

1994

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Recommended Citation

Richman, Steven (1994) "ESSAY: Edgar Lee Masters and the Poetics of Legal Realism," *California Western Law Review*. Vol. 31 : No. 1 , Article 6.

Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol31/iss1/6>

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EDGAR LEE MASTERS AND THE POETICS OF LEGAL REALISM

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Literature does not recognize Reality as such, but only *levels*. Whether there is such a thing as reality, of which the various levels are only partial aspects, or whether there are only the levels, is something literature cannot decide. Literature recognizes the *reality of the levels*, and this is a reality (or "Reality") that it knows all the better, perhaps, for not having come to understand it by other cognitive processes. And that is already a great deal.

Italo Calvino, *The Uses of Literature*

I. INTRODUCTION

Edgar Lee Masters (1869-1950) has become the forgotten man of law and literature. This is unfortunate, since he was the only one of the principal American lawyer-poets¹ to actively practice for any significant length of time; he did so for over thirty years as a trial and appellate lawyer before turning full-time to literary efforts. While known to some for his one-time partnership with, and later representation of Clarence Darrow,² Masters was

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1. The other principal American lawyer-poets that I have identified are Sidney Lanier, William Cullen Bryant, James Russell Lowell, Joaquin Miller, Archibald MacLeish, Charles Reznikoff, Wallace Stevens and John Godfrey Saxe. There are certain lawyers today who are establishing reputations as poets, and their exclusion here is not a reflection on their current status.

2. The relationship was not a happy one. Irving Stone describes it as "the only tragic relationship of" Darrow's life. IRVING STONE, CLARENCE DARROW FOR THE DEFENSE 159 (1941). He notes:

It is difficult to imagine a sharper contrast between two men: Darrow despised the human race but loved people; Masters loved humanity but hated people. Darrow was warm, informal, generous, tolerant, lovable; Masters was cold, intellectual, brittle, self-centered. Darrow admired Masters' objective legal mind and piercing briefs.

Id. at 160. When Darrow himself went on trial for bribery, although he was not the principal part of the defense team, Masters assisted by taking over fifty depositions. GEOFFREY COWAN, THE PEOPLE V. CLARENCE DARROW 366 (1993). For their respective memoirs, see CLARENCE DARROW, THE STORY OF MY LIFE (1932); EDGAR LEE MASTERS, ACROSS SPOON RIVER (1936) [hereinafter MASTERS, ACROSS SPOON RIVER], although Masters makes general references in his autobiography to his partners, including Darrow, if not by name. Interestingly, Darrow omits any reference to Masters in his autobiography as part of the defense effort in Darrow's

in his own right a successful commercial civil litigator with a wealth of reported decisions in his career, as well as various legal articles.³

Despite the breadth of the law and literature movement, Masters is virtually ignored. This is surprising in light of the liberal peopling of his most famous works, *Spoon River Anthology* and *The New Spoon River*,⁴ with lawyers, judges and litigants. These works were collections of poems in the form of posthumous soliloquies by the inhabitants of a fictitious town and have become classics in their own right. There is as yet no definitive or even current biography of him.⁵ Interestingly enough, Masters viewed his careers as poet and lawyer as incompatible, ultimately choosing literature. It is this perspective, as well as his relatively bitter and extensive experiences as a practicing lawyer, that enables us to examine *Spoon River Anthology* and *The New Spoon River*, as poetic expositions of legal realism. Writing as he did in the first decades of the twentieth century, contemporaneous with the early writings of what would be known as American legal realism, Masters chose poetry to explore the nature of law and legal systems. His poetry derives from his actual courtroom experiences as well as the politics of the legal profession.

In utilizing a format of soliloquy by hundreds of deceased residents of a town, Masters sought an honesty he apparently believed not otherwise ascertainable through prose, although he wrote numerous novels. Years later, he expressed his basis for having the dead speak to the living in a letter following the death of his father, Hardin W. Masters, himself a lawyer:

One thing I learned [sic] from my father's death is that there is the realm of the dead, with its mystical [sic] and ever broadening [sic] influence upon us; making one almost believe that the fact of death is one of the factors in the entire development of those who live, even if the dead are not like presences with their dumb brows pressed to our brows, and by that contact ever interfusing our thoughts and moulding our destinies. He has seemed to be not in a state of harm or disquiet, but in a sealed place of safety,

bribery trial. See DARROW, *supra*, at 187-89.

3. The opinions are set forth in Appendix A.

4. EDGAR LEE MASTERS, *SPOON RIVER ANTHOLOGY* (MacMillan 1944) (1915) [hereinafter MASTERS, *SPOON RIVER*]; EDGAR LEE MASTERS, *THE NEW SPOON RIVER* (MacMillan 1968) (1924) [hereinafter MASTERS, *NEW SPOON RIVER*].

5. In a letter to me dated July 21, 1992, Masters' son, Hilary Masters, advised that an author has "embarked" upon a biography of Masters, but that work has not yet appeared. For one relatively recent critical study, see RONALD PRIMEAU, *BEYOND SPOON RIVER: THE LEGACY OF EDGAR LEE MASTERS* (1981) [hereinafter PRIMEAU, *LEGACY*], as well as HERBERT L. RUSSELL, *THE ENDURING RIVER: EDGAR LEE MASTERS' UNCOLLECTED POEMS* (1991). See generally HILARY MASTERS, *LAST STANDS: NOTES FROM MEMORY* (1982); HARDIN MASTERS, *EDGAR LEE MASTERS: A CENTENARY MEMOIR-ANTHOLOGY* (1972); J. FLANAGAN, *EDGAR LEE MASTERS: THE SPOON RIVER POET AND HIS CRITICS* (1974); AMY LOWELL, *TENDENCIES IN MODERN AMERICAN POETRY* (1917). I have relied to some extent upon the collection of Masters' letters found at Princeton University. Masters' autobiography is MASTERS, *ACROSS SPOON RIVER*, *supra* note 2.

where the whole thing is philosophized. And I have felt glad that nothing could touch him further.⁶

Masters was heavily influenced by the *Greek Anthology*,⁷ which provides an insightful portrait of Greek society. The panoply of lawyers, judges, citizens, and litigants provides the forum for the main argument of this article: that it is possible to read *Spoon River Anthology* and *New Spoon River* as a work of legal realism.

II. THE SKEPTICAL REALISTS

It is not my purpose here to add to the plethora of writings on American legal realism, but rather, to give a brief overview of the major threads of early twentieth century legal realism to place Masters in perspective during the time he was writing. On one level, Masters was acutely aware of the "real world," as opposed to an isolated world of rules and purely academic or theoretical application. For example, in rationalizing why he was not appointed a United States district court, Judge Masters wrote, "I thought I could write opinions as a judge and write poems too; but likely I could not have done so. Certainly, it would have been out of key for a Federal judge to have written some of the Spoon River pieces."⁸ (He also noted that being a poet was bad for business in the practice of law⁹ and told his original editor, John Reedy, that his law business would be ruined if it were generally known that he was a poet since the "[l]aw business daily proved that a name in poetry frightens clients away."¹⁰ The feeling stayed with him his entire life.¹¹)

For Masters, there was a clear dividing line between the two worlds of literature and commerce, and a recognition of the antipathy of the one to the other. He wrote in his autobiography of his "laborious professional life when I was making so little," as well as being "plunged into turmoil of this sort [chasing fees], into strife with this kind of revolting human nature. It is not a good atmosphere in which to write poetry or to write anything."¹²

6. Letter from Edgar Lee Masters to Julian Street (Aug. 18, 1926) (in the Princeton University Claytor Rare Manuscript Collection [hereinafter Princeton Collection]).

7. William M. Reedy, *The Writer of Spoon River*, REEDY'S MIRROR, Nov. 20, 1914, at 1 [hereinafter Reedy]; see also LOWELL, *supra* note 5, at 182.

8. MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 333.

9. *Id.* at 377.

10. *Id.* at 362, 377.

11. G. CLAYTOR, EDGAR LEE MASTERS IN THE CHELSEA YEARS, 14 [PRINCETON] UNIVERSITY LIBRARY CHRONICLE 16 (1952) ("He told me that his law practice had dwindled after the book [Spoon River Anthology] appeared as he had prophesied it would.")

12. MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 202-03.

This dichotomy between poetic and legal practice¹³ marked his poetry to a large extent and helped define his poetry as an individualistic statement of legal realism. *Spoon River Anthology* appeared in 1915; *New Spoon River* in 1924. Collectively, they have as a pervading theme the new urbanization; law becomes but another weapon in the hands of the modern American businessperson. To Masters, law has nothing to do with truth. It is a function of power and power is the defining reality in the small towns and large cities with which Masters was intimate.

During the time Masters was practicing in Chicago and writing his Spoon River poems, the roots of legal realism were developing.¹⁴ Particularly in Masters' own midwest, Roscoe Pound, as dean of the law school at the University of Nebraska, offered a criticism of the legal system and judges in particular, setting the stage for the ensuing debate.¹⁵ Interestingly, Masters' law review article on trial by jury in Illinois appeared in the same issue as Roscoe Pound's paper *Some Principles of Procedural Reform*, read before the Chicago Law Club on December 3, 1909, when Pound was a professor of law at the University of Chicago.¹⁶ At this time Masters was interested in the sociological aspects of his cases, an interest he would eventually lose.¹⁷

Karl Llewellyn, a professor at Columbia during this period, delivered a series of lectures that ultimately became *The Bramble Bush*.¹⁸ The fact that this work followed almost immediately after the time frame of Masters' two Spoon River pieces lends credence to the views discernible by Masters in them. In other words, something was perceived to be amiss in the American

13. Primeau notes Masters' fascination with Goethe, himself a lawyer, poet and scientist. PRIMEAU, LEGACY, *supra* note 5, at 46-47. For a study of the effect *vel non* of Masters' contemporary Wallace Stevens' legal practice upon his own poetry, see THOMAS C. GRAY, THE WALLACE STEVENS CASE (1991). Masters refers to Goethe as "my solace and my inspiration since I was nineteen." Letter from E.L.M. to John Wheelock (Nov. 28, 1942) (in Princeton Collection, *supra* note 6).

14. See generally N.E.H. Hull, *Reconstructing the Origins of Realistic Jurisprudence: A Prequel to the Llewellyn-Pound Exchange over Legal Realism*, 1989 DUKE L. J. 1302 (1989) [hereinafter Hull, *Reconstructing*]; see also N.E.H. Hull, *Some Realism About the Llewellyn Pound Exchange over Realism: The Newly Uncovered Private Correspondence, 1927-1931*, 1987 WIS. L. REV. 921 (1987).

15. Hull, *Reconstructing*, *supra* note 14, at 1307.

16. See E.L. Masters, *Trial by Jury in Illinois*, 4 ILL. L. REV. 408 (1910). Masters' article is a serviceable enough one that defends the jury system.

17. See *An Interview with Mr. Edgar Lee Masters*, N.Y. TIMES BOOK REV., Feb. 15, 1942. Masters referred to a case in April 1914, around the time he was writing *Spoon River Anthology*, in which he represented "a union of underpaid waitresses." He noted

Almost every day during that year I was in court and doing a full job. For a time it was as though I was living two lives. The life in the courts and the life in the poems, for at that same time I was writing from seven to ten poems each week—the Spoon River poems—and sending them to Bill Reedy. I published them anonymously because I knew that if it got out that I was the author my law business would be destroyed.

18. See generally K.N. LLEWELLYN, THE BRAMBLE BUSH (1960).

legal system, at least the way the realists viewed it. What Masters was observing and thereafter demonstrating poetically, based upon his extensive practice, was nothing less than the same subject of Llewellyn's version of skeptical realism.¹⁹ Like Masters, Llewellyn at least had some experience (three years) in private practice and in particular, in commercial law.²⁰ Like Llewellyn, Masters concluded that law was not an artificially applied set of propositions, but a potent thread wrapping around and controlling people's lives.

In *The Bramble Bush*, Llewellyn argued that law is about disputes, that judges and sheriffs resolve disputes, and that "[w]hat these officials do about disputes is, to my mind, the law itself."²¹ In 1950, he emphasized that this sentence was not the whole of his approach, and that institutions shape a philosophy of law and its implementation.²² Nonetheless, Llewellyn's argument was that law is not about the externally imposed rules for conduct, but rather disputes and how one predicts what someone is going to do in order to resolve the dispute.²³ Law is not about what is "right," but rather, and almost exclusively, lawyers devote themselves to predicting what a particular court will do.²⁴ Law is "what law does."²⁵ (Masters, through the voice of Hughes Robinson, notes that the world "lauds laws, and tramples laws."²⁶) More important than "right" and "wrong" is that disputes are settled; this is the function and province of law.²⁷ As summarized by one commentator, Llewellyn's basic contribution to realism was that (1) law is in flux, (2) law is a means to an end, (3) law must be evaluated in terms of society's changes on a regular basis, (4) concepts of "is" and "ought" are not as relevant as how law works, (5) legal rules do not necessarily describe how courts work, (6) rules of law are not the principal feature in deciding cases, (7) law should be studied in narrow fields in terms of application of rules, (8) the effects of law are critical subjects, and (9) law should be constantly evaluated in terms of these principles.²⁸ To Llewellyn, precedent did not produce a certainty as to "matters of judgment and of

19. For a summary of skeptical realism, see 1 ROSCOE POUND, JURISPRUDENCE 269-76 (1959).

20. Hull, *Restructuring*, *supra* note 14, at 1311.

21. LLEWELLYN, *supra* note 18, at 3.

22. *Id.* at x.

23. *Id.* at 4.

24. *Id.* at 15.

25. *Id.* at 103.

26. MASTERS, NEW SPOON RIVER, *supra* note 4, at 126.

27. LLEWELLYN, *supra* note 18, at 135.

28. See generally R.W.M. DIAS, JURISPRUDENCE 631-32 (4th ed. 1976); see also Karl N. Llewellyn, *Some Realism about Realism—Responding to Dean Pound*, 44 HARV. L. REV. 1222 (1930-31); JOHN D. FINCH, INTRODUCTION TO LEGAL THEORY 174-78 (2d ed. 1974).

persuasion.”²⁹ Much depends upon the “attitude” of the court in the interpretation of evidence.³⁰

In this regard, another contemporary of Llewellyn and Masters, Jerome Frank, in his culminating work *Courts on Trial* specifically addressed the question “Are Judges Human?”³¹ Legal rights are not rule-intensive, but rather, they are a function of what will happen in a particular court as a result of a particular lawsuit, which witnesses will lie, and so forth.³² Facts are fluid. They are what the jury determines them to be and are, at most, guesses.³³ Not facts, but subjective facts lead to decisions, and Frank argues that perhaps only seventy-five to eighty percent of contract cases can be predicted to be resolved in accordance with actual principles of law.³⁴ In other words, Frank rejects the proposition that legal rules govern, and sets forth his “realistic” view, that only the particular lawsuit establishes rights, and not pre-conceived rules. Judges and juries are themselves fallible witnesses of the fallible witnesses testifying before them.³⁵ He refers to legal philosophy or jurisprudence as “legal magic.”³⁶ Legal rules do not control the trial courts since they cannot, no matter how intelligent the judge, control the subjectivity of the fact-finding process.³⁷ (In this line, one of Masters’ denizens, Orson Warwick, states “The laws are made upon superficial judgments, And by shallow minds.” He concludes with the admonition “Follow the facts!”³⁸)

Frank divides the so-called realists into two camps: rule-skeptics (in which he places Llewellyn) and fact-skeptics (in which he places himself).³⁹ The problem with the rule-skeptics is their limited experience or emphasis upon trial courts. As a “fact skeptic,” Frank goes so far as to argue that legal education should include studying the effect of judicial corruption.⁴⁰

The basic thrust, then, of the realists in the 1920s and 1930s was that “law is indeterminate.”⁴¹ They were united in terms of their focus away

29. LLEWELLYN, *supra* note 18, at 76.

30. *Id.* at 66.

31. JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* 146-56 (1949) [hereinafter FRANK, *COURTS ON TRIAL*]. See also JEROME FRANK, *LAW AND THE MODERN MIND* (1930); and JEROME FRANK, *IF MEN WERE ANGELS* (1942).

32. FRANK, *COURTS ON TRIAL*, *supra* note 31, at 10-11.

33. *Id.* at 16-18.

34. *Id.*

35. *Id.* at 47.

36. *Id.* at 50.

37. *Id.* at 61.

38. MASTERS, *NEW SPOON RIVER*, *supra* note 4, at 291.

39. FRANK, *COURTS ON TRIAL*, *supra* note 31, at 73-77.

40. *Id.* at 240-41.

41. David B. Wilkins, *Legal Realism for Lawyers*, 104 HARV. L. REV. 468, 474 (1990). For a response to the arguments for indeterminacy and a counter-argument that to the extent such indeterminacy exists, it has only a modest effect, see Karl Kress, *Legal Indeterminacy*, 77 CAL. L. REV. 283 (1989).

from rules and on individual judicial decisions.⁴² Their contribution, still debated today, was that law should be studied in terms of what is going on in the real world and not simply in a theoretical exposition of how law “ought” to function.

Having taken this briefest of overviews of realism, we can find a simple statement in one of the *Spoon River* poems of exactly this point. Through “Ace” Shaw, Masters expresses it slightly differently: “I never saw any difference / Between playing cards for money / And selling real estate, / Practicing law, banking, or anything else. / For everything is chance.”⁴³ In writing this, Masters spoke from deep experience. The remainder of this article explores Masters’ exposition of legal realism in different language and form than the writers just referenced, but in no less effective manner.

III. MASTERS AS LEGAL REALIST

Postponing his literary ambitions, Masters appears to have gone into law originally more from economic necessity than any great love for the law,⁴⁴ and rebelled against his father by refusing to join his practice and instead going to Chicago.⁴⁵ In his autobiography, Masters perceived himself as misunderstood, particularly by his lawyer-father, in terms of his poetic yearnings.⁴⁶ His becoming a lawyer seemed to derive from a sense of being overshadowed, if not overwhelmed, by his father’s abilities and a desire to escape his family;⁴⁷ Amy Lowell refers to a desire to escape the tedium of Lewistown, where he practiced.⁴⁸ Perhaps Masters was haunted by memories of his father’s practice in a small town, where “[t]he competition for business was intense, and my father had nothing to recommend him in particular. . . .”⁴⁹ He added that “[i]t was a tragedy that my father became caught in the circumstances and among the small-minded people that he did”⁵⁰ Masters would sit at the window of his father’s law office when helping him and:

42. Martin P. Golding, *Jurisprudence and Legal Philosophy in Twentieth-Century America—Major Themes and Developments*, 36 J. LEGAL EDUC. 441 (1986).

43. MASTERS, SPOON RIVER, *supra* note 4, at 51.

44. In fact, Masters had pursued his federal judgeship not from any tremendous respect for the office or the law, but rather as “[a]nother plan to finance myself for the leisure of literature” MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 333.

45. *Id.* at 136.

46. “It was [my father’s] fond hope that I should be a lawyer. My literary ambitions disturbed him. He thought that the writing of books was for men of genius, and that I had no genius.” *Id.* at 78.

47. *Id.* at 132-35.

48. LOWELL, *supra* note 5, at 152.

49. MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 56.

50. *Id.* at 81. He described it by saying “[t]here was a loneliness in this town and the surrounding country which could not be borne many years longer. It was this loneliness and an introspection produced by the country that gave me melancholy.” *Id.* at 79.

[s]ee what was going on about town as men went here and there on their business, and as the farmers came into town, tied their horses to the rails and started forth to see merchants, lawyers, or what not. This spectacle so affected me at times with its vast futility that I had to go forth and find companions to shake off the depressing feeling.⁵¹

In reading *Across Spoon River*, evidence of these “real world” experiences of Masters abounds. He recites the story behind *People ex rel. Smith v. Allen*⁵² in which he obtained a writ of habeas corpus in a complex case and was never paid; “Smith [Masters wrote] was able to get all the lawyers he wanted, good and bad. This was the law business in Chicago in those days.”⁵³ One finds a focus on fees (and their incessant uncollectability) and the press to obtain new business. Masters implies he was not terribly good at this.⁵⁴ In correspondence he wrote in 1920 “I am the most accessible person in Chicago, being in a law office with two others and et cet. People call me everywhere but here, as if there were no directory and no way of finding me.”⁵⁵ However, just prior to the publication of *Spoon River Anthology*, Masters seems to have had a thriving practice. His son Hardin Wallace Masters, writing some sixty years later with the considerable benefit of (perhaps romanticized) hindsight wrote:

At the height of ELM’s law practice, about 1913, things were prospering. He was a talented attorney-at-law and for a period of years enjoyed a good practice. His perception to motives, ability to analyze character, cynicism and talent at cross examination, all combined to make him a formidable foe in court. I have often reflected that the combination of these abilities was the catalyst that made his book of *Spoon River* such a natural product of his pen.⁵⁶

Judging by the number of reported decisions, Masters had to have been doing well for at least some of the time. We gain some sense of the demands of both his literary and legal career from a brief letter he wrote in 1916, not long after the publication of *Spoon River Anthology*, in which he notes that his eyes “go bad every now and then from excessive use.”⁵⁷ The writing of *Spoon River Anthology*, in competition with his practice, exhausted him.

51. *Id.* at 79.

52. 39 N.E. 568 (Ill. 1895).

53. MASTERS, *ACROSS SPOON RIVER*, *supra* note 2, at 203.

54. *Id.* at 204.

55. Letter from Edgar Lee Masters to Haskell Dole (Mar. 27, 1920) (in Princeton Collection, *supra* note 6).

56. HARDIN W. MASTERS, *EDGAR LEE MASTERS: A BIOGRAPHICAL SKETCHBOOK ABOUT A FAMOUS AMERICAN AUTHOR* 52 (1978). He refers to the “affluent days” of Masters’ practice, which foreshadowed many of the bitter disputes Masters had regarding money in later life. For example, Masters’ later letters to Scribners are filled with quibbles over royalties.

57. Letter from Edgar Lee Masters on stationery indicating “Law Office, Edgar L. Masters, Marquette Building, Chicago,” (Feb. 24, 1916) (in Princeton Collection, *supra* note 6).

These few comments tell much. Masters was a seasoned trial attorney and a close observer of the realities of practice. He reflects this in his portrayal of lawyers in the *Spoon River* works. In one example, attorney John M. Church laments:

I was attorney for the "Q"
 And the Indemnity Company which insured
 The owners of the mine.
 I pulled the wires with judge and jury,
 And the upper courts, to beat the claims
 Of the crippled, the widow and orphan,
 And made a fortune thereat.
 The bar association sang my praises
 In a high-flown resolution.
 And the floral tributes were many—
 But the rats devoured my heart
 And a snake made a nest in my skull!⁵⁸

Masters was no stranger to such cases, and seems to have done battle with the Churches of the bar. For example, in *Globe Mutual Life Insurance Ass'n v. Ahern*,⁵⁹ he represented a beneficiary in a suit against the insurance company which had refused to pay life insurance benefits on the grounds that the decedent misrepresented the fact of his prior rejection by a different insurance company. Masters, presumably the trial lawyer, appeared before the Supreme Court of Illinois as the appellate lawyer and was successful as appellee. In another case that made its way to the Supreme Court of Illinois, *Provident Savings Life Assurance Society v. King*,⁶⁰ Masters represented a victorious claimant in recovery against an insurance company for benefits upon her husband's death.

Among his reported decisions are numerous personal injury cases, in which he represented both plaintiffs and defendants. In *Vaughn v. Chicago Junction Railway Co.*,⁶¹ he was counsel for the railroad appellant, appealing an affirmance of a judgment in favor of an individual killed when a moving engine struck him. (The details of this case seem to have stayed with him; the date of the decision pre-dates *Spoon River* by only a few years. In one of the *Spoon River* poems, Johnnie Sayre had "the remorseless wheel of the engine / sink into the crying flesh of my leg."⁶²) Similarly, although representing the other side in *Chicago Railway Co. v. Jordan*,⁶³ Masters was involved in a case where a five year old boy was killed when hit by a streetcar. It is significant to note, then, that in Masters' discussions of law and decisions throughout *Spoon River* and *New Spoon River*, he was drawing

58. MASTERS, SPOON RIVER, *supra* note 4, at 85.

59. 60 N.E. 806 (Ill. 1901).

60. 75 N.E. 166 (Ill. 1905).

61. 94 N.E. 40 (Ill. 1911).

62. MASTERS, SPOON RIVER, *supra* note 4, at 38.

63. 74 N.E. 452 (Ill. 1905).

on actual cases with real results, sometimes going against him at the trial and appellate levels; he experienced first-hand how courts decided cases. As noted below in the discussion of Masters and judges, both judges and peoples' perceptions are in tune with the observations of the realists that attitude and personality were more important, it seemed, than application of strict legal principles.

Even after *Spoon River Anthology* appeared, Masters continued to practice law and try cases. He clearly viewed law as less a set of rules dispassionately applied than an exercise in human interaction. This is evidenced in a humorous vignette of lawyer Chalkley Cameron, who argued against a Spoon River ordinance prohibiting ballet on the grounds the ordinance violated the Constitutional right to pursue happiness; laughed at by the judges and crowd, he "faded out for shame."⁶⁴ For Masters, there was always the theme of conflict between art and literal law.

He seemed to view law, despite the complexity of his cases, as being completely derivative from the worst in human nature, a theme prevalent in the Spoon River chronicles. In a letter to Nathan Haskell Dole dated July 10, 1915 from his office in the Marquette Building, he acknowledged the interest Dole had taken in the book, and wrote:

This week and next I am occupied in the pleasant duty of trying a difficult and hotly contested lawsuit, where people are quarreling with all the venom that can be evoked about matters of property. I have noticed that hogs in a meadow are friendly towards each other and at peace until a basket of yellow corn is emptied before them when they begin to bite off each other's ears and disembowel each other in order to get all the corn. People are much the same where there is any question about something to eat or something with which to buy it, but are even better behaved than hogs when the question of money is removed from their attention. So I am engaged in this pleasant duty but will be through at the end of next week, when other things being equal, I expect to come to New York.⁶⁵

The world of Spoon River, brought to life by Masters, is a grim, common yet vibrantly human one. Its lawyers and judges speak their truths from beyond the grave and yield a stark portrait of legal practice that does not appear to have changed significantly in three quarters of a century. Law takes its victims as well, who seem to accept the practice with varying degrees of bitterness. The focus is on a period of industrial revolution and both economic and legal upheaval in American history.

His original editor and friend, William Marion Reedy, wrote in *Reedy's Mirror* (where the poems first appeared) that "[t]imes innumerable we find property blasphemed, and law—well, the law is an instrument of injustice

64. MASTERS, NEW SPOON RIVER, *supra* note 4, at 35.

65. Letter from Edgar L. Masters to Nathan Haskell Dole (July 10, 1915) (in Princeton Collection, *supra* note 6).

and so far from being a rule of right is a rule of idiocy.”⁶⁶ Critics disagreed, however, as to how faithful to reality was Masters’ portrait of small-town America.⁶⁷ Amy Lowell criticized *Spoon River* as “the great blot upon Mr. Masters’ work,” finding it “one long chronicle of rapes, seductions, liaisons, and perversions,” “an obliquity of vision, a morbidity of mind, which distorts an otherwise remarkable picture.”⁶⁸

Throughout his poetry, Masters indicated he was attempting to “draw the macrocosm by portraying the microcosm.”⁶⁹ Although the critics of the time focused mainly upon his portrayal of a town and its politics and sociology,⁷⁰ his men of law are in abundance (Masters finds no women attorneys or judges). They dominate the life of the town. Law and its implications interweave the lives of the citizens. *Spoon River* is filled with victims bemoaning the workings of law. The voices of the dead cross reference each other and form a composite of America, Masters’s own microcosm, as it was during the turn of the century.

Spoon River as a legal community reflects the reality of power as opposed to a fastidious attention to legal procedure. Thomas Rhodes runs the bank and, when that bank fails, it does not take Rhodes with it. Various of the poems refer to Rhodes and his personal influence and impact upon the people within the town and the legal system. I suggest a parallel between the poetic Rhodes and the real-life Smith described by Masters above, who could get any lawyer he wanted in Chicago, but who Governor Altgeld refused to pardon, and who occupied a significant discussion in Masters’ autobiography; the Smith case was also Masters’ first appearance before the Supreme Court of Illinois.⁷¹ Lawyers like Harmon Whitney who tried to maintain a sense of integrity and eloquence were “judged and loathed by a village of little / minds;” he viewed himself as “a picker of rags in the rubbage of spites and / wrongs.”⁷² Economics justifies law, not vice versa. A fact skeptic himself, Joseph Nightingale, the one-time Marxist, expressing a theme consistent with Masters’ own real-world view, concludes in old age that

66. Reedy, *supra* note 7, at 2.

67. J.T. FLANAGAN, EDGAR LEE MASTERS: THE SPOON RIVER POET AND HIS CRITICS 24 (1974).

68. LOWELL, *supra* note 5, at 175.

69. MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 339.

70. FLANAGAN, *supra* note 67, at 29.

71. MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 201-03; *see also* People *ex rel.* Smith v. Allen, 39 N.E. 568 (Ill. 1895).

72. MASTERS, SPOON RIVER, *supra* note 4, at 146-47. *Cf.* MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 206. Masters made similar remarks of himself, once referring to his “days of thankless labor at the office, of disheartening disaster which sent me down to the depths.” *See also* MASTERS, SPOON RIVER, *supra* note 4, at 146-47 (Whitney found himself “in a village / Spouting to gaping yokels pages of verse;” he is a man whose “soul could not re-act, / Like Byron’s did, in song, in something noble . . .”). MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 81.

"truth is Art, / Not facts, statistics, argument, / Or pounding the rich, or making laws."⁷³

The lawyers run the gamut of integrity and conscience. They range from the literary to the seedy. Not all of Masters's lawyers are successful even in life, with time for philosophical reflections and regrets only in death. Benjamin Pantier, attorney at law, for example, is at the ragged end of the scale. Driven out by his wife, he lives in his office with Nig, his dog, and dies a drunk.⁷⁴

Kinsey Keene may have been one of the honest lawyers in Spoon River, admonishing the powermongers of Spoon River to pay heed to Cambronne's dying words at Waterloo to never surrender,⁷⁵ but in the end, even he was part of a *realpolitik*; in exchange for his less than zealous pursuit of Thomas Rhodes for wrecking the bank, the judge (a friend of Rhodes') gave Keene's client, Jack McGuire, only fourteen years for shooting the town marshal.⁷⁶ Some live model lives, with which they never made inner peace, and give voice to this only in death, like Jefferson Howard or Harmon Whitney.

Masters' lawyers seem unable to find truth or vindication of justice within the realm of adversarial practice. For example, State's Attorney Fallas turned from zealot enforcement of the laws to science when a doctor misdelivered his son, turning him into an idiot. He uses telling words to describe himself as a prosecutor: "scourge-wielder," "balance-wrecker." He did not discover truth through law, but through his "poor ruined boy."⁷⁷

Masters is a realist to the extent he cites by example this prosecutor who uses non-legal terminology to explain his function in the system. Law and the adversarial system are not a forum for ascertaining truth. The prosecutor, Fallas, speaks of himself as inexorable, bitter and legalistic, a "smiter with whips and swords," sending Barry Holden to the hangman. Holden's story, told immediately preceding Fallas's, is the unexpressed tale of his own madness and economic strangulation. Holden's sister had set fire to his house on which Rhodes held the mortgage; Holden was also expecting a ninth child, adding to his stress. After watching the trial of Dr. Duval who had killed Zora Clemens after impregnating her, Holden returned home. Finding a hatchet by the door, listening to his wife, "big with child," talking about the mortgaged farm, he killed her.⁷⁸ The contrast of this case with his own son's situation forces Fallas from the law. Fallas's and Holden's stories

73. MASTERS, NEW SPOON RIVER, *supra* note 4, at 211.

74. MASTERS, SPOON RIVER, *supra* note 4, at 15; *see also* Beatty, SPOON RIVER, *supra* note 4, at 155; Chalkley Cameron, MASTERS, NEW SPOON RIVER, *supra* note 4, at 35, for two more examples of self-pitying lawyers who were not strong enough personalities to overcome the pressures of their peers and ultimately vanished in ridicule.

75. Bartlett's Familiar Quotations attributes to Pierre Jacques Etienne, Count Cambronne, the phrase: "The Guards die, but never surrender." Supposedly Cambronne denied the phrase, which was the "invention" of Rougement following Waterloo.

76. MASTERS, SPOON RIVER, *supra* note 4, at 43.

77. *Id.* at 80.

78. *Id.* at 79.

also demonstrate the stylistic endeavor of Masters to interweave a finite number of plots involving different characters in each others' lives. This, too, is a statement of realism: law is not an individualized, academic exercise. The acts of one participant in the system have ramifications throughout.

Joseph Meek is another brought to ruin by the attitudes of a judge that seem unrelated to purely rule-oriented analysis:

Did I not see the righteous scowls of the Circuit Judge,
 And read the bitter exaggerations of the editors,
 When proof was made that union sluggers
 Were paid five dollars a day to slug the scabs?
 And yet in this same court,
 And amid the silence of the press,
 And with the aid of the same judge
 I was ruined in my little business
 By the canning works in a suit in equity
 Whose lawyer was paid five hundred dollars
 To get me out of the way!⁷⁹

Masters describes a bitter experience with one of his partners who stole his union client⁸⁰ and it is possible that the incident in this poem is related to that one.

There was a pathos that Masters long felt for the microcosmic nature of the crimes of the people of which he wrote. Leaving Petersburg for Chicago from boredom and restlessness, he nonetheless maintained a keen eye towards people. He wrote of his father's practice as prosecutor and the people he prosecuted: "Their crimes were the usual offenses against property: attacks with knives and bricks and pistols; sometimes, burning houses or hospitals or mutilating cows or cattle."⁸¹ If the Spoon River lawyers (except Fallas) are ignorant of the effect they have on their fellow citizens, their victims certainly are not. Little justice is done in Spoon River, although a good deal of law is practiced. Indeed, as economic hard times set in, this becomes very apparent.

The fall of the bank wreaks havoc upon Spoon River. Mrs. Reece's husband, a mere cashier, goes to prison, while the wrecker of the bank, its president, Thomas Rhodes, does not.⁸² Privilege and power have their benefits. Other citizens express similarly bitter understandings. For example, Ida Chicken, a seemingly spinsterish schoolteacher, could have been cited by Judge Frank for the proposition that law is about power and wealth. She goes to the district court to obtain a passport, and is required to take an oath to defend the constitution; in the next room, the federal judge

79. MASTERS, NEW SPOON RIVER, *supra* note 4, at 309.

80. MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 268-70.

81. *Id.* at 36.

82. MASTERS, SPOON RIVER, *supra* note 4, at 92.

"[d]ecided the constitution / Exempted Rhodes from paying taxes / For the waterworks of Spoon River!"⁸³

To Masters, then, the adversary system suppresses, rather than releases, truth. It distorts reality. Spoon River is filled with secrets carried to the grave. The town is a network of hidden wells of power, and the lawyers are always involved, purveyors of layered meanings. The community is littered with victims of the system.

One such martyr is Roy Butler, convicted of rape, who states: "If the learned Supreme Court of Illinois / Got at the secret of every case / As well as it does a case of rape / It would be the greatest court in the world."⁸⁴ Butler was convicted at the trial level because a juror had a feud with him in the past. The rape involved a lying neighbor. Fortunately for Butler, "neither the Supreme Court nor my wife / Believed a word she said."⁸⁵

Masters' killers and conspirators are all innocent, all judged by the myopic standards of a provincial community. Plea bargains are made for the rich at the expense of the poor. Economic reality dictates morality. It is a legal system based upon whom one knows. Legal ability is measured not in terms of truth or justice, but personality and money. As Jack McGuire, accused of murdering the marshal, tells it: "They would have hanged me except for this: / My lawyer, Kinsey Keene, was helping to land / Old Thomas Rhodes for wrecking the bank, / And the judge was a friend of Rhodes / And wanted him to escape, And Kinsey offered to quit on Rhodes / For fourteen years for me."⁸⁶

To similar effect, George Kramer, in another comment relevant to Judge Frank's concerns about judicial attitude, bemoans the "amorous judges and juries," who jailed him because he couldn't pay his alimony.⁸⁷

Property dominates. It is as important to the citizens and the lawyers of Spoon River as it was to the rest of America in the early twentieth century,⁸⁸ and it was without regard for humanness. Sylvester Wilson, saying Spoon River will go on making laws and trampling delight, notes "[t]hat property, just property / Is at the bottom of all this illusion / That life will last forever!"⁸⁹ Masters' reported decisions include representation of parties

83. MASTERS, SPOON RIVER, *supra* note 4, at 110.

84. *Id.* at 171. Cf. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 559 (2d ed. 1985) (as it was, the Illinois Supreme Court at the end of the nineteenth century "was politically conservative, judicially activist, and intoxicated with constitutionality.").

85. MASTERS, SPOON RIVER, *supra* note 4, at 156.

86. *Id.* at 43.

87. MASTERS, NEW SPOON RIVER, *supra* note 4, at 84.

88. FRIEDMAN, *supra* note 84, at 359-83. In particular, Friedman notes that "[t]he dominant idea of American land law was that land should be freely bought and sold." *Id.* at 359. The mortgage "remained the primary mode of financing land" through the nineteenth century, used by farmers "to raise money for more land, to buy agricultural machinery, even to cover personal expenses." *Id.* at 374.

89. MASTERS, NEW SPOON RIVER, *supra* note 4, at 316.

in foreclosure actions,⁹⁰ so he was clearly aware of the legal issues involved in property.

To the extent that the realists urged a broader view of law that took into account politics and sociology, Masters sought to demonstrate this through the impact of legal process and lawyers on people with relatively simple problems. For example, Felix Schmidt wanted to keep his house; he had a sick wife and too many children to feed. Schmidt was approached by "lawyer Whitney" on behalf of Christian Dallman about a property dispute; Schmidt sued and lost all his property because of a tax deed that Dallman had acquired from Schmidt's dying father fifty years earlier. Schmidt ended up a tenant of Dallman.⁹¹ Schroeder the Fisherman witnessed Dallman's farm swallow Schmidt's patch "as a bass will swallow a minnow."⁹² One thinks again of Whitney, with his Byronic dreams, and sees him only as a hired gun. (The gambling lawyer, Tom Beatty, compared himself with Whitney, Keene and Garrison Standard, who all "tried the rights of property.")

"Lawyer Whitney" appears as the conveyor of doom under the guise of propriety; he destroys Schmidt, an innocent. Masters' portrayal of lawyers quietly intruding themselves with their reams of papers and legal terms, operating against a backdrop of violence and near-explosive, repressed emotions, specters on the American scene, is part of the background of which Llewellyn, Frank, and Pound were writing. If they do not convey the niceties of practice, Masters provides it. This is reflected most vividly in Masters' portrait of Louis Raguse, a criminal lawyer of the new breed, "a lecturer of facetious paradox."⁹³ Unlike most of the speakers, Raguse speaks of himself in the third person, also calling himself "a pessimist, but only by word of mouth," whose "ethical skin was thick / From handling and reaching for fees." Raguse "lived utility for notoriety and money," the "idol of the back-hall, being plain, / Unclean, pathetic and weary looking like Jesus." It might be said that Raguse is the prototype projected by Masters for the "new lawyer." Interestingly, Raguse speaks in the third person, and not directly. The poem in its entirety reflects the hardness of the defense lawyer Raguse must have been. This might be taken as a contrast to the compassionate man that Masters conceded his father to have been as, perhaps, the more preferred country lawyer.⁹⁴

One needs to read the poems in their entirety to gauge the cumulative effect. It is evident, however, from a reading of Masters' autobiography and an assessment of the cases in which he was involved, that he was really

90. See *Lang v. Metzger*, 69 N.E. 493 (Ill. 1903); *Eggleston v. Morrison*, 57 N.E. 775 (Ill. 1900).

91. MASTERS, *SPOON RIVER*, *supra* note 4, at 177. Interestingly, this poem presages *Kellner v. Finkl*, 123 N.E. 522 (Ill. 1919), in which a man named Kasper Schmidt left a will which resulted in a suit for partition.

92. MASTERS, *SPOON RIVER*, *supra* note 4, at 178.

93. MASTERS, *NEW SPOON RIVER*, *supra* note 4, at 24.

94. MASTERS, *ACROSS SPOON RIVER*, *supra* note 2, at 93.

affected by the politics of the practice of law. His own partnerships were filled with turmoil⁹⁵ and his personal life found him as a litigant as well with his family over his father's estate.⁹⁶ His lawyers are entwined within the political and social life of the town and, while many seem to pay lip service to the loftier aspects of the profession, in their statements from the grave they recognize the realities of choices they had to make, the reality of how decisions were made and what they had to do to respond. In this way, Masters took (even if he did not know it) the concept of realism and applied it to the laboratory of Spoon River. His lawyers do not discuss legal principles: results are a function of the realities of power within the town. The successful lawyers in Spoon River, as Llewellyn or Frank may have argued themselves, are those with an awareness of politics and a sense of survival.

IV. MASTERS AND THE JUDGES

Frank discusses trial judges as applying a "gestalt" factor, and gives an anecdote of one of his early trials, in which the judge later confided to him that since he, the judge, decided early on that Frank's client should win, the judge made procedural rulings in favor of Frank's adversary so as to better insulate his ultimate factual determination from reversal on appeal.⁹⁷ The rationale of legal rules applied to facts and yielding a decision is, in essence, a retroactive application to fit the judge's "hunch" or "feeling."⁹⁸ A judge's ultimate determination is as much a part of his or her background as it is confined by appropriate legal norms.

Legal themes run significantly through *Spoon River* and *New Spoon River*. The lawyers wind around the people, and the citizens are remarkably conversant with cases. At the top of the social scale, however, with people's destinies in their hands, are the judges. It is here that the full impact of the realities of the American legal system in the first quarter of the twentieth century is seen.

Masters portrayed numerous judges in both *Spoon River Anthology* and *The New Spoon River*.⁹⁹ Those who attempt to practice law and apply rules

95. Prior to his partnership with Darrow, he notes "[t]he law business had grown very poor, and my relations with my Irish associate were often strained, and he was by no means prosperous;" Masters complains about this individual stealing a union client in which Masters perceived himself to have done the appropriate background work but lacking the necessary charm. MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 268.

96. See *Masters v. Masters*, 325 Ill. 429, 156 N.E. 481 (1927).

97. FRANK, COURTS ON TRIAL, *supra* note 31, at 168.

98. *Id.* at 170.

99. At the turn of the century, the American penchant for lawyers, judges and legal system was demonstrated by the fact that "[i]n most parts of the country, the multiplicity of courts and judges remained an outstanding feature of the legal system. Nebraska, early in the century, had more judges than all of England; New Jersey had seventeen courts or parts of courts as late as 1947." BERNARD SCHWARTZ, THE LAW IN AMERICA 263 (1974).

in a more traditional sense deem themselves to have failed. For example, Judge Somers asks his own woeful question:

How does it happen, tell me
That I who was most erudite of lawyers,
Who knew Blackstone and Coke
Almost by heart, who made the greatest speech
The court-house ever heard, and wrote
A brief that won the praise of Judge Breese—
How does it happen, tell me,
That I lie here unmarked, forgotten,
While Chase Henry, the town drunkard,
Has a marble block, topped by an urn,
Wherein Nature, in a mood ironical,
Has sown a flowering weed?¹⁰⁰

Masters, like Frank, emphasizes the humanity of the judges beneath the robes, exposed by artists. In another poem, Peniwit the photographer makes Judge Somers lose his solemnity (he had just brought his cross eye under control) by shouting “overruled;” Judge Somers, responding automatically to his days in practice, gives Peniwit the look he used to have when saying “I except;” Peniwit snaps the portrait.¹⁰¹ Masters, an artist like Peniwit, paints a mockingly brutal portrait, his subjects providing the evidence from their own mouths, testimony to the hypocrisy of the small town but more pertinently, to the implicit criticism of a view of law that is rule-intensive.

The judges of Spoon River are, in the main, a function of a legal system that Masters must have perceived in his practice and from his father’s practice to rely very little on law and mainly on personality and an individual sense of “justice.” For example, there is the anonymous Circuit Judge who passed through lives, “[d]eciding cases on the points the lawyers scored, / Not on the right of the matter.” The Circuit Judge in his death reveries finds even Hod Putt, the murderer, innocent compared to his own soul. (Spoon River is filled with innocent murderers wrongfully sent to prison.) Daisy Fraser of Spoon River asks “Did you ever hear of the Circuit Judge / Helping anyone except the “Q” railroad, / Or the bankers?”¹⁰² Another who appeared before him, “Butch” Weldy, was denied recovery in an accident: “The Circuit Judge said whoever did it / Was a fellow-servant of mine, and so / Old Rhodes’ son didn’t have to pay me.”¹⁰³ Masters was familiar with this area of the law as well.¹⁰⁴ There was a perception

100. MASTERS, SPOON RIVER, *supra* note 4, at 13.

101. *Id.* at 111.

102. *Id.* at 20.

103. *Id.* at 26.

104. *See, e.g.*, Wheeler v. Chicago & W. I. R.R. Co., 108 N.E. 330 (Ill. 1915) (Clarence Darrow listed of record, with Masters listed “of counsel,” representing plaintiff/appellee who was injured while employed as a locomotive engineer); Knox v. American Rolling Mill, 86 N.E. 90 (Ill. 1908); Hansel-Elcock Foundry Co. v. Clark, 73 N.E. 787 (Ill. 1905) (rejecting argument that where fellow servants participate in the causes of the injury the employer is not liable,

among people that law was indeterminate—that judges made decisions based upon politics and bias—and Masters showed this to be a very real part of the landscape. He may be criticized, perhaps, although this was probably not his purpose, for fostering on the other hand certain perceptions of invidious corruption that may not necessarily have accurately reflected the basis for most decisions. Certainly his own reported decisions for the most part show careful judges proceeding through the law with attention to the facts at hand. However, Masters' poetry portrays judges more moved by human rather than legal motivations.

Granville Calhoun is one such judge, seeking a final term to round out thirty years of service. Deserted by his former allies, "a spirit of revenge seized me, / And I infected my four sons with it / And I brooded upon retaliation . . ." until, afflicted with a stroke, he spends his final days bedridden, staring out his window at the old court house.¹⁰⁵ Another citizen, interestingly enough, refers to "no justice without hate for steam; / no law without revenge."¹⁰⁶

More in the lines of Judge Somer, Justice Arnett ruminates upon the old docket that fell off the shelf and killed him; in the end, he sees the pages of the book not as leaves showering him, but the days of his life. It fell on him, he notes, from the "shelf above my head and over / The seat of justice . . ." Again, the perceptive Daisy Fraser says she "never was taken before Justice Arnett / Without contributing ten dollars and costs / To the school fund of Spoon River!"¹⁰⁷ He maintains an analytical, reasoned approach, searching for logic, while the Circuit Judge¹⁰⁸ sees in the forces of Nature, which erode his headstone, a less controlled, more metaphysical vengeance. It is not just the substance, but the way in which they speak, that mocks and caricatures (and captures) them.

As if providing a model for Frank's writings about the human fallibility and indeterminacy of judicial opinions, Judge Selah Lively relates how he worked himself up from nothing, studying law at night, and eventually became a judge. A short man, five feet two inches, asks: "And Jefferson Howard and Kinsey Keene, / And Harmon Whitney, and all the giants / Who had sneered at you, were forced to stand / Before the bar and say 'Your Honor'— / Well, don't you think it was natural / That I made it hard for them?"¹⁰⁹ (Interestingly, unlike John M. Church, Lively has no regrets about representing Thomas Rhodes and collecting notes and mortgages.)

where the plaintiff himself is not at fault).

105. MASTERS, SPOON RIVER, *supra* note 4, at 187.

106. MASTERS, NEW SPOON RIVER, *supra* note 4, at 45.

107. MASTERS, SPOON RIVER, *supra* note 4, at 53.

108. *See supra* notes 102-03 and accompanying text.

109. MASTERS, SPOON RIVER, *supra* note 4, at 97.

Hamilton Greene, another judge, was impressed with himself “for what service I was to the people,” thanking his parents and exalted lineage.¹¹⁰ Such pomposity ties in with the concerns about attitude raised by the legal realists, and is consistent with Masters’ own sardonic view of how judges are selected.

Along these lines is Judge Singleton, who

exonerated Amos Winkler
From the charges of perjury,
Swearing for the sake of more pension money
That Charles Winkler was his son,
When in truth he was the illegitimate son
Of another man, before Amos married the mother
Amos was kind to the boy, and was raising him,
Even as I loved the daughter of my wife,
The natural child of another man—
(A fact not known to you, Spoon River),
Before I married the mother!¹¹¹

In the face of known perjury, this judge nonetheless refused to accept the testimony and decided a case based upon personal feelings completely separate and apart from legal principles.

Judge Donald Shuman, years later in *The New Spoon River*, ruminates over the death, and funereal ceremonies, of a colleague, Judge Loeffler, and learns “[a] lesson in resignation / To see that nothing of ceremony / Makes anything of death.”¹¹² Law is mostly ceremony and does not last. Nature chips away at headstones; human lives on this earth are ruins waiting to happen. (Watt Fulgene sheds some light on legal realism and Judge Shuman, whom he claims robbed the brewery by taking fees from lawyers and receivers, and giving it to a new set of lawyers and receivers, yet sent Fulgene to prison for robbing the robbers).

Masters’ dissatisfaction with the provincial nature of the small town and its influence on the local judges emerges throughout the Spoon River works. Law punishes the individualist.¹¹³ Wendell P. Bloyd is locked up for “disorderly conduct / There being no statute for blasphemy.”¹¹⁴ The thread of law as antithetical to free expression, although ironic, permeates Spoon River.

If law is as temporary as the courthouse in Spoon River which was burned to the ground by an anarchist, its potent effects (and the effect of the judges) upon the short lives of ordinary people is devastating. Spoon River’s citizens endure Thoreau-like lives of quiet desperation. Emotions percolate

110. MASTERS, SPOON RIVER, *supra* note 4, at 115.

111. MASTERS, NEW SPOON RIVER, *supra* note 4, at 106.

112. MASTERS, NEW SPOON RIVER, *supra* note 4, at 53.

113. Masters writes of the “dour Puritanism of Lewistown.” MASTERS, ACROSS SPOON RIVER, *supra* note 2, at 82.

114. MASTERS, SPOON RIVER, *supra* note 4, at 81.

within concealed urns. These people are strangers to each other. They have unhappy marriages, and law continues its intrusions. Since divorce evokes scandal, lawyers urge conformity, not necessarily justice. For example, Mrs. Charles Bliss is advised by Reverend Wiley and Judge Somers not to divorce her husband: "Yet preachers and judges advise the raising of souls / Where there is no sunlight, but only twilight, / No warmth, but only dampness and cold- / Preachers and judges!"¹¹⁵

Spoon River's denizens are displaced just as ferociously by the "new" age of law and commerce in the 1920s of the *New Spoon River* as they were in 1915. Joseph Wheelock, the businessman, states that he did only what capitalists do, yet went to jail for it: "Your laws are only your wills / Which bend and break better laws." Wheelock, a self-proclaimed car bandit, claimed he "acted in imitation / And by suggestion," no less than the banker whom he robbed and killed had robbed "the township on a bond deal."¹¹⁶ Lawsuits also caused Peter Ryan, "a partner of power," to lose his business.¹¹⁷

Jacob Farmer, victim, has some statements to make about jurisprudence in this Spoon River context: "Why is the slow killing of a man ignored / And the quick killing of a man punished?"¹¹⁸ August Matson, the sheriff, understands; the townspeople "go on brutalizing yourselves, / Asking for the strangled bodies with cold and deliberate malice / From behind the painted masks of Justice and Law."¹¹⁹ There is nothing subtle about Masters here; justice and law are fancy terms for private ends and means.

Spoon River Anthology was written from a lawyer's perspective. While most of the critical pieces emphasize the small town invidiousness, the thread of law and its impact on the townspeople prevails. People are aware of law as meted out by the judges. They go through probate proceedings. They are keenly aware of the way the system works. They understand the links between power and "justice." It is their perception that is born of his practice. Lawyers and judges with some humanity to them, such as Jefferson Howard, Hamilton Greene, Tom Beatty and William Lloyd Garrison Standard, offer almost milquetoastian statements at their death.

There are also politicians, who impact as do the judges, and in this regard Masters was involved in various political cases.¹²⁰ In *The New Spoon River* there is Diamondi Viktoria, the corrupt county treasurer; in reality, Masters represented a plaintiff suing a county treasurer to enjoin their

115. MASTERS, SPOON RIVER, *supra* note 4, at 91.

116. MASTERS, NEW SPOON RIVER, *supra* note 4, at 187.

117. *Id.* at 189.

118. *Id.* at 117.

119. *Id.* at 218.

120. Various of the persons in *Spoon River Anthology* and *The New Spoon River* are political activists, taking on the system. Masters may have derived these from his own legal cases, such as *People ex rel. Dezettel v. Lueders*, 119 N.E. 339 (Ill. 1918).

salaries on the grounds that the civil service law was unconstitutional.¹²¹ Henry Breckenridge was Justice Arnett's law clerk who wrote his entries in the docket which killed him. Breckenridge becomes the clerk of the reorganized city court, and controls the judges in "black silk robes."¹²² By the 1920s and the time of *The New Spoon River*, the system changed from one where jurors laughed, to one where they sat "like wooden Indians," and the judges were directed by Henry Breckenridge. Bossism has come to Spoon River, and Masters laments the loss of humanity.

In sum, Masters' portrayal in poetic realism of judges mirrors the comments and conclusions of serious jurisprudential writers in the formative years of legal realism. The view of judges set forth by Masters is contained in the words of one of the victims of such legal practice. Rafael Chernetti understands what it is to win the case and lose one's life. He is stupidly accused of sending a dun on a postcard to Dr. Peffer. He is convicted, and after going to jail, had the conviction overturned on appeal: "Nevertheless I was broken and died. / Ignorance of the law excuses no man— / Unless he is a judge."¹²³

V. CONCLUSION

There are many examples of judges and lawyers in the Spoon River pieces, as well as other examples of litigants, criminals, and victims. I have given various examples that demonstrate the subject of both Llewellyn's and Frank's concern: namely, that to ignore the human element in the judicial process is to commit a serious mistake in defining what law is. The people of Spoon River are painfully aware not only of law and its impact upon them, but of the political and subjective manner in which it is applied. Masters drew upon his personal experiences as reflected in his correspondence, autobiography and reported decisions in creating his poetic voices. Such a derivation provides first-hand support for the more academic writings of the legal realists, and reinforces the use of literature recited by Calvino above as helping to gain insight into legal problems.

121. Compare MASTERS, NEW SPOON RIVER, *supra* note 4, at 39 with *McAuliffe v. O'Connell*, 101 N.E. 419 (Ill. 1913) (Masters represented petitioner challenging civil service statute). While not reflecting directly Masters as counsel of record, *see also* *Burke v. Snively*, 70 N.E. 327 (Ill. 1904), with Darrow and Masters listed as counsel of record, involved a suit by a taxpayer to restrain state officials from appropriating money for use on a canal; *People ex rel. Phillips v. Strassheim*, 88 N.E. 821 (Ill. 1909) (reflecting Darrow, Masters and Wilson as counsel for a person indicted for violating the primary election laws); *People ex rel. Dezettel v. Lueders*, 119 N.E. 339 (Ill. 1918) (Masters listed as counsel) (mandamus action to permit voting); and *People ex rel. Schnackenberg v. Czarniecki*, 100 N.E. 283 (Ill. 1912) (Masters himself was listed as counsel) (representing respondent against a petitioner who sought to have a nomination for chief justice placed under two parties on the ballot). These cases show an intimate involvement by Masters in politically charged cases that may have provided a basis for this particular poem.

122. MASTERS, NEW SPOON RIVER, *supra* note 4, at 12.

123. MASTERS, NEW SPOON RIVER, *supra* note 4, at 215.

APPENDIX OF REPORTED DECISIONS
OF EDGAR LEE MASTERS

The following are reported decisions specifically indicating Edgar Lee Masters as counsel of record.

1. *Kellner v. Finkl*, 288 Ill. 451, 123 N.E. 522 (1919) (partition action).
2. *People ex rel. Dezettel v. Lueders*, 283 Ill. 287, 119 N.E. 339 (1918) (mandamus action to permit voting).
3. *Novitsky v. Knicker-Bocker Ice Co.*, 276 Ill. 102, 114 N.E. 545 (1916) (victorious representation of appellant administrator of estate to recover damages for death of intestate child run over by defendant's wagon).
4. *Wheeler v. Chicago & W. I. R.R. Co.*, 267 Ill. 306, 108 N.E. 330 (1915) (successful representation of appellee in personal injury case).
5. *Carlin v. Chicago*, 262 Ill. 564, 104 N.E. 905 (1914) (successful representation of appellant Carlin in negligent killing case).
6. *Kellan v. Kellan*, 258 Ill. 256, 101 N.E. 614 (1913) (unsuccessful representation of appellant contesting a will). Masters referred to this case, which he also tried, in *ACROSS SPOON RIVER* at 334 as being lost "after vast labor."
7. *McAuliffe v. O'Connell*, 258 Ill. 186, 101 N.E. 419 (1913) (challenge to civil servant statute; won reversal of dismissal of complaint).
8. *People ex rel. Schnackenberg v. Czarnecki*, 256 Ill. 320, 100 N.E. 283 (1912) (represented respondent in challenge to refusal to allow certain nominations in certain positions on ballot).
9. *Vaughn v. Chicago Junction Ry. Co.*, 249 Ill. 206, 94 N.E. 40 (1911) (unsuccessful representation of defendant in personal injury case).
10. *Ball v. Evening American Pub. Co.*, 237 Ill. 592, 86 N.E. 1097 (1908) (successful representation of defendant newspaper in libel action).
11. *Luckowitz v. Eagle Brewing Co.*, 235 Ill. 246, 85 N.E. 213 (1908) (successful representation of plaintiff in personal injury action).
12. *Provident Sav. Life Assurance Soc. v. King*, 216 Ill. 416, 75 N.E. 166 (1905) (representation of appellee in claim on insurance policy).

13. *Chicago City C.R. v. Jordan*, 215 Ill. 390, 74 N.E. 452 (1905) (unsuccessful representation in wrongful death action of administrator of estate).
14. *United States ex rel. Turner v. Williams*, 194 U.S. 279, 24 S. Ct. 719, 48 L. Ed. 979 (1904) (with Clarence Darrow, unsuccessful representation of an alien anarchist in deportation proceeding).
15. *Lang v. Metzger*, 206 Ill. 475, 69 N.E. 493 (1903) (foreclosure action).
16. *Chicago T.T. R.R. Co. v. Schmelling*, 197 Ill. 619, 64 N.E. 714 (1902) (personal injury action).
17. *Globe Mutual Life Ins. Ass'n v. Ahern*, 191 Ill. 167, 60 N.E. 806 (1901) (insurance recovery case).
18. *Eggleston v. Morrison*, 185 Ill. 577, 57 N.E. 775 (1900) (successfully represented noteholder in foreclosure action).
19. *Mitchell v. King*, 187 Ill. 452, 55 N.E. 637 (1899) (will contest).
20. *People ex rel. Smith v. Allen*, 155 Ill. 61, 39 N.E. 568 (1895) (habeas corpus).

The following cases are those with Darrow and Masters, or Darrow, Masters and Wilson, as counsel of record, without specifying Masters himself as the appearing attorney:

1. *Carlin v. Peerless Gaslight Co.*, 283 Ill. 142, 119 N.E. 66 (1918).
2. *Haller Sign Works v. Physical Culture Training School*, 249 Ill. 436, 94 N.E. 920 (1911).
3. *Goodrich v. Busse*, 247 Ill. 366, 93 N.E. 292 (1910).
4. *People v. Bissett*, 246 Ill. 516, 92 N.E. 949 (1910).
5. *Van Cleef v. Chicago*, 240 Ill. 318, 88 N.E. 815 (1909).
6. *People ex rel Phillips v. Strassheim*, 240 Ill. 279, 88 N.E. 821 (1909).
7. *Kavanagh v. Bank of America*, 239 Ill. 404, 88 N.E. 171 (1909).
8. *Pryor v. Bank of America*, 240 Ill. 100, 88 N.E. 288 (1909).
9. *Knox v. American Rolling Mill*, 236 Ill. 437, 86 N.E. 90 (1908).

10. *Chicago Title & Trust Co. v. Danforth*, 236 Ill. 554, 86 N.E. 364 (1908).
11. *Chudnovski v. Eckels*, 232 Ill. 312, 83 N.E. 846 (1908).
12. *Brenock v. Brenock*, 230 Ill. 519, 82 N.E. 816 (1907).
13. *O'Brien v. People*, 216 Ill. 354, 75 N.E. 108 (1905).
14. *Raisor v. Chicago & A. R.R. Co.*, 215 Ill. 47, 74 N.E. 69 (1905).
15. *Hansel-Elcock Foundry Co. v. Clark*, 214 Ill. 399, 73 N.E. 787 (1905).
16. *Rostad v. Chicago Suburban Water & Light Co.*, 211 Ill. 248, 71 N.E. 978 (1904).
17. *Burke v. Snively*, 208 Ill. 328, 70 N.E. 327 (1904).
18. *People ex rel Deneen v. Belinski*, 205 Ill. 564, 69 N.E. 5 (1903).