

# Judge, Professor, Chronicler of Fairyland: James Campbell's Legal Imaginary

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**Nicolette I. Bruner**

University of Michigan, USA

## Abstract

This article examines a little-known archive of illustrated children's stories written by a nineteenth-century Michigan jurist, James Valentine Campbell. Despite his public reputation as a sober-minded judge and law professor who resisted interjecting his personal views into his decisions, Campbell's domestic life as an author and performer of children's stories served as an outlet for criticizing the excesses of the legal profession and proposing alternative methods of dispute resolution. His tales urged children to avoid laws and lawyers and instead to cultivate their own ethical and imaginative capacities for solving problems. His public and private activities intersected in his work as a founding professor at the University of Michigan Law School, training students to remain participants in the democratic process and resist mindlessly applying the law without understanding the deeper social and historical contexts of their work. This case study demonstrates the complexity of American legal subjectivity in the nineteenth century and the importance of considering archives beyond the published legal record.

## Keywords

Law, gender, literary studies, community formation, childhood, fantasy, public/private, legal education, classical legal thought

Today, if he is remembered at all, James Valentine Campbell is but another name on a long list of dead white jurists of the nineteenth century. A long-serving justice on the Michigan Supreme Court and professor at University of Michigan Law School, Campbell had built a reputation for sobriety and stability in both the courtroom and classroom. After his

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## Corresponding author:

Nicolette I. Bruner, Department of English Language and Literature, University of Michigan, 435 S. State Street, 3187 Angell Hall, Ann Arbor, MI 48109-1003, USA.

Email: [nbruner@umich.edu](mailto:nbruner@umich.edu)

death, Campbell's contemporaries glowingly remembered his "prodigious learning in the law," and one local historian went so far as to write: "Every publication that has to do with Detroit and Michigan in an historical sense is in duty bound to take special recognition of the eminent services and the noble character of this distinguished legist and jurist."<sup>1</sup> A colleague recalled his "quickness of apprehension, his persevering industry, his absolute trustworthiness, his great legal learning, his accurate judgment of men and business, his pleasant manners."<sup>2</sup> But like most obituaries, even obituaries of eminent local statesmen, these memories were registered with fondness and soon forgotten in what Franco Moretti calls the "slaughterhouse of literature" – in this case the literature of legal history.<sup>3</sup>

Campbell's children and their friends knew a very different man – an imaginative storyteller willing to poke fun at the law and other adult pretensions with stories of fairies, gnomes, medieval knights, monsters, and even Santa Claus, many of these characters shamelessly breaking local ordinances in the course of their adventures. Indeed, Campbell's public roles as a conservative jurist and law professor masked his flamboyant personal life as an entertainer of children – one who pushed the boundaries of gender normativity and legal education. For nearly four decades, from age twenty-seven until his death, Campbell did not simply pass along moral lessons but used his work with children to question the very foundations of American law and explore alternative methods of dispute resolution. By looking at his work as a cohesive whole – both his public legal writings and private children's stories – we can not only gain deeper understanding of the challenges and possibilities of professional legal subjectivity in the nineteenth century, but also recognize the powerful role of domesticity – specifically male domesticity – in shaping the transition in legal training between apprenticeship and modern professional education.

Active from 1857 to 1890, James Campbell served on the bench during the rise of what Duncan Kennedy has termed "classical legal thought," a philosophy that saw the role of the judiciary as balancing the sovereignty of federal and state governments against the dominion over property exercised by individuals and legislatures alike.<sup>4</sup> Balance came from systematization, a process by which individual cases were evaluated in terms of what categories fit them best, then ruled on accordingly.<sup>5</sup> As might be expected from one ensconced within the legal power structure of his time, Campbell's court opinions fit

1. Clarence M. Burton, *Compendium of History and Biography of the City of Detroit and Wayne County, Michigan* (Chicago, IL: Taylor and Co., 1909), p. 299. Paul Leake, *History of Detroit: A Chronicle of Its Progress, Its Industries, Its Institutions, and the People of the Fair City of the Straits*, III (Chicago, IL: Lewis, 1912), p. 1044.
2. Charles A. Kent, "James Valentine Campbell," *Michigan Law Review*, V (1907), 161–4. Charles A. Kent was a colleague of Campbell's at the Law School from 1868 to 1886, and in the words of the editor of the *Michigan Law Review* in 1907, "knew Judge Campbell better, probably, than did any man now living" (p. 161).
3. Franco Moretti, "The Slaughterhouse of Literature," *Modern Language Quarterly*, LXI (2000), 207–27.
4. Duncan Kennedy, *The Rise & Fall of Classical Legal Thought* (Washington, DC: Beard Books, 2006), pp. 2–6.
5. Morton J. Horwitz, *The Transformation of American Law, 1870–1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992), pp. 11–14; Kennedy, *Classical Legal Thought*, p. 7.

firmly within the constraints of classical legal thought, and the few remaining artifacts of his teaching suggest that Campbell shared the preoccupation with categorization that was a hallmark of this school of thought. In his children's stories, however, Campbell confounds these norms, highlighting classical legal thought's shortcomings – most notably its lack of attention to the real-world consequences of decisions – and thereby anticipating the rise of progressive legal thought.

In composing children's stories, Campbell can be seen as part of a conception of nineteenth century domesticity that, in the words of Gillian Brown, involved a "feminization of selfhood in service to an individualism mostly available to (white) men."<sup>6</sup> Contrary to a conventional notion of mid-nineteenth century middle class families "in which women took responsibility for the home and for the emotional tasks of parenthood while men took on the role of firm patriarch or detached observer," Campbell's children's stories, often featuring strong female protagonists and incorporating his children (girls and boys alike) by name, advocated the forthright use of power – by women and children as well as men – to enforce equality and resolve disputes.<sup>7</sup> In public, Judge Campbell may have been part of the male-dominated legal world in which judges, in particular, were invested in upholding a "version of responsible manhood," but in private his performance of gender was far more complicated.<sup>8</sup> His role as the chronicler of Fairyland was at once a callback to the early nineteenth century when men had a greater role in child-rearing and a challenge to the cool intellectualism of the prevailing judicial philosophy of his time.

In the early nineteenth century, as Robert Ferguson asserts, the "generalist" ruled the legal profession; lawyers understood their careers within a larger context of historical and literary accomplishments. Ferguson sees this age of the generalist as beginning in the colonial period and ending at the Civil War.<sup>9</sup> Such an account, however, fails to consider the rarely noticed but enduring hold that imaginative literature – especially children's literature – has had on the legal profession, even among its most respected jurists. Take, for instance, Supreme Court Justice Felix Frankfurter's advice in 1954 to a ten-year-old boy who wished to prepare for a career in the law:

No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry, seeing great paintings, in the original or in easily available reproductions, and listening to great music. Stock your mind with the deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career.<sup>10</sup>

6. Gillian Brown, *Domestic Individualism: Imagining Self in Nineteenth-Century America* (Berkeley, CA: University of California Press, 1992), p. 7.

7. Margaret Marsh, "Suburban Men and Masculine Domesticity, 1870–1915," in Mark C. Carnes and Clyde Griffen, eds., *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago, IL: University of Chicago Press, 1990), p. 117.

8. Michael Grossberg, "Institutionalizing Masculinity: The Law as a Masculine Profession," in Mark C. Carnes and Clyde Griffen, eds., *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago, IL: University of Chicago Press, 1990), p. 142.

9. Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, MA: Harvard University Press, 1984), p. 287.

10. Felix Frankfurter to M. Paul Claussen, Jr., May 1954, in E. London, ed., *The World of Law II* (New York: Simon and Schuster, 1960), p. 725.

Despite efforts after the Civil War to make legal education scientific, and despite the rise of independent law schools and professional organizations, it would seem that the role of the humanities in the law never actually disappeared.<sup>11</sup> Rather, jurists from Campbell to and Frankfurter used the changing valences of the home as a sphere of private activity to advance ideas about law, culture, and the humanities that were not entirely sanctioned by professional legal practice and its increasingly strict discursive boundaries. Indeed, this strategy continues today, as evidenced by Justice Sonia Sotomayor's two appearances on *Sesame Street* in 2012. On children's television, she could advocate for feminist educational principles in a space outside professionalized legal discourse – urging young girls to pursue careers in law, science, medicine, and other fields rather than dreaming of becoming princesses.<sup>12</sup>

## I. Campbell's Service on the Michigan Bench

James V. Campbell was three years old when his family moved to Detroit in 1826. Campbell's father was active in the real estate business and held several citywide positions, including associate justice of the county court and president of a banking institution. At age 18, Campbell commenced a legal apprenticeship in Detroit with the firm of Douglass and Walker. The apprenticeship continued for three years, concluding with Campbell's admittance to the Michigan State Bar in 1844. For the next decade, Campbell set about practicing law. He also joined several local community organizations and became a civic leader, helping organize the construction of his church and serving on the Board of the Young Men's Association in Detroit.<sup>13</sup> He soon acquired a reputation as an intensely moral individual, which may have contributed to his election in 1857, on the Republican ticket, to the newly reorganized Supreme Court of Michigan. Despite his youth – he was first elected at the age of thirty-four – Campbell enjoyed extraordinary popularity with voters, winning every reelection bid until his death in 1890, for a total of 32 years on the bench.

The published record of Campbell's work is extensive. The 1,812 opinions that he wrote during his long tenure offer a portrait of a judge who studiously applied precedent. Unlike in pre-classical legal thought, where "direct appeals to natural rights, morality, sovereignty, policy, and implied intent" filled judges' opinions, in classical legal thought, "the requirement of objectivity" led judges to rely on the maintenance of a universal, formal judicial method, one in which "the abstract concepts that fitted all legal

11. These efforts included the case book method of legal teaching, which has become the rule in modern law schools. See Christopher Langdell, "Teaching Law as a Science," *American Law Review* XXI (1887), pp. 123–5; William P. LaPiana, *Logic and Experience: The Origin of Modern American Legal Education* (Oxford: Oxford University Press, 1994); Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill, NC: University of North Carolina Press, 1983).

12. "Sonia Sotomayor Pushes Pro-Career, Anti-Princess Agenda on *Sesame Street*," *Gawker*, November 11, 2012. <<http://gawker.com/5959669/sonia-sotomayor-pushes-pro+career-anti+princess-agenda-on-sesame-street>> (Accessed January 31, 2014).

13. James V. Campbell to Cornelia Campbell, June 9, 1851, Box 1, Campbell Papers, Bentley Historical Library, University of Michigan.

relationships together in a pattern also provided the source of all particular legal rules.”<sup>14</sup> Campbell’s judicial opinions show him as fitting – publicly at least – within that tradition.

In his first opinion on record, *People v. Carmichael* (1858), we can see those incipient qualities at work.<sup>15</sup> Although narrated in a conventional formal style, the facts in the case were provocative: Delos Carmichael had been convicted of mingling a poison with raisins and feeding them to Emily Wakefield, a young woman, with the intent of “exciting her sexual desires.”<sup>16</sup> Not only did the seduction fail, but Wakefield was also physically injured by the effects of the poison. The key issue before the court was one of criminal intent. If Carmichael intended to commit another illegal act (the crime of seduction), but caused injury instead, was he still liable for the injury? Or, alternatively, was he protected from liability if he was not aware that the poison would cause severe bodily harm?

Campbell began by identifying the three main questions under contention, and then examining precedent – none of which arose under facts superficially similar to the case at hand, but that instead shared similar general issues of culpability and intent. Notably, Campbell leapt easily across the Atlantic to marshal precedent supporting his contention that intent to commit a larger offense encompassed intent to commit the smaller steps within that plan: “We are not wanting in authority on this point, in cases arising in England under a statute similar to ours.”<sup>17</sup> The use of foreign precedent was a sensitive issue. American jurists had been pitted in a struggle between the populists, who championed common sense over dry recitations of precedent, and the professionals like Campbell, who embraced strict reasoning based on a wide body of precedent and legislation as the only way to achieve a lasting and authoritative administration of justice. Much of the populist ire arose from the fact that this precedent was markedly British; indeed, even James (“Chancellor”) Kent, the author of influential treatises on American law first published in 1826, advocated the abandonment of English precedent “in circumstances in which American conditions rendered it inappropriate.”<sup>18</sup> Although such distinctions did exist – in the laws governing real property use, for example – a convincing case could be made that they were rarely necessary, and criminal intent, according to Campbell, was clearly not one of those instances.<sup>19</sup> Campbell did not arrive at this opinion out of veneration for the Englishness of the opinion, but rather because of “the consequences that would follow from [the rule’s] rejection.”<sup>20</sup> Accordingly, he found that Carmichael’s criminal intent encompassed the consequences of administering the poison, and that no

14. Kennedy, *Classical Legal Thought*, pp. 243, 260.

15. *People v. Carmichael*, 5 Michigan 10 (1858).

16. 5 Michigan at 13–14.

17. 5 Michigan at 15.

18. John H. Langbein, “Chancellor Kent and the History of Legal Literature,” *Columbia Law Review*, XCIII (1993), 568.

19. William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, NC: University of North Carolina Press, 1996), p. 127.

20. 5 Michigan at 16. It is intriguing to compare this with Chancellor Kent, who wrote in 1786 that he preferred the English decisions to the American ones because the former were “pronounced by Judges of vastly higher erudition and skill.” Langbein, 215.

evidence had been given to prove that he was not aware of the poison's effects, thus enabling the presumption of liability that would uphold Carmichael's conviction.

Beyond his precedential reasoning, Campbell also offered an explanation of the historical context of the relevant laws.<sup>21</sup> Speaking of the use of drugs to further the "destruction of female virtue," Campbell interpreted the intent of the legislature in terms of morality: "Hundreds of innocent young women are deceived into entering the dens of iniquity which abound in our cities, under the pretext of honest employment, and awake from their drugged sleep dishonored and ruined. These things were all known when the statute was passed, and known too as the very common effects of these baneful drugs; and they cannot be overlooked in any attempt to construe it."<sup>22</sup> Crucially, Campbell restricted his moralizing to the question of legislative intent – the mentality of the legislators who enacted the statute – and not to the contemporary "common-sense" notion of female virtue, which would have resulted in a much more vituperative (and much less measured) opinion.<sup>23</sup>

In the years that followed *People v. Carmichael*, Campbell handled thousands of cases that helped shape the young state of Michigan. A survey of his opinions – including his many dissents – draws attention to an apparent battle between Campbell and Thomas Cooley, his colleague at the University of Michigan Law School and a prominent jurist who would later serve as the first chairman of the federal Interstate Commerce Commission.<sup>24</sup> Campbell's rivalry with Cooley was exemplified by their differing approaches to the case of *People v. Board of Education of Detroit* (1869), where Cooley's view carried the day.<sup>25</sup> The case involved a man named Joseph Workman, who had unsuccessfully attempted to get his son, a "mulatto of more than one fourth African blood," into a Detroit school attended by white children. When the school board refused,

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21. Campbell had an abiding interest in Michigan's political history, which culminated in his massive, 606-page treatise published in 1876. James V. Campbell, *Outlines of the Political History of Michigan* (Detroit, MI: Schober & Co., 1876).

22. 5 Michigan at 20.

23. Campbell maintained this balance of legal reasoning and conventional morality when addressing seduction in other opinions as well. In *Sheahan v. Barry* (1873), he wrote, "Where popular opinion and legal usage have been so long in harmony, and the heavy verdicts generally given in aggravated cases show the profound conviction which men generally have of the evil deserts of such offenders, we do not feel called upon to search out any new arguments to maintain a doctrine which seems to us as reasonable as it is well settled by practice and decision." 27 Michigan 217, 219 (1873).

24. Today, Cooley has a law school named after him (Thomas M. Cooley Law School of Lansing, Michigan), as well as the Cooley Doctrine, which states that "local government is matter of absolute right; and the state cannot take it away." *People v. Hurlbut*, 24 Michigan 44, 108 (1871), (Cooley, J., concurring). It seems that Cooley's frequent differences in matters of law were mirrored off the bench, as Paul Carrington notes in his biographical study of Cooley: "Apparently for reasons of class difference, Cooley did not enjoy the company of James Valentine Campbell, who was his colleague on the court for 20 years and his colleague on the law faculty for 25 years." Paul D. Carrington, "Law as 'The Common Thoughts of Men': The Law-Teaching and Judging of Thomas McIntyre Cooley," *Stanford Law Review* XLIX, 524.

25. *People v. Board of Education of Detroit*, 18 Michigan 400 (1869).

Workman applied to a court for a writ of mandamus, which would require the school board to admit his child into the school. Cooley, speaking for the majority in granting the writ, found woven into an act of 1867 a legislative imperative that precluded the School Board from making an independent decision. In so doing, Cooley utilized his interpretation of legislation to further the “radical Jacksonian’s principle of Equal Rights that he found embedded in the interstices of the Michigan constitution.”<sup>26</sup>

Campbell took a different approach, even though three years earlier he had written for the majority in rejecting an interpretation of the Constitution that would deny the franchise to those of less than one-quarter African blood, a position that corresponded with prevailing Republican opinion in 1866.<sup>27</sup> Despite his personal views, Campbell articulated a reluctance to involve the court in matters of public policy where the legislative authority to do so was not clear. “The question involved,” he wrote, “is purely one of law, and cannot properly be allowed to become involved in any complications of policy.”<sup>28</sup> Not finding evidence that the law of 1867 was meant to be applicable to city schools, Campbell argued that the intent of the legislature had been to allow the board of education flexibility in determining how to run the schools:

[T]he supposed necessity arose from the state of public sentiment. But whether the policy was, or is, one worthy to be maintained now, is only to be determined by the board, or by the legislature. Public opinion cannot have the force of law, until it is expressed in the forms of law. Courts may or may not appreciate it, but they cannot determine the law by what that opinion is, or by what they suppose it to be.<sup>29</sup>

This insistence on restraining the powers of the court stands out in a century where the enforcement of morality was seen as a “responsibility of government and a quid pro quo of community membership.”<sup>30</sup> If Campbell found overt racial discrimination immoral, as his opinion in *People v. Dean* seemed to imply, then his refusal to join his fellow justices in requiring the writ of mandamus in *People v. Board of Education of Detroit* reflected his strict view of the proper role of the court.<sup>31</sup> Campbell’s public persona as an impartial referee corresponded with the emerging professional norms of the field. In private, however, Campbell revealed an entirely different side of his character.

26. Paul D. Carrington, “Deference to Democracy: Thomas Cooley and His Barnburning Court,” in Paul Finkelman and Martin Hershock, eds., *The History of Michigan Law* (Athens, OH: Ohio University Press, 2006), p. 115. Although Cooley was a Republican, Carrington contends that his jurisprudence on the Court showed a firm commitment to Jacksonian principles.

27. *People v. Dean*, 14 Michigan 406 (1866). See also Paul Finkelman, “The Promise of Equality and the Limits of Law: From the Civil War to World War II,” in Finkelman and Hershock, eds., *The History of Michigan Law*, p. 187.

28. 18 Michigan at 414 (Campbell, J.).

29. 18 Michigan at 419 (Campbell, J.).

30. Novak, *The People’s Welfare*, p. 154.

31. In his opinion in *People v. Dean*, Campbell “noted with regret that color was used for ‘political distinctions,’ despite ‘strong efforts to eradicate them.’” Finkelman, “Promise of Equality,” p. 193.

## II. James Campbell, Children's Writer

A wide body of literature in recent decades has drawn attention to what Mary Kelley has called "literary domestics," or "scribbling women."<sup>32</sup> These were women writers in the nineteenth century who led highly public lives as savvy cultural entrepreneurs, but who were forced to perform domesticity by pretending to eschew the very practice – female participation in the market – that made them rich and famous. Less well understood is the way this dynamic could be exploited in reverse by male professionals like Campbell, allowing them to explore taboo or controversial ideas through domestic literary production while outwardly upholding conservative norms of masculinity in public life. In Campbell's case, this involved a prolific hidden career writing children's books for private readings to his children, grandchildren, and friends. Twenty-six of these books are tucked inside a box in the Bentley Historical Library at the University of Michigan. These handwritten, hand-bound stories and poems were created between 1850 and 1884, spanning virtually the entirety of Campbell's adult life.<sup>33</sup>

Most of the surviving stories are dated around Christmas, and many deal with Christmas themes – particularly during the years when Campbell had young children at home. After 1865, Campbell's focus shifts to general historical tales, often set in Normandy and French Michigan, which engage with Arthurian legends and invoke the Muses. Several of these include the initials "J.V.C." by the date, suggesting that Campbell valued his claim to the authorship of the tales. Regardless of the topic, each tale was hand-bound in quality paper with ribbon or string, and almost all contain illustrations, either as hand-drawn pencil sketches with occasional watercolors, or, later, as brightly colored pictures that appear to be pasted or rubbed on from another source. The manuscripts show varying signs of wear, but overall are in excellent condition, some as crisp and clean as when Campbell first turned the pages for children in his circle.

Since many of these stories are dated around Christmas, Campbell likely created them as gifts – albeit gifts that ended up in his own personal papers, suggesting that they were distributed and returned, or used for private readings at gatherings of friends and family. Indeed, the gift may have been their recitation by Campbell himself, rather than the physical transference from Campbell to a recipient. As the historian Leon Jackson has noted, the exchange of literary gifts in this time "functioned to create and sustain

32. Mary Kelley, *Private Woman, Public Stage: Literary Domesticity in Nineteenth-Century America* (Chapel Hill, NC: University of North Carolina Press, 1984), p. 7. See also Elizabeth Maddock Dillon, *The Gender of Freedom: Fictions of Liberalism and the Literary Public Sphere* (Stanford, CA: Stanford University Press, 2004), Lauren Berlant, *The Female Complaint: The Unfinished Business of Sentimentality in American Culture* (Durham, NC: Duke University Press, 2008), Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America* (New York: A.A. Knopf, 1985), Sylvia Cook, *Working Women, Literary Ladies: The Industrial Revolution and Female Aspiration* (New York: Oxford University Press, 2008), June Howard, *Publishing the Family* (Durham, NC: Duke University Press, 2001), and Linda Kerber, *Toward an Intellectual History of Women: Essays* (Chapel Hill, NC: University of North Carolina Press, 1997).

33. All of these stories are located in Box 5, Folder 8-33, James V. Campbell Papers, Bentley Historical Library, Ann Arbor, Michigan.



powerful social bonds.”<sup>34</sup> During the nineteenth century, “Christmas-season gifts books and literary annuals ... came to displace the year-round friendship album as the literary gift genre of choice;” but for the majority of givers and recipients, these texts were produced by others, not self-authored.<sup>35</sup> The personal authorship of these gifts enabled them to transcend the gift-commodity distinction, even as the apparent lack of object transference complicates the notion of these books as gifts.<sup>36</sup>

The material qualities of these texts – as manuscripts that simulate books – provide an additional layer of complexity. With the exception of one poem for adults, “L’Anse Creuse,” which appeared at the end of another person’s volume of tales, none of these poems were ever published – and yet the care taken with their preparation indicates a seriousness to the project that goes beyond scribbling in a notepad or making up bedtime stories on the fly. As historians Ronald and Mary Zboray explain, scribal culture “evoked the elective mode of ‘publishing’ – that is, works circulated but not printed – called ‘social authorship.’”<sup>37</sup> Such socially-authored works may have been distributed by hand to friends or passed around at clubs or coffeehouses. Of Campbell’s tales, only one, the two-part “A Legend of King Arthur” and “Jack’s Voyage to the West,” included a specific named recipient, as the volume ends with the note “Written for Sam. Barstow Dec. 1857.”<sup>38</sup> Other stories were likely intended for Campbell’s own children, judging from the frequent references to “Nelly” (his eldest living daughter’s nickname) and her siblings. Some of the stories may have been intended for adults as well, and the covers of these texts (particularly those from the period 1867–1869) are significantly more worn than the others in the collection, perhaps indicating wider circulation among his friends and family. This would correspond with the observation of his biographer, who noted: “From an early period, he had great facility in writing for his friends pleasant verses. He kept this up all his life, and Christmas days and some other anniversaries were made interesting for his children, grand-children and other intimate friends, by his poetical compositions.”<sup>39</sup>

34. Leon Jackson, *The Business of Letters: Authorial Economies in Antebellum America* (Stanford, CA: Stanford University Press, 2008), p. 2.

35. Jackson, *Business of Letters*, p. 141. Quality, vivid illustrations were often a key selling point for these gift books, particularly for those targeted to a young readership. Ronald J. Zboray and Mary Saracino Zboray, *Literary Dollars and Social Sense: A People’s History of the Mass Market Book* (New York: Routledge, 2005), p. 66.

36. See James Carrier, “Gifts in a World of Commodities: The Ideology of the Perfect Gift in American Society,” *Social Analysis* (Dec. 1990), p. 19.

37. Zboray and Zboray, *Literary Dollars and Social Sense*, p. xv.

38. James Campbell, “A Legend of King Arthur/Jack’s Voyage to the West,” 1857, Box 5, Folder 11, Campbell Papers, Bentley Historical Library. The elder Samuel Barstow, a friend of Campbell’s in Detroit, died suddenly in 1854; the story may have been written for his only son, who would have been about five years old at the time. Henry Neill and Samuel Barstow, *A Memorial of Samuel Barstow* (Detroit, MI: E.A. Wales, 1854), pp. 17–20.

39. Kent, “Campbell,” 165. Many of Campbell’s children’s stories seem to be designed for bedtime. “Jimmy’s Ride” (1860), for example, begins “To your bed!” If such was true for “A Trip to Fairy-Land” (1858), which ends with the main character, a little girl, going back to bed after her adventures with the fairies, Campbell’s stories would pre-date the first published American bedtime stories for children by eight years. Zboray and Zboray, *Literary Dollars and Social Sense*, pp. 282–3, n.48.

For the most part, Campbell's tales chronicle the adventures of an evolving cast of children who share the world with Santa Claus, fairies, and other fantastic creatures. In writing the stories, Campbell seems to assume what Gillian Brown terms "domestic individualism" – "a self-definition secured in and nearly synonymous with domesticity," locating the individual in their removal from the marketplace – but unlike many of the cases in which Brown explores this phenomenon, it is one that accompanies but does not dominate Campbell's life and work.<sup>40</sup> In an era that is often thought of as one of "separate spheres," Campbell seems to have walked between them, and in many ways shielded his fantastical private work with his public eminence. The choice to refrain from publishing and profiting from his stories was not a result of financial security. Indeed, Campbell's public role as a jurist precluded him from accumulating a fortune in private practice or participating in the market in other ways, leading to a life of "constant economy."<sup>41</sup> His decision to devote such time and attention to a non-pecuniary avocation reflected the important intellectual and social role these stories played in his life.

When we consider Campbell's juridical role in tandem with the choice to compose these private children's stories, Campbell can be seen as a complex example of the fraught relationship in this period between law and the creative mind. As Susanna Blumenthal has noted, "the creative power of the judge was not only acknowledged but celebrated" in this era where a formalist jurisprudential perspective ostensibly saw the role of the judge as "the mechanical application of abstract doctrines to the case at bar, without consideration of the social interests involved."<sup>42</sup> Although Blumenthal explores this "romantic judicial ideal" primarily in the context of creativity within the court opinion itself, when we look at Campbell's children's stories, we can see an alternative form of lawmaking, a creation of parables in which the performance of justice takes on a more radical, interventionist cast than in his public work.<sup>43</sup>

At times, the stories reinforce the beliefs that Campbell articulated in his court opinions, while at others (or occasionally simultaneously) they add a richer, more contradictory portrait than the clear-cut principles that Campbell presented to the general public. In one untitled story dated Christmas 1862, Rosycheek (likely a pseudonym for Cornelia Lois Campbell) and her brothers visit the fairy kingdom of King Minimus and Queen Gentillessa.<sup>44</sup> While there, Rosycheek's brother Joe arbitrates a strange controversy over the fairy men

40. Brown, *Domestic Individualism*, p. 3.

41. As Kent notes: "Judge Campbell's early elevation to the Supreme Bench and his continuance there, almost without effort during the remainder of his life, was a great honor, but it took away all chance of his accumulating a fortune, or even of acquiring a modest competence, and led to a life of constant economy." Kent, "Campbell," 165.

42. Susanna L. Blumenthal, "Law and the Creative Mind," *Chicago-Kent Law Review* 74 (1998), 153–5.

43. Blumenthal, "Creative Mind," 154.

44. James Campbell, "Untitled Christmas Story, 1862," Box 5, Folder 15, Campbell Papers, Bentley Historical Library. In a move repeated several times through this body of work, Queen Gentillessa remembers how Rosycheek saved her from drowning in an inkstand – an event detailed in the untitled story of 1860. Gentillessa's personal relationships, such as Santa Claus being her grandfather, also originate in the story of 1860, with the exception of her marriage to Minimus. See James Campbell, "Untitled Story, 1860," Box 5, Folder 13, Campbell Papers, Bentley Historical Library.

who tend the peach orchard where fairies of all genders get the fuzz to make their clothes. The workers – “a crowd of bearded fellows, looking like the robbers in Rosycheek’s story books” – had demanded to be paid to get drunk six months out of the year, and then receive additional payment for any but the poorest peaches. For years, King Minimus (his self-negating name meaning “King Smallest” in Latin) had continually given in rather than confronting the workers, even though Queen Gentillezza had advised him otherwise (and even beats one of the workers with her riding whip during the course of this tale). Seeking a solution to the impasse, Joe declares: “I’ll give them King Minimus’s rule read backwards.” He proceeds to tie the workers up in a bunch and lash them with Queen Gentillezza’s whip until they agree to stop demanding increased compensation for their labor.

The young Joe’s violence offers an extralegal recourse Campbell believed himself unable to access as judge, his power checked by the burdens of historical precedent, professional norms, and his own judicial philosophy. Observing Joe’s work, Santa Claus tells Minimus: “I saw him laying down the law very nicely. He is, I perceive, a safe counsellor, and you will do well to follow his advice.” On the one hand, this might be seen as an ironic turn on Campbell’s dictum in his 1859 speech, “On the Study of the Law,” that the principles of legal reasoning are best inculcated in a young mind.<sup>45</sup> On a deeper level, however, this fictional and private literary production may have allowed Campbell to freely imagine a brand of problem solving that was impossible in the precedent-constrained world of the Michigan Supreme Court. There, he felt himself bound to respect and embrace the law, however poorly it might correspond with an ideal justice; here, he is free to have young Joe offer the kind of direct, if thuggish, arbitration of a contract dispute that he could only dream of elsewhere.

Beyond Joe’s forcible response to the strike, Campbell’s stories valorized other and more complicated forms of power as well. As illustrated by his 1856 story, “Honeylip,” Campbell celebrates charm and conversation as more potent sources of power than physical strength. The story, dated when his daughter Cornelia was four years old and his son Henry was still a toddler, begins with an elaborate pencil drawing of a woman lying on a gondola with a female attendant shading her from the sun, and below it the title, “Honeylip,” in a fanciful script. The story then commences with a twist on the traditional fairy-tale format:

Long long ago there was a good little Fairy, who liked nothing better than to do all the kind acts in her power to men women and children, or animals, and who spent most of her time in planning some pleasure for them. And as my dear little children may wish to know who this nice fairy was, I will tell you all about her. Her name was Honeylip, and she was called so because she never had a bad word for anyone, but was good and gentle always. She was a merry little creature, and not much bigger than one of Nelly’s dolls. But she could do a great deal, for all that, and there was not a giant in the country who would not jump to her will.

In this opening, the character of Honeylip becomes radically complicated in a brief amount of space. Based on the illustration, Honeylip would seem to be indolent and wealthy, dependent on helpers (although we later learn that her favorite pastime is

45. Campbell, “On the Study of the Law,” October 3, 1859, Box 5, Folder 1, Page 8, Campbell Papers, Bentley Historical Library.

sailing, and that she can do so without any assistance from others). Once the tale begins in earnest, Honeylip morphs from served to servant, motivated to assist others – human and animal alike – rather than herself. At this point, Honeylip still conforms to the traditional constraints for women in this period, where female power was expected to be confined to the home.<sup>46</sup> Campbell inverts this construction of femininity, however, when he observes that neither her sweet demeanor nor her lack of physical strength prevents her from imposing her will on even the most stereotypically powerful beings in the country. Kindness to others, in this formulation, is a source of strength and power that ultimately conquers brute force, as embodied in this story by Scurvytongue, a “cross old Manitou.”

The story is set on an island that Honeylip creates out of the bodies of her enemies. Angered by the songs of frogs who are celebrating the presence of Honeylip, Scurvytongue vows to do mischief against her. The leader of the frogs, Cronkatunk, warns Honeylip that Scurvytongue and various animals were plotting against her. She replies: “Ah well! . . . the world is wide enough for us both, and I will keep out of his way.” When the animals attack her, her own animal friends begin to devour them in revenge, but Honeylip takes pity and turns them into sticks that drift down the River Rouge. The pigeon (“who was of a romantic turn”) suggests making an island to live on out of the sticks so “we can live there without being troubled by our bad neighbors.” Enthusiastically agreeing to this suggestion, Honeylip coordinates the labor and advice of the friendly animals – coordinating rather than dictating – to create an ideal habitat out of the bodies of the animals that had tried to harm her. When Scurvytongue shows up in person, she stops the animals from hurting him, and instead exiles him to another island populated by hogs. His ultimate punishment is thus isolation: “the hogs thought him so mean they would have nothing to say to him, and he had to live all alone.”

This emphasis on community and female power rather than masculine dominance is a running theme throughout the stories. Like Queen Gentillessa, who stands up to the peach orchard workers while her husband the king runs back home and hides in a closet, Honeylip constitutes a celebration of female strength. Honeylip’s power is not immediately apparent when the arrival of French ships force her to abandon the island, however. Apparently defeated by the brute force of colonization, Honeylip laments that the island, now named Grosse Ile, will become “a fashionable place” filled with “silks and lace” instead of flowers and fairies. When they hear the news, however, the fairies who populate the island refuse to leave, and through Honeylip’s magic they are turned into whitefish, allowing the children listening to Campbell’s tale (and indeed his mode of address changes to directly speak to his audience as “you”) to reimagine the act of eating fish as an enduring fusion of fairy, animal, and human:

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46. As Mary Kelley notes of writers of this period, “The circle of domestic concerns was a closed, absorbing, and consuming one for these women, and although their literary careers obviously extended the boundaries of their lives, the focus of their beings revolved around and fastened them to a common and conventional ground.” Kelley, *Private Woman, Public Stage*, p. 221. The home was not always seen as a space of private activity. For the eighteenth century “household economy,” see Laurel Thatcher Ulrich, *A Midwife’s Tale: The Life of Martha Ballard, Based on Her Diary, 1785–1912* (New York: A.A. Knopf, 1990).

And to this day they come around every year with the frost, and crowd so about the island that they are caught by hundreds in seines, and people eat them and are astonished. For as soon as a morsel broiled on coals of Grosse Ile hickory is laid upon the tongue, a slight thrill passes up the temples, and rings in the ears, and makes the eyelids tremble, and tickles the throat, and warms the lungs, and makes the heart jump. And you may be sure then that it is a fairy you have been eating, and when you go to sleep you will dream of walking in green groves, at the bottom of a lake, and picking up beautiful flowers and shells, and riding in pearl canoes through lovely groves. But you will not dream of eating.

In this way, Honeylip helps the fairies confound the European settlers who take their land and devour their bodies, invading the children's dream worlds with a vision of what was lost. The story ends with several ways to use the magic of the fairies, either to get someone to agree to a favor ("first let him eat whitefish, and the good-natured fairies will keep him from saying anything but yes") or to see Honeylip in the form of a red-crested dove. The story thus acts both as a memorial to a lost past and an instruction booklet for resolving disputes through the exchange of gifts, albeit an exchange disguised as fairy magic. At the same time, the story offers the unsettling lesson that pleasure – in this case the enjoyment derived from eating – can be linked to another creature's destruction, a cycle of violence that the fairies, in whose visions "you will not dream of eating," had carefully eschewed.

This call for empathy becomes a pointed critique of classical legal thought in Campbell's untitled 1857 Christmas story.<sup>47</sup> In a move consistent with Campbell's insistence on a Michigan setting for his tales, Santa Claus lives under a hill in the woods beyond Saginaw Bay. The tale begins with another strong woman, Santa Claus's wife Katrina, ordering "Claus" to wake up and get to work, as there is only a month left until Christmas. Assisted by "dwarf" toymakers, including his chief helper Pumpernickel, Santa Claus goes about distributing toys to the children in Detroit, then travels east to New York State to give presents to the "Dutch children."<sup>48</sup> On the way, Santa Claus encounters a "Connecticut deacon" who serves as the embodiment of the unthinking insistence on enforcing the letter of the law regardless of the practical outcome. Soon after Santa Claus "got over the border" from New York into Connecticut,

he was hailed by a Connecticut deacon to know what he meant by coming down honest folks' chimneys at that time of night. Santa Claus explained that he was come to give Christmas presents to the children, but the deacon said he guessed that was 'agin the statuts,' and jumped out of bed to seize him. So up the chimney flew Santa Claus again, and the deacon chased him to the fireplace and looked up after him, but got a shower of soot in his eyes for his pains. And when he found the children's stockings full of all sorts of good things in the morning, and a new jackknife in his own, he put the knife in his pocket, and scolded about such superstitions all day,

47. Campbell, "Untitled Christmas story, 1857," Box 5, Folder 12, Campbell Papers, Bentley Historical Library.

48. In a nod to German immigration to Michigan, Pumpernickel mentions that he used to live in the Harz in northern Germany: "[pine trees] grow on the Hartz mountains, where I used to live." This is yet another example of Campbell's proclivity to merge cultural traditions within the Michigan landscape while maintaining reference to their origins.

and became so sour that all the cider he drank was worse than vinegar and he was sick for a week, and on New Year's day his life was despaired of. But Santa Claus, when he got out of the chimney was careful to get back into New York again.

Santa Claus, like an attorney, is clearly aware that when in Connecticut he is subject to Connecticut statutory law – in this case, the laws invoked by the deacon, which prohibit trespassing in a domicile. Clearly these laws do exist, and are intended to protect homes from harmful intruders, but have no application to a fantastical being like Santa Claus whose only form of harm is sprinkling “grumblejuice” on the toys of naughty children so they will not enjoy their presents. Having no technical recourse to the charge, Santa Claus can merely flee to a territory where Connecticut statutes no longer apply; but instead of punishing the deacon for his aggressiveness by withholding gifts, he gives the deacon a new jackknife, thereby leading the deacon to poison himself through his pernicious attitude. The breathless, run-on sentence in which Campbell piles self-inflicted pain on the deacon, ending with his very life in peril, suggests a sort of joy in the statutorily-minded deacon's comeuppance – a striking position given the fact that Campbell's day job was to enforce exactly this sort of technical distinction.

Campbell addressed his public role as jurist even more directly in a piece called “Good Old Days,” dated Christmas 1867. In this long poem, whose cover shows unusual signs of wear, Campbell intersperses images of territorial Michigan with references to judicial affairs past and present. Together these recollections offer a picture of a territorial court free of the constraints placed upon it by the political disputes dominating Campbell's contemporary Michigan, where the judicial and legislative bodies were constantly at odds:

For, happier than the ermined Bench,  
Whose will the statutes oft retrench,  
The sages of this empire new  
Were judges and law-framers too.  
And when, perchance, a knotty case  
Brought gloom upon a Counsel's face,  
Their Honors, ready to discern  
Such tangles, might at once adjourn,  
And in a trice renew their sitting  
With a fresh law precisely fitting:  
Or, if the first attempt fell short  
A new adjournment of the Court  
Resolved the doubt, or patched the flaw,  
And hit the sinner in the raw.<sup>49</sup>

The poem places the Michigan of “Good Old Days” in the territorial period. As Campbell noted in his speech at the opening of the University of Michigan Law School, “On the Study of the Law,” the governor and judges of the territory had constituted a legislative

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49. James Campbell, “Good Old Days,” 1867, Box 5, Folder 23, Campbell Papers, Bentley Historical Library.

board as well.<sup>50</sup> Still, the cheerful envisioning of a court able to intervene in legislation stands in curious contrast to the firm rejections of judicial activism reflected both in the content of Campbell's opinions and in the advice he gave to students. By one reading, this passage suggests that Campbell, an intensely principled individual by all accounts, may have felt trapped in his own judicial philosophy, which prevented him from interfering in instances where he saw legislation or precedent as preventing a moral result. If this poem was in fact distributed among friends, it stands as a rare expression of doubt about the virtues of judicial restraint, couched among warm recollections of the past but bearing strong contemporary significance to his profession.<sup>51</sup>

Few of Campbell's stories deal as directly with the law as the above example, but many include subtle references to the constraints of his work as a jurist, and particularly the role of historical precedent as an ongoing, even haunting presence. Just as his conception of law was self-effacing, requiring him to defer his personal convictions to the wisdom of ages past (or the statutory pronouncements of the legislature), so too did his tales bear uneasy layers of recollection, both internally (with references to stories written years before) and externally, with their locations in the same Michigan spaces where both writer and audience lived. As noted earlier, the only one of Campbell's poems to be printed was "A Legend of L'Anse Creuse," written at Christmas 1866. The manuscript copy in the Bentley Library closely corresponds with Campbell's other poems in its bindings and illustrations, although it is unusual in that it appears in the same year as another, untitled Christmas poem, a short one about how children who are "contented in mind" receive presents from Santa Claus.<sup>52</sup>

"A Legend of L'Anse Creuse" tells the tale of the competition for the hand of Lady Claire of L'Anse Creuse, a small town in French Michigan.<sup>53</sup> Briefly, Claire's father decrees that the person who wins a horse race across the frozen bay may marry his daughter. Borrowing a horse from a local Native American tribe, Beauclerc, the young man Claire loves, wins the race and the right to marry Claire. Given its anchoring in both French history and in an actual place, it is perhaps unsurprising that Campbell would have selected this story years later, when assisting Marie Caroline Watson Hamlin with her collection of French stories entitled *Legends of Le Détroit*. The volume contained thirty-one stories in chronological order, dating from 1669 to 1815. At the end, not listed in the table of contents, is "A Legend of L'Anse Creuse," printed with the

50. James Campbell, "On the Study of the Law," October 3, 1859, Box 5, Folder 1, Page 4, Campbell Papers, Bentley Historical Library.

51. In another piece of evidence that the poem was intended for a legal audience, Campbell criticizes the mass granting of corporate charters, which was becoming quite prevalent in Michigan at the time, often with complex legal consequences: "Youngster and greybeard, plain and pretty, / Would not have filled a corporate city; / Though city charters flutter down / On every puny strutting town / Like toddling child in granny's gown." Campbell, "Good Old Days."

52. James Campbell, "Untitled Christmas poem, 1866," Box 5, Folder 22, Campbell Papers, Bentley Historical Library.

53. There is no town called L'Anse Creuse in Michigan today, but there is a L'Anse Creuse Bay on the western edge of Lake St. Clair in Macomb County, Michigan, suggesting that the story may take place near the present-day Harrison Township.

following note: "I am indebted to the courtesy of Hon. James V. Campbell for the use of this charming poem, also for much historical information and flattering interest and encouragement."<sup>54</sup>

We might say that the Campbell of Hamlin's acknowledgment was a more complex figure than his public persona as an eminent jurist would suggest. Campbell's views on judicial activism, for example, are expressed in his court opinions, which reveal a harsh adherence to the letter of the law despite the potential injustice of the practical result. At the same time, his stories reveal a profound discomfort with the real-life consequences of that restraint, marking him as a little-known connecting thread between the generalists of the Early Republic and the pragmatists of the twentieth century.<sup>55</sup> These two strands of Campbell's career – one public, one private – came together in Campbell's educational philosophy, particularly his strongly-held belief in the importance of the liberal arts to the incipient lawyer. As one of the founding figures of the University of Michigan Law School, Campbell outwardly performed the roles of jurist and educator while maintaining a vibrant and largely secret creative life throughout.

### III. Legal Education Reconsidered

Five years before his elevation to the bench, in 1852, Campbell and forty-one others had signed a petition to the Board of Regents of the still-young University of Michigan. Although at its inception, the University had three authorized departments – Literature, Medicine, and Law – only the first two had been established. Campbell and the other signers exhorted the Regents to, if not create a Law School outright, at least establish some professorships in the law to prepare undergraduates for their responsibilities as citizens.<sup>56</sup> The petition was a success, and in 1859, Campbell became one of four professors of the newly-created Law Department. At the time, legal education was only beginning to shift away from the apprenticeship model – in which Campbell himself learned the

54. Marie Caroline Watson Hamlin, *Legends of Le Détroit* (Detroit, MI: Thorndike Nourse, 1884), p. 243.

55. Legal pragmatism is a philosophical approach to the law characterized by four elements: the emphasis on the context of any given decision as influencing the outcome rather than an imagined reliance on pure black-letter law; the replacement of overarching foundational principles with inductive legal reasoning; a forward-looking emphasis on the results of a decision rather than its precedents; and an openness to revision if one's perspective is altered or challenged. See Richard A. Posner, *Law, Pragmatism, and Democracy* (Cambridge, MA: Harvard University Press, 2003); Thomas C. Grey, "Holmes and Legal Pragmatism," *Stanford Law Review* (Feb. 1997), 495–546; and Dennis M. Patterson, "Law's Pragmatism: Law as Practice & Narrative," *Virginia Law Review* (Aug. 1990), 937–96.

56. Elizabeth Gaspar Brown, *Legal Education at Michigan, 1859–1959* (Ann Arbor, MI: University of Michigan Law School, 1959), pp. 395–8. Aspects of the petition bear a striking resemblance to Campbell's speech, "On the Study of the Law," at the opening of the University of Michigan Law School. Campbell, "On the Study of the Law," October 3, 1859, Box 5, Folder 1, Campbell Papers, Bentley Historical Library.



law – to modern legal education, which gives professional law schools a virtual monopoly on the training of lawyers.<sup>57</sup>

Many elements of the apprenticeship model remained in place during Campbell's youth. Although Campbell had acquired a university education of sorts, he embarked on the study of law through an apprenticeship in Detroit in the office of Douglass & Walker, two prominent Democratic lawyers who were also known as the producers of a series of chancery reports.<sup>58</sup> After three years of study, Campbell was admitted to the Michigan bar. This corresponded to the typical pattern during Michigan's territorial days, which was codified after the state's admission to the Union in 1837.<sup>59</sup>

On October 3, 1859, Judge Campbell stood in the Presbyterian Church of Ann Arbor and delivered an address, "On the Study of the Law," to the first incoming class of the Law Department.<sup>60</sup> In this address, Campbell sought to connect the relevance of legal learning to the practice of citizenship for lawyers and non-lawyers alike. Campbell presented the educational process as one that should not be approached aimlessly, but rather with a view towards the "practical results that will flow from it" (8). Campbell portrayed the task of the student as simultaneously an intellectual introduction to the law and a preparation for a practical apprenticeship. Casting law school as a continuation of a broad liberal education that began with childhood, he argued:

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57. As of 2014, only four states – California, Vermont, Virginia, and Washington – allow prospective applicants to the bar to engage in intensive study under the supervision of a judge or attorney in lieu of attending law school. Two others allow the replacement of a portion of law school with an apprenticeship. For every other state, prospective lawyers must graduate from law school in order to be eligible to take the bar exam in that jurisdiction. National Conference of Bar Examiners and American Bar Association, "Comprehensive Guide to Bar Admission Requirements 2014" < [http://www.ncbex.org/assets/media\\_files/Comp-Guide/CompGuide.pdf](http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf) > (Accessed January 31, 2014).
58. The school Campbell attended in his teenage years, originally known as St. Paul's College, suffered in the financial collapse of 1837 and ultimately failed to get a charter from the state legislature, leading to its closing in 1845. Kent, "James Valentine Campbell," 162; William Wilberforce Newton, *American Religious Leaders: Dr. Muhlenberg* (Cambridge, MA: Riverside Press, 1890), pp. 24–7. Later in his life, Campbell contributed a set of annotations to *Walker's Chancery Reports*, as they were then known. Henry N. Walker, *Reports of cases argued and determined in the Court of Chancery of the State of Michigan 1842–1845: with preface and annotations by Hon. James V. Campbell* (Detroit, MI: Richmond, Backus & Co., 1878).
59. After three to four years of study under an established attorney who vouched for the applicant's character and preparation, the prospective lawyer would be examined by territorial judges, who would determine the applicant's suitability for practice. This remained an acceptable method for bar admission in Michigan until the legislature prohibited it in 1949. Byron D. Cooper, "Legal Education in Michigan," in Finkelman and Hershock, eds., *The History of Michigan Law*, p. 256.
60. Campbell, "On the Study of the Law," October 3, 1859, Box 5, Folder 1, Campbell Papers, Bentley Historical Library. See also Henry Wade Rogers, "Law School of the University of Michigan," *Green Bag* I (1889), 192.

Habits of mind must be formed; and they can only be formed by some regular and continued training. And it must either be the generous and easy training of early life, when the faculties are pliant, and the mind, free from care, is able to act without bias or obstacle; or it must be the rugged and dangerous training of professional labor. (13–14)

By this formulation, we can perhaps read his children's stories as a form of "generous and easy training" – although this simple reading is complicated by the vast substantive differences between the fairytales and advanced professional training.

Throughout the address, Campbell sought to justify the involvement of the State in legal education, particularly as regards the common law: "Our legal duties and privileges, an assurance of which should form a part of our very being, always suggesting the rule whenever the rule applies, are not learned at all – much less indelibly written in our hearts" (33). In a move correspondent with his ruling in *Atkinson v. Detroit Free Press* (1881), Campbell rejected the conflation of law and policy, observing that one cannot rely upon the "enlightened wisdom of a Mansfield" to ameliorate the substitution of judicial for legislative judgment, which, he asserted, is "just as much an act of tyranny as if an executive officer should nullify the statutes" (32).<sup>61</sup> Anticipating Christopher Langdell's case study method, which would dominate legal education in the twentieth century, Campbell asserted that law was a science, one "dependent on general principles" and necessitating the understanding both of its internal workings and its relationship to other aspects of a broad liberal education.<sup>62</sup> To Campbell, understanding the science of law was not a matter of rote memorization, but rather being able to "recognize its living and eternal principles" and "apply them to the exigencies of human life."<sup>63</sup> Without a broad education in the humanities, new lawyers were no different than the Connecticut deacon in the Christmas story Campbell had drafted less than two years earlier, unable to see past the letter of the law: "[The] study of Law is not the study of law books alone. And when we compare the dry-brained sages who have decried all other knowledge with those who have added elegant attainment to legal lore,

61. *Atkinson v. Detroit Free Press*, 46 Michigan 341, 9 N.W. 501 (1881). The reference here is to William Murray (also known as Lord Mansfield), who reformed English law and was responsible for the decision in *Somerset's Case* outlawing slavery in England. Mansfield's "judicial activism" was influential on Jeremy Bentham, who derived the lesson from it that "judge-made law was inherently founded on a myth of consent and interpretation." Daniel R. Coquillette, *The Anglo-American Legal Heritage* (Durham, NC: Carolina Academic Press, 1999), p. 500.

62. Langdell began using his case study method at Harvard in 1870. Thomas C. Grey, "Langdell's Orthodoxy," *University of Pittsburgh Law Review* 45(1) (1983).

63. Remarkably, Campbell went on to assert the primacy of actual cases in learning the law, which could be seen as a direct anticipation of Langdell's case study method of legal education, twelve years before Langdell created his first casebook: "we should regard no labor as too irksome, and no training too severe, in the preparation for this study. I say in the preparation for this study, for the true study begins when actual, and not imaginary, cases call for the application of legal rules; and it may be profitably pursued throughout a lifetime." Campbell, "On the Study of the Law," October 3, 1859, Box 5, Folder 1, Page 35, Campbell Papers, Bentley Historical Library.

their fame sinks into nothingness" (42). Campbell instead encouraged his students to emulate "a host of other worthies" who "have reaped laurels as poets, historians, philosophers, and statesmen" as well as for their legal knowledge. Only by becoming lawyers "of liberal minds and broad views," he concluded, could those students preserve the liberties of a nation (43).

Seven years later, addressing yet another class of graduating law students, Campbell continued to offer a utilitarian view of legal education that, in the light of his private body of work, reveals an internal conflict in Campbell's worldview. Campbell began his address, "Law and Lawyers in Society," by offering the standard to which he measures all accomplishments: "[let us] judge them by the only test that is safe, their practical utility in the business of life. This business I understand to be, so living as to do our part in maintaining the best interests of society, as well as those of our immediate personal sphere, and in striving that no fault of ours shall cause any good course to be obstructed."<sup>64</sup> By this strict standard, mere playtime or enjoyment has no intrinsic worth, only being valuable so far as it instructs one to do better in the world: "while personal pleasure and profit may very well be enjoyed, and may be necessary inducements to diligence, yet no amount of learning is of any great worth, if it cannot be made a means to further a valuable purpose" (4). This would seem to say that his vast body of children's stories has no purpose except to instruct, or to serve as a reward for good behavior in children. Aside from the obvious care taken in every point of their creation, from drafting to binding and illustrating, the stories themselves, with their playful wanderings around magical Michigan settings, seem to contradict this inference.

So too in the speech, Campbell insisted: "Law is the only universal bond which protects and strengthens the minor bands of union among men" (4). Farmers, mechanics, men of science, and all other professions, he argued, were dependent on one another. In contrast to the actions of his "safe counsellor" Joe in the untitled 1862 Christmas story, who solved the dispute between the peach orchard workers and King Minimus with violence, Campbell instructed the young lawyers in the audience to restrain their emotions: "It is the duty of the Bar to stand in the gap, and restrain contending passions by cool and sober reason" (10). The difference between what Campbell showed his children and young acquaintances through his stories and what he inculcated in the law students at this occasion may derive from Campbell's apparent hope to create a new generation liberated from the "habit or prejudice" that he portrays as "warp[ing]" otherwise intelligent minds such that they cannot understand "matters of human policy" (9).

By creating an empathic, sentimental world within his stories, Campbell sought to perfect humanity itself, such that his own profession would become obsolete; as he hints, "Human laws can never be enforced on perfect principles, until men outgrow, in their perfection, the necessity of any human laws at all" (17). Until that day, however, Campbell understood the law as being more than "black-letter" teachings, but rather something made up of the vast complexity of interactions that form law into its own sort of living being: "The law, as you have seen, has only its skeleton in law-books. Its body

64. James Campbell, *Law and Lawyers in Society: An Address Delivered before the Graduating Class of the Law Department of the University of Michigan, March 28, 1866* (Detroit, MI: F.A. Schober, 1866), p. 3.

is built up by feeding on human converse, and all profound and elegant learning, and all true philosophy, and all divine morality. While your time should not be spared from immediately legal studies, you can never grow to greatness unless you also find leisure for other acquirements and accomplishments. Nothing is out of place in a lawyer, which can strengthen or embellish the character of a man" (19–20). By this logic, authoring children's stories is a necessary part of what makes Campbell a good lawyer – whether offering an outlet for wishful thinking on what the law could be, allowing the whimsical creation of fantastical worlds where new laws can be tested, or simply by remembering that there is more to life than statutes and case-law.

In other writings and addresses on legal education, Campbell embraced a sense of the law as the collective decisions of people through time, always involved deeply with lived experience. This seems to have made a tangible impact on his students, and made him stand out from the other three professors teaching at the Law Department. Years later, a scholar surveying extant notebooks of law students would note: "There seems to have been great student concern for the rules as stated by the professors and little evidence of recording the rationale behind such principles. In a few notebooks of this period, there is some concern with the reasoning behind the problems. This, when found, was generally in the lectures delivered by Campbell."<sup>65</sup> Campbell's approach – unlike that of his colleagues — would thus seem to anticipate the current emphasis in legal education on understanding the underlying principles of the law, leaving the rote memorization of black-letter law for a post-law school bar exam review.

Shortly after Christmas, on December 30, 1873, Campbell spoke before the Michigan State Teachers' Association in Ann Arbor. Although he presented himself as someone "who is not directly engaged in the same work" – at least, not publicly – the address nonetheless offers an opportunity to gauge the pedagogical reasoning behind his fairy stories. As Campbell notes, learning happens in a multitudes of ways beyond the overwhelming "elaboration of system" found in the classroom: "There is no moment of activity in which the youngest child is not learning something; and if he does not improve in general intelligence more rapidly than in acquired book knowledge, there can be no healthy development of character or understanding."<sup>66</sup> This understanding, although it can be developed through childish words and images, should not be restricted to tame, easily solved conundrums: "there are ways of putting the abstrusest problems (which it is ever wise to put before children) so they can get at least a glimmering of their meaning" (3). In so doing, Campbell implored, adults can and should break down the divisions that separate adults and children, thereby allowing the two groups to relate as one: "The young are generous; and when they find a preceptor ready to meet them on their own ground, and to answer their questions, and to hear them express their ideas in their own way, they receive their elder

65. Brown, *Legal Education at Michigan*, p. 535. See also pp. 480–91 for a list of lectures given during Campbell's tenure.

66. James Campbell, *Address Delivered before the State Teachers' Association at Ann Arbor, December 30, 1873* (Ann Arbor, MI: n.p., 1873), pp. 1–2.

at once into fraternity, and no longer regard him as their natural enemy, in or out of the school room.”<sup>67</sup>

In this vision, Campbell asserts that not only are adults and children together engaged in the formation of community, thereby placing the children in a position to develop their mental capacities, but that the adults also benefit from the challenge of making their ideas intelligible to children:

Systematic treatment is necessary to make any subject intelligible, but in all sketches of human interest there is room for a multitude of gentle touches and careful shading, that bring out little by little the fair proportions and expressive beauty of life. The wisest master in any art or calling can never, with all his thought and skill, express himself so fully and completely on any subject, that conversation with his equals, or his inferiors in ability will not enable him to amplify and improve his thoughts and utterances. No mind can do its best work alone. (2)

In this light, Campbell’s children’s stories can be seen as a way to work out the problems of law, governance, and fairness that Campbell struggled with on the bench. The stories may feature fairies, Arthurian knights, and Santa Claus, but they engage with problems that the contemporary lawyer and jurist addressed every day. How can one manage a society in such a way as to maximize fairness? How can compassion be used to further justice – and at what point must compassion give way to force? Although Campbell’s domestic production of children’s stories may have seemed a world away from his court opinions and public lectures, attention to the substance of the stories, reinforced by Campbell’s own public pronouncements on education, show that Campbell himself saw the two projects as fundamentally united, the spheres of public and private overlapping in the creation of fairy stories with a purpose.

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67. James Campbell, *Address Delivered before the State Teachers’ Association at Ann Arbor, December 30, 1873* (Ann Arbor, MI: n.p., 1873), p. 6. Notably, Campbell viewed engagement with young people as a way to ameliorate what he believed to be the breakup of the “republic of letters” among adults. As he explained: “The republic of letters has been dissolved into petty communities, and the old brotherhoods have disappeared. Here and there, indeed, are circles where all can come together; but the tendency is to separate.” James Campbell, *Law and Lawyers in Society: An Address Delivered before the Graduating Class of the Law Department of the University of Michigan, March 28, 1866* (Detroit, MI: F.A. Schober, 1866), p. 7.