

Law Professor Salaries

THE DEOBJECTIFICATION OF LEGAL SCHOLARSHIP BY TENURED RADICALS

Arthur Austin

LAW PROFESSORS ARE PAID MORE than their colleagues in the arts and humanities. The disparity is in part the result of their professional status as lawyers and the implied threat that the option to leave the academy to make more money in practice carries with it. In addition, they have nurtured a reputation for a commitment to scholarship as a rational and analytical discourse. Both differences are market-driven – good lawyers start at \$200 per hour and the ability to influence judges and lawyers trumps the postmodern babble posing as scholarship that comes from the humanities as a motivation for alumni contributions. Recent shifts have subverted the leverage of both factors.

In a market glutted with lawyers it is sophistry to argue that a viable option for employment exists outside of the academy for today's law professors. A buyer's market is one reason young attorneys abandon practice for academe. They face formidable barriers to entry into the world of power and money that

is partnership – making tenure all the more attractive. Then there is the dark secret that faculty hate to concede: very few law professors have the stomach for the rigors of practice, especially when contrasted with the stress-free corridors of academe. More important, whatever marketable skills they may have once possessed have atrophied from nonuse.

Nevertheless, it is unlikely that the people in the provost's office will ever catch on to the adverse conditions in the market for lawyers. Years of conditioning by law deans, the news of skyrocketing salaries for first-year associates at large firms, and the stream of news reports about lawyers getting rich off big jury verdicts will preserve the façade. Another subtle factor is the presence of celebrity professors like Laurence Tribe of Harvard who make headlines with exorbitant fees for arguing appeals. In addition, the growing ubiquity of law professors as TV talking heads has a built-in public relations value to the university that enhances their leverage at the wage table.

Arthur Austin is the Edgar A. Hahn Professor of Jurisprudence at Case Western Reserve University School of Law and the author of *THE EMPIRE STRIKES BACK: OUTSIDERS AND THE STRUGGLE OVER LEGAL EDUCATION* (N.Y.U. Press 1998).

The more serious threat to the existence of law professors' inflated salaries comes from a young group of lawyers who see teaching as an opportunity for retirement and revolution. To them the academy is a safe zone where they are not subject to oppressive partners and the unreasonable demands of capitalist clients. Ideologically driven to revive the 1960s' counterculture movement, they play the role of Tenured Radicals dedicated to initiating a new regime of revisionist scholarship.

Over sixty years ago, Fred Rodell of Yale Law School announced that legal scholarship had two problems – style and content. Renouncing legal writing to churn out pithy pieces for magazines like the *New Republic*, he encouraged law reviews to publish special features, “fighting” editorials, cartoons, and gossip columns à la Walter Winchell.

It was the style and content of the doctrinal method, which functioned as the vehicle for legal analysis, that Rodell condemned. Viewing law as a form of deductive logic, doctrinalists offer normative judgments or solutions derived from neutral and objective analysis of cases and laws. Despite periodic criticisms like Rodell's outburst, doctrinal writing dominated the academy – until now.

Legal education is in the process of being humanized by the fashion of E. & E. – empathy and emotionalism – which is deployed to build the collective self-esteem of the community. Communitarianism and the politics of meaning seek to drive out the individualism of the casebook method. Legal humanism endorses a relativeness that deconstructs cases to uncover Kafkaesque interpretations. Tenured Radicals follow Stanley Fish's deconstruction ukase that truth is irrelevant to a higher obligation to be interesting. Ignoring the traditional constituency of judges and lawyers, TRs write for the approval of soulmates in the humanities. Chief Judge Harry Edwards of the U.S. Court of Appeals for the D.C. Circuit calls them dilettantes who specialize in meaningless abstract theory.

The dilettantes publish things that have Dean Christopher Columbus Langdell, who originated the casebook method in 1870, twisting in his grave: stories and narratives describing “agony experiences” undergone dealing with the dominant Liberal white culture, screeds against the patriarchy and hierarchy of the Socratic Method, corporate practice as Faustian bondage to capitalist devils, essays on various topics such as engendering restrooms, birthing, gay bashing, and hair discrimination, memoirs on sexual promiscuity, doggerel about big firm oppression, haiku, photography, journalism, etc.

The assault on scholarship is being played out in the elite law reviews. They feature popular legal culture (articles on anything from the relevance of *L.A. Law* to postmodern analysis of the female body), autobiographical narratives on victimization, along with an assortment of radical race and feminist manifestos. The student editors see themselves as the Tina Browns of legal scholarship, morphing the voices of intellectual high fashion into a chic Ally McBeal buzz. The enemy is doctrinalism's Tyranny of Objectivity.

In a zeal to use oppositional techniques to revise scholarship, Tenured Radical empaths ignore a counter-productive repercussion – the subversion of legal scholarship's credibility. They disregard a fact of life the doctrinalists learned decades ago – the Tyranny of Objectivity delivers the considerable benefits of status. Without objectivity, law faculty have no more credibility than English Lit professors. Doctrinalists observed the hard sciences' – physics, math, and engineering – use of objectivity's shroud to solve problems and attract grants and recognition, enabling them to erect barriers around their fields. They were no longer lumped in with the mushy humanities where people squabble over things like the privilege of the phallus in language. Doctrinalists likewise learned from the economists who, using mathematical analysis

to objectify speculation, gained respectability and became serious contenders for grant subsidies.

Acceptable scholarship assumes the existence of critical discourse in the form of peer evaluation and criticism. The process involves a dialogue among members of the community conducted under widely held standards of criticism. The merit of the doctrinal method of objectivity and analysis is that it enables scholars to present new ideas and to critically examine the judgments and methods of others. There is another justification for a vibrant critical dialogue: its presence deflects attention from the embarrassing fact that the primary source of publication for law professors is in non-peer-reviewed journals edited by third-year students.

In repudiating doctrinal scholarship, empathists reject critical dialogue; they have no other choice. How can one discuss and analyze subjective and highly emotional narratives about the homeless, birthing, or encounters with sexist, homophobic, and racist colleagues? Moreover, because anecdotal methods such as narrative and storytelling involve no objective reference, how does the reader verify that the events even occurred? Other than an equally subjective reaction, the only response is to reply with your own story. Critical discourse then degenerates into a battle of narratives.

It is, nevertheless, a shrewd tactic; by

switching to subjective scholarship, Tenured Radicals render their work judgment-proof and beyond the criticism of doctrinalists. In the process, they subvert the credibility and status of legal scholarship, reducing it to the level of post-dialectic discourse and neo-modernist consciousness. There is, however, a negative tradeoff. As they defeat the doctrinalists' efforts to critically evaluate their work, they also make it impossible for practitioners to evaluate it. Work so far away from what practitioners see as "law" will have very little influence on them. As legal scholarship's influence ebbs, so will the ability of law schools to raise money from their alumni. Deobjectification also compounds the problem presented by a tight legal market. Professors who write about hairstyle as an "assertion of self" will have a harder time proving their value to the practitioners' market, making it harder for them to jump from academics to practice. As they lose the ability to jump to practice, they will also lose that portion of their salary attributable to the availability of higher-paying jobs as practitioners. In a tight legal market, and without a strong connection to the revenue-generating world of practicing lawyers, nothing will differentiate the market for law professors from the market for humanities professors. If the Tyranny of Objectivity disappears, so will the luxury salaries – to the detriment of everyone. 