

**The Erosion of the Country Lawyer: An Exploration into the Past, Present, and Future of
the Legal Profession**

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The average modern American, when asked to think of what a modern successful lawyer looks like, would likely imagine an urban corporate lawyer working for a large law firm making hundreds of thousands of dollars a year. But as little as 70 years ago, the archetype for a successful lawyer in the mind of the average person was likely extremely different - more so going back 100, or even 200 years. Urbanization, specialization, professionalization, and corporatization have emerged, among numerous other factors, as driving forces behind redefined visions of what today's "successful" lawyer looks like - for without large cities, large corporations, and specialist lawyers, much of the aforementioned imagery would not have been cultivated, and would not continue to be cultivated, as defining images of legal success. In focusing on defining success as those lawyers who work for large corporations in big cities, we fail to capture the true spirit of American lawyering – one that was lost long ago, and yet, to this day, remains an object of desire for the very lawyers who fit the modern archetype for success.

In Part II of this paper, I introduce the "country lawyer" by defining its separate linguistic, historical, and mythical actualities. In Part III of this paper, I map the fall of country lawyers, detailing the greatest forces throughout history that posed threats to their existence and identifying the state of the contemporary country lawyer. In Part IV of this paper, I offer an analysis of the current state of the country lawyer as an ideal and ethos as opposed to the existence of the country lawyer itself. In Part V of this paper, I demonstrate how the county lawyer can be both literally

and figuratively integrated in modern America by bridging the rural-urban divide, promoting diversity and inclusion in the legal profession, and altering the way law schools teach the law to aspiring lawyers. In Part VI of this paper, I conclude by exploring the impact of the reification of the country lawyer in modern America.

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1.0 Introduction

The average modern American, when asked to think of what a modern successful lawyer looks like, would likely imagine an urban corporate lawyer working for a large law firm making hundreds of thousands of dollars a year. These lawyers are most likely working contract law or mergers and acquisitions, fighting for corporate interests, and working exceedingly long hours. But as little as 70 years ago, the archetype for a successful lawyer in the mind of the average person was likely extremely different - more so going back 100, or even 200 years. Urbanization, specialization, professionalization and corporatization have emerged, among numerous other factors,¹ as driving forces behind redefined visions of what today's "successful" lawyer looks like - for without large cities, large corporations, and specialist lawyers, much of the aforementioned imagery would not have been cultivated, and would not continue to be cultivated, as defining images of legal success. In focusing on defining success as those lawyers who work for large corporations in big cities, we fail to capture the true spirit of American lawyering – one that was lost long ago, and yet, to this day, remains an object of desire for the very lawyers who fit the modern archetype for success.

In the formative days of our nation, lawyers did not work for large corporations in urban hubs: they were generalists,² working for their respective communities, sometimes for just enough

¹ As a preliminary outline into the country lawyer, I will be limiting myself to exploring these phenomena. A more comprehensive analysis would likely include more in-depth discussions of masculinity and frontierism, correspondence legal education, recent technological advancements and legal database changes, among others, as they relate to the country lawyer

² See, e.g., Shrute, Henry A. "The Country Lawyer." *The American Lawyer: A Monthly Journal Serving the Business and Professional Interests of the American Bar*, Volume 12, XII, Dec. 1904, pp. 437–440.

to get by.³ These were “country lawyers” through and through - living mostly in rural America, operating in circuit courts and small towns. At its height, the country lawyer was the ideal leader of their community. In true form to the grand tradition⁴ of lawyering that prevailed in their prime, most had invariably been involved in politics and leadership,⁵ as practiced speakers at rallies or events.⁶ in elected positions in their community,⁷ or spokes in the wheel of politics.⁸ As moral bastions of their communities, they served as role models, setting the standards of how to behave, how to be virtuous, and how to uphold the civic republican ideals our nation was founded on.⁹

As time went on and the country began to commercialize and urbanize, disparities in legal representation began to grow. As a result of growing trends in urbanization, specialization, corporatization and professionalization, the most prominent lawyers moved from the countryside to increasingly urban settings where the majority of the money was to be made, leaving a large gap of legal representation in those communities.¹⁰ In a world where lawyers were eventually making millions of dollars in fees, the ethos of the country lawyer over time became replaced by that of the corporatized city lawyer – and as a result, the profession slowly began to forget the roots of its very existence.

³ I Can Go Home Again, by Arthur Gray, Powell. Chapel Hill: The University of North Carolina Press, 1943; Windolph, F. Lyman. "The Country Lawyer." Commercial Law League Journal, vol. 33, no. 6, June 1928, pp. 315-318. HeinOnline. Country lawyers were “willing to take his pay in pork or potatoes or in good will.”

⁴ The “Grand Tradition” of lawyering refers to a tradition of lawyering wherein lawyers were largely public-facing and did significant work in the public interest, coined by Bernard Hibbitts at the University of Pittsburgh School of Law. This type of lawyering is characterized by a generalist education, a deep interest in public-facing work (usually in local, state, or federal government), a large degree of community involvement, and an ethos driven by uplifting and supporting the foundational ideals of American society (ideals such as democracy, justice, among others).

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Hannah Ritchie and Max Roser (2019) - "Urbanization". Published online at OurWorldInData.org. Retrieved from: '<https://ourworldindata.org/urbanization>'

The beginning of the decline of the “country lawyer” came around the time that the species was formally identified. In the 1920’s and 30’s, the lawyers who found financial success practicing in large urban corporatized firms began to look back fondly at a time where law and business were not so intricately intertwined – a romanticized version of pastoral America, whose time had come and gone. For these lawyers, the mythos of the county lawyer created a tension between the past and present: lawyers, in their reminiscing, began to look to the narrative of the country lawyer as a foil to their current reality, reminding them of what they had lost and serving as a vehicle for them to critically evaluate themselves in a modern context. Through the 1940s, 50s and 60s, this nostalgia translated into something far greater - the country lawyer became a cultural phenomenon, arising in movies and TV shows with a common trope: lawyers who, feeling disaffection with their occupation, leave the city in an effort to reconnect with rural America. To this day, the urge to escape has been, and remains to this day, a powerful pull on the profession.

As a linguistic, historical, mythical, and contemporary phenomena, the “country lawyer” today has oft been used indiscriminately by historians, biographers, writers and lawyers alike to mean a multitude of different things, ranging from idealization of a pastoral aesthetic,¹¹ professional description by geographic location,¹² and a method of cultivating a moral persona.¹³

¹¹ See, e.g., Economides, Kim. “The Country Lawyer: Iconography, Iconoclasm, and the Restoration of the Professional Image.” *Journal of Law and Society*, vol. 19, no. 1, 1992, pp. 115–123. JSTOR, www.jstor.org/stable/1410032.; Marx, Leo. *The Machine in the Garden: Technology and the Pastoral Ideal in America*. Oxford Univ. Press, 1973.

¹² See, e.g., Cornett, Judy M., and Heather H. Bosau. “The Myth of the Country Lawyer.” *Albany Law Review*, vol. 83, no. 1, 2019-2020, p. 125-168. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/albany83&i=133>., and Frank, Cheryl. “Can the Small Town Lawyer Be Saved.” *Barrister*, vol. 14, no. 4, Fall 1987, pp. 5-40. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/barraba14&i=177>.

¹³ See, e.g., *I Can Go Home Again*, by Arthur Gray, Powell. Chapel Hill: The University of North Carolina Press, 1943; Windolph, F. Lyman. “The Country Lawyer.” *Commercial Law League Journal*, vol. 33, no. 6, June 1928, pp. 315-318. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/clla33&i=317>; Shrute, Henry A. “The Country Lawyer.” *The American Lawyer: A Monthly Journal Serving the Business and Professional Interests of the American Bar*, Volume 12, XII, Dec. 1904, pp. 437–440.

However, the “country lawyer” does exist, as separate linguistic, historical, mythical, and contemporary actualities, and as it morphed and grew into different identities, it has only further eroded, both in a literal and figurative sense, for more than a century. In this way, the country lawyer may yet serve as a bastion of hope for a modern profession reimagined and poses a promising vehicle for analysis into symptoms and solutions for the problems facing today’s legal profession.

In this paper, I will argue that the mythos of the country lawyer is an essential and necessary fiction for the American legal profession. Specifically, I argue that we are at a historical crossroads, both as a society and as a profession: as society becomes more polarized and issues of magnitudes never before seen threaten our very existence as a species, and as the legal profession continues to grow into its new corporate archetype, a unifying mythos to revert lawyers back to the founding ethics of the American legal profession is essential. Critical to this undertaking is developing the idea of the “country lawyer” which has largely been lost to history. To prove my thesis, I will define the country lawyer in its separate linguistic, historical, contemporary, and mythical actualities, bridge the gap between the reality of country lawyers and the aesthetic, mystical qualities of its mythos, map how and in what capacities the ethos of the country lawyer has persisted into modern-day lawyering, and finally demonstrate how the mythos of the country lawyer can reify itself in modern America as a solvent for larger problems facing the legal profession, and by extension, society at large. From this analysis, I will demonstrate that the mythos of the country lawyer is an incubator for the reemergence of the grand tradition through a new type of lawyer - the “community lawyer” - and that from this reemergence the profession may

be able to combat the issues of ethical disillusionment and disparities in legal representation that our country currently faces.

In Part II of this paper, I will introduce the “country lawyer” by defining its separate linguistic, historical, and mythical actualities. In Part III of this paper, I will map the fall of country lawyers, mapping the greatest forces throughout history that posed great threats to their existence, and identify the state of the contemporary country lawyer. In Part IV of this paper, I will offer an analysis of the current state of the country lawyer as an ideal and ethos as opposed to the existence of the country lawyer itself. In Part V of this paper, I will show how the county lawyer can be both literally and figuratively integrated in modern America by bridging the rural-urban divide, promoting diversity and inclusion in the legal profession, and altering the way law schools teach the law to aspiring lawyers. In Part VI of this paper, I will conclude by exploring the impact of the reification of the country lawyer in modern America.

2.0 The Country Lawyer Defined

As a linguistic phenomenon, the words “country lawyer” denote myriad meanings depending on the context of its use. The modern word “country” creates imagery of rural America - perhaps of a Southern aesthetic - and with it a feeling of nostalgia and a desire for a simpler, more harmonious life with nature.¹⁴ The American obsession with the pastoral aesthetic has permeated the arts and literature since our country’s founding, and to this day is even used in advertisements for cigarettes, beer, and varying brands of American cars.¹⁵ Indeed, it seems as though the very history of America is inseparable from the country mystique, though we may not always be conscious of it. The use of the word “country” is indeed a powerful method of subtly yet systematically altering perceptions of ideas and values - in this case, especially for the legal profession. The country lawyer mythos has had and continues to have a great capacity to positively influence the profession’s image, altering sentiments and opinions both within and beyond the profession. Keeping this in mind, the following sections will define the “country lawyer” by exploring its linguistic, actual historical, modern, and mythical facets.

¹⁴ Marx, Leo. *The Machine in the Garden: Technology and the Pastoral Ideal in America*. Oxford Univ. Press, 1973. (6)

¹⁵ *Ibid.* (6)

2.1 Linguistics, Symbolism, and Public Perception

In many ways, the words “country” and “lawyer” are a modern-day juxtaposition. The attractiveness and felicity of unspoiled terrain - the “country” - has been a cornerstone of the American psyche for generations,¹⁶ while the word “lawyer” has been (and continues to be) an object of lament and disdain.¹⁷ Indeed, from our country’s very beginnings, lawyers have almost always been an object of popular hatred, and it is a result of this perception that lawyers have obsessively tried to cultivate a more positive public image of themselves.¹⁸ Indeed, the practical implications of their poor perception have often manifested themselves into tangible consequences through the systematic denial or regulation of fees on the grounds that permitting them would “tarnish the image of the profession”¹⁹. Through their many efforts to improve their perception, lawyers have instituted gatekeeping mechanisms, such as the LSAT and bar examinations, to prevent racial and ethnic minorities from entering the profession²⁰, and have tried to bar cameras from the courtroom to censor the public’s ability to witness and engage with the law in practice, among other things.²¹ The more nefarious methods have been recognized and discussed at length by scholars and academics alike, who have lambasted the profession for their attempts at creating a professional mystique at the expense of the public at large.

¹⁶ Ibid. (9)

¹⁷ See, e.g., Zaretsky, Staci. “Lawyers: The Most Despised Profession in America.” Above the Law, Above the Law, 15 July 2013, abovethelaw.com/2013/07/lawyers-the-most-despised-profession-in-america/.

¹⁸ "Gross, Leonard E." Seton Hall Law Review, vol. 29, no. 4, 1999, pp. 1405-1460. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/shlr29&i=1417>.

¹⁹ Ibid.

²⁰ Randall, Vernellia R. "The Misues of the LSAT: Discrimination against Blacks and Other Minorities in Law School Admissions." St. John's Law Review, vol. 80, no. 1, Winter 2006, pp. 107-152. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/stjohn80&i=109>.

²¹ *Canons of Judicial Ethics*, 62 ABA ANN. REP. 1123, 1134-35 (1937).

Little attention, however, has been paid to the more subtle influencers of public perception for the profession. For instance, the very conception of the “country lawyer”, which was only first formally articulated and integrated in the vernacular of the legal profession, was only first coined around the time that the ethos of the profession, along with its public perception, was shifting away from its original foundation. Linguistically, the etymology of the word “country” and the professional obsession with its use goes beyond a simple descriptor of geographic location - indeed, in associating and qualifying some lawyers as “country lawyers”, one was doing more than simply adding a geographic qualifier to certain lawyers²². Whether consciously or unconsciously, the effect of the newly characterized “country lawyer” also served the purpose of associating the positive pastoral imagery and mystique of the country with the tarnished and negative imagery of the legal profession - which, in effect, subtly placed these so-called “country lawyers” in higher esteem in the minds of both the profession and the public at large. As such, whether intentional or not, the “country lawyer” is indeed defined, at least in part, by its relationship with the American obsession for the country.

However, the country lawyer is not merely defined by its linguistic association. The “country lawyer”, as it is used throughout history, is also defined by its existence as a historical phenomenon, a contemporary reality, and a mythical manifestation. The following sections will articulate these distinctions in an effort to capture the entire scope of the country lawyer.

²² Modern examples of this phenomena include Sam Ervin, who used the self-descriptive terminology of “country lawyer” as a rhetorical device and signpost for himself even though he graduated from Harvard Law School with Honors, as indicated by Senator Howard Baker (R-TN) during the Watergate Hearings.

2.2 The Historical Country Lawyer

The actual historical country lawyer encompassed most of the lawyers practicing in America from the founding of Jamestown in 1607 to the end of the civil war in 1865.²³ Understood as a strictly geographical and territorial quantifier, the historical “country lawyer” lived in the heart of rural America. In a time where less than 20% of the American population lived in urban environments,²⁴ most lawyers who entered the profession worked within the towns and villages where they grew up. Those who entered the profession were often those who were deemed the brightest in their communities,²⁵ and these lawyers learned how to practice law in the offices of country practitioners rather than in formal law schools.²⁶ Many country lawyers in this time practiced a less formal, more community-facing interpretation of the law; indeed, the law as a social enterprise existed mostly in the heads of the community, and as such country lawyers often applied their judgements based on community understandings as opposed to the letter of the law itself.²⁷ These country lawyers were obsessed with prestige and pride, and used the public nature of the courts as both a practical means of advertising their capabilities to the community and a means of sport with opposing attorneys in the community.²⁸ Oftentimes, due to the nature of the small towns they practiced in, lawyers and judges alike would travel together from town to town, developing close kinship with one another on what would have otherwise been long, arduous

²³ Landon, Donald D., 1930-. *Country Lawyers : the Impact of Context on Professional Practice*. New York :Praeger, 1990. (1)

²⁴ Hannah Ritchie and Max Roser (2019) - "Urbanization". Published online at [OurWorldInData.org](https://ourworldindata.org). Retrieved from: '<https://ourworldindata.org/urbanization>'

²⁵ Shrute, Henry A. “The Country Lawyer.” *The American Lawyer: A Monthly Journal Serving the Business and Professional Interests of the American Bar*, Volume 12, XII, Dec. 1904, pp. 437–440.

²⁶ *Ibid.*

²⁷ *I Can Go Home Again*, by Arthur Gray, Powell. Chapel Hill: The University of North Carolina Press, 1943

²⁸ *Ibid.*

journeys.²⁹ In the absence of a formal professional discipline, what was generally considered right and wrong etiquette was determined on a case by case basis by the localities which these lawyers practiced in, adding unique communal standards of lawyering that varied substantially by location.³⁰ Distinctly generalists, these lawyers lived under the motto of “every sort of legal service for every sort of client”,³¹ serving both the least and most well off in the community in whatever capacity deemed necessary.³² Though they took fees for a living, the country lawyer’s ultimate maxim remained “justice, and not the fee, must be his goal.”³³ Outside of the courtroom, country lawyers were community leaders, advising selectmen,³⁴ appearing as supervisors of the check-list of nearby towns (dealing with matters of voter eligibility),³⁵ serving as judges, statesmen, public orators, and local party leaders, and most often offering general guidance about more mundane non-legal matters of property and family.³⁶

By its very nature, the actual historical country lawyer was decidedly an extremely important yet unhistorical phenomenon. Most country lawyers lived their entire lives within the scope of their own small communities, never gaining national recognition or praise and often not

²⁹ Bodeneimer, Edgar (1950) "The Growth of American Law: The Law Makers, by James W. Hurst," Indiana Law Journal: Vol. 26: Iss. 1, Article 11.

³⁰ Ibid.

³¹ Windolph, F. Lyman. "The Country Lawyer." Commercial Law League Journal, vol. 33, no. 6, June 1928, pp. 315-318. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/clla33&i=317>.

³² See Bellamy Partridge, Country Lawyer, in READER'S DIGEST, Sept. 1939, at 111 (condensed version of BELLAMY PARTRIDGE, COUNTRY LAWYER (1939)). "The city lawyer can specialize in whatever field he likes. But the country lawyer must be ready to handle almost any kind of case that comes along."

³³ Dumm, A.T. "The Country Lawyer." Canadian Law Times, vol. 41, no. Issues 8 and 9, August-September 1921, pp. 537-542. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/canlawtt41&i=547>.

³⁴ I Can Go Home Again, by Arthur Gray, Powell. Chapel Hill: The University of North Carolina Press, 1943

³⁵ Ibid.

³⁶ Windolph, F. Lyman. "The Country Lawyer." Commercial Law League Journal, vol. 33, no. 6, June 1928, pp. 315-318. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/clla33&i=317>. (Story of a man who sought the advice of a lawyer on whether or not to purchase a plow)

even referring to themselves using the qualifier “country lawyer”³⁷. Most often, their contributions to history never escaped the towns they practiced in, and most exist merely as footnotes in the larger scheme of American history or in the minds of the communities which were gently touched by their presence. However, a few country lawyers enjoyed success spanning well beyond their communities, leaving us with portraits of the existence of the broader historical country lawyer - men such as Gabriel Jones, dubbed the “Valley Lawyer” due to his prominence in the rural Virginia Valley region. As a lawyer, legislator, court clerk, and civil servant, Jones served as the first resident lawyer of rural Augusta county, and through his work became close with George Washington.³⁸ He was widely considered one of the most successful and renowned men in the colonial bar, known for his incredible native abilities and political affinities.³⁹ Even after retiring from the profession, Jones remained active in Virginia politics, serving in the Virginia House of Burgesses from 1757-1761 and again in 1771, and was appointed to serve as the representative of Virginia to the first Continental Congress in 1774.⁴⁰ As a community leader, politician and statesman, Jones represents an archetypal instance of the historical country lawyer - a man content with living a life of public service to his community.

Beyond Jones, other men existed in similar capacities conducting similar work within their communities. One such man was Hugh Henry Brackenridge, a renowned lawyer, judge, writer,

³⁷ A notable historical example of a country lawyer who did not refer to himself by such a name is former Supreme Court Justice Benjamin Cardozo (1870-1938) who was drawn into many of the ideals and aspirations that typify country lawyers without explicitly identifying as one around the time that the species was, in fact, becoming explicitly defined.

³⁸ Lockhart, Arthur William (1918). *Gabriel Jones (1724–1806): Sometime a Scholar of Christ's Hospital, and American Citizen and Friend of George Washington*. London: School Press. OCLC 19319585 – via Google Books.

³⁹ Green, Thomas Marshall (1889). *Historic Families of Kentucky*. Cincinnati: Robert Clarke and Company. OCLC 223261777 – via Google Books.

⁴⁰ Lockhart, Arthur William (1918). *Gabriel Jones (1724–1806): Sometime a Scholar of Christ's Hospital, and American Citizen and Friend of George Washington*. London: School Press. OCLC 19319585 – via Google Books.

and justice of the supreme court of Pennsylvania. After studying the law under Samuel Chase in Annapolis, Maryland, Brackenridge moved to Pittsburgh, then a small town of less than 400 inhabitants which effectively marked the Western frontier, remarking that his goal, in “offering myself to the place” was “to advance the country and thereby myself.”⁴¹ While in Pittsburgh, Brackenridge established the first Western newspaper, *The Pittsburgh Gazette*; founded the Pittsburgh Academy (known today as the University of Pittsburgh); and wrote a masterwork commentary titled *Modern Chivalry* on how greed and ignorance lead to the election of corrupt and hypocritical leaders.⁴² As a community leader and bastion of morality for broader American society, Brackenridge represents another portrait of the historical country lawyer - a man devoted to his community and his country, serving in whatever capacity necessary to better the lives of everyone around him.

Later on in history, the pinnacle figure of the historical country lawyer, Abraham Lincoln⁴³, arose as the guiding force for the profession. Lincoln, born to a poor family in rural Kentucky, became a lawyer through his own self-education and eventually arose as a party leader for the Whigs, serving as an Illinois state legislator and congressman.⁴⁴ Biographers and historians alike nostalgically refer to his work as a “prairie lawyer,” gaining a reputation as a hardworking, honest

⁴¹ Elliot, Emory B. “Brackenridge, Hugh Henry.” Princeton University, The Trustees of Princeton University, etcweb.princeton.edu/CampusWWW/Companion/brackenridge_hugh_henry.html.

⁴² Ibid.

⁴³ A brief note: we should be careful to un-critically use Lincoln as an example of the 'actual historical' country lawyer. As a fundamental component of the broader American mythos, Lincoln's life and biographies are likely influenced by a positive perception and may not be an entirely truthful and unbiased accounting of his life, as is most history. It could very well be that he has truly transcended the actual country lawyer and it is likely that many descriptions of him are, to some extent, influenced by his mythical stature in the minds of bibliographers and historians alike who see him as someone who did little to no wrong. For the sake and scope of this paper, however, I will not take a stance or critically evaluate this position, and will take at face value the historical documents and sources below.

⁴⁴ “Abraham Lincoln.” Wikipedia, Wikimedia Foundation, 14 July 2019, en.wikipedia.org/wiki/Abraham_Lincoln#Prairie_lawyer.

man in rural American prairies.⁴⁵ While practicing in these small communities, Lincoln understood the importance of community perception in his cases, and often employed mediation and compromise instead of taking cases directly to the courts, even if he made less doing so.⁴⁶ He ensured that those in his community understood that the nominal winners of court cases are often real losers - in time, expenses, and fees.⁴⁷ More broadly, Lincoln advocated for lawyers to be peacekeepers in communities, and above all else, be good, honest men.⁴⁸ Later on, he became a leader of the Republican party, leaving his small town to take on a far grander role as the future 16th President of the United States of America. An outspoken abolitionist, Lincoln used his position as president to issue the Emancipation Proclamation, setting precedent for the adoption of the 13th amendment after the civil war and the abolishment of slavery in the United States.⁴⁹ Lincoln's unabashed spirit and dedication to service and justice above all else embodies the best of what country lawyering was and ought to be - and through his example, we may come to better understand the country lawyer at its peak. As an incredible leader, moralist, and lawyer, Lincoln represents yet another portrait of historical country lawyering and its potential to transcend its historical constraints and become the ideal for all Americans, lawyers and non-lawyers alike.

⁴⁵ Donald, David Herbert (November 5, 1996). Lincoln. Simon and Schuster. ISBN 9780684825359.

⁴⁶ Steiner, Mark E. An Honest Calling: the Law Practice of Abraham Lincoln. Northern Illinois University Press, 2009., p. 75.

⁴⁷ Lincoln, Abraham. "Abraham Lincoln's Notes for a Law Lecture." Abraham Lincoln's Notes for a Law Lecture, The Abraham Lincoln Association, www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm.

⁴⁸ Ibid.

⁴⁹ Ibid.

2.3 The Mythical Country Lawyer

As a distinct and separate phenomenon, the mythical “country lawyer” - broadly defined as the country lawyer translated into popular culture, transcendent to the point of becoming a mythos as opposed to an absolute reflection of reality - distinguishes itself by its relationship to law, literature, film, history, and popular culture, as opposed to a purely linguistic or territorial phenomenon. As a result, the mythical country lawyer, time spaced by the one who conceptualizes it, is defined mostly by the prevailing social conception of the legal profession at the time of its conception, which has varied drastically throughout American history. Around the turn of the 18th century, when lawyers and legal fiction were becoming a larger trope in American fiction, depictions of the law were oriented around three cardinal points: first, a strong ambivalence toward legal attitudes, with the distinctions between lawyer and criminal were blurred; second, an obsession over the circumstantial justification of crime; and third, a systematic discrediting of English legal institutions and mechanisms.⁵⁰ Many depictions of attorneys - country or otherwise - focused on their incompetence and corruption.⁵¹ Over time, however, depictions of lawyers in literature shifted and changed, and many post-colonial literary works featured lawyers in a more sympathetic light, depicting their struggles to reconcile their obligation to uphold the law with their convictions of morality.⁵² Essentially, as external (public) and internal perceptions of the

⁵⁰ Punter, David. “Fictional Representation of the Law in the Eighteenth Century.” *Eighteenth-Century Studies*, vol. 16, no. 1, 1982, pp. 47–74. JSTOR, www.jstor.org/stable/2738000.

⁵¹ *Ibid.*

⁵² Knake, Renee Newman. "Beyond Atticus Finch: Lessons on Ethics and Morality from Lawyers and Judges in Postcolonial Literature." *Journal of the Legal Profession*, 32, 2008, pp. 37-66. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/jlegpro32&i=40>.

legal profession changed, the moral values and literary myths underlying the country lawyer in literature changed as well to reflect the times.

Beyond simply fiction, the mythical country lawyer also came to prominence in a new space where it had rarely existed within American culture: in popular media and film. Around the middle of the 20th century, the “simple country lawyer” trope arose in film, literature, and television in a time where the country was obsessed with Westerns. Ever since Hopalong Cassidy, played by William Boyd, and his horse Trooper appeared on television, western television shows depicting a country aesthetic dominated American media and culture for a large period of time.⁵³ By 1959, TV westerns became so popular that they outpaced all other prime time TV genres, and by the end of the 1960s there were over 100 TV westerns on air.⁵⁴ As a part of a grander obsession with rural America, the country lawyer was the ‘western’ aesthetic of the legal profession which was able to come to prominence within the Western archetype as a new cultural character. Indeed, from the 1950s on, the country lawyer arose in many popular films and books that, to this day, remain seminal works of American culture.

The 1959 television drama *The Anatomy of a Murderer*, in many ways, represents the prototypical depiction of the country lawyer in film. The protagonist, Paul Biegler, played by Jimmy Stewart, is a country lawyer from rural Michigan who was tasked with defending a man who killed his wife’s rapist in court against the big-city lawyer played by George C. Scott.⁵⁵ In this archetypal “rural vs. urban” environment, the victory of Biegler over the big city lawyer is a symbolic depiction of the primacy of rurality - of the simple country lawyer defending a man in

⁵³ Kiss, Stephen. “On TV Westerns of the 1950s and '60s.” The New York Public Library, The New York Public Library, 27 Oct. 2015, www.nypl.org/blog/2012/12/01/tv-westerns-1950s-and-60s.

⁵⁴ Ibid.

⁵⁵ Hoff, Timothy. "Anatomy of a Murder." *Legal Studies Forum*, vol. 24, no. Issues 3 & 4, 2000, pp. 661-666. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/lstf24&i=669>.

court against the odds. In 1986, the courtroom drama *Matlock* introduced yet another country lawyer, Ben Matlock, played by Andy Griffith.⁵⁶ Matlock's decisively country aesthetic - the folksy Southerner who dressed in conservative gray suits who always got to the bottom of his cases - captured the hearts and minds of Americans nationwide throughout its nine year lifespan.⁵⁷ In 1997, the film *The Devil's Advocate* introduced yet another depiction of the country lawyer - Kevin Lomax, played by Keanu Reeves.⁵⁸ In another classic depiction of the anti-big city trope, Lomax, a country lawyer from rural Florida who is offered a job in a big New York City law firm, comes to realize that the owner of the big city firm is the devil himself, and the film ultimately shows the primacy of the country lawyer over his big city counterpart. These examples, among many others,⁵⁹ depict an important cultural phenomenon. The primacy of the country lawyer type in popular culture - the elevation of its ideals, values, and ethos - represents the lamentation of the urban corporate lawyer's rise to supremacy. Indeed, it almost as if society more broadly recognized the direction that the legal profession had turned to and reacted by attempting to create a new counter-culture movement which sought to denounce the current state of affairs and call for change.

Perhaps the most interesting and prominent mythical "country lawyer" is Atticus Finch from Harper Lee's *To Kill a Mockingbird*. Indeed, the image of Atticus Finch is so pervasive within popular culture that even law school textbooks have begun to treat him as an actual historical person.⁶⁰ Atticus Finch represents the quintessential depiction of the country lawyer ideal in popular culture: a moralist tasked with defending Tom Robinson, a black man falsely accused

⁵⁶ "Matlock." TV Tropes, tvtropes.org/pmwiki/pmwiki.php/Series/Matlock.

⁵⁷ Ibid.

⁵⁸ "The Devil's Advocate (1997 Film)." Wikipedia, Wikimedia Foundation, 24 June 2019, [en.wikipedia.org/wiki/The_Devil%27s_Advocate_\(1997_film\)](https://en.wikipedia.org/wiki/The_Devil%27s_Advocate_(1997_film)).

⁵⁹ For other depictions of country lawyers in media, see *Runaway Jury* (2003), *I Love You Phillip Morris* (2010), the character Jewel Clawford in *King of the Hill*, the character Matcluck of *Futurama*, among others.

⁶⁰ Robert M. Jarvis, The Admiralty Lawyer in Popular Culture, 37 J. MAR. L. & COM. 23 n. 46 (2006)

of rape in the rural South,⁶¹ doing everything in his power to help by whatever means necessary, no matter the cost. He does not live a particularly lavish lifestyle - he lives with his two children in a modest home and is well-known and well-regarded within the community. The book's 1962 film adaptation further enshrined Finch as the pinnacle of the country lawyer ideal in film, depicting him as a lawyer-hero in the courtroom, giving plain-talk sermons and upholding morality and justice in an otherwise morally backwards community. Though ultimately unsuccessful in the trial, Atticus Finch remains one of the most enduring images of integrity, ethicality and morality for the legal profession.⁶² As the most eminent literary depiction of the "country lawyer", Atticus Finch serves an important portrait of the country lawyer as a mythos and its role in cultivating an image of rural lawyers as decidedly moralist and good.

Now formally defined in its different facets, the next section will explore the various forces and counterforces that led to the fall of the country lawyer throughout history, looking specifically at how urbanization, corporatization, specialization and professionalization arose as threats to the morals and ideals of the historical country lawyer and to what extent country lawyers still exist in modern America.

⁶¹ Lee, Harper. *To Kill a Mockingbird*. Chelsea House Publishers, 1999.

⁶² More recent literature on the morality of Atticus Finch has contested the idea that Atticus Finch is an enduring image of racial heroism. For a more in depth discussion of the persona of Atticus Finch, see Zwick, Peter. "Rethinking Atticus Finch." *Case Western Reserve Law Review*, vol. 60, no. 4, Summer 2010, pp. 1349-1368. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/cwrlrv60&i=1357>.

3.0 The Fall of the Historical “Country Lawyer”

The history of country lawyers in America is mired by the intersection of various social, economic, and political circumstances which facilitated its decline in the more than 200 years since this country's founding. From the end of the revolutionary war through the middle of the 19th century, country lawyers had yet to be affected as a particular species because they were yet to be defined; they were largely indistinguishable from the broader legal community's success through the American civil war. However, the end of the American Civil War marked an important turning point for the historical country lawyer in America: both within and beyond the profession, budding trends such as urbanization, specialization, professionalization, and corporatization redefined and split the American legal profession into distinct groups, separating what was once a much more general class of lawyers into segments marked by territorial, subject, and economic distinctions. In this time of change, country lawyers began to emerge as a unique subset of the legal profession, ebbing back and forth into prominence and experiencing periods of both decline and revitalization up through the current day. This section will focus on mapping the various forces that led to the periods of decline throughout the country lawyer's existence, ending with the extent to which the country lawyer exists in America today.

3.1 Introduction

Though only truly defined as a species at the turn of the 20th century,⁶³ the historical country lawyer's prime existed in a time where few were concerned about its existence. From the end of the 18th Century to the middle of the 19th Century, most lawyers in America were considered 'country lawyers' by the nature of where they practiced, the type of law they engaged in, and the fundamental qualities that defined their moral characters.⁶⁴ Though the historical country lawyer continued to exist after the middle of the 19th century, its fundamental ethos was challenged: the growing reliance and success of capitalism in America, alongside various other social, political, and economic factors, had begun to more effectively undermine the core tenets of country practice that nurtured the ideal of the country lawyer in America. At the turn of the 20th Century, the legal profession developed a new taxonomy for classification, with the 'Country Lawyer' becoming its own distinct and separate subset of the legal profession for the first time. This marked a turning point for the profession and for the historical country lawyer - in naming the country lawyer as its own phenomena, the profession cemented its state as a 'type' rather than the 'norm'.

That is not to say that as a 'type', the country lawyer was unable to occupy its place as the majority identity for the American legal profession in post-bellum America. For example, manifested through frontierism and a redefined masculine identity, the 1930s became a catalyst for

⁶³ The use of the term 'country lawyer' to describe individuals beyond a simple territorial distinction into something more meaningful (i.e. imparting pastoralism and imbuing morality through the use of the term) and as a subject of the work as opposed to an adjective in a sentence only began around 1880-1900. See, e.g., Hensel, W. U. "Thaddeus Stevens as a Country Lawyer." *Green Bag*, vol. 18, no. 12, December 1906, pp. 641-656. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/tgb18&i=680>.

⁶⁴ For a broader discussion of historical country lawyers in Early America, visit section I of this paper

the return of the country lawyer - or at the very least a return of its ideals - in a time where Americans were unsure about their future. As a solvent for the disillusionment of progress, the country lawyer served as an anti-historical phenomenon which helped lawyers reconcile their emotions about the state of the legal profession by nostalgically looking back to a time where lawyering was at its peak. From then on, though continuing to decline as a species, the spirit and presence of the country lawyer remained, taking on new forms in literature and television, capturing the hearts and minds of not only those in the legal profession but everyday Americans as well.

As a preliminary outline to the topic of country lawyers, the following sections will examine a few key forces at play on the country lawyer throughout history, mapping the fall over its lifetime.

3.2 Early America and the Pastoral Dream

America was founded on the pastoral dream. As far back as the creation of the Book of Genesis and the story of the garden of Adam and Eve, humans have been obsessed with pastoral imagery. Historically, the allure of idyllic, unspoiled land has been a primary motivating force for exploration, capturing the hearts and minds of 16th century Europeans who expanded the reach of their imagination beyond what they saw in mainland Europe or Asia.⁶⁵ As nations began to view exploration and colonization as opportunities for growth and expansion, colonization and

⁶⁵ Marx, Leo. *The Machine in the Garden: Technology and the Pastoral Ideal in America*. Oxford Univ. Press, 1973. (68)

exploration transcended their existence as purely state-driven endeavors into ones that were accessible to individuals and corporations who were interested in their tenants. Fueled by the sentiments of works such as Thomas Moore's *Utopia*, prominent wealthy individuals in England began to take steps to actualize the pastoral dream into a physical reality. As part of the few who had the economic capacity to invest in exploration, lawyers were in a unique position to invest in colonial enterprises, both as economic opportunities and as opportunities to satisfy their explorative imaginations. Prominent lawyers such as John Rastell, a member of England's Middle Temple, invested in colonial enterprises of their own for the purpose of actualizing their pastoral ideals - spreading virtue to an otherwise uncivilized land and creating an idyllic utopia.⁶⁶ As manifestations of this explorative ideal, the American colonies - by virtue of their ruggedness and their proximity to nature and native Americans - served as both early symbols of country wilderness in a world obsessed with ruralism and unspoiled terrain and as tangible projections of a utopian pastoral future in North America.

In many regards, the explorative ideal, fueled by these pastoral sentiments, allowed for the projection of the idyllic dream into the future. As a nation founded on rural obsession, the country has always been on the minds of Americans. By the very nature of early America, almost every lawyer practicing in America from the founding of Jamestown in 1607 to the end of the civil war in 1865 was a country lawyer.⁶⁷ Up through the middle of the 19th century, America was composed of small rural towns and villages, with less than 20% of the population living in urban

⁶⁶ In his play, *Four Elements*, he writes, "And what a meritorious deed it were to have the people instructed to live more Virtuously, and to learn to know of men the manner, and also to know god their maker, who as yet live all beastly" (Rastell, John. *Nature of the Four Elements*. Hardpress Publishing, 2012.)

⁶⁷ Landon, Donald D., 1930-. *Country Lawyers : the Impact of Context on Professional Practice*. New York :Praeger, 1990. (1)

environments.⁶⁸ As most Americans and American lawyers alike were living in the literal country itself, they were constantly surrounded and supported by country imagery, further ingraining the rural aesthetic into their imaginations.

From the country's founding through the turn of the 19th century, this ideal existed relatively unopposed. However, the advent of tangible historical phenomena - actual visible technological developments which became pervasive throughout all of America - soon invaded the American psyche and challenged the pastoral ideal. As literal "machines in the garden", technological developments in machinery, manifested through the image of the locomotive, became the symbol of the obtrusiveness of technology and history into the ahistorical pastoral landscape, which had been able to exist relatively independent of change.⁶⁹ With the development of the railroad and the noise of steam engines permeating small towns and villages, technology was no longer avoidable in the country - and as such, the locomotive arose in literature as a counterforce for the pastoral archetype in the decisive "take off" stage of the new American capitalist economy.⁷⁰ In this way, industrialization and technological progress, fueled by the burgeoning American economy and its desire to outpace the rest of the world, posed a new threat to the rise and fall of the utilization of the terminology 'country lawyer', in addition to the viability of the 'country' image itself - one that slowly contributed to its downfall.

⁶⁸ Hannah Ritchie and Max Roser (2019) - "Urbanization". Published online at OurWorldInData.org. Retrieved from: '<https://ourworldindata.org/urbanization>'

⁶⁹ Marx, Leo. *The Machine in the Garden: Technology and the Pastoral Ideal in America*. Oxford Univ. Press, 1973.

⁷⁰ Ibid. (26)

3.3 Urbanization and the Country

The latter half of the 19th century experienced a series of profound demographic changes in America that set the stage for an urban revolution. From the period 1850-1900, the number of Americans living in urban environments almost tripled - from only 20% in 1850 to over 60% in 1900.⁷¹ Today, more than 80% of Americans live in cities - a complete reversal of population demographics from 1850, which was less than 200 years ago.⁷² At the same time, rural communities have been unable to adequately adapt to the effects of technological advancement and urbanization. Historically, rural communities were relatively self-sufficient - yet with the advent of urbanization, rural communities have faced population decline, changes in population composition in the form of migration, and tax base decline.⁷³ These issues are compounded by a general lag in efforts to make necessary structural changes to rural communities to accommodate technological advancements that have redefined the scope of their communities.⁷⁴ For these reasons, as well as the fact that more Americans were living in cities as opposed to rural communities, lawyers began to move to cities as a matter of adapting to what best suited their personal and professional needs.

At the same time, not all Americans were ready to transition to new urban environments. The phenomenally rapid pace of urbanization over the period of only a few decades broke up neighborhoods and communities, uprooting family structures and completely upending the

⁷¹ Hannah Ritchie and Max Roser (2019) - "Urbanization". Published online at OurWorldInData.org. Retrieved from: '<https://ourworldindata.org/urbanization>'

⁷² Ibid.

⁷³ Bishop, C. E. "The Urbanization of Rural America: Implications for Agricultural Economics." *Journal of Farm Economics*, vol. 49, no. 5, 1967, pp. 999–1008. JSTOR, www.jstor.org/stable/1236977. (1000)

⁷⁴ Ibid.

demographics of America in a way that humans have never experienced before. Amidst these developments, the turn of the 20th century saw the development of a new medical concern, dubbed Neurasthenia, which stemmed from exposure to modern civilization due to factors such as economic competition, excessive brain work, rapid communication, and the fast pace and constant noise from the city.⁷⁵ Neurasthenia was a catch-all diagnosis for a more general growth of nervousness and fatigue among men, which came about as a reaction to changing societal demographics and lifestyles that mirrored the growth of urbanity. As a psychological phenomenon, Neurasthenia represented the emotional and neurological manifestation of the discrepancies many Americans faced with abandoning the pastoral aesthetic in favor of city life. As a new breed of men who lived a life that embodied a distinctly anti-pastoral ideal, the reattainment of a lost sense of ruggedness for “urban men” was of paramount concern for American men affected by Neurasthenia.⁷⁶ Common prescriptions for such men were “medical trips” westward to rural dude ranches, where one would engage in rugged exercise, horseback riding, and other physical activities to reconnect with the country, regain their lost sense of manliness, and rid themselves of their nervousness.⁷⁷

The juxtaposition of Neurasthenia and urbanization represents, in part, the internal conflict within many Americans in a time of great societal change. As a neurological phenomenon literally pulling men back to the country, Neurasthenia and the counter movement against urbanity became important forces for the revival of the pastoral trope in American society and an antidote to the ailing country lawyer. Popular culture, as depicted in prominent novels of the time such as Jack

⁷⁵ Pettegrew, John. *Brutes in Suits: Male Sensibility in America, 1890-1920*. Johns Hopkins University Press, 2012.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.* (22)

London's *Call of the Wild*, Frederick Jackson's *Frontier Thesis*, and Theodore Roosevelt's "Rough Riders", all contributed to the reinvigoration and re-centering of a distinctly country aesthetic in American culture⁷⁸ which, in part, validated the existence of the country lawyer in a time where it was otherwise losing its place. Though the world was becoming more metropolitan and the historical country lawyer type was in decline, the country lawyer continued to persist through the beginning of the 20th century.

3.4 Corporatization, Specialization, and Professionalization

In many ways, specialization, corporatization, and professionalization are noxious to the ideal of the country lawyer. As discussed earlier, by the very nature of rural American communities, country lawyers are forced to be generalists in most instances simply as a means of survival. As a historical fact, most lawyers in early America, being country lawyers, were generalists by nature because their communities and work necessitated that they be. However, after the civil war, as methods of legal education were redefined, the necessity of knowledge of "law" more generally was displaced by a specialist tendency, whereby lawyers went to new schools specifically dedicated to teaching the law to learn certain aspects of the law, such as tax law or family law, as opposed to law more broadly.⁷⁹ In this space, redefined conceptions of

⁷⁸ Ibid.

⁷⁹ Ariens, Michael. "Know the Law: A History of Legal Specialization." *South Carolina Law Review*, vol. 45, no. 5, 1994, pp. 1003-1062. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/sclr45&i=1019>. (1008)

professionalization⁸⁰ fueled the development of a new ‘expert’ tradition and taxonomy of lawyer ‘type’, fundamentally changing the nature of the American legal profession and acting as a force of displacement for the historical country lawyer.

In this broader context, the corporatization of large urban law firms, situated within the centering of the capitalist ethos in American society, drove lawyers to become more focused on external rewards and the praise of others, which prioritized a desire for financial success alongside an obsession with image and status.⁸¹ The burgeoning focus on extrinsic monetary and self-obsessive goals denounced the ideas of universalism, benevolence, and self-direction, all of which are essential aspects of country lawyering and its dependence on community.⁸² Moreover, the centering of the capitalist ethos within the legal profession enshrined financial success as the paramount measure of self-fulfillment and self-actualization, which stood in direct opposition to the country lawyer’s ideals of community feeling, affiliation, and desires to improve the world through activism.⁸³ In this space, lawyers looked not to center the needs of their communities, but instead saw them as opportunities to make money. Lawyers began to seek the best and most profitable cases to secure their own financial success at the expense of those which would best serve those most vulnerable or most in need.

In a world where lawyers and law firms were now specialized into distinct areas of focus, large urban law firms in the 1920s began to institutionalize specialist firms taking on specific types of cases as a new structure for law firms, laying the groundwork for their replication and

⁸⁰ Beyond simply the development of professional competence and standards, but also a trend away from the community as the professional identity took on that of city lawyering and rural bar associations became increasingly disaggregated and disorganized compared to their urban counterparts.

⁸¹ Kasser, Tim, et al. “Some Costs of American Corporate Capitalism: A Psychological Exploration of Value and Goal Conflicts.” *Psychological Inquiry*, vol. 18, no. 1, 2007, pp. 1–22., doi:10.1080/10478400701386579. (7)

⁸² *Ibid.* (8)

⁸³ *Ibid.* (8)

proliferation. As these large specialist law firms grew in prominence and American aspirations changed due to the social, political and economic climate at the turn of the 20th Century, the image of the ‘corporate lawyer’ type established itself and began to thrive as a new and particularly aspirational exemplar for the profession.⁸⁴

Around the same time, the structure of American legal education shifted as well. Whereas traditional country lawyers were taught the law in the form of apprenticeships of practicing lawyers, formalized law schools became the new method of legal education for aspiring lawyers. After the civil war, new thought leaders within the American legal profession emerged looking to redefine, on a fundamental level, what law was: a science. Among those who were restructuring sentiments on the basis of what law was Joseph Story, a famous antebellum lawyer, who remarked in a letter to a friend, “Law I admire as a science; it becomes tedious and embarrassing only when it degenerates into a trade.”⁸⁵ In coming to a better understanding of what law was, these lawyers looked to understand, more fundamentally, the nature of their profession in the first place.

In 1871, the idea of law as a science was applied for the first time to its education. In his *Selection of Cases on the Law of Contracts*, Christopher Columbus Landgell, then dean of the Harvard School of Law, introduced a new way of teaching the law. Dubbed the “case method”, aspiring lawyers were taught the law by a selection of case books - each independent of another and focusing on specific areas of the law - and were told to come to a conclusion on the case with the same materials given to the actual judges and lawyers who were a part of the case.⁸⁶ In treating the education of the law as such, the case method was a deterrent to the country lawyer ideal in

⁸⁴ Ibid. (1008)

⁸⁵ Joseph Story, Letter to Thomas Welch (Oct. 19, 1799), in 1 LIFE AND LETTERS OF JOSEPH STORY 81, 83 (William W. Story ed., 1851).

⁸⁶ Morgan, Edmund M. "Case Method, The ." *Journal of Legal Education*, vol. 4, no. 4, Summer 1952, pp. 379-391. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/jled4&i=389>. (380)

two ways. First, in treating each body of law as a separate entity and relegating it to its own case book, students were less able to see the established relationships and connections between different areas of the law. This compartmentalization of the law made it difficult for students to envision a generalist archetype - given that each was taught as an independent area of law, it made more sense for lawyers to look to specialization as a way to master a specific area of law as opposed to trying to understand all of the law. In this manner, lawyers leaving law schools were ill equipped to be country lawyers, for without the capacity to engage with the multiple facets of the law in a generalist setting, these lawyers could not envision the law as a broader enterprise in the same way as their country lawyer predecessors. Second, the case method treated too many dimensions of the law as fixed. This was especially detrimental to the ideal of the country lawyer, who was increasingly needed to think in and across different settings, in different ways, and who needed more freedom of thought than the simple appellate decisions given by the case method in order to address many of the prominent social and constitutional issues of the time, both for American society at large and within a smaller community context.⁸⁷ In this regard, the very structure of the system of legal education made it so lawyers were leaving law schools less capable and less inclined to become country lawyers and more likely to become urban specialists.

New lawyers, now the byproducts of the Langdellian system of legal education, soon entered the profession looking to adopt formal codes to validate their attitudes on specialization. Proponents of specialization within the profession began to argue that the growing complexity of law made it such that lawyers ought put restrictions on the amount of types of law they could practice - for in claiming their professional status, they decreed that true professionals only claimed

⁸⁷ Rakoff, Todd D., and Martha Minow. "A Case for Another Case Method." *Vanderbilt Law Review*, vol. 60, no. 2, March 2007, pp. 597-608. HeinOnline, [https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/vanlr60&i=612.\(600\)](https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/vanlr60&i=612.(600))

to practice law that they were experts in.⁸⁸ They also claimed that specialization would give them greater authority over their clientele - for if they were deemed experts in a particular aspect of the law, or so the argument goes, they would be able to act more on their own volition and less on the private desires and interests of their clients.⁸⁹

In 1970, the American Bar Association (ABA) formally adopted a model of specialization for the legal profession, much to the dismay of general practitioners who lamented that this redefined conception of professionalism diminished the capacity of lawyers to understand “the law” and would limit their professional standing.⁹⁰ At its adoption, opposition to legal specialization was no longer taken on by country lawyers and general practitioners, but by those who claimed specialization was a tool for the bar to charge monopolistic prices for legal services.⁹¹ With specialization came the final “nail in the coffin” for the country lawyer - now both literally and figuratively removed from the geography and ethos of their predecessors, the modern specialist city lawyer was considered too far gone from its former country ideal.

That is not to say that there were no ‘country layers’ left in America who embraced, at the very least, the nomenclature of a professional ethos somewhat lost to time. Indeed, many lawyers in modern America still consider themselves country lawyers - even though the current species differs greatly from its predecessor. The following section will develop the state of the actual contemporary country lawyers that exist in the same geographic contexts as country lawyers of the

⁸⁸ Ariens, Michael. "Know the Law: A History of Legal Specialization." *South Carolina Law Review*, vol. 45, no. 5, 1994, pp. 1003-1062. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/sclr45&i=1019>. (1009)

⁸⁹ *Ibid.* (1009)

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

past, noting how they have adapted and changed over time as a result of the aforementioned factors at play throughout American history.

3.5 The Contemporary Country Lawyer

The contemporary country lawyer is largely different from its historical counterpart. While the earliest descriptions of the “country lawyer” in the early 1920s were likely used as an endearing term oft intricately tied to the linguistic perceptions of nature⁹², when most scholars and professionals refer to modern-day country lawyers, they are usually exclusively qualifying a lawyer by their geographical and territorial distinction, usually relating to small suburban or rural areas. While most lawyers from the founding of Jamestown to the beginning of the American civil war would have been considered “country lawyers” because of their geographical and territorial distinctions, the contemporary landscape for potential “country” lawyers to operate in is vastly different than it used to be. Whereas up through the middle of the 19th century only 20% of Americans lived in urban environments, today more than 80% of Americans live in cities.⁹³ The very landscape of America has changed - both literally and figuratively - to encompass and embrace urbanity, and in many respects, the very country in which the country lawyer has practiced has been in decline for almost two centuries and exists in a wholly new capacity.

⁹² See Section I part A of this paper for further explanation into this phenomena

⁹³ Hannah Ritchie and Max Roser (2019) - "Urbanization". Published online at OurWorldInData.org. Retrieved from: '<https://ourworldindata.org/urbanization>'

Contemporary country lawyers are almost universally the products of formalized law school education as opposed to informal education in the offices of country practitioners. Their communities are the same size, but in many regards are far more intimate - as a result, clients of country lawyers today expect lawyers to be conciliatory as opposed to adversarial to uphold community cohesion, and as such contemporary country lawyers often look to settle disputes outside of the courts.⁹⁴ These lawyers, while still engaged within the community and serving as community leaders in many of the same ways as their historical counterparts, take on these roles for fundamentally different purposes. Indeed, rather than for the sake of “bettering the country and therefore [themselves],” country lawyers today participate as community leaders and activists both for the purpose of enriching their social base to expand their business and as a way to gain clients in the absence of a strong rural bar.⁹⁵ Though grounded by many of the same moral guidelines of the historical country lawyer, today’s country lawyer is consumed by an entirely new “entrepreneurial ethos”⁹⁶ - one that contorts and displaces a historically internal sense of morality into an external moral guideline. Country lawyers today are guided by normative “people practice” guidelines, and the cultivation of esteem and business are dependent on their reputation for helping people - to betray this ideal would certainly mean less business for today’s country lawyers.⁹⁷ Contemporary country lawyers are also less likely to use the courts than their historical counterparts - indeed, while courtroom battles have historically been considered spectacles for entertainment in the community,⁹⁸ today’s country lawyers and their clients actively avoid

⁹⁴ Landon, Donald D., 1930-. *Country Lawyers : the Impact of Context on Professional Practice*. New York :Praeger, 1990.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Bodeneimer, Edgar (1950) "The Growth of American Law: The Law Makers, by James W. Hurst," *Indiana Law Journal*: Vol. 26: Iss. 1, Article 11.

courtrooms and are much more informal in their legal approach. Though generalists, the nature of today's rural setting, in combination with the fact that most modern country lawyers are solo practitioners, necessitates that country lawyers be businesspeople as well. In this regard, country lawyers are less likely to take on divisive cases within their communities - for instance, cases such as against the school board, child custody cases, and divorce cases - and are more likely to outsource collections to firms outside their community solely because their livelihoods are dependent on maintaining good relations with as many people as possible.⁹⁹ In many regards, today's country lawyer does not embody the same "every sort of legal service for every sort of client"¹⁰⁰ motto as their historical counterpart - indeed, because contemporary country lawyers hand pick and choosing which cases to take on based primarily on profit potential (as opposed to serving the legal needs of everyone in their community regardless of their background), the needs of especially vulnerable groups of Americans - in particular, low-income Americans - are being disregarded.¹⁰¹ Thus, as a distinctly modern phenomena, today's country lawyer varies extensively from the country lawyer of the past, and ought be considered in a different light than the likes of Jones, Brackenridge, and Lincoln.

However, as formally recorded to history, the contemporary country lawyer exists in some similar manners as its historical counterpart - specifically as an entirely important cornerstone of their communities, and yet a largely unhistorical phenomenon outside of it. Uncovering the contemporary country lawyer is difficult, as most are unknown beyond the community that they

⁹⁹ Landon, Donald D., 1930-. *Country Lawyers : the Impact of Context on Professional Practice*. New York :Praeger, 1990.

¹⁰⁰ Windolph, F. Lyman. "The Country Lawyer." *Commercial Law League Journal*, vol. 33, no. 6, June 1928, pp. 315-318. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/clla33&i=317>.

¹⁰¹ Legal Services Corporation. 2017. *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.

practice. However, some are findable - men such as Bruce Cameron, a lawyer practicing in Rochester, Minnesota. In many ways, Cameron embodies the contemporary country lawyer: he recognizes that reputation within the community is absolutely essential to a successful practice, and emphasizes the necessity to develop one's business as a principal motivation for engaging with and cultivating clientele.¹⁰² He is not a strict specialist, and practices in a variety of fields, such as estate planning, incapacity planning, probate administration, collective divorce, and dispute resolution. He feels as though he is more careful than his urban counterparts when it comes to checking for conflicts and ethicality, recognizing the integral role of reputation in the community as a factor in deciding which cases to take.¹⁰³ As a generalist whose practice is determined by his entrepreneurial ethos, Cameron is a common example of the contemporary country lawyer as they exist in modern America.

Another example of the contemporary country lawyer is immigration attorney Marty Rosenbluth of rural Lumpkin, Georgia. Rosenbluth is a bit of a rarity with regard to the contemporary country lawyer: in his practice, he takes on the legal needs of impoverished immigrants without charge.¹⁰⁴ As the only immigrant attorney in a town of 1,400 - and the only immigrant attorney on a 120 mile stretch between Lumpkin and Atlanta - Rosenbluth serves an important role within his community as an immigrant activist and general counsel for immigrants who are caught up in the legal system. By the nature of his job, he has to consult families on what's best for them beyond simply the courtroom, and often acts as a general counsel for advice for these

¹⁰² Ward, Stephanie Francis. "Do You Have What It Takes to Be a Rural Lawyer? (Podcast with Transcript)." *ABA Journal*, 6 Oct. 2014, www.abajournal.com/news/article/podcast_monthly_episode_55.

¹⁰³ *Ibid.*

¹⁰⁴ Shah, Khushbu. "The Only Lawyer in Town: a Lonesome Figure Stands up for Immigrants." *The Guardian*, Guardian News and Media, 14 Oct. 2018, www.theguardian.com/us-news/2018/oct/14/lone-immigration-attorney-lumpkin-georgia-trump.

families.¹⁰⁵ Though less inclined than the average contemporary country lawyer to pass on a case due to its potential partisan nature, Rosenbluth fosters his communal reputation by taking on the cases that others would not take on, making a name for himself in the immigrant community by being the sole advocate on their behalf. As the only immigrant lawyer in a small rural town of 1,400, Rosenbluth is another example of the country lawyer as they exist in America today.

That the country lawyer still exists in contemporary America ought demonstrate its resiliency and capacity to transcend other professional phenomena, and its enduring legacy in popular culture has ensured that, at the very least, the country lawyer will remain a cultural phenomenon in the minds of Americans for the time being. More recent developments in American society have also given space for the resurgence of the country lawyer ideal - or at the very least a hybrid version of it. As an important matter of both cultural and professional significance, an analysis of the state of the country lawyer ideal and ethos today is crucial. In the next section, I will analyze the state of the country lawyer ideal's existence today and assess to what extent it remains in the minds of lawyers and the legal profession in contemporary America.

¹⁰⁵ Redmon, Jeremy. "Immigration Lawyer Finds Home in Shadow of Giant Ga. Detention Center." *Ajc, The Atlanta Journal-Constitution*, 27 Nov. 2018, www.ajc.com/news/state--regional-govt--politics/immigration-lawyer-finds-home-shadow-giant-detention-center/Rr7tduT3Z2B1jvKfhOLrdI/.

4.0 The Country Lawyer Ideal Today

While the number of actual country lawyers may be dwindling, the ideal and ethos of the country lawyer is alive and thriving within specific parts of the American legal profession. Indeed, since the beginning of the 1960s, the institution of various legal aid programs and the movement to re-center the ethos of the profession to better serve those most vulnerable created a new type of “poverty lawyering” that was centered on helping the impoverished. Even more recently, the profession has identified another new form of lawyering similar to that of the country lawyer - the “citizen lawyer” - who, in many ways, have adopted a public spirit about their work not entirely dissimilar to that possessed by historical country lawyers, becoming more open to working within their communities and taking on a new set of morality that the ideal corporate lawyer today is lacking.¹⁰⁶

In this section, I will discuss the history and practices of poverty lawyering and citizen lawyering, both which have many similarities to the country lawyer ideal, and introduce a hybrid lawyer: the “community lawyer,” which embraces various aspects of country, poverty, and citizen lawyering to become a new type of lawyering for the profession to aspire to be.

¹⁰⁶ There are other potential vehicles through which the ideals of the country lawyer ideal may have continued to survive (including potentially the idea of pro-bono work in large corporate law firms); however, this paper will limit its analysis to the larger traditions and movements within the legal profession of poverty lawyering and citizen lawyering.

4.1 Poverty Lawyering

Poverty lawyering has only recently emerged as a distinct sect of lawyering. Poverty lawyering is a type of lawyering that is focused on finding ways to best help those most impoverished. The earliest forms of poverty lawyering came from either privately funded sources or municipally-funded legal aid societies.¹⁰⁷ These early poverty lawyering structures were found primarily in large cities, and were rarely found in rural areas.¹⁰⁸ These organizations worked separately from each other, and it was not until President Lyndon B. Johnson's anti-poverty legislation passed in 1964 that a national apparatus for poverty lawyering was adopted for the first time.¹⁰⁹ The Office of Economic Opportunity (OEO) was created in 1965 as a part of this broader anti-poverty legislation. Its goal was to enforce a fundamental idea of a "right to live" - the idea that every person living in the US ought to have enough resources to feed, clothe, and house themselves.¹¹⁰ In an attempt to facilitate the growth of 'social engineers', the OEO enabled poverty lawyers to work within the confines of the American democratic and legal system to pursue societal reform through the courts. In adopting a test-case approach to legal representation, poverty lawyers took on individual cases with the hopes of the courts creating and enforcing rulings that granted more protections that aligned with the "right to live" doctrine. This type of lawyering proved extremely successful - in the first five years of the program, OEO-funded attorneys took

¹⁰⁷ Cantrell, Deborah J. "A Short History of Poverty Lawyers in the United States." *Loyola Journal of Public Interest Law*, vol. 5, no. 1, Fall 2003, pp. 11-36. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/loyjpubil5&i=17>.

¹⁰⁸ *Ibid.* (12)

¹⁰⁹ *Ibid.* (17)

¹¹⁰ *Ibid.* (18). See the 1965 OEO directors remarks on the program: "The role of [the] OEO program is to provide the means within the democratic process for law and lawyers to release the bonds which imprison people in poverty, to marshal the forces of law to combat the causes and effects of poverty."

219 cases to the supreme court, winning seventy-three of them: for context, in the 89 years before the program, no legal aid society attorney had taken a case before the supreme court.¹¹¹ Their court rulings saw the implementation of various new protections for low-income Americans, effectively demonstrating the capacity of the courts to implement change. By 1966, the OEO had contributed more than \$27 million to legal services and programs across 46 cities.¹¹² By 1967, the funding had increased to \$40 million, and its reach surpassed over 300 legal programs nationwide.¹¹³

As successful as poverty lawyers were as social engineers, not everyone saw their work as beneficial. In the late 1960s and early 1970s, governors in Arizona, California, Connecticut, Florida, and Missouri began to take steps to defund successful poverty legal programs.¹¹⁴ The publication of Vice President Spiro Agnew's *What's Wrong with the Legal Services Program* in 1972¹¹⁵ further inflamed tensions between the federal government and the legal aid services program, bluntly stating the Nixon administration's opposition to poverty lawyers as social engineers. Though facing opposition, poverty lawyering continued to thrive through the 1970's, taking on a new federal designation as the Legal Services Corporation (LSC) in 1974. However, with the election of Raegan in 1980, the LSC saw a drastic decrease in funding and further restrictions on their practice.¹¹⁶ Though unable to fully eliminate the LSC, Raegan was able to effectively cripple the work of the LSC, and in 1995, congress dealt a critical blow to the LSC by cutting its appropriations by an additional 30 percent and drastically limiting the extent of the

¹¹¹ Ibid. (27)

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Spiro, in his work, wrote: "So long as individual attorneys conceive their role to be that of social engineers, they will continue to exacerbate community tensions and undermine the very purposes they were hired to accomplish."

¹¹⁶ Ibid. (29): "Congress restricted LSC-funded programs from undertaking certain activities including legislative lobbying, representing aliens, and accepting certain types of fee-generating cases."

LSC's operational capacity.¹¹⁷ From then on, poverty law programs have existed in minimal capacities nationwide, most unable or unwilling to focus on work other than individual services to individual clients.¹¹⁸

Though not entirely the same as country lawyers, poverty lawyering and its embrace of helping the most disenfranchised emulates some of the most important ideals of the country lawyer ethos. In many ways, the poverty lawyer is the urban parallel to the rural country lawyer - both often took on the cases of those who needed it the most in their respective urban and rural areas when no one else would. However, while country lawyers mostly focused on helping the poor and disenfranchised navigate the legal system, poverty lawyers were more interested in changing the legal system itself.¹¹⁹ That is not to say that both goals cannot be achieved simultaneously. New thought leaders in the poverty services sphere have developed novel ways of approaching how the law and legal services can best help the poor. Lucie White's "Third-Tier lawyering" takes the stance that helping a group "learn how to interpret moments of domination as opportunities for resistance"¹²⁰ is the most effective way to combat poverty. This type of lawyering is meant to teach the community how to develop their own methods of resistance as opposed to having lawyers dictate what they should do. In a somewhat similar vein, Gerald Lopez's "Rebellious Lawyering"¹²¹ advocated for lawyers to fully immerse and become members of the community they practice as to become advocates and help the community organize and develop the

¹¹⁷ Ibid. (30): "Programs were barred from: initiating class action lawsuits, a common vehicle for law reform; pursuing claims for attorneys' fees, a common source of additional program financing; and seeking to reform federal or state welfare systems."

¹¹⁸ Ibid. (30)

¹¹⁹ Ibid. (29)

¹²⁰ Ibid. (32)

¹²¹ López Gerald P. *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*. Westview Press, 1992..

communities own voices of discontent and protest.¹²² A further idea - dubbed “holistic lawyering” - involves viewing the lawyer as part of a larger collective group of service-people who have the common goal of understanding the complexities of each individual case and offering support - legal or otherwise - to best help each individual situation.¹²³ Holistic lawyering, in many ways, is as close to the country lawyer ideal as poverty lawyering has gotten: it embraces the law as a part of the solution to clients’ needs as opposed to the whole solution to their needs, which closely parallels how historical country lawyers would tackle the work of their clients. As generalists who offered counsel on various matters of both the law and more mundane financial, familial, or social matters, country lawyers, much like holistic lawyers today, embraced the necessity of helping their clients both within the spectrum of the law and outside of it. In this way, though distinctly different, the ideals of country and poverty lawyering share many of the same fundamental tenants as one another, proving that some of the most important ideals of country lawyering have persisted throughout American history even at a time when actual country lawyers have begun to decline.

4.2 Citizen Lawyering

Citizen lawyering has emerged as a relatively new phenomena within the legal profession. The premise behind citizen lawyering is that the law is more than just a profession: it is a calling, and by its nature has both the capacity and duty to do good for the country more so than other

¹²² Cantrell, Deborah J. "A Short History of Poverty Lawyers in the United States." *Loyola Journal of Public Interest Law*, vol. 5, no. 1, Fall 2003, pp. 11-36. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/loyjpubil5&i=17>.

¹²³ *Ibid.* (32-33)

people or other professions.¹²⁴ Lawyers centering the ideal of citizenship is not necessarily a new phenomenon: lawyers of the past who acted in what was considered the “grand tradition” embraced many of the same ideals as citizen lawyering today. Indeed, Joseph Story’s 1821 address delivered before the members of the Suffolk Bar serves as an archetypal example of historical country lawyers seeing themselves as “sentinels on the outposts of the constitution,” embracing a mindset of citizen-lawyering which brought a defense of Americanism and American ideals into their everyday practice.¹²⁵ In early America, this meant serving in government as a way of sustaining the new republic. In modern America, citizen lawyering represents a general embodiment of a “public spirit” in legal work.¹²⁶

Citizen lawyering is just as much about how lawyers do their jobs as opposed to what jobs they do.¹²⁷ Therefore, working with integrity and civility, mentoring others, and coming to the defense of the rule of law no matter the cost are critical to the ideal of the citizen lawyer.¹²⁸ Citizen lawyers also dedicate time and effort to pro bono work and non-profit settings, engaging in various community, cultural, religious and educational areas to better not just themselves but the people around them as well.¹²⁹ They often make personal and professional sacrifices for the greater good, taking pay cuts in order to better serve their community - for instance, becoming judges at the

¹²⁴ Reveley, W. Taylor III. "The Citizen Lawyer." *William and Mary Law Review*, vol. 50, no. 4, March 2009, pp. 1309-1322. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/wmlr50&i=1317>.

¹²⁵ Miller, Perry. *The Legal Mind in America: from Independence to the Civil War*. Doubleday, 1969.

¹²⁶ Reveley, W. Taylor III. "The Citizen Lawyer." *William and Mary Law Review*, vol. 50, no. 4, March 2009, pp. 1309-1322. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/wmlr50&i=1317>. (1317)

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.* (1318)

expense of pay cuts, or giving up tenure as a law professor to become the head of a community non-profit.¹³⁰

In many ways, the citizen lawyer retains a sense of morality that is found within the core of the ideal of the country lawyer. They both are intimately involved within their communities and take on many roles as community leaders, regardless of whether they are compensated financially for doing so. They are both moralists, and actively seek to better those in society who are in most need. In this way, the citizen lawyer is a manifestation of many aspects of the historical country lawyer ideal and shows the extent to which the ideals and ethos of the country lawyer have persisted into modern America.

4.3 The Community Lawyer

I argue that a third type of lawyering ought to exist in modern America, whose roots are fundamentally intertwined in the country lawyering tradition in a way that is distinct from that of the citizen or poverty lawyer. This lawyer is a hybrid of the linguistic, historical, contemporary, and mythical country lawyer: one who, by the nature of their work, is intimately intertwined with their community. This new type of lawyer goes beyond the poverty-lawyer mindset of strictly helping the poor - though they will often take on their cases, most especially when no one else will. This new type of lawyer also goes beyond a simple public-facing, citizen-lawyer mindset in their work - though they will often take on pro bono work and step up as leaders in their

¹³⁰ Ibid. (1318-19)

communities. As an amalgam of poverty lawyering, citizen lawyering, and country lawyering, a new type of lawyer - one I have dubbed the “community lawyer” - emerges as a distinct ideal: one which, at its core, reinforces the sentiment that legal practice exists within the broader context of a community, and that it is the duty of the lawyer to act in every way possible to better the health of that community.

The community lawyer is a distinct and different ideal than any which has come before it. Reduced to its essence, the community lawyer stakes the health of their practice on the health of the community, and as such practices with the intention of bettering the community. However, unlike the country lawyer, which by its name suggests a distinctly country aesthetic and therefore suggests a strictly rural territorial environment for its existence, the community lawyer transcends territorial distinctions. To be a community lawyer, one does not have to practice in the “country”, nor does one have to exist strictly within low-income city-neighborhoods: the community lawyer exists everywhere in America. The community lawyer is intimately involved in the community, serving many of the leadership roles as the country lawyer and sharing a deep understanding of their community's needs. The community lawyer, though often embodying the shared country, poverty, and citizen lawyer ideal of helping the disenfranchised, either through pro bono work or otherwise, is not strictly limited to that type of practice. Indeed, the community lawyer will also come to the aid of core businesses and wealthy individuals who are cornerstones of the community - those people and businesses whose absence may result in the degradation of the health of the community. However, the maxim of the community lawyer remains the same as that of the country lawyer: that “justice, and not the fee, must be his goal.”¹³¹ Unlike the citizen lawyer, who centers

¹³¹ Dumm, A.T. "The Country Lawyer." *Canadian Law Times*, vol. 41, no. Issues 8 and 9, August-September 1921, pp. 537-542. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/canlawtt41&i=547>.

the duties and responsibilities of citizenship and American democracy as its core guiding principles, the community lawyer centers its own individual community and the unique needs that they demand. They are moralists in every sense of the world, guided by their sense of justice for every member of the community, regardless of their specific circumstances. The community lawyer is also a generalist - they must be prepared to serve the community in a variety of ways, and though they need not be experts in all facets of the law, they must have a working understanding of a broad breadth of the law to best serve the dynamic needs of their communities. The community lawyer also understands the intersection of the law and community, and will often take a holistic approach to lawyering, both through offering advice and counsel to clients which may avoid litigation altogether or helping the community heal after legal battles have occurred by utilizing various social services in tandem with their legal work. In this way, the community lawyer does not see themselves or their legal actions as more important than any other type of communal services within the community - they merely see themselves and the law as an available tool for those who need it. As an ideal, the community lawyer exists as an intersection of old and new: it embraces the best of what country lawyering has to offer, while adopting new approaches to lawyering in the poverty and citizen lawyer traditions which give it new life in contemporary America. It offers itself as a potential avenue for the resurgence of the grand tradition in the American legal profession - a tradition that harkens back to the likes of Joseph Story and his defense of Americanism in 1821. But more importantly, its ideal is universally adoptable - extending beyond territorial and aesthetic conditions and beyond specific types of legal practices (poverty lawyering or otherwise), allowing for the resurgence of communalism, morality, and generalism within the profession.

Community lawyers by this denotation can and do exist in America today. Men like Daniel Arshack, a criminal defense attorney, managing partner of the law firm Arshack, Hajek and Lehrman, PLLC, founding member of the International Criminal Bar, and co-founder of the Bronx Defenders, a public defender's office located in the South Bronx neighborhood of New York City, embody much of what the community lawyer would look like today in America.¹³² Arshack's vision encompasses much of the community lawyer's ideals. His Bronx Defenders office embraces the holistic approach and intimate community involvement of community lawyering - his office works with civil, family defense, and immigration lawyers, as well as non-attorney advocates such as investigators and social workers to help clients deal with the full range of issues - legal and non-legal - that arise from criminal charges.¹³³ Located directly within the community it serves, Arshack's Bronx Defenders office embraces the community lawyer idea that lawyers are but one facet of the community's services, and through their generalist advocacy often offer services and advice to clients beyond their legal capacities. Beyond his Bronx Defenders office, his firm, Arshack, Hajek and Lehrman, PLLC, offers legal defense services to all members of the community, whether it be individuals, businesses, or professionals.¹³⁴ In this way, Arshack embraces the idea of community lawyering in that the capacity to work for the community extends beyond that of serving only the most impoverished. Seeking justice for all of his clients has remained his ultimate maxim, and as a lifetime defense attorney, Arshack embodies the community lawyer's ethos of just practice, and centers the unique needs of the Bronx community.¹³⁵ Through

¹³² "Daniel Arshack." Wikipedia, Wikimedia Foundation, 9 Dec. 2018, en.wikipedia.org/wiki/Daniel_Arshack#Bronx_Defenders.

¹³³ "The Bronx Defenders." Bronx Def, www.bronxdefenders.org/.

¹³⁴ Arshack, and Hajek & Lehrman PLLC. "Arshack, Hajek & Lehrman." Arshack Hajek Lehrman, www.lawahl.com/.

¹³⁵ Ibid.

his intimate understanding of the intersection of the law and the community, Arshack is an excellent example of the community lawyer and its potential to be a great force within contemporary America.

Though it may not necessarily be called by the same name, the potential for the reification of the country lawyer ethos is possible in American society. Whether it be through poverty lawyering, citizen lawyering, or through community lawyering, there are many lawyers who are actively working under the mythos of their predecessors - whether they know it or not. However, as outlined in section II of this paper, there remain significant barriers to this ideal achieving primacy in the minds of lawyers and average Americans alike: urbanization, professionalization, corporatization, and specialization remain strong pulls on young lawyers who may otherwise wish to practice in the country lawyer traditions noted above. That being said, in order to fully actualize the potential of the country lawyer ethos in modern America, significant changes must be made, both within the legal profession and society more broadly. The following section will explore how bridging the rural-urban divide, promoting more diversity and inclusion in the legal profession, and reforming law school education can bring about the changes necessary to provide an environment wherein the country lawyer ethos may reemerge as the archetype of the profession - even if those lawyers are not necessarily called “country lawyers” themselves.

5.0 Moving Forward: Integration of the Modern Country Lawyer Ideal into Modern Lawyering

In this section, I will explore how efforts to bridge the rural-urban divide, alongside initiatives to promote diversity and inclusion within the legal profession and changes to the traditional law school education model, can bring about the re-emergence of the country lawyer in modern America. To prove this, I will show how a thoughtful return to rural America will facilitate the re-emergence of the country lawyer: that by creating policy solutions that make it feasible (economically and otherwise) for lawyers to return to rural America, more lawyers will feel empowered to serve underrepresented communities and help address the justice gap in rural America, allowing lawyers to physically return to practice where country lawyers had in the past; that by promoting diversity and inclusion, people who are themselves part of marginalized communities may have access to legal education and access to the legal profession and will be better able to serve communities where they have lived experiences, such as the country lawyers of the past; and that by creating spaces of microinclusion and by teaching legal fiction in law schools, law schools will become less antagonistic to oppressed communities and help foster empathy for marginalized communities through literature, promoting the moral ideals of country lawyers of the past. By looking into the potential integration of the country lawyer ideal in a modern context in this way, I will begin by addressing the literalist barriers preventing a return to country lawyering and move into a more metaphorical and theoretical application of the ethos of the country lawyer, thereby proving that achieving these three goals will create an environment that will allow for the return of the country lawyer - literally and figuratively - in modern America.

5.1 Bridging the Rural-Urban Divide

Modern American lawyers are largely a byproduct of urbanity. Most lawyers today receive their education in large cities and then choose to stay there after graduation, creating what we understand today as legal deserts in rural America - places (mostly rural towns) without enough lawyers to adequately provide for their legal needs. Country lawyers of the past, in contrast, grew up in and were themselves members of the communities they served. They had studied the law in the small towns and communities where they practiced and had an intimate understanding of the local laws, customs, morals, and culture of their communities, giving them a natural localized advantage and community competency, which allowed them to successfully address the full range of needs of their clients. Despite efforts by some well-intentioned modern-day lawyers to bridge the rural-urban divide by implanting themselves and their services in rural communities, many have continued to be unsuccessful and legal deserts are only growing. This is due in part to the fact that, in the cases where lawyers wish to return to rural communities to practice, barriers exist that prevent them from succeeding and making a proper living in these communities. As such, a return to the country is not just an abstract problem - it is a sociological fact that necessitates a return to the theoretical underpinnings of country lawyering. This section will explore potential solutions for this problem, looking to the country lawyer and the reasons why they were successful in their time as a way to offer potential modern solutions, through virtualizing the profession or sponsorship, which may help bridge today's rural-urban divide in America and bring about the reification of the country lawyer.

To begin, the virtualization of the profession has offered new challenges and opportunities for lawyers to access rural communities as a result of the proliferation of virtual communication technologies (through online video platforms such as Zoom) as a result of the COVID-19

Pandemic. Indeed, virtual legal representation has been one way in which lawyers who otherwise were not physically present in rural communities are able to represent clients remotely - sometimes from legal offices hundreds of miles away. For instance, many legal aid providers have successfully transitioned a variety of their legal services to online models, offering online information and education sessions for individuals who are facing dire legal issues such as eviction during the COVID-19 pandemic.¹³⁶ Many lawyers and their clients have also cited that the adoption of virtual technology as a medium has improved access to courts for particularly vulnerable people, solving for traditional problems such as taking time off or paying for childcare as a result of having to physically attend court hearings. However, critics contend that increased access alone is not the answer - most especially when the resulting legal representation is of a resulting lower quality. Practicing attorneys in rural environments have lamented that they and their clients believe Zoom to be inadequate for taking evidence, and that the lack of physical presence of counsel in the courtroom, especially for criminal matters, makes their clients feel poorly represented (in effect, “Zoom is not the answer”).¹³⁷ Moreover, the digital disparity resulting in communities with limited English proficiency, older populations, and people without consistent access to broadband or cell coverage have already resulted in many cases defaulting due to non-appearance because of technical problems related to connecting to virtual proceedings.¹³⁸ In many ways, it seems as though virtual representation is but a band-aid for struggling rural communities living in legal deserts; neither the lawyer nor their client feels as though, in most

¹³⁶ Draeger, Michelle Giard, and Mathew Scease. "For Legal Aid Providers, It Is a Time of Challenge and Change." *Maine Bar Journal*, vol. 36, no. 2, 2021, p. 89-93. HeinOnline, <https://heinonline.org/HOL/P?h=hein.barjournals/mainebarj0036&i=93>.

¹³⁷ Hurly, Michael. "North Dakota Rural Recruitment Program." *Gavel*, vol. 68, no. 2, Spring 2021, p. 20-20. HeinOnline, <https://heinonline.org/HOL/P?h=hein.barjournals/gavel0068&i=60>.

¹³⁸ Draeger Et. al.

cases, virtual representation is adequate - seeing it as more of a temporary solution that does not get to the root of the issue.

For the country lawyer and its ideal to successfully reify itself in modern America, lawyers must not simply become more accessible to rural communities: they must have the necessary support to be able to physically return to rural America. For context, many rural communities in rural America today face a legal crisis wherein there are simply not enough lawyers to accommodate the legal needs of their communities. Recent analysis of rural practice has determined that only two percent of small practices are located in rural locations, despite over 20 percent of Americans living there.¹³⁹ This is because, oftentimes, salaries for rural lawyers are almost half of what their urban counterparts make, and more often than not lawyers are retiring at rates faster than they are being replaced in these rural communities.¹⁴⁰ Moreover, many lawyers who graduate law school and seek to either return to their hometown rural communities or to other rural communities find that attorneys which may be there have a fiercely loyal clientele built up over decades. As such, though most of these incoming lawyers end up charging significantly less than their competitors, many end up serving few - if any - clients.¹⁴¹ Many of these lawyers end up teaching law classes at local law schools on top of their practice or taking up court appointments to represent criminal defendants.¹⁴² Indeed, the incredibly daunting task of starting up rural legal practice from scratch and lack of formal support often results in well-intentioned lawyers arriving

¹³⁹ “Equality before the Law: Ending Legal Deserts in Rural Counties.” Georgetown.edu, 2021; www.law.georgetown.edu/poverty-journal/blog/equality-before-the-law-ending-legal-deserts-in-rural-counties/. Accessed 28 Oct. 2021.

¹⁴⁰ Ibid.

¹⁴¹ Davis, Wendy. “No Country for Rural Lawyers: Small-Town Attorneys Still Find It Hard to Thrive.” ABA Journal, ABA Journal, 2020, www.abajournal.com/magazine/article/no-country-for-rural-lawyers. Accessed 28 Oct. 2021.

¹⁴² Ibid.

woefully unprepared, feeling overwhelmed and having to overwork to integrate themselves into the community before they receive any clients. If the success of country lawyers is the ideal which the profession seeks to achieve in a modern context, revisiting how country lawyers were able to successfully integrate themselves into the communities where they practiced may prove valuable in helping modern lawyers bridge the rural-urban divide and reify the country lawyer tradition.

In looking to the ways in which country lawyers in the past were taught the law, it is clear that modern lawyers are neither prepared nor supported in the same ways as country lawyers were for rural practice: the clearest distinction being that country lawyers of the past were taught how to thrive in rural communities through formal mentorship programs in local law offices. Though the idea of mentorship in the legal profession is not new, it has certainly diminished in popularity as many modern lawyers have come to view mentorship with a lens of apathy. Most modern mentorship relationships have become corporatized, morphing into bureaucratic box-checking exercises wherein mentors do the bare minimum required by the firm as a part of the mentor programs. These relationships have deemphasized critical mentor roles of the past such as advocating for their mentee in terms of their own professional development within a firm.¹⁴³ This was not always the case. Lawyers of the past, such as John Adams, entered into the profession through robust mentor relationships in which their mentors were personally invested in the mentee's success. Adams learned how to succeed in practice by studying the law in the offices of other prominent lawyers in the time such as John Putnam, gaining valuable exposure to their mentor's clientele and making a name for themselves. These mentor relationships were defined by the close-knit relationship between practicing lawyer and mentee, wherein the practicing lawyer

¹⁴³ “The Evolution of Mentorship in Legal Professional Development.” Americanbar.org, 2020, www.americanbar.org/groups/business_law/publications/blt/2020/04/mentorship/. Accessed 14 Jan. 2022.

would train the mentee in the critical operations of the lawyer's work such that someday the mentee would take over the business. Through almost literally living the lives of their mentors, they became engrossed in every facet of practice, spanning from the law office to the courtroom to the home - an experience that almost all modern lawyers do not receive, leaving them ill equipped for country practice.

Legal scholars have noticed the trend toward increasingly impersonal mentorship and have inadvertently replicated the models of country lawyer mentorship programs through what they are calling "sponsorship" initiatives as a potential solvent. Sponsor-protege relationships are distinct from their modern mentor-mentee counterpart in that they create relationships in which advice and guidance to the protege is tailored to them individually and involves the sponsor leveraging their influence and networks to provide access to key assignments and responsibilities.¹⁴⁴ In effect, sponsorship relationships are the modern-day equivalent of the country lawyer's mentor relationships. Legal scholars have shown that this form of highly personalized mentorship, wherein the sponsor is personally invested in the success of the mentee, are particularly successful and valuable in terms of networking, skills training, developing professionalism, and teaching lawyers how to take advantage of opportunities to develop industry and practice expertise.¹⁴⁵ In this way, sponsorship programs similar to the ways country lawyers learned the law in the past may prove a valuable tool for modern lawyers to achieve the same success in country practice as their predecessors.

The relative newness of this legal scholarship, in tandem with the fact that rural incentive programs for legal professionals are a relatively new phenomena (with South Dakota becoming

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

the first state to do so in 2013), means that little of the theory and application of sponsorship programs to rural areas has been translated into tangible policy initiatives.¹⁴⁶ However, in the states where there has been a greater policy push for the development of these types of programs, there has already been great anecdotal success. Rural incentive policy initiatives which have been adopted that feature mentorship programs have given incoming rural lawyers an “in” with the local community in ways that they have formerly been unable to do on a wide scale. Bar and state funded formal mentor placement initiatives serve as the modern-day proxy apprenticeship experiences in ways similar to how the historical country lawyer went about educating themselves by learning the law through local lawyers in their communities. Programs such as the Colorado Attorney Mentoring Program (CAMP)¹⁴⁷ or the Illinois State Bar Association’s Rural Practice Fellowship Program¹⁴⁸ were intentionally designed to help new and transitioning lawyers in the state access peer support and professional development resources to be successful in rural practice. Other efforts by states such as South Dakota have included buttressing similar programs by paying attorneys to relocate to rural areas and practice for 5 years.¹⁴⁹ The success of these programs in their early stages prove that the intentional act of pairing aspiring rural attorneys with rural lawyers who have the necessary community competency to succeed in rural contexts has been what previous rural incentive programs for lawyers have been missing. In this way, sponsorship

¹⁴⁶ Alsgaard, Hannah. "Rural Incentive Programs for Legal and Medical Professionals: A Comparative." *South Dakota Law Review*, vol. 59, no. 3, 2014, p. 585-615. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/sdlr59&i=615>.

¹⁴⁷ “Colorado Attorney Mentoring Program.” *Coloradomentoring.org*, 2016, coloradomentoring.org/. Accessed 15 Mar. 2022.

¹⁴⁸ “Rural Practice Fellowship Program | Illinois State Bar Association.” *Isba.org*, 2018, www.isba.org/ruralpractice. Accessed 15 Mar. 2022.

¹⁴⁹ Rural Access to Justice through Mentoring BY COURTNEY D. SOMMER
https://k794ovkhl52hdtl419uu4dcd-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/CL_May21_COMPLETE.pdf

programs targeted to rural communities, when paired with monetary support by bar associations and federal and state sources, may provide a promising path forward in bridging the rural-urban divide for today's lawyers.

5.2 Diversity and Inclusion in the Legal Profession

The demographic identity of the legal profession of today is vastly different than it was in the time of the historical country lawyer. Indeed, it is vastly different than it was even 50 years ago. Recent estimates on the gender of the legal profession have determined that from 1950 to 1970, only 3% of all lawyers were women; that percentage has increased to 8% in 1980, to 20% in 1991, to 27% in 2000, and to 37% as of 2020, indicating a much greater representative share of women in the legal profession than just 50 years ago.¹⁵⁰ Estimates on the percentage of lawyers of color – Hispanic, African American, Asian, Native American and mixed race – has continued to grow, albeit slowly, over the past decade as well, from 11.4% of all lawyers in 2010 to 14.1% of all lawyers in 2020.¹⁵¹ However, compared to the total U.S. population, white men and women are still overrepresented in the legal profession; though witnessing a decline by 3% from 89% to 86% over the past decade, the fact that 60% of all U.S. residents were non-Hispanic whites in 2019 indicates that the legal profession is far more diverse by gender and race than it was in the time of the historical country lawyer.

¹⁵⁰ Perry Martinez, Judy. *Letter from ABA President*. 2020.

¹⁵¹ *Ibid.*

The historical country lawyer practiced in a time where lawyers were almost exclusively white males¹⁵². These lawyers were successful within their communities in part because they were part of the communities they served - indeed, much of the success of country lawyers in their ability to advocate on behalf of their clients was mostly due to the fact that the majority of their clients were also other white men. The historical country lawyer rarely had cases involving persons of color or women, and in the times that they did, they were under equipped to advocate on their behalf. In this way, the historical country lawyer shared a degree of community competency as a byproduct of their shared race and gender (by and large) with their clients.

In modern America, the historical country lawyer would not share the same inherent benefits of community competency because the communities lawyers serve today are much broader and expansive than in the past.¹⁵³ There currently exists a dearth of legal professionals who identify as part of minority communities who can advocate and serve on behalf of those communities with a degree of community competency shared by country lawyers of the past. As such, to truly reify the ideal of the historical country lawyer of the past in the modern legal profession, there must be increased efforts to promote broader diversity and inclusion within the profession such that lawyers who are themselves members of marginalized communities and hold this innate community competency are serving those communities. This section will highlight promising efforts and propose solutions moving forward that will help facilitate more diversity and promote more inclusive spaces within the legal profession.

¹⁵² This is not to say that there were non-white male historical country lawyers serving marginalized communities, as those certainly did exist. However, it was far from the norm, and many barriers existed - socially, politically, and structurally within the profession - that prevented many non-white male lawyers from entering and practicing in the profession.

¹⁵³ That is not to say that marginalized communities of the past did not need lawyers - in fact, many requested the services of lawyers and were successful in doing so. However, it was not commonplace, nor was it the norm, for these communities to actively seek out lawyers at the prime of the historical country lawyer's existence.

Currently, the presence of bias remains a barrier to access for diverse legal professionals in the context of large firms. Indeed, recent literature on the subject of diversity, equity, and inclusion within the legal profession has determined that the prevalence of bias, especially gender and racial bias, is driving diverse legal talent out of big law firms and corporations.¹⁵⁴ This is despite the fact that law firms with more diversity and those that have robust diversity, equity, and inclusion (DEI) policies are more profitable, have higher retention rates, perform better, have stronger global operations, and have better internal operations.¹⁵⁵ In the case where employers of legal professionals have adopted official DEI programs, 75 percent of underrepresented employees feel as though they have not benefited from the programs, with half of underrepresented employees saying they face bias daily in the workplace and half also mentioning that they feel as though upper management cannot make decisions free from bias.¹⁵⁶

In the courtroom, many lawyers, especially lawyers of color, continue to witness cases of harassment and discrimination resulting in alienation and devaluation of their work. Many express feelings of their abilities being taken for granted, and many think that they are given their titles due to affirmative action.¹⁵⁷ Lawyers of color also often face mistreatment due to their race which frustrates their ability to be “zealous advocates for their clients in the pursuit of justice.”¹⁵⁸

¹⁵⁴ See Noli, Mariana, and Elyssa LeFevre Chayo. "Diversity, Equity, and Inclusion in the Profession." *Los Angeles Lawyer*, vol. 44, no. 5, July/August 2021, p. 40-2. HeinOnline, <https://heinonline.org/HOL/P?h=hein.barjournals/losalaw0044&i=228>.

¹⁵⁵ *Ibid.*

¹⁵⁶ Price, Mandy, and Star Carter. "Working Together: The Importance of Diversity, Equity, and Inclusion in the Legal Industry." *Texas Bar Journal*, vol. 83, no. 6, June 2020, p. 376-377. HeinOnline, <https://heinonline.org/HOL/P?h=hein.barjournals/texbarj0083&i=377>.

¹⁵⁷ Ashleigh Parker Dunston, *A Call to Action: Fighting Racial Inequality behind the Bench*, 43 *CAMPBELL L. REV.* 109 (2021).

¹⁵⁸ *Ibid.*

Traditional DEI approaches in the legal profession have been ineffective, and can sometimes increase bias - but alternative approaches, such as creating inclusive policies, fostering inclusive leadership practices, hiring entire teams and dedicating robust resources toward DEI work, and using technology to track the benefits (increased productivity, higher retention rates, etc.) of DEI programs have been proven to be more helpful in fostering inclusive environments.¹⁵⁹ Beyond the workplace, promising proposals for real change within professional legal organizations have included mandatory semi-annual bias/diversity/inclusion CLE requirements (North Carolina is making bias training mandatory starting in 2022) and making state bars adopt ABA model rule 8.4(g) which “renders it misconduct for an attorney to “engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, ... ethnicity, ... or socioeconomic status in conduct related to the practice of law.” In addition, bar associations, such as the Colorado Bar, have made attempts to structurally change their practices to be more diverse, equitable, and inclusive. Designated as the REDI (racial justice, equity, diversity, inclusion) strategic plan, the Colorado Bar Association has already formally adopted measures to make the Colorado Bar more reflective of the broad diversity within American society at large - by gender, race, sexuality, and other traditionally underrepresented populations. Specific actions taken include creating pipelines for underrepresented persons to take leadership roles, publishing statements on diversity, equity, and inclusion, highlighting underrepresented persons in bar publications, promoting REDI-related programs, among others.¹⁶⁰

¹⁵⁹ Price, Mandy, and Star Carter. "Working Together: The Importance of Diversity, Equity, and Inclusion in the Legal Industry." *Texas Bar Journal*, vol. 83, no. 6, June 2020, p. 376-377. HeinOnline, <https://heinonline.org/HOL/P?h=hein.barjournals/texbarj0083&i=377>.

¹⁶⁰ Jessica Brown, Promoting Racial Justice, Equity, Diversity, and Inclusivity within the Bar: Are We "REDI" for Lasting Change, 50 *COLO. LAW.* 4 (2021).

In sum, it will take a series of robust, informed, and well-intentioned policy and programmatic changes within and beyond the workplace, courtroom, and professional associations to create professional environments that allow for a much more diverse legal profession - one with the innate community competency to be able to better advocate on behalf of marginalized persons and address the justice gap in modern America in the spirit of the historical country lawyer. These tangible approaches offer promising examples of ways in which the profession may help better promote DEI within the modern American legal profession.

5.3 The Role of Law Schools and Legal Education

Since the formation of the American Bar Association in 1878 and its following strict standards for admission to the bar, law schools have only grown in power and renown and have remained the primary vehicle through which aspiring lawyers in contemporary America enter the legal profession. However, access to and success within institutions of legal education has historically been, and to this day remains, unfairly biased against minority and marginalized communities. Indeed, the legal profession has a storied history of implicit and explicit bias toward marginalized communities with regard to legal education. Significant scholarship has been dedicated to showing how standards for admissions to law schools, including the utilization of the LSAT, have perpetuated unfair discrimination against racial minorities and has resulted in

diminished diversity and under enrollment of underrepresented populations.¹⁶¹ Even then, those who attend law school today are not taught how to properly understand and empathize with the needs of marginalized communities that are not their own. Indeed, the development of Langdell's case method, which became the invisible hand of an impersonal expert tradition, continues to force new generations of lawyers away from what the country lawyers practicing in the grand tradition thought the law ought to be - of the community.¹⁶²

The methods of legal education of the past worked for the historical country lawyer because they equipped aspiring legal professionals - themselves mostly white men - with the ability to serve other mostly white men. Modern methods of legal education which endeavor to facilitate the country lawyer ideal of serving all people, especially those most vulnerable, must adapt and change to both facilitate an influx of more lawyers from diverse demographic backgrounds and teach empathy and community competency for the remaining lawyers such that they are better equipped to serve marginalized communities. This section will explore two potential practical considerations for law schools to achieve this - how teaching law and literature can help bridge the empathy and community competency gap that exists for modern American lawyers, and how schools can create spaces of microinclusion for persons belonging to marginalized communities such that they feel welcome and incentivized to study the law.

¹⁶¹ Woodson, Kevin. Mitchell Hamline Law Review Mitchell Hamline Law Review Entrenched Racial Hierarchy: Educational Inequality from the Entrenched Racial Hierarchy: Educational Inequality from the Cradle to the LSAT Cradle to the LSAT ENTRENCHED RACIAL HIERARCHY: EDUCATIONAL INEQUALITY from the CRADLE to the LSAT.

¹⁶² Modern academics have tried to move the case method away from its original style and introduce elements of narrative and story, making it more accessible and less strictly scientific and immutable. However, I would contend that this is not a fundamental or radical enough change - indeed, as noted earlier, the very undercurrents of the structure of the case method and its teachings is what is noxious to many of the core tenants of country lawyering. This debate, however, is beyond the scope of this paper.

One of the biggest barriers to feelings of inclusion within the legal profession that marginalized and minority students of the law face in the classroom is a lack of validation of their lived experiences with the law. For many students who identify as part of marginalized communities, law school education fosters an environment where the law is treated as immutable, creating tension with and validating the application of the law as a weapon in cases where it has been applied unjustly toward marginalized groups.¹⁶³ As such, it is critical that law schools endeavor to be a more welcoming space for diverse and underrepresented perspectives such that they become spaces in which these communities feel they belong and feel that they are bringing valuable experiences and perspectives.

One promising educational policy is that of utilizing ‘microinclusions’ - teaching practices that not only counter microaggressions¹⁶⁴ but also affirmatively create learning environments of belonging where these underrepresented communities may thrive.¹⁶⁵ Micro Inclusions are strategies of naming the differences that marginalized communities and persons face in relation to their peers and creating space for stories that center underrepresented or marginalized communities. The practice of naming differences conveys awareness and acceptance of diverse identities, reframing law from that of immutability to that of a story which is subject to change.¹⁶⁶ The structuring of law as a ‘story’ makes law seem less rigid, absolute and determined - qualities

¹⁶³ Strand, Palma Joy. "We Are All on the Journey: Transforming Antagonistic Spaces in Law School Classrooms." *Journal of Legal Education*, vol. 67, no. 1, Autumn 2017, p. 176-210. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/jled67&i=180>.

¹⁶⁴ See “Microaggressions Are a Big Deal: How to Talk Them out and When to Walk Away : Life Kit.” NPR.org, 9 June 2020, www.npr.org/2020/06/08/872371063/microaggressions-are-a-big-deal-how-to-talk-them-out-and-when-to-walk-away. Accessed 15 Mar. 2022.

, “Microaggressions are defined as the everyday, subtle, intentional — and oftentimes unintentional — interactions or behaviors that communicate some sort of bias toward historically marginalized groups.”

¹⁶⁵ Strand, *Ibid.*

¹⁶⁶ *Ibid.*

that invalidate and oppress those within marginalized communities who have witnessed the power of the law to oppress and subjugate. In addition, this approach identifies the law as resulting from construction and contingency, which allows individual struggles and stories of underrepresented and marginalized persons in the classroom to be valued as part of understanding the ‘group’ nature of inequities in our legal system.¹⁶⁷ In this way, microinclusions create spaces of belonging in traditionally cis-white-male centric environments.

However, to truly achieve the country lawyer ideal of equipping today’s lawyers with the knowledge and conviction to serve those most vulnerable, law schools must also endeavor to foster a non-innate sense of community competency in lawyers who are not themselves members of marginalized communities. Teaching empathy in this way, however, is not an easy endeavor. Indeed, the primacy of the case method of legal education has displaced lawyers from the grand tradition which the historical country lawyer was able to achieve through community competency and empathy. Recent scholarship has corroborated this claim, finding that traditionally dominant paradigms within law schools continue to perpetuate the conceptualization of emotions in the law as “irrational, and therefore irrelevant.”¹⁶⁸ In contrast, the historical country lawyer’s education was holistic and well rounded, including education in philosophy, ethics, and literature - core components of developing an empathetic understanding of the world we live in as it relates to the law, much of which is not taught in law schools today. Indeed, it will take a revisioning of the way that the law is taught to best facilitate the education of empathy for lawyers such that they may

¹⁶⁷ Ibid.

¹⁶⁸ Jones, Emma. "Transforming Legal Education through Emotions." *Legal Studies. The Journal of the Society of Legal Scholars.*, vol. 38, no. 3, 2018, p. 450-479. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/legstd38&i=455>.

have a more well-rounded understanding of the ways in which the law engages with marginalized communities in ways that perpetuate injustice.

One promising way of incorporating empathy into the current legal curriculum of law schools is through teaching law through literature. The modern academic context in which law in literature has been adopted has shown that there are various benefits to the study of literature - specifically through critically reading the stories of fictional lawyers as lessons in morality. Prominent legal scholars who have adapted the model to their curriculum contend that the study of literary lawyers has the following benefits:

(1) provides insights about the practice of law and its effects on individuals, (2) enhances our capacity for sensitivity to oppression or injustice through imagination and new experiences, (3) challenges established thought, and (4) adds variety in the law school curriculum, among other virtues.¹⁶⁹

Literature, in this way, allows lawyers to access and grapple with great issues of individualized morality that they will encounter in their everyday practice as lawyers in a purely imaginative environment - free to grapple with issues in a safe way that lacks the practical consequences endemic to this exploration in the real world. In experiencing the stories of lawyers in literature through reading and critical discussion, these fictional lawyers “become a form of role model (to emulate or avoid, depending on the circumstances) and a way of testing strategies with the benefit of reflection and knowledge from others and ourselves.”¹⁷⁰

¹⁶⁹ See Philip C. Kissam, *Disturbing Images: Literature in a Jurisprudence Course*, 22 *LEGAL STUD.* F. 329, 329-30 (1998).

¹⁷⁰ Knake, Renee Newman. "Beyond Atticus Finch: Lessons on Ethics and Morality from Lawyers and Judges in Postcolonial Literature." *Journal of the Legal Profession*, 32, 2008, pp. 37-66. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/jlegpro32&i=40>.

One particularly effective practical approach to teaching law through literature is Renee Knake's curriculum, a Michigan State University College of Law Lecturer who focused on postcolonial literary depictions of lawyers and drew important lessons for contemporary lawyers from their characters and themes.¹⁷¹ In this curriculum, the four chosen postcolonial novels which feature the characters Mostamai¹⁷², the Magistrate¹⁷³, the Judge¹⁷⁴, and Vera Stark¹⁷⁵ offer lessons on reconciling the law and individual morality in the pursuit of justice. In each story, the characters undergo complex personal struggles that pit their individual moral compasses with those of the rules of law they participate in or enforce. In reading and discussing their struggles in an academic context, readers implant themselves and experience the law as a story, learning important ethical lessons and exploring ways in which the rule of law alone, in practice, may not always equate with justice - and that humanity is sometimes what one must rely on to make their judgments.¹⁷⁶ These works help law students critically evaluate the disconnect between law and individual morality by illuminating the ways in which the cases of colonization and the laws created during that era conflicted with the pursuit of justice for marginalized communities - in effect, giving lawyers a greater sense of empathy for the struggles of marginalized groups as they encounter the law as a weapon against them.¹⁷⁷ The creator of the curriculum notes that through these novels, the reader experiences the phenomena of 'otherness', which refines the reader's perception of the world and makes them more empathetic lawyers through the "performative process of the act of imagination

¹⁷¹ Knake, Renee Newman. "Beyond Atticus Finch: Lessons on Ethics and Morality from Lawyers and Judges in Postcolonial Literature." *Journal of the Legal Profession*, 32, 2008, pp. 37-66. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/jlegpro32&i=40>.

¹⁷² From Nadine Gordimer's *The House Gun*

¹⁷³ From J. M. Coetzee's *Waiting for the Barbarians*

¹⁷⁴ From Kiran Desai's *The Inheritance of Loss*

¹⁷⁵ From Nadine Gordimer's *None to Accompany Me*

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

that is teaching.” More importantly, however, these novels highlight law students’ underlying responsibility as lawyers to the pursuit of justice.¹⁷⁸ In placing lawyers as storytellers, they regain the critical connection with the intensely communal nature of the law that was hallmark to the experience that country lawyers had in their actual practice working with marginalized communities directly - exactly what many modern lawyers are missing.

The reframing of law as a story and the lawyer as both storytellers (as they work to be the speakers of the law to their communities) and story writers (as they see themselves as fundamental actors in creating and revising the law) has important implications beyond simply better preparing lawyers to be more empathetic, moral agents. It also has the benefit of framing the law as relatable and accessible to marginalized communities. Recent legal scholarship has inadvertently drawn on the tradition of legal literature by adopting storytelling techniques to the idea of micro validation,¹⁷⁹ which some professors of law have utilized to counter microinvalidation by validating experiences, stories, histories, and alternative perspectives which help shed a light on the larger, more systemic issues of injustice and inequity in the profession.¹⁸⁰ By teaching the law as a story through law in literature curriculum, students, but especially those who are themselves not members of marginalized communities, come to see and experience the law through the stories of lawyers who work within (and sometimes actively fight) the legal environment they operate in, allowing them to see themselves as critical story writers for the future of the law. Moreover, the framing of law as a story in this way affirms and validates the perspective of the law that their peers who have marginalized identities hold. Because stories are framed as vehicles to learn

¹⁷⁸ Ibid.

¹⁷⁹ Strand, Palma Joy. "We Are All on the Journey: Transforming Antagonistic Spaces in Law School Classrooms." *Journal of Legal Education*, vol. 67, no. 1, Autumn 2017, p. 176-210. HeinOnline, <https://heinonline-org.pitt.idm.oclc.org/HOL/P?h=hein.journals/jled67&i=180>.

¹⁸⁰ See Strand, Ibid.

important lessons, the framing of laws as lessons and artifacts of the past to learn from and critique better allow marginalized students to critique the law and see their capacity to change it to best support themselves and their communities. This creates a degree of mutual reciprocity and reinforcement by which law and literature and the practice of micro-inclusion, when practiced in tandem, has multiplying effects on the ability of law students to be more empathetic and better equipped to advocate on behalf of marginalized communities as lawyers.

This intentional shift toward focusing on the language lawyers use in their practice is a sign of a broader movement within the legal profession which has its roots in the traditions of the country lawyer: that being the revitalization of rhetorical understanding. Modern lawyers have lost their sense of rhetoric, forgetting what it means to speak thoughtfully and intentionally in interpersonal dialogue and not understanding the power of the words they use. As the legal profession became more distanced - both physically and intellectually - from the average person, lawyers continued to lose touch with the broader community. Country lawyers of the past spoke what is now becoming the lost language of humanity, which they learned by living and working directly among everyday people. Country lawyers were always taught to think of the impact of their words because they had to live their lives with their clients as members of the community and had to deal with the face-to-face consequences of using the wrong language. To truly reify the country lawyer in modern America, lawyers today need to return to rhetorical understanding: honoring the other person and understanding both the other side and their clients. That's what any good lawyer of the past would have done, and that is the critical component of the country lawyer which has been lost today. Indeed, the aforementioned new methods of teaching lawyers the art of rhetorical understanding are a vehicle through which law schools can reverse engineer the country lawyer into our own rhetorical understanding of the law today. Indeed, in changing the way we

teach the law and by changing the legal classroom environment, there is a far greater potential to reify the community lawyer's values of community, empathy, and justice in the classroom, creating the next generation of lawyers who know the issues of systemic injustice that Americans face, know how to speak and empathize with their fellow man, and feel empowered to take action on those issues in much of the same ways as country lawyers of the past.

If critically evaluating the current state of affairs of modern American lawyering has taught us anything, it is that the pursuit of integrating the ideals and values of the historical country lawyer requires us to return to our roots. The common thread among structural changes to law school education and bridging the rural urban divide is that these approaches have been done before. In its prime, the historical country lawyer utilized the same exact techniques of imagining and learning the law in the context of their community and becoming practitioners in rural America through mentorship - in effect, we are reinventing the wheel in a modern context. Recognizing the successful approaches of the historical country lawyer and adapting them to fit modern needs helps legitimate the current successful efforts underway, while also reminding the legal profession of just how far out of touch it is; indeed, by calling these approaches 'novel', we neglect to learn from the history of lawyering in America and the mistakes made along the way.

These practices, in tandem with changes to policy within the workplace, courtroom, and professional organizations, will help the profession inch closer to achieving the ideal of the country lawyer in the future. Though the reification of the country lawyer may take a new name or title, the fact that it is occurring is indicative of the direction of the profession moving into the future. As the pendulum shifts and the profession hopes to reimagine itself in the light of the likes of community lawyers, we may be heartened by the fundamentality of this idea and how deeply

ingrained it is in American culture. Indeed, if these approaches demonstrate anything, it is that when the ideal of the country lawyer is allowed to operate, good things can happen.

6.0 Conclusion

Today's legal profession is in a state of disarray. From the outside, the public believes that the essential services of the profession are inaccessible to those who need it the most.¹⁸¹ Indeed, in 2017 alone, 86 percent of the civil legal needs of low-income Americans seeking legal assistance went unmet.¹⁸² Recent reports further suggest that as many as 6,900 more public defenders are needed simply to meet the legal needs of low-income Americans nationwide.¹⁸³ Trends toward defunding integral legal services for low-income Americans in recent years have further inflamed an already crippled system of legal aid programs,¹⁸⁴ and the profession continues to be one of the most despised in all of America.¹⁸⁵ In a country where justice is sought in the courts, the disparities in legal representation effectively underline a far more insidious problem in modern America: that the legal profession is not fulfilling its crucial role as the arbitrators of justice for all of society.

From within, the picture is just as grim. Recent studies have indicated that as many as 56% of lawyers would describe themselves as dissatisfied, with many lawyers leaving the profession altogether or retiring early.¹⁸⁶ Lawyers who work in larger firms are increasingly unhappy, whether

¹⁸¹ See, e.g., Buckwalter-Poza, Rebecca. "Making Justice Equal." Center for American Progress, 8 Dec. 201; Zuckerman, Michael. "Is There Such a Thing as an Affordable Lawyer?" The Atlantic, Atlantic Media Company, 31 May 2014;

¹⁸² Legal Services Corporation. 2017. The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.

¹⁸³ Buckwalter-Poza, Rebecca. "Making Justice Equal." Center for American Progress, 8 Dec. 201

¹⁸⁴ Ibid.

¹⁸⁵ Zaretsky, Staci. "Lawyers: The Most Despised Profession in America." Above the Law, Above the Law, 15 July 2013, abovethelaw.com/2013/07/lawyers-the-most-despised-profession-in-america/.

¹⁸⁶ Berman, Casey. "The Hidden Reason Why Lawyers Are so Unhappy." Above the Law, Above the Law, 6 Mar. 2020, abovethelaw.com/career-files/the-hidden-reason-why-lawyers-are-so-unhappy/. Accessed 15 Mar. 2022.

due to the overwhelming number of hours worked,¹⁸⁷ declining professionalism¹⁸⁸, or an inability to fulfill expectations of legal practice beyond law school,¹⁸⁹ among many others. The cycle of disillusionment is self-fulfilling; indeed, lawyers who leave law school and enter large law firms are increasingly coerced into maintaining what may be otherwise unfulfilling positions¹⁹⁰ through the pull of “retention bonuses” that effectively keep them as associates beyond two or three years.¹⁹¹

Though the state of the American legal profession may seem bleak, there is still hope. Many of the reasons why there is both such a large justice gap in America and a more general sense of disillusionment within the profession boils down to the fact that the main professional ideal for success in the modern American legal profession remains the urban corporate lawyer. The adoption of the ideal of monetary success above all else has distorted and obfuscated the founding premise behind the American legal profession: the country lawyer and their sense of communalism and morality. Today’s successful urban corporate lawyers isolate themselves from their communities, working for large corporate firms in large urban offices who serve corporate clients without regard for both their own health and the health of the communities they practice in. That this ideal remains as the zenith of the profession is the reason why fewer lawyers are working with low-income Americans, for the allure of bigger paychecks have surpassed the allure of morality and civic responsibility within the minds of young law school graduates. It is also the

¹⁸⁷ Carter, Stephen. “Why Lawyers Are Miserable.” *Chicagotribune.com*, Chicago Tribune, 11 May 2019, www.chicagotribune.com/opinion/commentary/ct-why-lawyers-are-miserable-20150907-story.html.

¹⁸⁸ Schuyler, David. “Disillusioned Lawyers Seek Careers Outside Law Firms.” *Milwaukee Business Journal*, Milwaukee Business Journal, 9 Aug. 1999, www.bizjournals.com/milwaukee/stories/1999/08/09/focus2.html.

¹⁸⁹ *Ibid.*

¹⁹⁰ See Sandage, Scott A. *Born Losers: a History of Failure in America*. Harvard University Press, 2006

¹⁹¹ Martin E.P. Seligman, Paul R. Verkuil & Terry H. Kang (*DeakinLawRw* 4; (2005) 10(1) *Deakin Law Review*), at 53.

reason why many lawyers today are unhappy and either retiring early or leaving the profession altogether more so than ever before, for the monetary success of the urban corporate lawyer often does not translate into a fulfilling occupation. Indeed, it should not come as a surprise that the problems we face now, both as a profession and as a society, come about a time when lawyers have left the country (literally and figuratively).

However, in offering a foil to the urban corporate lawyer ideal, there is hope for a profession redefined. Lawyers, as a profession, have a unique capacity to induce social change and act as bastions of morality and goodness for the rest of society. In many ways, being a lawyer is about more than making a living: it is a calling, and by its nature lawyers have a responsibility to use the law for just and egalitarian purposes. This paper has sought to demonstrate that there is hope for a legal profession redefined. In going back to the roots of the profession - country lawyering - and learning from its example, we can foster and develop a competing professional ideal for success that the legal profession may be able to aspire to. While the country lawyer may never be able to reify itself in modern America in the exact same way that it has existed in the past, the community lawyer - a combination of the old country lawyer ideal, as well as new ideals of poverty and citizen lawyering - has the potential to counteract the dominating image of successful lawyering and reinvigorate the ideals that the profession was founded on: communalism, morality, and republicanism.

But in order to achieve this, radical change must happen. The very structures that we are so intimately familiar with will need to be completely reimagined, if not fully dismantled, if we want to fundamentally change the dominant professional ethos. Indeed, the law school model needs to be radically altered, allowing space to return to models of legal education that allowed historical country lawyers to thrive - whether it be altering current law school curriculum or

allowing space for a return to informal apprenticeship programs or correspondence legal education such that lawyers may live and learn among the rural communities they wish to serve. This, alongside the devotion of significant resources to the building out of apprenticeship and diversity, equity, and inclusion programs, may prove critical to helping save a profession in disarray. If we address these fundamental issues, there may yet be hope for a profession reborn - one that will help address the current justice gap in America, counter the growing professional disillusionment within the profession, and act as a bastion of hope for a better future.¹⁹²

¹⁹² Some may suggest that the country lawyers' absence in rural communities has larger implications on the health of those communities and American democracy writ large - however, those insights are beyond the scope of the paper and may be a potential source of further exploration.

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