RESOLVING ETHICAL DILEMMAS IN JAMES WELCH'S *THE INDIAN LAWYER*

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Introduction

This essay explores ways that James Welch's novel *The Indian Lawyer*¹ sheds light on the ethical obligations and duties of lawyers. The study of fiction to examine legal issues is an accepted—though not necessarily regularly practiced—method of instruction within the law school curriculum.² One area where fiction intersects with the study of law is in the study of legal ethics. As a professor of professional responsibility, I am especially interested in the ways in which literature can illuminate the issues raised in my course, particularly how literature can offer further insight and understanding about a lawyer's role and responsibilities. The use of literature in this way is not without criticism, but a number of legal ethics professors recognize that it is an effective tool.³

Most law professors venturing into the waters of law and literature turn to traditional courtroom dramas with white male protagonists.⁴ Incorporation of

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1. JAMES WELCH, *THE INDIAN LAWYER* (W.W. Norton & Co. 2007) (1990).

2. See Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. L. REV. 665, 666 (1995) (conducting a survey of 199 North American law schools and finding that "eighty-four reported offering some variation of a law and literature course, 111 reported that they do not offer such a course, one reported that the course has been approved but not yet taught, and three schools did not respond to either mail or telephone enquiries").

3. See, e.g., Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 FORDHAM L. REV. 787 (2000); Alexander Scherr & Hillary Farber, *Popular Culture as a Lens on Legal Professionalism*, 55 S.C.L. REV. 351 (2003); David M. Spitz, *Heroes or Villains? Moral Struggles vs. Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture*, 24 NOVA L. REV. 725 (2000).

4. See, e.g., Richard Delgado & Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929, 1955, 1982 (1991) (observing that most novels

these classic selections achieves certain benefits;⁵ yet more is to be gained by expanding the legal ethics and literature canon to include works from other cultures and perspectives such as American Indian works.⁶ *The Indian Lawyer* is an excellent example of the kind of work ignored by the legal academy in this regard. In some ways, the novel offers the same insight that might be gained from a typical courtroom drama. But in other ways, *The Indian Lawyer* offers much more, particularly in the context of resolving the conflict between a lawyer's obligations to the law and a lawyer's personal morality (or moral compass).

As this essay reveals, the themes of otherness, self-deception, and acceptance present in *The Indian Lawyer* allow the reader to better understand ethical concerns in the practice of law. Part I of the essay engages in a close textual reading of Welch's *The Indian Lawyer* to demonstrate how a study of the novel supports this premise. Part II of the essay reflects further on the use of literature in the legal ethics curriculum and the possibility of including historically unrepresented perspectives, such as works by and about American Indians.

I. A Study of The Indian Lawyer

What might a work of fiction like *The Indian Lawyer* offer to the study of legal ethics? Following a brief background on James Welch and a summary of the novel's plot, this essay explores three lessons offered through a careful

considered by the legal academy to constitute the law and literature canon were written by white men, writing about white men and their experiences); see also ERIC CHEYFITZ, *The (Post)Colonial Construction of Indian Country, U.S. American Indian Literatures and Federal Indian Law*, in THE COLUMBIA GUIDE TO AMERICAN INDIAN LITERATURES OF THE UNITED STATES SINCE 1945, at 27 (Eric Cheyfitz ed., 2006) ("As for American literature and American studies, which ought to be centrally interested in [the situation of Native Americans in the United States] (after all, the United States was and continues to be built on stolen Native land), there has been relatively little attention in proportion to the importance of the issues and the richness of the literature, both oral and written.").

5. See Menkel-Meadow, *supra* note 3 (elaborating on the benefits associated with incorporating literature in the legal ethics curriculum).

6. See Delgado & Stefancic, *supra* note 4; Gemmette, *supra* note 2; Kristin Brandser Kalsem, *Looking for Law in All the "Wrong" Places: Outlaw Texts and Early Women's Advocacy*, 13 S. CAL. REV. L. & WOMEN'S STUD. 273, 324 (2004) ("[I]t is important that all of us who study law be aware of and critically analyze the significance of the historical exclusion of certain voices and experiences from traditional legal texts."). See also Renee Newman Knake, *Beyond Atticus Finch: Lessons on Ethics and Morality from Lawyers and Judges Depicted in Postcolonial Fiction*, 32 J. LEGAL PROF. 37 (2008) (making a similar argument with regard to postcolonial literature).

reading of *The Indian Lawyer*. First, the reader is exposed to otherness and the feeling of being an outsider. This exposure hopefully causes those in the majority to become more aware and understanding of the minority experience. At the same time, this exposure to otherness reveals a mechanism for resolving internal conflict, whether based on one's ethnic heritage or based on some other set of personal circumstances. Second, the reader learns about the consequences of self-deception, which are exposed on several levels in the novel. Third, the novel's conclusion teaches the reader about acceptance, providing an example of how the kinds of real-life dilemmas faced by the novel's protagonist may be resolved in the lives and work of attorneys. By engaging in a careful study of this novel, the reader gains wisdom from the specific insights offered within the text, and it becomes clear that narratives from outside perspectives have much to offer to the study of legal ethics.

A. The Author James Welch

James Welch was born in 1940 on the Blackfeet Indian reservation near Glacier National Park in Montana, where he grew up attending schools on the Blackfeet and Fort Belknap reservations. He graduated from the University of Montana and held a number of positions including working with the forest service and the state parole board, but he is best known as a novelist and poet. He received a number of awards for his writing, including a Lifetime Achievement Award for Literature from the Native Writers' Circle, the Knight of the Order of Arts and Letters medal from the French government, the Los Angeles Times Book Prize (for *Winter in the Blood*), and the Pacific Northwest Booksellers' Award (for *Fools Crow*). He passed away in 2003 at age sixty-two.

The Indian Lawyer was the fourth of five fiction novels by Welch. It was published in 1990 and noted by critics for its focus on the urban Indian⁷ and "the casting of Native American issues in a Western legal mold."⁸ As Welch himself explained in an interview shortly before his death, his purpose in writing this novel

7. MARY JANE LUPTON, JAMES WELCH: A CRITICAL COMPANION 105 (2004) ("Welch began to shift his attention to the plight of the urban Indian, the person who leaves the reservation and its traditions in order to become assimilated in a city environment.").

8. Rennard Strickland, *Indian Law and the Miner's Canary: The Signs of Poison Gas*, 39 CLEV. ST. L. REV. 483, 485 (1991) ("*The Indian Lawyer* . . . is about the casting of Native American issues in a western legal mold. In truth, *The Indian Lawyer* is about an even larger question: the casting of the fate not just of the Native American, but of all mankind into formalistic and legalistic equations.").

was to talk about a whole different kind of Indian who is very successful. He has been rising rapidly into this position where he's in a big law firm in Helena and he is running for Congress. I wanted to write about a person who's successful by anybody's standards, see how this Indian man functions in a white society, and towards the end of the book have him return to an Indian community.⁹

The emphasis on identity makes this book remarkably appropriate for exploring the ethical responsibilities of attorneys, as it "combin[es] elements of the [character novel] with those of the historical novel in such a way that psychology mingles with sociology at the turn of nearly every page," and the "issue of character turn[s] on an ethical rather than an ethnic axis."¹⁰ Before embarking on this exploration, a summary of the novel will provide some helpful background.

B. A Summary of The Indian Lawyer

Welch's novel *The Indian Lawyer* tells the story of Sylvester Yellow Calf, a Stanford law educated Blackfeet Indian who has just made partner at a prestigious Montana firm. Yellow Calf is the favored candidate for the United States Senate. He sits on the state parole board. When we first meet Yellow Calf, he is reviewing the cases of several prisoners with other parole board members. Yellow Calf has been described by one commentator as

exceptional in his professional capacity: He is perceptive and smooth even when the other two members of the board are tired and strained. During a slow moment, Yellow Calf thinks ahead to a cocktail party. Both his social life and his professionalism indicate his position among the political and cultural elite of contemporary Montana.¹¹

Yet, Yellow Calf very much views himself as an outsider. Despite his feelings of being on the outside of white society, however, Yellow Calf has willingly consumed the influences of non-Indian culture.

9. Mary Jane Lupton, *Interview with James Welch (1940-2003)*, 29 AM. INDIAN Q. 198, 201 (2005).

10. RONALD MCFARLAND, UNDERSTANDING JAMES WELCH 148 (2000).

11. Darin Saul, *Intercultural Identity in James Welch's Fools Crow and The Indian Lawyer*, 19 AM. INDIAN Q. 519, 521-22 (1995).

Yellow Calf grew up on the Blackfeet Reservation, raised by his grandparents. He worked hard both athletically and academically. He was a high school basketball star and went on to play in college. During his senior year of high school, a columnist for the *Great Falls Tribune* wrote a prescient (but at the same time racist and patronizing) article, calling Yellow Calf

the heart and soul of the greatest Indian basketball team this state has seen. . . . [The article] went on to praise [his] leadership, intelligence, work ethic, [and] politeness. [It] ended by calling [Yellow Calf] a “winner” both on the court and off, in the past, present, and future, in life—a “winner for all minorities who fight the endless battle for respect and honor.”¹²

The column leaves Yellow Calf embarrassed, full of “regret that his teammates had not gotten their fair share of credit.”¹³ As the novel progresses, we learn that this sentiment continues throughout his life as Yellow Calf attempts to reconcile his heritage and identity with his role in white society and the law.

Yellow Calf decides to attend Stanford Law School after reading “an article in a magazine that [his] guidance counselor had given him about Indian lawyers.”¹⁴ The article “called them the ‘new warriors’ and predicted that Indian law and water law—both of which figured prominently on reservations—were the fields to choose. . . . The guidance counselor . . . told [him] that he had the talent and dedication to be one of these new warriors.”¹⁵ And so Yellow Calf finds himself at Stanford with the intention to practice law in Helena only long enough to build his reputation and return to his reservation and work there. Ten years after law school, Yellow Calf has yet to make the transition because, in his words, “one thing and another kept coming up.”¹⁶ Instead, he becomes partner of his law firm and a candidate for the United States Senate.

Given the prestige of his legal career and the promise of a future in politics, it may come as a surprise to learn that such a seemingly disciplined, successful man finds his entire world upended by an isolated incident of sexual indiscretion with a client. Yellow Calf does not acknowledge responsibility for the affair immediately. Consequently, he becomes the victim of an elaborate blackmail scheme. At the novel’s conclusion Yellow Calf removes

12. WELCH, *supra* note 1, at 102-03.

13. *Id.* at 104.

14. *Id.* at 106.

15. *Id.*

16. *Id.* at 70.

himself from his private law practice and his political plans. He accepts a position representing the Sioux tribe on Standing Rock Reservation in a water-rights matter.

C. Lessons from The Indian Lawyer on Resolving Ethical Dilemmas

With this background established, let us now focus on lessons that students and practitioners of the law might take away from a careful study of *The Indian Lawyer*. There are several moments in the novel where Yellow Calf struggles to resolve his identity as an American Indian, his obligations to the law, and his individual morality. These moments can be categorized under the umbrella of three different themes: the experience of otherness, the consequences of self-deception, and the resolution of acceptance. An examination of these themes reveals significant lessons for lawyers hoping to avoid unethical behavior and for lawyers striving to reconcile the conflict between obligations to the law and obligations to personal identity or morality.

1. A Lesson on the Experience of Otherness

One theme central to the novel is Yellow Calf's feeling of otherness and the ways that feeling influences his resolution of ethical dilemmas he encounters. Yellow Calf's discomfort with his identity as an outsider permeates the entire novel, even before the reader opens the book to the first page. It exists in the very title, *The Indian Lawyer*, not simply *The Lawyer*. This "familiar feeling of unease" is ever-present, as Welch explains that Yellow Calf

left so many people behind, so many friends and acquaintances, to live in a world that had little to do with his people. He had always been different, even back there on the reservation, and now he was different in a white man's town in a white man's world of briefcases, suits, law and politics. Even Buster Harrington, the senior partner of the law firm, had begun to push him to become more like his young white colleagues.¹⁷

Yellow Calf finds it difficult to blend in with Helena society given that "[t]here weren't many Indian lawyers in Helena who had been basketball stars at the University of Montana."¹⁸ In contrast, Yellow Calf observes that when going home to visit his grandparents on the reservation "he was treated with respect, not because he had been a basketball player or was now a lawyer but because he was Little Bird Walking Woman's grandson whom she had

17. *Id.* at 38.

18. *Id.* at 48.

brought up well.”¹⁹ As much as Yellow Calf is disturbed by the constant distinction of otherness, he is equally resigned to it.²⁰ Yellow Calf is not comfortable with his Indian roots, nor is he comfortable in his role as lawyer and aspiring politician. Indeed, as one commentator suggests, at least part of his discomfort seems to be of his own making in that Yellow Calf “ha[d] essentially turned away from his tribal roots” in exchange for “the upscale world of Helena, with its dress-up social events and political machinations.”²¹

Even in Yellow Calf’s success as a lawyer he is still defined not for what he accomplishes but by his ethnic heritage. For example, early in his career Yellow Calf wins a significant jury award in a personal injury action—\$1.8 million for an elderly woman in a slip-and-fall case. Welch writes that “the story went out over the AP wire around the country how a little old lady who had slipped on a sidewalk and her *Indian* attorney had brought a historically ruthless monopoly to its knees.”²² His ethnicity overshadows his legal skill in a way that makes him feel excluded from the majority of attorneys whose ethnic background would never be identified that way in a news article. A similar encounter with otherness occurs as he embarks on his Senate race and attends a cocktail party to meet several potential political supporters. He enters the room and even “[w]ithout looking around he could tell that people were beginning to look at him, beginning to notice him.”²³ Yellow Calf is approached about his candidacy by a representative from the Democratic National Committee, Pete Fabares. Fabares pulls Yellow Calf aside to speak to him alone, asking him what he believes in, to which Yellow Calf responds, “Well, certainly Indian issues, water rights, mineral rights on reservations, alcoholism, [and] family issues.”²⁴ After Fabares inquires further, Yellow Calf elaborates on his response, “The environment, wilderness, preservation . . . [g]enerally, the problems poor people face in gaining a voice. . . .”²⁵ Yellow Calf is honest, vulnerable, and true to himself in his response to Fabares questions. And in exchange, Fabares says, “Okay, let’s see, you’ve got Indians, environmentalists, poor people—with that constituency you just might

19. *Id.*

20. See Peter Donahue, *New Warriors, New Legends: Basketball in Three Native American Works of Fiction*, 21 AM. INDIAN CULTURE & RES. J. 49, 50 (1997) (“[T]he more successful he becomes at basketball and beyond, and the more recognition he receives for his achievements, the further he distances himself from his people and his heritage.”).

21. MCFARLAND, *supra* note 10, at 135.

22. WELCH, *supra* note 1, at 44 (emphasis added).

23. *Id.* at 48.

24. *Id.* at 51.

25. *Id.*

get elected dog catcher here in Helena.”²⁶ “Who else you going to appeal to,” Fabares asks, and goes on to observe that in order to actually win, Yellow Calf must look to people who have influence, his fellow law partners, and his potential relationships with corporate institutions and power.²⁷ Here Yellow Calf is faced with a divergence from what he believes in and what it will take to win the Senate seat. Fabares adds another layer, in a somewhat misguided effort to encourage him: “You’ve got a lot going for you—great name recognition as a result of your basketball career, law degree from Stanford, well established in a prestigious law firm, member of the parole board . . . and above all you’re an Indian.”²⁸ In that final comment Fabares once again targets and exploits Yellow Calf’s otherness.

Yellow Calf’s efforts to address the feelings of otherness and to reconcile his ethnic heritage with his role in the law culminate in his decision to run for senator. He faces an ethical dilemma here that is not borne of professional conduct rules or the like. Rather, Yellow Calf struggles with a desire to remain true to the issues he believes are most critical to him and his reasons for becoming a lawyer, while also availing himself of the power and influences necessary to win the Senate race (though potentially sacrificing his internal moral compass in the process). This moment is pivotal in Yellow Calf’s efforts to reconcile the disconnect he feels between the traditions of his past and his present role in the law.

Ignoring his conflicting emotions, Yellow Calf decides to enter the Senate race, hoping to preserve his core beliefs but justifying any potential compromise of those beliefs as a temporary means to an end. The compromise appears subtle; the kind of calculation that many lawyers make in their own lives and practices. However, the consequences prove profound. On one hand, Yellow Calf is excited by the election. When he announces his candidacy before the press and public, standing on the steps of an orphanage, Yellow Calf “[feels] a great wave of anticipation sweep through his body and he [thinks], I am on my way, I will make a difference because I am Sylvester Yellow Calf and I do count.”²⁹ On the other hand, after an Indian orphan gives him a peace pipe at the close of the announcement, Yellow Calf is embarrassed by the spectacle of it and ashamed about the way he manipulates his appearance for his own political gain. An aide encourages him to push his

26. *Id.*

27. *Id.* at 51-52.

28. *Id.* at 55.

29. *Id.* at 290-91.

discomfort away, suggesting that these sorts of events will become easier with time. Yet, for Yellow Calf they do not become any easier.

One might say that Yellow Calf is engaging in a form of self-deception in his decision to run for senator, avoiding the moral implications of choices that are calculated for political gain.³⁰ The reader learns how a lawyer may become implicated, even if unintentionally, in this kind of dilemma. As one commentator has observed, Welch transforms Yellow Calf “from a man who was aware of his own difference even as a boy back on the reservation, to a man who is flattered into believing that he can ‘make a difference.’”³¹ The question for the reader, however, is whether Yellow Calf actually can make a difference. Unfortunately for the reader (and for Yellow Calf) this question is never answered fully.

Yellow Calf is appreciative of his opportunities, whether it is his Stanford education or his Senate candidacy, yet he cannot separate the appreciation from his feelings of otherness and as a result is never fully satisfied with the opportunities. At times Yellow Calf is so overwhelmed by the feelings of otherness that he engages in the same kind of prejudice or stereotyping imposed upon him over the years. For example, he sees a seven-year-old Indian boy playing marbles alone in a vacant lot, wearing a “raggedy T-shirt, his blue jeans worn out at the knees,” and wonders:

[I]f that seven-year-old and I were in the same place at the same time and I saw myself in him, why couldn't he turn out to be me? Why couldn't he have the same opportunities, the same encouragement, the same helping hands I had? Why couldn't this

30. See generally *infra* Part I.C.2 (reflecting further on the theme of self-deception).

31. MCFARLAND, *supra* note 10, at 144. Welch further drives this point home when he describes Yellow Calf moments before his Senate announcement:

Now, as he remembered to look out at the small crowd, he saw the posters bobbing over the faces, red and blue with white lettering, YELLOW CALF FOR CONGRESS, and the large buttons on topcoats and wool jackets, and he became excited by what he was actually doing. All the planning, the strategy, the issues, which had seemed so academic to him, gave away to the reality that he was actually running for office, that he was qualified, not in the politician's way but in his own beliefs and values. He felt a great wave of anticipation sweep through his body and he thought, I am on my way, I will make a difference because I am Sylvester Yellow calf and I do count. He suddenly felt as though his life had inexorably led him to this moment and he wanted it to be momentous.

WELCH, *supra* note 1, at 290-91.

kid be taught that he is important, that he doesn't have to fail just because he is an Indian and it's expected of him?³²

He makes certain presumptions about the child based on appearance alone. On another occasion, when delivering a speech to the Indian Alliance about preserving Indian reservations and communities, Yellow Calf assumes his audience "would feel that he was an opportunist, suddenly embracing the Indian way of life after years of living out of it," and he is surprised that "the people at the dinner seemed quite pleased to have him talk to them, talk with them. They had presented him with a star quilt and a certificate of appreciation."³³ In these ways, Yellow Calf treats fellow Indians in the very manner that causes him such discomfort. Toward the novel's end, he begins to recognize this cycle. Yellow Calf's awareness of self is part of what seems to motivate him to return to the kind of work that inspired him to become a lawyer in the first place.³⁴

A number of conclusions may be drawn from Yellow Calf's experience of otherness. Witnessing Yellow Calf's struggle over feeling that he is on the outside gives the reader insight about the minority perspective, and hopefully those in the majority become more sensitive to the American Indian experience. Moreover, the forum of literature facilitates consideration of Yellow Calf's internal thoughts and emotions, as the reader learns how he moves through the cycle of otherness and personal conflicts toward peace. It is evident that "Yellow Calf represents the catastrophic shift in Indian character from a person who values family, ceremony, and generosity to a twentieth-century role: He is an employee who finds his career in the white world has displaced his tribal values."³⁵ As a result, "Yellow Calf has allowed outside influences to provide direction in his life, causing his sense of material well-being to erode his memories of the oppression of his people."³⁶ The larger lesson, however, is not limited to American Indians who become lawyers and in the process reject their tribal values or leave them behind. Yellow Calf's failings occur "[b]ecause he has allowed himself to become an outsider to family, landscape, and tribal identity, [leaving him] poorly equipped to cope with challenges that arise."³⁷ Any among us who allow our

32. WELCH, *supra* note 1, at 59.

33. *Id.* at 295.

34. *See infra* Part I.C.3.

35. Sidner J. Larson, *The Outsider in James Welch's The Indian Lawyer*, 18 AM. INDIAN Q. 495, 497 (1994).

36. *Id.* at 499.

37. *Id.* at 505.

professional role or the accompanying influences of power to intrude upon or displace our value system face the same quandary as Yellow Calf. Experiencing Yellow Calf's otherness through the novel allows readers to better identify and address it in their own lives.

2. *A Lesson on the Consequences of Self-Deception*

A second theme running throughout the novel is one of self-deception. When one hears of attorneys who engage in corruption, fail in their duties to clients, or violate disciplinary rules, it is tempting to dismiss them as the bad apple or the anomaly. Nevertheless, it is a fair assumption that no one goes to the effort to become a lawyer with a deliberate plan to engage in corruption or other behavior that would jeopardize licensure. Instead, something happens along the way, whether it is pressure from colleagues or clients, the quest for power, financial troubles, substance abuse or, as social science researchers have suggested, a gradual but dangerous process of self-deception.³⁸ Literature provides a forum for analyzing the fundamental causes of unethical decisions, especially when such decisions stem from self-deception. Welch's tale presents an excellent example. As discussed in Part II.C.1, the consequences of self-deception are presented to a certain extent when Yellow Calf deliberates over his Senate candidacy. But Yellow Calf's capacity for convincing himself that things are not as they seem is most obvious when he engages in a sexual indiscretion with a client.

The novel opens at a parole board hearing. Yellow Calf is sitting on the panel reviewing parole requests from state prison inmates. One inmate on review is Jack Harwood, in prison for his second armed robbery. Shortly before the parole hearing Harwood is beaten up by Indians in prison, now fears for his life, and is desperate to get out. After the panel, when Yellow Calf denies Harwood's parole request, Harwood contrives a blackmail scheme involving Yellow Calf in an effort to orchestrate an early parole and at the same time retaliate against his Indian assailants in a symbolic way. Harwood sends his wife, Patty Anne, to seduce Yellow Calf. She makes an appointment to see Yellow Calf in his office about a pretend will dispute. Yellow Calf accepts her case, meets her for a follow-up appointment at a bar, and ends up sleeping with her. Only later in the novel does Yellow Calf learn that Patty Anne is merely a pawn in an elaborate bribery scheme.

38. See Ann E. Tenbrunsel & David M. Messick, *Ethical Fading: The Role of Self-Deception in Unethical Behavior*, 17 SOC. JUST. RES. 223, 223 (2004) (examining "the root of unethical decisions by identifying the psychological forces that promote self-deception").

The standard casebook analysis of this issue would identify such behavior as a violation of American Bar Association Model Rule of Professional Conduct ("Model Rule") 1.8(j), which prohibits sexual relations with a client, and would likely leave it there.³⁹ But the more interesting issue, one that literature allows the reader to explore, is what causes the Sylvester Yellow Calfs of the world to make a choice like this. Yellow Calf gives us some insight, reflecting that he

couldn't believe what had happened last night, but he knew he had wanted it. Why else would he have met with her in a bar? He had slept with a client. He had heard so many stories and he had always been disgusted by them. His colleagues laughed and told stories with great enthusiasm. Now, [he] had joined the ranks of those they laughed at.⁴⁰

As it turns out, Yellow Calf has real feelings for Patty Anne, which only further complicate the situation.

Soon after deciding to run for senator but before making an official announcement, Yellow Calf learns about the blackmail scheme orchestrated by Harwood and two of Harwood's recently paroled prison buddies. Notably, even the blackmail scheme is tinged with race and the theme of otherness. As Yellow Calf explains, Harwood decides to blackmail him because Harwood sought revenge against Indians who attacked him in prison: "And he chose me to blackmail. . . . The only Indian on the board. Not only is he trying to blackmail me, he's getting his revenge too."⁴¹ This becomes part of Yellow Calf's justification for not revealing the affair or blackmail immediately. Instead, he makes the choice to go forward with the announcement of his candidacy, pretending that nothing is wrong. Yellow Calf goes so far as to misuse his authority on the state parole board to obtain information about the other ex-convicts involved in the bribery scheme, hoping to find a way to manipulate the system and turn the table on the parties involved. Again, the standard casebook analysis would cite Model Rule 8.4, noting his dishonesty in abusing the parole board position in this way.⁴² The casebook analysis might also provide excerpts from a disciplinary opinion or a law review article,

39. MODEL RULES OF PROF'L CONDUCT R. 1.8(j) (2003) ("A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.").

40. WELCH, *supra* note 1, at 159.

41. *Id.* at 225.

42. MODEL RULES OF PROF'L CONDUCT R. 8.4(c) ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

or even explore the issue in the context of a hypothetical problem, but it probably would not spark further reflection or inquiry. In contrast, addressing the behavior through literature provokes reflection, as Yellow Calf's emotional state and the perspectives of those around him are revealed. The reader is compelled to ask why Yellow Calf makes certain choices and in turn discovers how those choices succeed or fail. The reader is also able to evaluate the reasons for Yellow Calf's decisions and learn about the consequences of self-deception.

In the end, Yellow Calf cannot live with his decisions about the affair and blackmail. The choices eat away at his conscience. Yellow Calf regrets not going to the police as soon as he learned of the blackmail, even though

[it] would have been embarrassing then, he might have had to take a leave of absence from the law firm, there might have been a hearing before the ethics board for sleeping with a client whose husband was a convicted felon, but he would have come out safe on the other side. Lawyers made stupid, even if unwitting, mistakes. But he was now an announced candidate for Congress, in the public eye, seeking the public trust, and he was being blackmailed by thugs. He was playing in their world, and that was unforgivable.⁴³

Rather than waiting for the media or a political rival to uncover the scandal, Yellow Calf chooses an alternative path. This choice is significant.

At the novel's close Yellow Calf is torn between a number of conflicting duties because of the sexual encounter with a client. These obligations include: (1) the rules of professional conduct forbidding his sexual relations with his client and forbidding his misuse of authority on the parole board to thwart the bribery scheme; (2) his role in the law as a partner of a prestigious Helena firm and a Senate candidate; (3) his identity as a Blackfeet Indian desiring to use the law to help his people; and (4) his conscience, his moral compass. Yellow Calf believes he has let down the people of his tribe and other Indians living in Montana.⁴⁴ In an effort to reconcile these conflicts, Yellow Calf returns to the old power symbolized by his great-grandfather's war medicine (or war pouch) that was used for protection during battle. The war medicine was first given to Yellow Calf by his grandmother, Mary Bird, when he left for college. Yellow Calf ignored it, tucking it behind some books on a shelf. In the face of escalating difficulties in resolving these conflicting

43. WELCH, *supra* note 1, at 304.

44. *See id.* at 326-27.

duties, however, Yellow Calf returns to his grandparents' home and retrieves the war medicine, torn as he may be about reliance upon it.⁴⁵ At least for Yellow Calf, a return to tradition enables him to adjust and adapt to his role in the law. The reader sees this through what one commentator calls "Welch's portrayal of the creative, hybrid aspects of cultural and personal development."⁴⁶ This portrayal "keep[s] the future open as a place where tradition can provide a dynamically positive influence in the process of adaptation . . . for everyone situated in the increasingly complex terrain of a multicultural world."⁴⁷ It has also been said that the war medicine "is at once historical substance and process—cultural, familial, individual, courageous. It is, in fact, history AS advocacy."⁴⁸

It is at this point where Yellow Calf returns to his moral compass, setting aside his political and professional aspirations. Yellow Calf decides that he must withdraw from the Senate race, resign from the parole board, and take a leave of absence from his firm. If Yellow Calf's story were conveyed through a reported decision from a disciplinary hearing or media account, only the improper behavior and the disposition of the disciplinary proceeding, if any, would be revealed. Much more is gained through the novel. The reader is exposed to Yellow Calf's raw emotion, deliberative process, and motivation for responding to the situation in the way that he does. This is not to say all lawyers can avoid the plight of Yellow Calf by turning to war medicine, but in considering his situation, the reader learns how Yellow Calf addresses his mistakes and is all the better for it. While not every lawyer should anticipate a sex scandal at some point in his or her career, it certainly happens to some.⁴⁹ Many lawyers will face situations where personal choices conflict with professional obligations in a similar way. The opportunity to consider one's choices when faced with such a dilemma in the context of fiction provides preparation for facing these problems in the future.

45. See *id.* at 293 ("Caught up in the moment, Sylvester wished he had worn his great-grandfather's war medicine. Then he thought that would be condescending, but he was now glad to have it in his possession. Just knowing that it was there made him feel aggressive and confident.").

46. Saul, *supra* note 11, at 524.

47. *Id.*

48. Robert F. Gish, *New Warrior, New West: History and Advocacy in James Welch's The Indian Lawyer*, 15 AM. INDIAN Q. 369, 373 (1991).

49. See, e.g., Stephen Braun, *Detroit Mayor's Troubles Deepen: Linked in an Affair, Kwame Kilpatrick and His Former Chief of Staff Face Felony Charges*, L.A. TIMES, Mar. 25, 2008, at 1; James M. Odato, *Spitzer Resigning: Aides Say Governor Quitting over Prostitution Scandal as Lawyers Negotiate*, ALBANY TIMES UNION, Mar. 12, 2008, at A1.

3. *A Lesson on Arriving at Acceptance*

A final lesson Yellow Calf's story offers is one of acceptance; acceptance of responsibility for his actions and, ultimately, acceptance of his identity and himself. Though Yellow Calf does not immediately acknowledge his deception and wrongdoing in conducting an affair with a client or misusing his authority on the state parole board, he does so before a third-party such as a disciplinary agency or the media forces his hand. Yellow Calf accepts the consequences of his actions, voluntarily pulling out of the Senate race and taking a leave of absence from his law firm. Yellow Calf then moves to Bismarck and begins working for the Standing Rock Sioux Reservation, where he and two law students from the University of North Dakota handle an Indian water-rights case.⁵⁰ While perhaps not the most realistic of conclusions,⁵¹ his new career path demonstrates a resolution of acceptance:

At first he didn't know if he wanted to become so deeply involved [in the water rights case for the Standing Rock Sioux]. It could conceivably take years to settle the case, but the more comfortable he became with the reservation people, the more he got to know the individuals involved, the more he realized he would see it through to wherever it ended—even if it meant giving up his new partnership in Harrington, Lohn and Associates.⁵²

One commentator explains, “[T]here is a recognition of the fault lines in other-directed life and of the hard work needed to get beyond old systems that create boundaries. What Yellow Calf achieves is a level of honesty with the women in his life and a step back from elitism, at least for the moment, to work on a water rights case for another tribe.”⁵³ Welch has conceded that the reader is not meant to know if Yellow Calf is “returning wholeheartedly or if it’s partly a retreat from the white world.”⁵⁴ Welch has further observed that the ending of the novel is “partly positive in that [Yellow Calf] might help his people. But I think it also is kind of a retreat from a way of life that ended up treating him badly.”⁵⁵

50. WELCH, *supra* note 1, at 304-05.

51. See Matthew L.M. Fletcher, *Dibakonigowin: Indian Lawyer as Abductee*, 31 OKLA. CITY U. L. REV. 209, 232-33 (2006) (observing that Yellow Calf's work on the water-rights case is unrealistic and that such characterization “does a minor disservice to Indian lawyers”).

52. WELCH, *supra* note 1, at 343.

53. Larson, *supra* note 35, at 504.

54. Lupton, *supra* note 9, at 201.

55. *Id.*

Another way to interpret the ending is that Yellow Calf is returning to his original purpose in becoming a lawyer. He finally seems to be at peace with his decisions. Not only has Yellow Calf accepted responsibility for his actions with Patty Anne, but he has also accepted a case that is the kind of work he intended to do when he made the decision to become a lawyer (though it must be acknowledged that the work is not for his own tribe). It has been written that Welch "improvise[s] and appropriate[s] from both Blackfeet and white cultures in the process of creating [his] identit[y]. In doing so, [he] assert[s] individual autonomy and hold[s] out hope for a better future."⁵⁶ Yellow Calf reconciles the conflicts in his identity by returning to the role he envisioned for himself as he embarked on his legal career, filled with idealism and a sense of purpose. While it is not the route he might have predicted, Yellow Calf finally finds himself closer to the place he intended to be when he went to law school to become a "new warrior."⁵⁷ As one commentator surmised:

In some ways, as Welch suggests on a couple of occasions near the end of the novel, this change in directions constitutes a 'fall from grace,' but most readers will concur that in resigning [from] the state parole board and giving up his run for [Congress], [Yellow Calf] saves himself and begins the revival and regeneration of his character.⁵⁸

We see that acceptance of heritage and ancestry allows one to resolve the competing concerns of otherness or disconnect, as in the end, Yellow Calf "has not gone 'home,' either to the reservation or to his life in Helena, but instead has gone away again to a place where he can perhaps sort things out."⁵⁹ This is not to suggest that lawyers will only find professional fulfillment by returning to ethnic roots or heritage, or even more narrowly, that Indian lawyers will be fulfilled only by returning to their community. Such a narrow reading fails to fully appreciate the message of Yellow Calf's story, which has been called "part social science and psychology, part tribal values, part literary."⁶⁰ Rather, reflecting on Yellow Calf's story inspires readers to

56. Saul, *supra* note 11, at 519.

57. See LUPTON, *supra* note 7, at 120. Welch uses this term throughout the novel and in an interview commented: "Lawyers are the quintessential New Indians. In the Indian community lawyers are called the New Warriors. I thought Yellow Calf would be a good character to represent the new, successful Indians." *Id.* (quoting Interview by Mary Jane Lupton with James Welch (Nov. 17, 2001)).

58. MCFARLAND, *supra* note 10, at 129.

59. Larson, *supra* note 35, at 504.

60. *Id.* at 505.

examine their own stories, reflect upon where they come from, and determine where they are heading. This sort of examination is critical for those who desire to develop a rewarding and meaningful life in the law. A reviewer of *The Indian Lawyer* summarized the novel's ending as follows: "[Yellow Calf] has lost a personal and political battle or two but promises to win the war. And the war he wages will be to seek and perhaps partially restore the economic, ecological, cultural, and spiritual (especially his own) balance and harmony."⁶¹ Another commentator concluded that "[d]espite . . . the context of cultural confusion and prejudice in *The Indian Lawyer*, [it] ultimately offer[s] the hope of new possibilities."⁶² Through this hope, Yellow Calf and the reader arrive at acceptance.

II. Literature and Legal Ethics

Reading a novel like *The Indian Lawyer* demonstrates that the examination of a lawyer's ethical dilemmas in the context of fiction can be quite compelling compared to the more traditional tools employed in the study of law, such as court opinions or hypothetical problems. The use of literature to analyze legal ethics issues sets the reader free to imagine and to be creative in ways that traditional law school instruction often ignores, if not outright discourages. Studying legal ethics through literature invites reflection and internal dialog without the pressure to find the "right" or most clever answer. To be sure, the study of literature alone is not sufficient, but it certainly enhances the learning process. When used effectively, it can be an important supplement to standard law school teaching methods. Moreover, in my experience students are eager to consider legal ethics in the context of a novel.⁶³

61. Gish, *supra* note 48, at 374. *But see* Fletcher, *supra* note 51.

62. Saul, *supra* note 11, at 524.

63. As a component of the course I teach, students are required to select a novel or film as the basis for a written analysis of how lawyers resolve (or fail to resolve) the obligations of professional conduct rules with individual morality. The list of works to select for this assignment includes options from the traditional canon like Harper Lee's *To Kill a Mockingbird* as well as options beyond the canon such as postcolonial fiction from Nadine Gordimer and J.M. Coetzee and, of course, Welch's *The Indian Lawyer*. Over 90% surveyed in a class of 108 students found this writing exercise helpful. Some of their comments included:

I did find the assignment quite helpful in applying what we learned in class. When reading the casebook, all the issues are neatly pre-packaged for us and it is obvious that professional responsibility issues are going to be implicated. When looking at a book . . . these issues are not always readily apparent; it takes some digging and real application of what we have learned to uncover the important facts and circumstances.

Most literature making an appearance in the law school classroom for this purpose is limited to traditional Western selections such as Harper Lee's *To Kill a Mockingbird* or Charles Dickens' *Bleak House*.⁶⁴ Scholars have urged for an expansion of the canon to include more works from outside perspectives. Yet such an expansion has not occurred, despite the existence of a number of excellent choices.⁶⁵ Works from outside perspectives are deserving of attention and provide a unique take on concerns that arise in the context of professional responsibility or legal ethics courses. These concerns relate to the ways lawyers address (or fail to address) ethical dilemmas, ranging from questions about how lawyers apply ethical rules of professional conduct to how lawyers address situations where the rule of law diverges from their moral compass.

I enjoyed the application of the Rules in this exercise. It is always good to move away from abstract principles and to try one's mettle in a potential real-life scenario. It gives more depth and "realness" to the Rules as a whole.

I think this assignment was worthwhile. It is a nice change of pace from the constant reading of case law we typically have to do. Plus it is nice to see real ethical dilemmas played out in more of a story fashion. It makes it seem more real.

By reading about ethical dilemmas outside of a law school textbook or case, the book reading assignment has made these conflicts more real to me, and aided me in starting to think about what I would do if confronted with similar situations.

The additional reading assignment helped give me a broader picture of the problems attorneys face with their clients. When we read cases in class we only get excerpts of the case and therefore it is harder to relate to the clients. By engaging yourself with the characters of a book and thinking about these issues in that light, it makes problems more realistic to what you will encounter in practice.

I found it thought provoking and enlightening to view the substance of the book not only as a moral dilemma, but through the lens of legal responsibilities of the attorney. It shed a different light on the rules than the examples in the casebook. Additionally, I appreciated the opportunity to read a great book I otherwise probably would not have.

Renee Newman Knake, Professional Responsibility Class Survey (Fall 2007) (on file with author).

64. See discussion *supra* notes 4-6 and accompanying text.

65. See Delgado & Stefancic, *supra* note 4, at 1980-83 (listing numerous recommended additions to the canon including African-American narratives, Asian-American narratives, Mexican-American narratives, Native-American narratives, gay and lesbian narratives, women's narratives, and notably, *The Indian Lawyer*).

American Indian fiction takes this even further, ideally familiarizing the reader with the concerns and perspectives of the American Indian community and facilitating the consideration of a more inclusive and respectful co-existence.⁶⁶ The act of reading this kind of novel also shapes reality and can be in many ways a transformative experience.⁶⁷ This is clearly demonstrated by *The Indian Lawyer*, where the protagonist struggles not only with his role in the law, but also with issues of personal identity and issues of otherness. Exposure to the American Indian perspective enhances the ability to identify and reconcile conflicting obligations and emotions.⁶⁸

However, care must be taken while studying a work like *The Indian Lawyer* not to engage in stereotyping or prejudice.⁶⁹ As one commentator has noted, the very act of including works identified “as Native American works also tends to marginalize them, since using the label implies the validity of categorizing literature according to its ethnic antecedents.”⁷⁰ These concerns are valid but should not constitute a reason for omitting outside perspectives from the canon. Exclusion of such literature “fail[s] to account fully for our shared pasts and constrain[s] our present efforts to engage in more respectful relations.”⁷¹ Works from outside the Western literary tradition provide the reader with insight about the experience of otherness, ideally in a way that fosters understanding and empathy. While this capacity is certainly not unique to American Indian fiction, it is fulfilled by it as revealed through the lessons drawn in this essay from Welch’s *The Indian Lawyer*.

66. See N. Bruce Duthu, *Incorporative Discourse in Federal Indian Law: Negotiating Tribal Sovereignty Through the Lens of Native American Literature*, 13 HARV. HUM. RTS. J. 141, 143 (2000) (“The reason for this . . . is that such an incorporative discourse serves to awaken the mind to reconceptualize the place of Native Americans within American society and to ignite the imaginative possibilities of more inclusive, respectful, and peacefully co-existing communities.”).

67. See BLANCA SCHORCHT, *STORIED VOICES IN NATIVE AMERICAN TEXTS: HARRY ROBINSON, THOMAS KING, JAMES WELCH, AND LESLIE MARMON SILKO* 108-09 (Franke Wilmer ed., 2003).

68. See Duthu, *supra* note 66, at 188.

69. See ALAN R. VELIE, *FOUR AMERICAN INDIAN LITERARY MASTERS: N. SCOTT MOMADAY, JAMES WELCH, LESLIE MARMON SILKO, AND GERALD VIZENOR* 6 (1982) (“[A] more bothersome misconception, or habit of mind, is the tendency of white Americans to read any book by an Indian about Indians as protest literature—that is, as essentially a political work championing Indians against their brutal enemies, white Americans.”).

70. ROBERT M. NELSON, *PLACE AND VISION: THE FUNCTION OF LANDSCAPE IN NATIVE AMERICAN FICTION* 2 (1993).

71. See Duthu, *supra* note 66, at 188.

Conclusion

The Indian Lawyer serves as a catalyst for considering how we might apply Yellow Calf's lessons in our own lives and practices. We see well beyond the obvious ethical dilemmas presented by Yellow Calf's decision to run for Senate or his affair with a client and learn through his emotions, internal deliberations, and ultimate choices how to arrive at a solution that we not only can live with, but that also puts us in a better place than where we began. Moreover, we learn from Yellow Calf that even the most disciplined and highly regarded among us are vulnerable. We recognize the subtle process of self-deception and begin to understand the consequences so at best we can avoid Yellow Calf's follies and, to the extent we find ourselves in similar circumstances, at least know we are not alone. Last, we learn how Yellow Calf resolves his own disconnect and feelings of otherness as he "evolves from a lawyer who happens to be Indian to a lawyer who deals with Indian-related issues, and is therefore an 'Indian lawyer' in the full sense of the term."⁷² He now advocates for Indian rights and concerns, returning to the purpose that initially inspired his pursuit of the law. At the novel's last line we find Yellow Calf playing basketball alone, "going one on one against the only man who ever beat him."⁷³ Ultimately, Yellow Calf's struggle is against himself, and in the end, it is clear that there are no easy answers. Acknowledging the complexity, however, is part of the process for resolution. Exploring the complexity of lawyers' obligations in the context of a novel like *The Indian Lawyer* assists us in balancing competing legal obligations, ethical duties, moral convictions, and personal identity.

72. MCFARLAND, *supra* note 10, at 129.

73. WELCH, *supra* note 1, at 349; see also Arnold Krupat & Michael A. Elliott, *American Indian Fiction and Anticolonial Resistance*, in THE COLUMBIA GUIDE TO AMERICAN INDIAN LITERATURES OF THE UNITED STATES SINCE 1945, at 127, 136 (Eric Cheyfitz ed., 2006).

That last sentence, with its freshening wind, seems hopeful. But it hardly seems "tribal," "national," transpersonal, relational. It is almost as if Welch in *The Indian Lawyer* took a brief respite from collective resistance. Certainly, Montana and America present obstacles to American Indians that the white population, for the most part, does not face, and the predicament in which Sylvester Yellow Calf finds himself is undoubtedly complicated by his Blackfeet background. But, all the same, this book is very much the story of Sylvester Yellow Calf, Indian lawyer, human, fallible individual agent, far more than the story of the Blackfeet nation or the Pikuni way.

Id. at 136.