

# Notes Toward an Aesthetics of Legal Pragmatism

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## BOOK REVIEW

### Notes Toward an Aesthetics of Legal Pragmatism

David A. Skeel, Jr. \*

THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY.<sup>1</sup>  
By Thomas C. Grey.<sup>2</sup> Cambridge: Harvard University Press. 1991.  
155 pp. \$24.95.

#### INTRODUCTION

A reader well-versed in Wallace Stevens' poetry might be surprised to learn that Thomas Grey has devoted an entire book to the issue of Stevens' relevance for lawyers. This is not because lawyers and law schools resist the intrusion of nonlegal disciplines into the law school curriculum. With law-and-economics, critical legal studies, and law-and-literature well into their second generation, lawyers increasingly have come to recognize and even solicit the insights of nonlawyers into the law. The titles of Grey's own recent law review articles reflect a degree of the ecumenicalist spirit: "Serpents and Doves: A Note on Kantian Legal Theory";<sup>3</sup> "The Malthusian Constitution";<sup>4</sup> "The Constitution as Scripture."<sup>5</sup>

But Wallace Stevens has never been thought to have much to add to this discourse. Although critics have been quick to uncover hidden meanings in his poems, almost all of these same critics have assumed that Stevens' lengthy career as a surety lawyer at the Hartford Casualty and Indemnity Company was irrelevant to his verse.<sup>6</sup> Richard Posner's pronouncement is characteristic: "Wallace Ste-

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<sup>1</sup> THOMAS C. GREY, *THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY* (1991).

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<sup>3</sup> Thomas C. Grey, *Serpents and Doves: A Note on Kantian Legal Theory*, 87 COLUM. L. REV. 580 (1980).

<sup>4</sup> Thomas C. Grey, *The Malthusian Constitution*, 41 U. MIAMI L. REV. 21 (1986).

<sup>5</sup> Thomas C. Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1 (1984).

<sup>6</sup> See, e.g., Wilson E. Taylor, *Of a Remembered Time*, in WALLACE STEVENS: A CELEBRATION 92 (Frank Doggett & Robert Buttel eds., 1980).

vens was . . . a lawyer . . . but no one supposes that Stevens' poetry is about law."<sup>7</sup>

The conventional assumption that Stevens's poetry was not "about law" purports to answer at least two distinct questions: 1) does Stevens' poetry tell us anything about the law?; and 2) did Stevens' legal career influence his poetry? Grey is most interested in what might be described as the poetry-law perspective, that is, the question whether Stevens' poetry has anything to add to a lawyer's understanding of what she does for a living. Grey concludes that Stevens' poetry does in fact speak to lawyers but not, as law-and-literature enthusiasts might predict, to teach us about people, politics, or the nature of legal idiom. He argues that Stevens' poetry reflects a consistent, although constantly changing, pragmatist philosophy which offers a fresh look at pragmatic legal theory.

I consider Grey's pragmatist account of Stevens' poetry in Part I of this review. While Grey's critique of law-and-literature will undoubtedly fuel the debate on the movement's "tendency [according to Grey] to emphasize law's discourse at the expense of its actions and their material consequences,"<sup>8</sup> I suggest that Grey's real aim is to articulate an aesthetics of legal pragmatism. I argue that while Stevens' poetry does not by itself offer a complete pragmatist aesthetics—Stevens privileged the role of the poet, for instance, to an extent inconsistent with the Deweyan version of pragmatism that has most influenced the recent pragmatist revival<sup>9</sup>—Grey's efforts to claim Stevens for pragmatism are compelling and his use of the poetry extraordinarily effective.

In Part II, I look at the suggestion that Stevens' poetry was not "about law" from the opposing perspective. The question I ask is thus the law-poetry question: did Stevens' career as a surety lawyer have any impact on his poetry? Grey, like the vast majority of Stevens' previous commentators, argues that it did not, a somewhat surprising conclusion given the pragmatist emphasis on the integrated nature of all human activity. I tell a very different story about the significance of law to Stevens' poetry in Part II in an effort to provide a more fully pragmatic perspective on Stevens.

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<sup>7</sup> See GREY, *supra* note 1, at 2 (quoting RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* 179 (1988)).

<sup>8</sup> See *id.* at 3, 4. For an earlier example of this criticism of law-and-literature, see Robert M. Cover, *Violence and the Word*, 95 *YALE L.J.* 1601, 1601 n.1 (1986) (criticizing Ronald Dworkin and James Boyd White for ignoring the relationship between interpretation and the violent aspects of the law).

<sup>9</sup> See generally *infra* note 15 (describing Richard Rorty's role in drawing attention to pragmatist thought).

## I

WHAT THE POET STEVENS HAS TO SAY TO LAWYERS: A  
LESSON IN LEGAL PRAGMATISM

In posing the question whether Stevens' poetry has anything to say to lawyers, *The Wallace Stevens Case* thrusts Grey into the center of the law-and-literature debate. Grey spends the first half of the book distancing himself from this movement and from what he characterizes as a tendency to see literature as a source of instruction in empathy,<sup>10</sup> or in the ambiguous, situated nature of language.<sup>11</sup> Stevens valued ambiguity in poetry, Grey points out, but he firmly believed that legal language can and should be precise, transparent, and utterly unambiguous.<sup>12</sup> Nor does Grey believe that Stevens' poems will help lawyers understand one another better. Stevens' poems not only operate at a removed, "second order" level, but they also have almost nothing to say about people and how we should or do interact.<sup>13</sup>

This critique, although certain to provoke a sharp response from James Boyd White and other leading law-and-literature figures, really only sets the stage for Grey's primary thesis, which is that Stevens was a pragmatist in his philosophy. In the section that follows, I examine Grey's reasoning in some detail.

## A. The Case for Claiming Stevens as a Pragmatist

*The Wallace Stevens Case* can be seen as a continuation of a project that Grey began in his 1989 law review article "Holmes and Legal Pragmatism."<sup>14</sup> "Holmes and Legal Pragmatism" not only ar-

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<sup>10</sup> Grey identifies Robin West, in particular, with this aspect of law-and-literature. See, e.g., Robin West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1986); Robin West, *Law, Literature, and the Celebration of Authority*, 83 NW. U. L. REV. 977 (1989).

<sup>11</sup> See, e.g., JAMES BOYD WHITE, *HERACLES' BOW* (1985); JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (1973).

Grey characterizes these two tendencies as the respective poles of a continuum in law-and-literature analysis. GREY, *supra* note 1, at 22-23. As the characterization and his subsequent qualifications suggest, the two poles do not capture the full richness of the law-and-literature movement, see, e.g., Jane B. Baron, *The Many Promises of Story Telling in Law: An Essay Review of Narrative and the Legal Discourse: A Reader in Storytelling and the Law*, 23 RUTGERS L.J. 79 (1992) (describing the pluralism of approaches among law-and-narrative theorists), just as his account of law-and-economics as reductively instrumental arguably shortchanges that literature, see, e.g., Jason S. Johnston, *Law, Economics, and Post-Realist Explanation*, 24 LAW & SOC'Y REV. 1217 (1990) (essay review of books by Cooter and Ulen; Goldberg; Landes and Posner; Shavell; and Williamson). These simplifications serve to exaggerate his comparisons, but ultimately do not detract from his central thesis.

<sup>12</sup> GREY, *supra* note 1, at 41.

<sup>13</sup> *Id.* at 26-27.

<sup>14</sup> Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 STAN. L. REV. 787 (1989) [hereinafter Grey, *Holmes and Legal Pragmatism*]. Like John Dewey, Grey has not limited his

gues that viewing Holmes as a legal pragmatist explains many of the apparent contradictions in Holmes' jurisprudence, but also affords Grey a vehicle for presenting his version of the recent pragmatist revival.<sup>15</sup> Grey distills pragmatism to two primary tenets, each of which emphasizes the practical. First, pragmatism perceives human thought as instrumental, in that its purpose is to achieve practical goals.<sup>16</sup> Second, thought is seen as situated, historical and contextual, grounded in practice rather than in a "set of fundamental and indubitable beliefs."<sup>17</sup>

In *The Wallace Stevens Case*, Grey once again argues that the inconsistent and even contradictory pronouncements of a major twentieth century intellect can be understood only by examining them from the perspective of pragmatism. The crux of Grey's argument lies in Stevens' lifelong obsession with the relationship between reality and the imagination. Grey schematizes the changing, digressive nature of Stevens' thought, and underscores its striking affinities with legal pragmatism, as follows. The poems shift, Grey suggests, from "the romantic or idealist quest to escape . . . reality by enhancing and transcending it in imagination," to a desire to "purg[e] thought and language of the imagination's . . . meta-

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pragmatist project to the scholarly domain. For instance, testifying against Justice Thomas at Thomas' confirmation hearings, Grey suggested that:

[W]hat I think has frightened some Americans about the idea that Judge Thomas will be a justice . . . is the attitude that we see in [Thomas'] continued references to self-evident truths . . . . There is a difference in style and spirit of constitutional reasoning that I might try to characterize as the difference between a dogmatic style and a more pragmatic style . . . . The pragmatic style is the style that tends to see most constitutional cases as difficult, as involving more than one of the great values that animate the Constitution.

*Hearing of the Senate Judiciary Committee*, Federal News Service, Sept. 16, 1991, available in LEXIS, Lexis Library, Nominee File. Grey also helped draft Stanford's discriminatory harassment clause, a process he has described in several recent articles. Thomas C. Grey, *What Good is Legal Pragmatism*, in PRAGMATISM IN LAW & SOCIETY (Michael Brint & William Weaver eds., 1991); Thomas C. Grey, *Civil Rights vs. Civil Liberties: The Case of Discriminatory Harassment*, 8 SOC. PHIL. & POL. 81 (1991).

<sup>15</sup> The work of Richard Rorty has sparked much of the recent interest in pragmatism. See RICHARD RORTY, *CONTINGENCY, IRONY, & SOLIDARITY* (1989) RICHARD RORTY, *CONSEQUENCES OF PRAGMATISM* (1982); RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979). For a good introduction to the influence of neopragmatism on legal theory, see *Symposium on the Renaissance of Pragmatism in American Legal Thought*, 63 S. CAL. L. REV. 1569, 1569-1853 (1989).

<sup>16</sup> Grey, *Holmes and Legal Pragmatism*, *supra* note I4, at 799.

<sup>17</sup> *Id.* at 798-99. Analytical philosophers have traditionally attempted to isolate basic unchangeable "foundational" truths. The second of Grey's prongs reflects the pragmatists' rejection of this project, and of its underlying assumption of a dualism between mind and matter, as misguided. See, e.g., RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979); Richard Rorty, *Introduction: Pragmatism as Anti-Representationalism*, in JOHN P. MURPHY, *PRAGMATISM: FROM PEIRCE TO DAVIDSON* 1-5 (1990).

phors," and to return to "bare" reality.<sup>18</sup> Grey sees this tension between reality and the imagination as precipitating a third movement, a "perspectivist reaction against the reality-imagination distinction itself, stressing that each version of reality is only a version."<sup>19</sup> The "perspectivist reaction" may consist either of a synthesis of reality and the imagination or of a dialogue between the two. Either way, the resolution is always temporary; Stevens never settles conclusively on a single explanation.

Grey argues that rather than proving the absence of any coherent philosophy, as other critics have concluded,<sup>20</sup> Stevens' ever-changing perspectives on reality and the imagination closely parallel legal pragmatism. In law, pragmatism mediates between instrumentalist approaches, such as law-and-economics, and more "idealistic"<sup>21</sup> ones that view law as historically and culturally situated, such as law-and-literature, critical race theory, and feminist jurisprudence. Pragmatists argue that neither jurisprudential vision can happily exclude its opposite. Thus, lawyers and the legal system must choose one or the other, or some combination of the two, as the context requires. The nature of this choice may change from one context to the next, just as Stevens' poems never adopt a final, consistent attitude toward reality and the imagination. "Sometimes," Grey tells us, "it is right to hold in mind that the early bird catches the worm; sometimes, that all work and no play make Jack a dull boy."<sup>22</sup>

Grey at times seems overly enamored with the dualistic thought that his analysis of Stevens is intended to critique. In addition to the dichotomy between reality and the imagination and its legal analogue, instrumentalism/idealism, we hear about "tough-minded materialism" versus "tender-minded idealism,"<sup>23</sup> and Strict Law versus Equity.<sup>24</sup> The two prongs of Grey's statement of pragmatism, in-

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<sup>18</sup> GREY, *supra* note 1, at 69. Grey uses the term "idealistic" as a synonym for what in literature is characterized as "romanticism." He defines "realism" as the opposite of idealism, thus limiting "realism" to what might be described as a lay person's conception of the word. As Grey points out, each of these terms carries a variety of different, even contradictory meanings for philosophers in other contexts. *Id.* at 69 n.5.

<sup>19</sup> *Id.*

<sup>20</sup> See, e.g., PETER BRAZEAU, PARTS OF A WORLD: WALLACE STEVENS REMEMBERED 212 (1984); ("The fact of the matter is there's no logical coherence . . . [Stevens' mind] was the inquiring mind, not equipped professionally with [philosophical] methods and methodology to work toward a solution.") (comments of Elder Olson); FRANK DOGGETT, STEVENS'S POETRY OF THOUGHT 199-216 (1966); DENIS DONOGHUE, *Stevens's Gibberish*, in READING AMERICA: ESSAYS ON AMERICAN LITERATURE (1988).

<sup>21</sup> See GREY, *supra* note 1, at 69 n.5; see also *supra* note 18.

<sup>22</sup> GREY, *supra* note 1, at 84.

<sup>23</sup> See *id.* at 68.

<sup>24</sup> *Id.* at 87.

strumentalism and contextualism, also make an appearance;<sup>25</sup> and, in the first chapter, Grey speaks of a distinction between Stevens the lawyer and Stevens the businessman.<sup>26</sup> Yet despite the profusion of dualisms, Grey's analysis is clear, succinct, and persuasive throughout.

Grey buttresses his thesis with readings of Stevens' poems that are sufficiently acute as to be of interest both to lawyers and to Stevens' literary critics. Stevens' poem "The Motive for Metaphor," for instance, is usually seen as contrasting the imaginative, metaphorical world, as depicted in its first four stanzas, with the harsh reality of the poem's conclusion: "The sharp flash,/The vital, arrogant, fatal dominant X."<sup>27</sup> Grey makes the intriguing suggestion that metaphor may not be truly separable from reality in this poem and may in fact help *reveal* reality, as evidenced by the fact that the "dominant X" of reality is itself a metaphor.<sup>28</sup> In jurisprudential terms, the harsh reality of the instrumental aspects of the law and the countervailing "imaginative" impulse toward flexibility are intertwined. Neither by itself can both preserve order and ensure the vitality of the law.<sup>29</sup>

Grey quotes from "The Idea of Order at Key West" in a subsequent chapter to illustrate the related point that it is not only propo-

<sup>25</sup> *Id.* at 110.

<sup>26</sup> *Id.* at 10-11. Grey also has a tendency at times, after having assigned his terms to opposing poles, see, e.g., *supra* note 11, implicitly to claim the entire middle ground for pragmatism. In a sense, this distortion is necessary, since a more textured presentation of the contrasted terms would risk collapsing the distinctions before he is ready to do so. See, e.g., Richard Rorty, *The Banality of Pragmatism and the Poetry of Justice*, 63 S. CAL. L. REV. 1811, 1813 (1989) ("For myself, I find it hard to discern any interesting *philosophical* differences between Unger, Dworkin and Posner . . . I do not think that one has to broaden the sense of 'pragmatist' very far to include all three men under this accommodating rubric.").

<sup>27</sup> WALLACE STEVENS, *The Motive for Metaphor, in THE COLLECTED POEMS OF WALLACE STEVENS* 288 (1954) [hereinafter STEVENS, COLLECTED POEMS]; see, e.g., HELEN H. VENDER, WALLACE STEVENS: WORDS CHOSEN OUT OF DESIRE 23-26 (1984).

<sup>28</sup> Although Grey does not mention this, Stevens himself seems to have validated Grey's point that "X" is in part a metaphor, rather than unadorned reality, when he wrote (in reference to "The Man with the Blue Guitar") that the "imagination takes us out of the (Ex) reality into a pure irreality. One has this sense of irreality often in the presence of morning light on cliffs which then rise from a sea that has ceased to be real and is therefore a sea of Ex." LETTERS OF WALLACE STEVENS 360 (Holly Stevens ed., 1966) [hereinafter LETTERS].

<sup>29</sup> Examples of the law's recognition of this fact are plentiful. To mention two, the Restatement of Contracts establishes a strict rule requiring bargained for consideration as a prerequisite to enforcement of any contract, RESTATEMENT (SECOND) OF CONTRACTS § 71 (1979), then leavens this standard by authorizing enforcement on promissory estoppel grounds if failure to enforce would be "unjust." RESTATEMENT (SECOND) OF CONTRACTS § 90 (1979). Similarly, the Bankruptcy Code carefully regulates the bankruptcy process, but also vests bankruptcy courts with the broad equitable power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a)(1988).

nents of Equity who experience pleasure, but there is also pleasure in Strict Law,<sup>30</sup> as in the effort to impose a structure on the unruliness of the sea:

Ramon Fernandez, tell me, if you know,  
 Why . . . why the glassy lights,  
 The lights in the fishing boats at anchor there,  
 As the night descended, tilting in the air,  
 Mastered the night and portioned out the sea,  
 Fixing emblazoned zones and fiery poles,  
 Arranging, deepening, enchanting night.<sup>31</sup>

Grey finds further evidence of the pleasurable aspects of Strict Law and other forms of "objective," rational reasoning in the straight lines that link the stars in "The Stars at Tallapoosa," which Stevens describes as like "[a] sheaf of brilliant arrows flying straight,/Flying and falling straightway for their pleasure."<sup>32</sup> Here, as elsewhere, Grey's use of the poetry is revealing and effective.

In his recent review of *The Wallace Stevens Case*, Steven Winter suggests that Grey's commitment to pragmatism "leaves [him] with no way to escape the tradition and practices . . . that he seeks to edify with his pragmatist insights. Grey's own analysis remains afflicted by the residual binarism that he decries."<sup>33</sup> In Winter's view, cognition is grounded in a single, imaginative, metaphoric process. He sees all mental processes, whether they appear to be "rational" or "imagistic," as interrelated and irreducibly metaphoric, rather than distinct. Winter suggests that greater recognition that metaphor is our only means of "having" a world would help to avoid the "errors of conflation, objectification, and reification" that arise from the continued use of oppositions and dichotomies such as poetry and law, imagination and rationality.<sup>34</sup>

Winter's reading of "The Motive for Metaphor" epitomizes his quarrel with Grey. Grey reads the next-to-last line, "Steel against intimation—the sharp flash," as establishing an opposition between

<sup>30</sup> Grey's concern here is with the traditional assumption that proponents of Strict Law (which he associates with law-and-economics and other instrumentalist views of law) are clear-sighted and objective, whereas proponents of Equity (i.e., "humanist" approaches such as law-and-literature, critical race theory, and feminist jurisprudence) allow feelings to cloud their judgment. To concede this distinction, Grey argues, is to concede the priority of Strict Law. See GREY, *supra* note 1, at 89. By demonstrating that "pleasure-seeking" is as important an attraction of Strict Law, as it is of Equity, Grey endeavors to eliminate this bias. *Id.* at 90.

<sup>31</sup> See STEVENS, COLLECTED POEMS, *supra* note 27, at 130.

<sup>32</sup> See GREY, *supra* note 1, at 91 (quoting STEVENS, COLLECTED POEMS, *supra* note 27, at 72).

<sup>33</sup> Steven L. Winter, *Death is the Mother of Metaphor*, 105 HARV. L. REV. 745, 747 (1992) (citation omitted).

<sup>34</sup> *Id.* at 764.

“steel” and “intimation,” or between real and imaginary or law and poetry. Winter insists that “steel” should be read as a transitive verb.<sup>35</sup> In Winter’s interpretation, the narrator “steels” against the “intimation” of mortality. The apparent dualism of steel versus intimation is not present in Winter’s reading, and metaphor alone, our single means of making sense of the world and of responding to the fear of death, remains.<sup>36</sup>

Winter’s analysis impressively demonstrates the dangers of continuing to employ traditional dichotomies. His emphasis on the common, metaphorical aspects of apparent antinomies, such as reality and the imagination, both reveals and diminishes the temptation to continue to accord the terms a measure of the a priori validity they were previously thought to possess.<sup>37</sup>

At times he appears to press further with this insight, suggesting that attention to metaphor might enable us fully “to [escape] the dichotomization of mind and world, realism and idealism, truth and fiction.”<sup>38</sup> Yet even a heightened appreciation of the role of metaphor in all cognition seems unlikely to obviate the usefulness of categories and oppositions in the law and in other contexts. Not only do dichotomies perform an important role in communication—it is helpful to speak in terms of reality and the imagination, just as we may wish to describe something as in or out, true or false, even if each of these terms is denied any independent, foundational status—but the very instability that dichotomies engender may itself be a virtue, a built-in means of adjusting to a constantly changing world, rather than a source of impasse as Winter suggests. Stevens himself seemed to think so. Otherwise, he could not have said, with cheerfulness and sincerity, that sometimes he believed mostly in reality, but at other times he believed more strongly in the imagination.<sup>39</sup>

### B. Toward a Pragmatist Aesthetics

Just as Grey used his pragmatist account of Oliver Wendell Holmes as the occasion for a doctrinal statement about pragmatism,<sup>40</sup> he clearly has further designs for *The Wallace Stevens Case*.

Grey recognizes, both in the Holmes article<sup>41</sup> and in much more detail in *The Wallace Stevens Case*, that pragmatism faces a “pub-

<sup>35</sup> *Id.* at 769-70.

<sup>36</sup> *Id.* at 770.

<sup>37</sup> See RORTY, *The World Well Lost*, in CONSEQUENCES OF PRAGMATISM, *supra* note 15, at 15.

<sup>38</sup> Winter, *supra* note 33, at 762.

<sup>39</sup> LETTERS, *supra* note 28, at 710.

<sup>40</sup> Grey, *Holmes and Legal Pragmatism*, *supra* note 14.

<sup>41</sup> *Id.* at 814-15.

lic relations" problem.<sup>42</sup> The pragmatist is a denizen of the middle way, a voice of moderation for whom all activity is situated, not generalizable, and every theory is incomplete. It is difficult to generate passion for a theory, however persuasive, whose credo is "hear the other side." In Grey's words, "do you not nod off to your own nods of agreement as you hear the good gray liberal expound the mild virtues of golden mediocrity?"<sup>43</sup> This concern is not a trivial one. As Grey points out, a legal or philosophical theory succeeds in no small part because it is attractive on a wholly affective level. Among pragmatists, William James is famous for rejecting philosophical determinism for a similar reason: its failure to offer the "sentiment of rationality."<sup>44</sup>

Focusing on "Connoisseur of Chaos," Grey looks to Stevens for a response to this dilemma. Stevens, in good pragmatist fashion, reconciles two apparently inconsistent principles in the poem: "A. A violent order is a disorder; and/ B. A great disorder is an order." He then summarizes as follows:

Now, A  
And B are not like statuary, posed  
For a vista in the Louvre. They are things chalked  
On the sidewalk so that the pensive man may see.<sup>45</sup>

For Grey, the "pensive man" is the pragmatist, for whom even the most absolute of statements are "practical guidelines to be put to use by the alertly streetwise when context makes them applicable."<sup>46</sup> Yet the pragmatist need not envy theorists who believe that their theory is the "one true mountain" that transcends the practical world since, as Stevens' poem concludes, "The pensive man . . . He sees that eagle float/For which the intricate Alps are a single nest."<sup>47</sup>

Grey's point is not simply that Stevens is an eloquent spokesperson for pragmatism. Stevens' poems do more than merely restate, in heightened language, the tenets of pragmatism; rather they help reveal its processes:

Re-visioned through the pragmatist lens supplied by Stevens's metaphors, a theory has more in common with a poem than appears from other conceptions of theorizing: it is a fiction, a made

<sup>42</sup> GREY, *supra* note 1, at 106.

<sup>43</sup> *Id.* at 107.

<sup>44</sup> See, e.g., MURPHY, *supra* note 17, at 34-36.

<sup>45</sup> See GREY, *supra* note 1, at 109 (quoting STEVENS, COLLECTED POEMS, *supra* note 27, at 216).

<sup>46</sup> GREY, *supra* note 1, at 109.

<sup>47</sup> STEVENS, COLLECTED POEMS, *supra* note 27, at 216.

thing, a heuristic refreshener, an unstable mixture of the pleasing and the useful.<sup>48</sup>

Stevens' value, as Grey suggested in an earlier version of the book, is that his poems show the reader what it "feels like" to be a pragmatist.<sup>49</sup> By highlighting this facet of Stevens' poetry, *The Wallace Stevens Case* advances the project Grey began in his pragmatist account of Oliver Wendell Holmes. Grey now has added to the doctrinal statement of his study on Holmes, the basis for a pragmatist aesthetics, one that adds a measure of poetry to the practice of pragmatism.

It is important to note, however, Stevens' limitations as the source of pragmatist aesthetics. As Grey has mentioned elsewhere, John Dewey's writings have particularly influenced the revival of pragmatism.<sup>50</sup> Dewey's brand of pragmatism, like that of Rorty and other neopragmatists, has a distinctively egalitarian tone. For instance, Dewey insisted that every individual's work (not just that of an elite class of intellectuals) should be rewarding in itself, rather than simply being an instrumental "means" to production. For Dewey, the absence of this intrinsic sense of enjoyment is evidence of a pathology in the structure of society.<sup>51</sup>

Like Holmes, Wallace Stevens is much more elitist in orientation. It is the poet, in Stevens' view, who provides meaning, not the ordinary worker. In the Coda to the poem "Notes Toward a Supreme Fiction," Stevens asserts that "[t]he soldier is poor without the poet's lines."<sup>52</sup> Only after he has been supplied by the poet with the "proper words" can a soldier die "gladly."<sup>53</sup> Similarly, Stevens suggests in his essay "The Noble Rider and the Sound of Words," that:

[The poet's] function is to make his imagination theirs [i.e., the people's]. . . . His role, in short, is to help people to live their lives. Time and time again it has been said that he may not address himself to an élite. I think he may. There is not a poet whom we prize living today that does not address himself to an

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<sup>48</sup> GREY, *supra* note 1, at 110; *see also* RORTY, *Overcoming the Tradition, in CONSEQUENCES OF PRAGMATISM, supra* note 15, at 45 (Dewey and Heidegger both emphasized the ties between philosophy and poetry).

<sup>49</sup> Thomas C. Grey, *Hear the Other Side: Wallace Stevens and Pragmatist Legal Theory*, 63 S. CAL. L. REV. 1569-70 (1989) (discussing T.S. Eliot's statement that "Lucretius and Dante teach you . . . what it feels like to hold certain beliefs"); *see also* GREY, *supra* note 1, at 103 (quoting the statement without comment).

<sup>50</sup> Grey, *Holmes and Legal Pragmatism, supra* note 14, at 791.

<sup>51</sup> *Id.* at 855; JOHN DEWEY, *EXPERIENCE AND NATURE* 354-437 (1929); *see generally* RICHARD RORTY, *CONTINGENCY, IRONY & SOLIDARITY* (1990) (articulating a democratic vision of pragmatism with a particular emphasis on tolerance).

<sup>52</sup> STEVENS, *COLLECTED POEMS, supra* note 27, at 407.

<sup>53</sup> *Id.* at 408.

élite. . . . And that élite, if it responds, not out of complaisance, but because the poet has quickened it . . . will thereafter do for the poet what he cannot do for himself, that is to say, receive his poetry.<sup>54</sup>

This surely is not what Dewey or contemporary legal pragmatists have in mind. The next move in defining an aesthetics of legal pragmatism, beyond its eloquent beginning in *The Wallace Stevens Case*, may therefore be to reconcile Stevens with the Deweyan impulse toward a more egalitarian ideal.

## II

### THE GHOST OF A LAWYER IN STEVENS' POEMS

Grey's pragmatist account of Stevens addresses the first half of the law-poetry equation in Stevens' life. I now look in depth at the flip-side issue of whether Stevens' legal career influenced his poems in any significant way, using a critique of Grey's analysis of this second question as my starting point.

#### A. Questioning Grey's Dismissal of Law from Stevens' Poems

Unknown even to many admirers of his poetry, Stevens presided over the surety claims department at the Hartford Accident and Indemnity Company for thirty-seven years. He had moved to Hartford after several unsuccessful years in private law practice, followed by eight years at another insurance company.<sup>55</sup> Stevens' job was to review claims made on surety bonds that the Hartford issued. As Grey points out, surety bonds are used most widely in the construction industry, where owners of land require their builder to obtain a bond. The bond ensures that if the builder fails or is otherwise unable to perform, the owner can look to the surety for payment of any damages suffered.<sup>56</sup> This way, the owner is not forced to sue a potentially judgment proof builder in the event the builder breaches.

Stevens faced a variety of legal and business issues when an obligee made a claim on a surety bond issued by the Hartford. He first

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<sup>54</sup> WALLACE STEVENS, *The Noble Rider and the Sound of Words*, in *THE NECESSARY ANGEL* 29-30 (1951).

<sup>55</sup> BRAZEAU, *supra* note 20, at xii.

<sup>56</sup> GREY, *supra* note 1, at 16-17. The nomenclature of surety bonds can baffle even the initiated. Each surety bond involves three parties: the obligee, who is the party requiring that the bond be posted; the principal; and the surety, which is the company that issues the bond. Grey refers to the obligee as the "insured," and to the surety as the "insurer," presumably for the sake of simplicity. Surety lawyers take pleasure in pointing out that the three-party nature of suretyship distinguishes it from insurance, and thus that insurance-related designations technically are inaccurate. *See, e.g.*, WILLIAM J. CONNERS, *CALIFORNIA SURETY & FIDELITY BOND PRACTICE* § 1.4 (1969)(discussing the differences between surety and insurance, and the importance of these differences).

decided whether the claim was valid, that is, whether the builder had in fact breached its contract and whether the builder had any legal defenses to the asserted breach. Claims that Stevens found to be valid presented additional questions: should the Hartford complete the building project itself<sup>57</sup> or should it simply pay the obligee's damages? Although surety specialists tended to view attempts at "salvage" as inviting disaster, Stevens frequently violated this rule of thumb with enviable success.<sup>58</sup>

What are students of Stevens' poetry to make of his legal career? Grey enlists Stevens' poem "A Rabbit as King of the Ghosts" when he offers his answer. In the poem a rabbit, Stevens' symbol for the imagination, grows progressively larger as evening advances than the fat red and green cat, which represents reality.<sup>59</sup> The rabbit not only triumphs in Stevens' poem, ultimately dwarfing the "bug"-like cat, but also threatens to lose all sense of proportion, to mushroom out of control. Grey reads this poem allegorically. For Stevens, law provided relief from his poetry and served as a counterbalance to the dangerous rabbit of his imagination. But the poetry was always primary, Grey tells us, and Stevens' legal career was merely a "form of relief . . . , as the milkman relieves from the moonlight, as the walk around the block relieves the writer's trance-like absorption."<sup>60</sup>

Grey's choice of analogies—law as a milkman or a stroll around the block—underscores the need to reconsider the traditional assumption that Stevens' legal career played no real role in his poetry. It is one thing to suggest that walking or even holding certain kinds of employment—waiting tables, for example—may serve wholly instrumental purposes for a poet, but it is quite another to reach this conclusion about a lifetime in the law. Few attorneys would compare their careers to walking around the block.<sup>61</sup> Why have we al-

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<sup>57</sup> The surety's right to complete a failed project (and to look to the principal for reimbursement) arises both from implied contract and from the indemnity agreement executed in its favor by the bond principal (i.e., the builder). See, e.g., RESTATEMENT OF THE LAW OF SURETYSHIP 90-91 (Tent. Draft No. 1, 1992) (implied contract) [hereinafter PROPOSED RESTATEMENT]. In addition to agreeing to indemnify the surety for any amounts paid, principals typically authorize the surety to take possession of the work, and to complete the project itself or hire a third party to finish. See Continuing Agreement of Indemnity-Contractor's Form § 9(b) (copy on file with *Cornell Law Review*).

<sup>58</sup> GREY, *supra* note 1, at 17 (citing BRAZEAU, *supra* note 20, at 67). Stevens himself noted in a short prose statement on surety practice that "the saying among claim men that often the only salvage recoverable lies in an advantageous settlement, is true." Wallace Stevens, *Surety and Fidelity Claims*, in *OPUS POSTHUMOUS* 239 (Milton J. Bates ed., 1989).

<sup>59</sup> STEVENS, *COLLECTED POEMS*, *supra* note 27, at 209.

<sup>60</sup> GREY, *supra* note 1, at 46 (alluding to Stevens' use of the metaphor in a different context).

<sup>61</sup> In Anthony Kronman's words, the practice of law:

ways assumed that Stevens was different in this respect, and that his legal career was merely a refresher from other pursuits?

One explanation is that Stevens himself sometimes disclaimed any connection between law and his poetry, and that he downplayed the significance of his legal career. For example, Stevens once told his daughter that "[n]one of the great things of life have anything to do with making your living."<sup>62</sup> But he also asserted that "one is not a lawyer one minute and a poet the next," and was amused that critics did not seem to understand how an important poet could make his living as a surety lawyer.<sup>63</sup>

Much more important is the actual nature and content of Stevens' poems. In them, Stevens rarely alluded directly to law or his work at the Hartford. Aside from a few scattered references to legal concepts (Stevens defines poetry in one famous passage as "[p]art of the res itself and not about it")<sup>64</sup> and the people he worked with,<sup>65</sup> Stevens' poems seem to have nothing to do with life at the office. Thus, commentators have concluded that law and the Hartford simply disappeared when Stevens sat down to write a poem.

The absence of direct reference to his legal career is misleading, however, because Stevens rarely revealed influences directly. In Helen Vendler's words, Stevens:

insisted on the normal and the actual as his subject, but the way to the subject was through "making the actual a little hard to see"—by creating a fiction of life on another plane.<sup>66</sup>

As Stevens stated, "The real is only the base. But it is the base."<sup>67</sup> Commentators have recently begun to take Stevens' cue, and to look

is always a mental exercise and often an emotional one . . . To practice law well requires not only a formal knowledge of the law but certain qualities of mind and temperament as well. Most lawyers recognize this and recognize, too, that the qualities in question are also the ones that experience in law practice tends to encourage and confirm.

Anthony T. Kronman, *Living in the Law*, 54 U. CHI. L. REV. 835, 840-41 (1987) (footnote omitted).

<sup>62</sup> LETTERS, *supra* note 28, at 426.

<sup>63</sup> *Id.* at 413.

<sup>64</sup> STEVENS, *An Ordinary Evening in New Haven*, in COLLECTED POEMS, *supra* note 27, at 473. See also his use of "devise" in STEVENS, *Examination of the Hero in a Time of War*, COLLECTED POEMS, *supra* note 27, at 275, where this verb appears to connote not only "create" but also "bequeath," suggesting that the hero must inherit our human characteristics.

<sup>65</sup> Stevens refers to two of his colleagues, "Redwood Roamer" and "Naaman," in the poem "Certain Phenomena of Sound." STEVENS, COLLECTED POEMS, *supra* note 27, at 286. See also BRAZEAU, *supra* note 20, at 53 (identifying Addison Posey as "Redwood Roamer," and Naaman Corn as "Naaman").

<sup>66</sup> Helen H. Vendler, *Posthumous Work and Beautiful Subjects*, NEW YORKER, Nov. 12, 1990, at 124 (book review of OPUS POSTHUMOUS, *supra* note 58).

<sup>67</sup> STEVENS, *Adagia*, in OPUS POSTHUMOUS, *supra* note 58, at 187. Even "Owl's Clover," *id.* at 75, Stevens' most important, and famously unsuccessful, attempt to engage

for connections between the first order level of Stevens' life and its recharacterization and transformation in the second order world of his poetry. Recent books by Alan Fileis and James Longenbach offer persuasive evidence that World War II and other world events of Stevens' time stimulated and influenced many of his most important poems.<sup>68</sup> Similarly, Mark Halliday has argued that Stevens' poems address and reflect his interpersonal relationships to an extent not previously appreciated.<sup>69</sup>

Given the subtitle of *The Wallace Stevens Case*, "Law and the Practice of Poetry," one would expect Grey to do for Stevens' legal career what other commentators have done for the contemporary events and society with which Stevens was familiar. Grey's failure to do so and his disclaimer of any meaningful link between the law and Stevens' poems seem still more surprising, given the pragmatist credo that all human experience is integrated and connected.<sup>70</sup> A truly pragmatist "case study" of Stevens should explore parallels between Stevens' legal career and his poetry. In the following section, I suggest several links between Stevens' lengthy career as a lawyer and his poetry. Whether or not my premise that Stevens could not have been a lawyer one minute and a poet the next is persuasive, the discussion will hopefully help clarify some of the critics' confusion as to what Stevens did in the hours he spent at the office.

### B. Of Early Writs and Marginal Heraldry

The connections between his legal career and his poetry manifest themselves not only in the form but also at times in the content of Stevens' poems.<sup>71</sup> In this section, I suggest several stylistic and linguistic links between surety law and his poetry. I shift to an emphasis on subject matter in the following section.

To appreciate how law school and a career at the Hartford appear to have influenced his poetic style, consider first Stevens' discourse on poetry in "The Primitive Like an Orb":

The central poem is the poem of the whole,

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in explicit social and political commentary with his poetry, is more elliptical than direct in responding to the Marxist critics who had attacked his poems as too removed from historical realities.

<sup>68</sup> ALAN FILREIS, *WALLACE STEVENS AND THE ACTUAL WORLD* (1991); JAMES LONGENBACH, *WALLACE STEVENS: THE PLAIN SENSE OF THINGS* (1991).

<sup>69</sup> MARK HALLIDAY, *STEVENS AND THE INTERPERSONAL* (1991).

<sup>70</sup> See, e.g., DEWEY, *supra* note 51, at 343-44.

<sup>71</sup> The distinction between form and content is, of course, an artificial one. This is particularly true with respect to the poet under discussion. See, e.g., Wallace Stevens, *Two or Three Ideas*, in *OPUS POSTHUMOUS*, *supra* note 58, at 257 ("the style of a poem and the poem itself are one").

The poem of the composition of the whole,  
 The composition of blue sea and of green,  
 Of blue light and of green, as lesser poems,  
 And the miraculous multiplex of lesser poems,  
 Not merely into a whole, but a poem of  
 The whole, the essential compact of the parts,  
 The roundness that pulls tight the final ring  
 And that which in an altitude would soar,  
 A vis, a principle or, it may be,  
 The meditation of a principle,  
 Or else an inherent order active to be  
 Itself.<sup>72</sup>

Helen Vendler sees a lawyerly deliberateness in these lines, in the careful development and the continual qualification of Stevens' poetic argument.<sup>73</sup> At the risk of stretching the analogy too far, one could almost characterize the last five lines of the passage as a poetic version of the legal art of pleading in the alternative.<sup>74</sup> Like generations of lawyers before and after him, Stevens develops several potentially inconsistent arguments simultaneously in these lines. Thus, he suggests that the central poem might "soar . . . a principle;" or if not a principle, perhaps the "mediation of a principle;" or, as a final alternative, "an inherent order active to be/Itself."<sup>75</sup> Characteristically, Stevens reverses the lawyer's traditional ordering of arguments, moving toward, rather than away from, his strongest position: what it is that he most wishes to say.

From this point of view, one can even begin to see Stevens' penchant for hypotheticals in a slightly different light. Consider, for instance, his commentary on the shifting perspectives of his thought in "The Man with the Blue Guitar":

So it is to sit and balance things  
 To and to and to the point of still,  
 To say of one mask it is like,

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<sup>72</sup> STEVENS, COLLECTED POEMS, *supra* note 27, at 442.

<sup>73</sup> HELEN H. VENDLER, *Wallace Stevens, in VOICES & VISIONS: THE POET IN AMERICA 132-33* (Helen Vendler ed., 1987) (quoting STEVENS, COLLECTED POEMS, *supra* note 27, at 442).

<sup>74</sup> Pleading in the alternative, that is, setting forth two or more different statements of the same claim, was demurrable due to uncertainty at common law, but had achieved general acceptance by the end of the nineteenth century. See, e.g., Gregory Hankin, *Alternative and Hypothetical Pleadings*, 33 YALE L.J. 365, 369, 373-77 (1933), and cases cited therein. The Federal Rules of Civil Procedure eliminated any lingering doubt as to the validity of alternative pleading. FED. R. CIV. P. 8(e).

<sup>75</sup> STEVENS, COLLECTED POEMS, *supra* note 27, at 442. In a mythical case passed down from the common law, a defendant who was accused of borrowing a kettle and failing to prevent it from cracking pleaded: 1) that he never borrowed the kettle; 2) that it did not crack; and 3) that the crack was present when he borrowed it. RICHARD H. FIELD ET AL., *MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE* 38 (5th ed. 1984).

To say of another it is like,  
 To know that the balance does not quite rest,  
 That the mask is strange, however like.<sup>76</sup>

Any law student or lawyer who has tried to distinguish a case, or anyone who has listened to a judge toss out hypotheticals at oral argument, is likely to sympathize with these lines. Lawyers certainly do not have a monopoly on this mode of analysis, and other poets use similar techniques. But few use them so repeatedly and characteristically as Stevens. It hardly seems surprising that a poet with his peculiarities of mind, his "intellect/Of windings round and dodges to and fro,/Writhings in wrong obliques and distances,"<sup>77</sup> also spent much of his life engaged in the practice of law.<sup>78</sup>

Another passage in the poem just quoted provides powerful evidence, when juxtaposed with Stevens' correspondence, that he may have recognized the common thread. In a letter he wrote to his future wife in 1908, Stevens briefly described his career:

Business is at a high pitch and I have my hands full. There is a little law business, too, now and then, but law is mostly thinking without much result. It consists of passing one question to take up another.<sup>79</sup>

Both the sentiment and the rhetorical strategy reflected in this early letter seem to reappear many years later as a portrayal of the art of poetry:

The particular question—here  
 The particular answer to the particular question  
 Is not in point—the question is in point.  
 If the day writhes, it is not with revelations.  
 One goes on asking questions . . . .<sup>80</sup>

Putting suretyship into a broader perspective suggests an additional connection between Stevens' legal career and his poetry. In the forty years since Stevens practiced, every state has adopted Article 9 of the Uniform Commercial Code,<sup>81</sup> which has transformed the law of secured transactions. Despite its obvious kinship with secured transactions, surety law has managed to escape these clarify-

<sup>76</sup> STEVENS, COLLECTED POEMS, *supra* note 27, at 181.

<sup>77</sup> *Id.* at 429.

<sup>78</sup> See, e.g., *supra* note 61.

<sup>79</sup> LETTERS, *supra* note 28, at 110.

<sup>80</sup> STEVENS, COLLECTED POEMS, *supra* note 27, at 429.

<sup>81</sup> ROBERT E. SCOTT & DOUGLAS L. LESLIE, CONTRACT LAW AND THEORY 71 (1990) (49 states have adopted the UCC). The lone holdout, Louisiana, has now adopted significant portions of the UCC, including Article 9.

ing and codifying impulses.<sup>82</sup> The Restatement of Security, the only restatement that addresses suretyship in any systematic fashion, has not been revised since 1941,<sup>83</sup> fourteen years before Stevens' death. It is one of the least frequently-cited restatements.<sup>84</sup>

Even in Stevens' day, the language of suretyship must have sounded arcane and encrusted. The standard performance bond begins with the following phrase: "KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the [name of obligee]." Black's Law Dictionary defines the rather inscrutable (and characteristically sexist) term "know all men" as "[a] form of public address, of great antiquity . . . ."<sup>85</sup> The same dictionary explains that the term "'these presents' is used in any legal document to designate the instrument in which the phrase itself occurs."<sup>86</sup> Other aspects of the standard form, and of suretyship generally, are equally opaque.<sup>87</sup>

What would Stevens have thought of this quagmire of confusing terminology? Stevens delighted in word play, and frequently sent his assistants to the library to track down the meanings of unfamiliar words.<sup>88</sup> He also had a penchant for using unusual words in his poems, as well as creating his own.<sup>89</sup> One can easily imagine this side of Stevens chuckling at phrases like "know all men" and "these presents" and perhaps even appreciating the sense of historical continuity that such phrases suggest.<sup>90</sup>

<sup>82</sup> Courts have regularly held that sureties are not covered by Article 9 of the UCC, and thus are exempt from its filing requirements, notwithstanding the fact that a surety's common law right of subrogation functions very much like a security interest. See, e.g., *In re Ward Land Clearing & Drainage, Inc.*, 73 B.R. 313 (Bankr. N.D. Fla. 1987).

<sup>83</sup> RESTATEMENT OF SECURITY (1941). The Uniform Commercial Code (UCC) treats a few aspects of suretyship, as it applies to financing transactions in Article 3, and a few states (most notably California) have enacted suretyship statutes. But for the most part, the only guidance concerning suretyship comes from scattered and somewhat erratic case law. Amelia H. Boss, *Developments on the Fringe: Article 2 Revisions, Computer Contracting, and Suretyship*, 46 BUS. LAW. 1803, 1816-18 (1991).

<sup>84</sup> Boss, *supra* note 83, at 1817.

<sup>85</sup> BLACK'S LAW DICTIONARY 784 (5th ed. 1979).

<sup>86</sup> *Id.* at 1066.

<sup>87</sup> I have already mentioned the difficult nomenclature of suretyship. Another term that has proven problematic is "suretyship" itself, and the issue as to whether and how to distinguish suretyship from a "guarantee." The initial council draft of the proposed Restatement of Suretyship, see *infra* note 93, seeks to eliminate the distinction and to employ a single, consistent set of terms in both contexts. See PROPOSED RESTATEMENT, *supra* note 57, at § 1, cmts. c & d.

<sup>88</sup> BRAZEAU, *supra* note 20, at 25.

<sup>89</sup> For examples of Stevensian linguistics, see his references to the "gay tournamonde" in *An Ordinary Evening in New Haven*; the "ithy donts and long-haired/Plomets" in *Analysis of a Theme*; and the "chidder-barn" in *Montrachet-Le-Jardin*. STEVENS, COLLECTED POEMS, *supra* note 27, at 476, 349, 260.

<sup>90</sup> Stevens' appreciation for the mysteries of arcane terminology is perhaps most evident in his frequent use of Latin and Latin-like phrases in his poems. Thus, he refers

But Stevens also knew well that outmoded usages can obscure whatever usefulness the language may once have had. Nowhere is this more apparent than in the opening section of Stevens' landmark poem "Notes Toward a Supreme Fiction."<sup>91</sup> Stevens tells his "ephebe" that "You must become an ignorant man again/And see the sun again with an ignorant eye/And see it clearly in the idea of it." Several lines later he bemoans how, through time, the "first idea becomes/The hermit in a poet's metaphors . . . ."<sup>92</sup> This is only one example of a theme that runs through much of Stevens' poetry, his belief in the need to cut through the accumulated artifacts of language, and to reconceptualize in terms more immediate to contemporary experience. I picture this side of Stevens telling his assistant that the company needs to revise its model documents so that the average person could understand them.<sup>93</sup>

If we begin with the pragmatist assumption that all human activity is situated and integrated, it does not take a leap of faith to suggest that Stevens' perceptions of the calcification of language may well have been reinforced by his familiarity with the archaic aspects of surety. Moreover, Stevens' poem "From the Journal of Crispin" seems to provide at least a small piece of uncharacteristi-

to the "principum . . . [s]ed quaeritur" in *The Comedian as the Letter C*; seems to conjugate or decline "[p]ipperoo, pipperra, pipperrum" in *On an Old Horn*; describes a phenomenon as "magnified, sua voluntate," in *Examination of the Hero in a Time of War*; and speaks of "compound[ing] the imagination's Latin with/The lingua franca et jocundissima" in *Notes Toward a Supreme Fiction*. STEVENS, COLLECTED POEMS, *supra* note 27, at 27, 230, 277, 397. That Stevens shares many lawyers' peculiar attraction to latin phrases suggests yet another connection between his legal and poetic careers. See, e.g., DAVID MELINKOFF, *THE LANGUAGE OF THE LAW* 11, 13-15, 19 (1963) (use of Latin in legal writing).

<sup>91</sup> STEVENS, COLLECTED POEMS, *supra* note 27, at 380.

<sup>92</sup> *Id.* at 380-81. Stevens' notion that the first step toward the "supreme fiction" (or to use Grey's schema, Stevens' reaction against the imagination, back to "bare reality") is to rediscover the "first idea," bears an intriguing and probably not accidental resemblance to the concept of "firstness" articulated by the early pragmatist Charles Peirce. Compare, for example, Peirce's statement that "[a] sign by Firstness is an image of its object and, more strictly speaking, can only be an *idea*," Charles Peirce, *Logic as Semiotic: The Theory of Signs*, in *PHILOSOPHICAL WRITINGS OF PEIRCE* 105 (Justus Buchler ed., 1955); see also HAROLD BLOOM, WALLACE STEVENS: THE POEMS OF OUR CLIMATE 49 (1977), to Stevens' exclamation "How clean the sun is when seen in its idea," and suggestion that "It is the celestial ennui of apartments/That sends us back to the first idea," early in "Notes Toward a Supreme Fiction." STEVENS, COLLECTED POEMS, *supra* note 27, at 381. For another important writer who also was influenced by Peirce's theory of signs, see WALKER PERCY, *A Triadic Theory of Meaning*, in *THE MESSAGE IN THE BOTTLE* 159 (1975).

<sup>93</sup> The American Law Institute has recently laid the groundwork for a Restatement of Suretyship. See *supra* notes 57, 87. This process should lead both to new visibility and to a harmonization of suretyship with secured transactions, insurance, and other related areas of the law. The drafting process may also precipitate an overhaul of the basic surety bond forms. Perhaps the ALI would ask Stevens to serve as one of the reporters were he alive today. He was, after all, seen by colleagues as the "dean" of the surety bar in his time. BRAZEAU, *supra* note 20, at 67.

cally direct corroboration. In "From the Journal of Crispin," Crispin somewhat sarcastically describes his preconceptions about America, colored as they were by an outmoded, inherited tradition, as "[a] feverish conception that derived/From early writs and marginal heraldry."<sup>94</sup>

The hint of a continuity between Stevens' legal career and his poetry should not be overstated. Few would describe him as a "legal" poet, in the sense that other poets can profitably be characterized as, for example, feminist or environmental poets. Yet these examples reinforce the notion that his poetry does reflect, in a very real sense, the "mind" of a lawyer.

### C. Insurance and Social Change

Stevens' musings on the tragic social landscape of the 1930's and 1940's suggest that his legal career at the Hartford may also have factored into his poetry at an even more substantive level. As chairman of the Hartford's surety claims department, Stevens saw many of the immediate casualties of the Depression—the businesses that failed and the obligees who were forced to make claims on their surety bonds. He obviously would also have been familiar with other related facets of the Hartford's business, and in particular with the nature of suretyship and insurance as *prospective* risk spreading devices.<sup>95</sup> In the 1937 essay "Insurance and Social Change,"<sup>96</sup> he directly connected this experience to the broad social issues raised by the Depression.

In "Insurance and Social Change," Stevens considers (in somewhat satirical fashion) the possibility of global insurance and the increasing socialization of risk in Italy, Germany, England, and Russia.

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<sup>94</sup> *From the Journal of Crispin*, in OPUS POSTHUMOUS, *supra* note 58, at 52. Given Stevens' habit of indirection, it is perhaps not surprising that he omitted these lines from STEVENS, *The Comedian as the Letter C*, in COLLECTED POEMS, *supra* note 23, at 27, the final version of this poem. The language quoted in the text furthers an extended conceit (much of which he retained in the final version) describing in feudal and quasi-legal terms the European influences that Crispin (read Stevens) seeks to escape. In describing Crispin's survey of the new world, for instance, the narrator exclaims, "How greatly had he grown in his *demesne*." *Id.* at 31 (emphasis added). Later, having announced Crispin's intention to purge the traditions of England and France, and to write the poetry of America, the narrator concludes that "Crispin concocted *doctrine* from the rout." *Id.* at 45 (emphasis added).

<sup>95</sup> James Longenbach's new book illustrates critics' confusion about Stevens' job at the Hartford. LONGENBACH, *supra* note 68, at 114-15. Longenbach sees in the repetitive variations of *Sea Surface Full of Clouds*, in COLLECTED POEMS, *supra* note 27, at 98, "a poem written by a claims man, late one night, filling in the standard forms with different names, and having trouble isolating life beyond this sheet of paper." LONGENBACH, *supra* note 68, at 114. As the discussion in the text makes clear, Stevens did not fill in the standard bond forms; rather, he handled claims that arose after the bond had been issued and the projects were underway.

<sup>96</sup> Stevens, *Insurance and Social Change*, in OPUS POSTHUMOUS, *supra* note 58, at 233.

Perhaps in an insurance era, we could, with “the payment of a trivial premium . . . protect ourselves, our families and our property against everything.”<sup>97</sup> He concludes that the more a private insurance company like the Hartford can “[adapt] to the changing needs of changing times . . . the more certain [it is] to endure on the existing basis.”<sup>98</sup>

Stevens also sought to address these issues in the poetry he was writing at the time. In 1935, a young Marxist critic, Stanley Burnshaw, published a scathing review of *Ideas of Order*. Burnshaw suggested that Stevens’ poetry was:

remembered for its curious humor, its brightness, its words and phrases that one rolls on the tongue. It is the kind of verse that people concerned with the murderous world collapse can hardly swallow today except in small doses.<sup>99</sup>

Stevens had frequently been criticized for the “dandyism” of his poetry and for his apparent obliviousness to pressing social and political problems. But coming as it did in the midst of the Depression and of the intense social turmoil that preceded World War II, Burnshaw’s review struck a particularly raw nerve.

In 1936, the year before “Insurance and Social Change” appeared, Stevens published his poetic response to the Burnshaw review in *Owl’s Clover*.<sup>100</sup> The timing alone suggests that politics, principles of insurance and suretyship, and poetry had come together, at least at this one historical moment, in the crucible of the poet-lawyer’s mind. Moreover, *Owl’s Clover* seems in places even to foreshadow his essay on the future of insurance. For instance, in response to the Marxist dream of a utopian state, which he associated with the Burnshaw invective, Stevens questioned whether beauty could continue to exist in a state that guaranteed satisfaction of its workers’ every need, whether “love [could flourish]/Without any horror of the helpless loss.” He suspected, instead, that notwithstanding the hyperbolic claims of Marxism:

[The workers’] destiny is just as much machine  
As death itself, and never can be changed  
By print or paper, the trivial chance foregone . . .<sup>101</sup>

These lines suggest Stevens’ conclusion that global insurance, as a replacement for the private regime with which he was familiar, would leave a great deal to be desired.

<sup>97</sup> *Id.* at 234.

<sup>98</sup> *Id.* at 237.

<sup>99</sup> Stanley Burnshaw, *Review of Ideas of Order*, 17 NEW MASSES 41 (1935), reprinted in 69 SEWANEE REVIEW 355, 365 (1961).

<sup>100</sup> OPUS POSTHUMOUS, *supra* note 58, at 75.

<sup>101</sup> *Id.* at 92.

Stevens seemed less confident in his efforts to articulate an alternative vision of a poet's responsibilities in *Owl's Clover*. As discussed above, he eventually concluded that a poet's function is to provide words, and ultimately a supreme fiction for us to live by, but that the poet has no other social obligation. "The truth is," he argued, "that the social obligation so closely urged is a phase of the pressure of reality which a poet . . . is bound to resist or evade today."<sup>102</sup>

Stevens rarely addressed contemporary events so directly as in *Owl's Clover*. Yet even as his focus shifted from social issues back to the more abstract and universal modernist crisis of belief, he continued to view his project in terms that recall his thoughts about, and experience with, risk and the consequences of loss. In "Of Modern Poetry," for instance, he suggests that the modern poem is "[t]he poem of the mind in the act of finding/ What will suffice."<sup>103</sup> In "Asides on the Oboe," he writes: "The prologues are over. It is a question, now,/Of final belief . . . . It is time to choose."<sup>104</sup> Stevens the poet, not Stevens the lawyer at Hartford, speaks to us in these poems, but the Stevens we hear is a poet who has commenced his poetic salvage operation.

#### D. Summary

The purpose of this part has not been to make an exhaustive case for the thesis that Stevens' legal career at the Hartford exerted an important and almost completely neglected influence on his remarkable poetry. Rather, I have suggested several connections that seem to raise doubt as to whether Stevens truly was the "sane schizophrenic"<sup>105</sup> that his critics have often painted him to be. These connections seem to warrant further exploration. The echoes of his legal experience in the world of his poetry may well hold (to quote Paul Harvey's famous radio newscast teaser) "the rest of the story" with respect to a pragmatist account of Wallace Stevens.

### CONCLUSION

At the end of my first semester in law school, my civil procedure professor mentioned, somewhat offhandedly, that none of us would ever again think as we did before we had immersed ourselves in the law. Although most lawyers would see this as simply stating the obvious, the statement hit me with unexpected force. I wondered what

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<sup>102</sup> THE NECESSARY ANGEL, *supra* note 54, at 28.

<sup>103</sup> COLLECTED POEMS, *supra* note 27, at 239.

<sup>104</sup> *Id.* at 250.

<sup>105</sup> P. 43 (quoting BRAZEAU, *supra* note 20, at 28).

I had gotten into and whether I would ever read another novel or write another poem.

I have come to believe that, while my fears were largely misplaced, my professor's point about "thinking like a lawyer" was accurate. Law school and the practice of law have altered the way I characterize any inquiry, the way I articulate thoughts. I strongly suspect that this was equally true for Stevens. The possibility that he thought and wrote like a lawyer, even in his poems, is an aspect of the "Wallace Stevens case" that has not yet been fully told, one where lawyers who also are interested in poetry could make a real contribution to the existing commentary on Stevens' poetry.

Thomas Grey has given us a different Stevens in *The Wallace Stevens Case*, a Stevens whose poems teach the virtues of pragmatism to those lawyers who have ears to hear. We may not be convinced either by Stevens, or by Grey, as to the legitimacy of this vision of jurisprudence. But there is little doubt that having seen this splendid analysis of the pragmatist impulse in Stevens' poems, each of us will "reason about [both Stevens and legal pragmatism] with a later reason."<sup>106</sup>

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<sup>106</sup> STEVENS, *Notes Toward a Supreme Fiction*, in *COLLECTED POEMS*, *supra* note 27, at 399.