him and his colleagues to "do well" instead. He faults Harvard Law for failing to live up to what he calls its "enormous potential" (p. 8). While he never directly names what that potential is, it is, I think, the potential that law has to be a vehicle for righting wrongs. Law school should take the fact that "every once in a while many of us... see ourselves in To Kill a Mockingbird, defending the innocent victim of racial prejudice, or as Ralph Nader taking on GM" (p. 138) and turn those embryonic visions of law as the handmaiden of justice into a lifelong career. Thus Kahlenberg continuously faults his teachers for failing to inspire him (e.g., "I wish people like [Anthony] Lewis who've written stirring books like Gideon's Trumpet..."

would realize that small words of encouragement, gestures of interest, can mean the world to a student” [p. 92]; “What really disappointed me about Duncan Kennedy was his inability to inspire . . .” [p. 165]).

In this search for inspiration and the realization of potential he, like Goodrich, notes the tension between professional education and the humanist vision of law: “I had learned how to spot circular reasoning and how to see when an argument proves too much. But I also knew my classes seemed to be dulling my idealism and passion for justice” (p. 59). *Broken Contract* again reminds us of the deep ignorance and misunderstanding about law and the legal profession that afflict our culture. How could Kahlenberg have gone to Harvard thinking that it was an eager training ground for public interest or poverty lawyers? How could he have known so little about the organization of the profession as not to know of the power and influence of the major corporate law firms?

Kahlenberg provides a careful description of the way career choices are made and of the forces that shape those choices. In particular he emphasizes the importance of the sorting process in legal education. This process begins on the first day in law school and is perhaps most fully exemplified in the way first semester grades shape subsequent possibilities. Everything seems to be about ranking. “The Law Review editors,” Kahlenberg argues, “would be invited to the dinner parties, have a chance to clerk for the Supreme Court, feel the exhilaration of having the world at their doorsteps” (p. 64). Given the accuracy of this perception, one wonders why Kahlenberg himself tried so hard—albeit unsuccessfully—to make the Law Review and to obtain a judicial clerkship (aided by Lawrence Tribe and Anthony Lewis). For someone struggling to use law to do good, Kahlenberg’s choices and possibilities do not seem all that unconventional. Thus his first summer was spent working in the prestigious Manhattan District Attorney’s Office, his second summer at Ropes & Gray (a prestigious corporate law firm). In each of these acts one can see the slight erosion of commitment, the erosion of a humanist vision by someone drawn to the traditional markers of success.

Kahlenberg suggests that Harvard conveys a not-so-subtle double message about public interest practice. On the surface, straightforward encouragement of public interest commitment is communicated by such luminaries as James Vorenberg and Abe Chayes. Thus Vorenberg used the opening orientation session to “earnestly advise us to consider public-interest law as an alternative to a corporate-law career. . . . He said public interest could be more rewarding than private practice” (pp. 30-31). Yet to Kahlenberg, Vorenberg’s admonition seemed quite anomalous; Vorenberg himself had begun his career at Ropes & Gray, delivered his admonition about public interest law in the Ropes & Gray Room at Harvard Law School, and was comfortably ensconced as Dean of the Law School. “Here was the dean, in the room named after the law firm.
where he once worked, singing the virtues of public interest. Didn’t he sense the irony?” (p. 31).

But is there really an irony here? Kahlenberg’s idea of public interest practice is, from the start itself an elite and, at best, reformist vision.27 Public interest practice is fully compatible with, and may be essential in its legitimation role to, the maintenance of the very structure which allows firms like Ropes and Gray to have rooms named after them at places like Harvard.28 There is nothing ironic about the containment of the humanist vision within the confines of a corporate structure, about liberalism sponsored and disciplined by the very structures to which it is, in theory, opposed.

Kahlenberg seems obsessed with the question of how liberalism and liberals can live within those structures—public interest being praised in the Ropes & Gray room, liberals like Vorenberg and Cutler practicing law in large corporate firms. “[T]he central question of my memoir,” Kahlenberg writes, “was whether a liberal could, in good conscience, work at a corporate law firm” (p. 100). But one wonders why this is such a question for him when he so easily dismisses poverty law as “social work” and seeks a platform to “change the world” (p. 75). One wonders why this is such a question when he notices that the lawyers who get the high-level government jobs, “even in Democratic administrations” (p. 101) are “invariably attorneys from corporate firms” (p. 101). Here Kahlenberg might have noted what almost every progressive scholar since the start of the twentieth century has noted, namely the way so-called liberal politics in the United States is fully inscribed in a capitalist political economy.29 Proving one’s credentials as a “safe” liberal is as important for liberal activist lawyers as is reassuring the stock market for Democratic presidential candidates.

Perhaps his inability or unwillingness to comprehend this symbiotic relationship between liberalism and capitalism explains his hostility to Critical Legal Studies (CLS), a complex intellectual and political movement within the legal academy which emphasizes among other things the indeterminacy of law and its availability as a tool of, rather than restraint on, power.30 Kahlenberg’s hostility to CLS plays an unusually vivid role in his critique of Harvard. Here, of course, there is an obvious contrast with Anarchy and Elegance which, not unexpectedly, makes no mention of CLS. CLS has, after all, had almost no presence at Yale since the so-called “purge” of some of its early sympathizers. While Kahlenberg presents himself as politically progressive, he has little patience or sym-

pathy for CLS. His book turns out, as much as anything else, to be a liberal attack on the left.

Kahlenberg suggests that the adherents of CLS whom he encountered were, for the most part, self-indulgent and hypocritical, disillusioned by their own inability to head off the stampede of their students into corporate practice and, at the same time, partially responsible for that stampede. At various points in *Broken Contract*, Kahlenberg accurately describes CLS's critique as most powerfully directed at the liberal assumptions which animate people like him, in particular the belief that liberalism can somehow be decoupled from capitalism. CLS warns of what he painfully discovered in law school, namely the substitution of the mainstream, dominant conception of professionalism for the humanist idealism of many of Harvard's entering students. If there is blame to be handed out, one would have thought that Kahlenberg would have directed most of it to the institutions of corporate America which sustain that conception. Yet there is almost nothing in this book to suggest that Kahlenberg has any systematic understanding of the dynamics which support and sustain the kind of law practice which he condemns. 31

Instead, he faults CLS for its cynicism and its "nihilism" (p. 23), which, he believes, paradoxically free students to give in to the temptations to use money and power as the measure of professional success. From his teachers he seems to crave inspiration and example. What he encounters from advocates of CLS are pretense and pretentiousness, and comfortable radicalism, dressed up in discomforting, and inaccessible, jargon. "[T]hat's Critical Legal Studies—playing squash in cutoffs; teaching at the great prestigious law school and thinking of oneself as the vanguard of the proletariat; trying to be radical but only in the most traditional context" (p. 84). Kahlenberg values engagement in projects of social reform, but finds CLS surprisingly disengaged: "While the liberals were out fighting, Duncan Kennedy was busy writing dense pieces for publications like the *Buffalo Law Review*, pages few people read and even fewer understood" (p. 78).

"Crits," Kahlenberg argues, pretend to be interested in humanizing legal education, but they are as standoffish and aloof as any other Harvard professors. They pretend to care about and value teaching, yet somehow inexplicably line up to defend Clare Dalton, whom Kahlenberg describes as "the worst teacher I ever had" (p. 46). It is, of course, odd that so much of Kahlenberg's "hatred for Harvard Law School" is directed at the crits, until one remembers that crits are for him threatening models of fallen liberals, examples of people like himself whose commitment to using law as a tool of social justice was tested, tried, and

frustrated. He reminds us that “they [crits] had believed that they could employ legal techniques to further justice but soon discovered that the system was not a set of neutral techniques available to anyone. . . but a game heavily loaded in favor of the wealthy and powerful” (p. 23). Instead of spending so much time railing against CLS, Kahlenberg might have done his argument a service by directing his fire against the concentrations of power that distort and corrupt the ideals of professionalism, that turn the ideal of disinterested service into the pursuit of profit.

In the end, Broken Contract seems all too often to be a self-indulgent rattling of what a former colleague of mine would have called Kahlenberg’s “golden chains.” Late in the book I ran out of patience with Kahlenberg’s need to find someone who would understand “what I was going through” (p. 186) in the choice between a job at Covington & Burling, and a job on the staff of Senator Charles Robb. Can the humanist commitment be authentic in a person who takes himself and his privileges that seriously? How deep could his understanding be of the meaning of lawyering in the public interest if he could so narrowly focus on a choice unavailable to 98 percent of the persons to whom such lawyering would be most important and most helpful?

III. CONCLUSION

Law schools, almost since their inception, have been torn between two masters: one the university, with its insistence on an open, scholarly understanding of law, the other the organized legal profession, with its demands for the production of disciplined professionals. If any schools are likely to be able to serve the university and distance themselves from the profession, one would imagine that Harvard and Yale would be prime candidates. While in many ways they do distance themselves from the profession and ally themselves with what I have called the humanist vision of law, both Anarchy and Elegance and Broken Contract indicate that even at these schools the profession—with its emphasis on positivism and realism—holds sway.

Kahlenberg ends Broken Contract by arguing that the arrangement of institutions matters in facilitating or inhibiting the daily struggle of individuals with “our good and bad impulses” (p. 235). He suggests that “we might want to restructure our social institutions in order to make it a little easier to be good” (p. 235). Echoing Goodrich, “law,” he proclaims, “is supposed to be about justice” (p. 237). For me the question which these books raise is whether law schools can ever attain sufficient distance from the organized legal profession to pursue the mission of making it a little easier for lawyers to do good in their lives in the law. For Kahlenberg’s and Goodrich’s humanist vision to have a chance, the restructuring which Kahlenberg calls for would have to begin with legal education itself.
What is, of course, most startling about legal education is how resilient it has been over the course of nearly a century, and how resistant it has been to changes in its basic form and mission despite generations of complaints similar to the ones Goodrich and Kahlenberg exemplify. That resilience and resistance are possible because legal education does exactly what the dominant conception of professionalism requires. Law schools—even Harvard and Yale—are not liberal arts colleges precisely because their mandate is to train and mold lawyers to fit into a profession which itself values doing well more than doing good.

For legal education to nurture and sustain a humanist vision of law, to keep alive the idea that law is, among other things, a species of moral argument, either the dominant conception of lawyering is going to have to change or new forms of legal education are going to have to develop which have greater distance from the profession and its dominant conception. As to the former, I am not optimistic. As to the latter, perhaps Kafka is right that the closer one gets to law the more powerful the obstacles to the realization of its “immortal radiance.”

This suggests that the kind of liberal arts approach to law that both Goodrich and Kahlenberg value can be best sustained in places other than law schools. The humanist vision is done a disservice if legal education is left entirely to the law schools. As the late A. Bartlett Giamatti wrote when he was President of Yale,

The Law is not simply a set of forensic or procedural skills. It is a vast body of knowledge, compounded of historical material, modes of textual analysis and various philosophical concerns. It is a formal inquiry into our behavior and ideals that proceeds essentially through language. It is a humanistic study—both as a body of material wrought of words and a set of analytic skills and procedural claims involving linguistic mastery . . . To argue, therefore, for courses in the parts, principles and purposes of law is not to argue for 'professional' training in college in the techniques, accumulated lore and diverse iterations of method that training for the profession also entails. It is rather to argue for philosophic, textual and historical concerns, as one would argue for the teaching of any humanistic . . . inquiry. . . . It is to argue that the medium of cohesion and conflict, ligature and litigation, that is the law, must be part of the educated person’s perspective in order to appreciate one of the grandest, systematic ways of thinking human beings have developed.

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33. For an example of an earlier version of such criticism, see Louis Brandeis, “The Opportunity in Law,” in Business—A Profession (Boston: Hale, Cushman and Flint, 1933).
for their survival.\textsuperscript{35}

Perhaps if Goodrich and Kahlenberg had had a systematic education in and about law before they entered law school, the humanist vision which each brought to the door of law would not so quickly or so easily have given way. Perhaps the humanistic life of law would then have had a better chance against the prevailing professional vision.

\textsuperscript{35} Giamatti, \textit{supra} note 17, 36-37.