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## Essay

# Beyond the Waste Land: Law Practice in the 1990s\*

by

DAVID SCHUMAN\*\*

It cannot be happenstance that so many of our literary icons gravitate toward climactic trial scenes. The testing of Antonio's bond with Shylock,<sup>1</sup> the parricide prosecution of Dmitri Karamazov,<sup>2</sup> Captain Vere's encounter with the radical innocence and formal guilt of Billy Budd<sup>3</sup>—these scenes from our culture's most venerated narratives demonstrate that at some level our collective imagination envisions law as the public process of forging and testing our most passionately held beliefs and constitutive values. One would think that lawyers, as those to whom this process is entrusted, might legitimately claim membership in a vocation, a calling, implicated in the community's most fundamental efforts at self-definition, purification, and consecration. Yet too often today's lawyers do not occupy this world of profound social meaning; rather, they too often occupy a world of fiercely contested private disputes with no significance beyond the amount of billable hours they might generate. Their world is not tragic, but pathetic. Their text is not *The Merchant of Venice*, or *The Brothers Karamazov*, or *Billy Budd*, but T.S. Eliot's "The Waste Land."<sup>4</sup>

In that enigmatic masterpiece of modernist poetry, the narrator surveys a variety of sterile venues, some as arid as the Biblical valley of dry bones, some as ostentatiously opulent as a gilded drawing-room, but all inhabited by characters cut off from those things like passion, piety, reverence, and tradition that might make their lives

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1. W. SHAKESPEARE, *The Merchant of Venice*, IV.i (1600).

2. F. DOSTOYEVSKY, *THE BROTHERS KARAMAZOV* 623-717 (C. Garnett trans. Norton ed. 1976).

3. H. MELVILLE, *Billy Budd, Sailor*, in *BILLY BUDD AND OTHER STORIES* 287, 356-64 (F. Busch ed. 1986).

4. T.S. ELIOT, "The Waste Land," in *THE COMPLETE POEMS AND PLAYS, 1909-1950* 37 (1958).

meaningful and whole by connecting them to others, both living and dead. It is a land where April is the cruellest month because it stirs memories of fresh life within souls that are currently barren;<sup>5</sup> where churches are empty and haunted, and the ablest representative of the supernatural is not God, but a bogus clairvoyant with a bad cold;<sup>6</sup> where people say things like, “I never know what you are thinking,” and “I can connect / Nothing with nothing.”<sup>7</sup>

Of all the desiccated inhabitants of these landscapes, the most memorable to those of us connected with the legal profession appears only briefly near the end of the poem. The narrative voice, groping for a single image to capture the essence of life in the Waste Land, focuses on a “lean solicitor” opening sealed documents “In our empty rooms.”<sup>8</sup> The image is perfect: what was once a home animated perhaps by the sounds of a family with children and the smells of cooking, is now a collection of empty rooms. Events of emotional moment—births, deaths, marriages, gifts—have been reduced to lifeless words in sealed documents. In all likelihood those documents carry the letterhead of a law firm, because presiding over this wasted world from which all the juice, all the sap, and all the blood have been refined away stands the Lean Solicitor.

Of the fifteen or twenty solicitors, lean and not-so-lean, who were my friends in law school, and who are just beginning to move into positions from which they will define the nature and direction of the profession in the 1990s and beyond, each one—although presently employed and making good money—has, without exception, changed jobs at least once. The bland bar bulletin announcements of these changes typically conceal a personal dark night of the soul that leads to the abandonment of one major life commitment in favor of another. These friends have not left their firms; they have divorced them. Several of my law school colleagues have divorced the profession entirely. Some have divorced their spouses, and a few have picked up a substance abuse problem of one sort or another. Among my own students, the lean solicitors-to-be, the most perceptive no longer worry that failure in law school will cause them to lose financial security; they worry that *success* in law school will cause them to lose their soul—will lead them into the Waste Land of work without significance or moral dimension, where they will connect “Nothing with nothing.”

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5. *Id.* at 37.

6. *Id.* at 38.

7. *Id.* at 40, 46.

8. *Id.* at 49.

Nor can this phenomenon be dismissed as the idiosyncratic grumbling of a skewed sample of socially or professionally dysfunctional yuppie malcontents. The recent literature documents a problem that transcends generation and region. *The Nation* recently published an omnibus review of books on lawyers.<sup>9</sup> The title of the review was revealing: *A Problematic Profession*. The books had names like *Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers*;<sup>10</sup> *Making It and Breaking It: The Fate of Public Interest Commitment During Law School*;<sup>11</sup> and *Full Disclosure: Do You Really Want to Be a Lawyer?*<sup>12</sup>

Closer to my home, a recent *Willamette Week* article entitled "The Lawyer Glut"<sup>13</sup> described the local legal community as an archetypal Waste Land populated by a merger-mad, burnt-out, overworked collection of self-destructive hypocrites providing a commodity essentially indistinguishable from fast food, all the while cynically attempting to pass themselves off as practitioners of a high-minded vocation.

The gist of the *Willamette Week* article was that an oversupply of lawyers leads to increased competition for scarce resources—clients—which in turn leads to monomaniacal emphasis on the bottom line and hence longer hours, less *pro bono*, larger and more impersonal firms, and more alienation. The description has the exaggerated and sensational tone of the six o'clock news or the supermarket tabloid, and it does not resonate with the experience of most participants. Furthermore, it does not take a Ph.D. in economics or logic to spot the inconsistency in an analysis that simultaneously identifies both overwork and scarcity of clients as sources of professional discomfort.

Surely it is simplistic and wrong to blame the legal profession's growing resemblance to the Waste Land on overwork and merger mania, nor can it be blamed on glut. Let me suggest a more global culprit: I believe the root cause of this professional pathology is the increasingly combative and aggressive nature of the legal profession. I suggest that too often we treat ruthlessness, paranoia, and insensitivity as professional virtues, cloaking these traits in the amiable

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9. Goodrich, *A Problematic Profession* (Book Review), 250 *THE NATION* 205 (1990).

10. R. JACK & D. JACK, *MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS* (1989).

11. R. STOVER, *MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL* (1989).

12. YOUNG LAWYERS DIVISION OF THE ABA, *FULL DISCLOSURE: DO YOU REALLY WANT TO BE A LAWYER?* (S. Bell ed. 1989).

13. Dexheimer, *The Lawyer Glut*, *Willamette Week*, Jan. 18, 1990, at 1.

guise of zealous advocacy within the adversary system. The word "adversary" stems from the Latin *advertare*, "to turn against" or "to turn upon." In our adversarial Waste Land, we are all turned against each other. We are paid for being adept and successful at turning upon others and protecting our clients from being turned upon.

More than earlier practitioners and more than other professionals, today's legal practitioner is steeped in and permeated with a complex of ideas that, when left to grow unchecked, are inappropriate and dysfunctional. The model of that complex of ideas, which might be called aggressive domination, is the typical lawsuit as it appears in the appellate opinions that first year law students confront from the first day of their legal training. Smith and Jones find themselves with different accounts of what is right. Each of them is represented by a zealous advocate who has presented a skillfully crafted argument to a neutral and unbiased magistrate. The opinion is the magistrate's explanation of why one argument more closely conforms to the rule of law implicit in the existing universe of precedent, legislation, and other relevant legal materials. There is a winner and a loser.

The traditional critique of this system is that it trains lawyers not to concern themselves with whether the right side wins, because in the adversary system the side that wins is right *by definition*.<sup>14</sup> The critique then typically moves on to attack the presumption that prevailing arguments win because they are stronger, instead suggesting that they often win because they fit more comfortably within the dominant ideology or were propounded by the party with the most resources. But both the proponents and the opponents of the adversary system believe that the proper method of resolving disputes is confrontational. Proponents believe that justice will naturally prevail in confrontation. Although opponents contend that frequently justice can be outgunned by superior cunning or better access to resources, they propose to rectify this injustice not by abandoning adversarial litigation, but by guaranteeing that both sides have equal champions—that the confrontation takes place on a level playing field.

My criticism of the traditional model is not merely that it disregards the fact that superior cunning and access to resources often allow those who should lose to win. Rather, my criticism centers on the presumption that disputes must have winners and losers, that justice demands a victor and a vanquished, that the system requires aggressive domination and exclusion of an opponent.

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14. By "traditional" I do not refer to any particular critic, but rather to the sort of criticism one encounters from typical non-lawyers.

During law school, and even more so afterwards, this presumption undergoes refinements and complications. But its pervasive structure survives to color nearly everything a lawyer does, even a lawyer who never sees the inside of a courtroom. In drafting wills, contracts, partnership agreements, and leases; in counselling on divorce, adoption, and employment matters, we are always asking: How will this hold up in court? How can I maximize my clients' interests while protecting them from all imaginable predatory attacks? In litigation as in drafting, the underlying presumption is that the world of others is hostile, waiting to attack at the first sign of vulnerability, and that prudence requires us to be equally hostile. Our metaphors betray us: the highest praise a legal document can earn is to be called "iron-clad" or "bomb-proof," terms from the lexicon not of civil discourse, but of warfare.

It is small wonder that lawyers, who are trained in the ethic of the jugular attack and immersed in a system that increasingly forces complex, multidimensional problems with subtle gradations of moral nuance into the form of all-out battles, find it difficult to sustain stable, convivial, and compatible work groups, not to mention families. After all, we are the ones who invented the pit bull deposition, the interrogatory avalanche, the sadistic cross-examination, the trial by defamatory press conference, and other forms of hardball Waste Land litigation.

When our co-workers turn against us or become defensive toward us, they merely are using the tools and methods we admire when used against "enemies." When clients turn against us, they are applying lessons they learned in our offices and courtrooms. When our marriages become, in Kant's terms, reciprocal contracts of mutual use,<sup>15</sup> they have simply taken the form we assume is appropriate for all human interactions. A rabbi once noted:

The religion in which we worship writes its name on our faces, be sure of that. And we will worship something—have no doubt of that either. . . . That which dominates our imagination and our daily thoughts will determine our life and character. Therefore it behooves us to be careful what we are worshipping, for what we are worshipping we are becoming.<sup>16</sup>

The religions that lawyers practice eight, ten, or twelve hours a day are aggressive disputation, and for those who are not litigators, de-

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15. I. KANT, *THE PHILOSOPHY OF LAW: AN EXPOSITION OF THE FUNDAMENTAL PRINCIPLES OF JURISPRUDENCE AS THE SCIENCE OF RIGHT* 110 (W. Hastie trans. 1887).

16. Remarks by Rabbi Harold L. Kudan of Congregation Am Shalom at the Bat Mitzvah of Naomi Dietzel (Dec. 16, 1989) (Congregation Am Shalom, Glencoe, Ill.). These sentences appear within quotation marks on page 12 of the congregation's privately reproduced prayer book, but nobody has been able to determine from whom the quote is taken.

fensive living: the arrangement of human transactions in such a way as to make them invulnerable to the aggression, greed, and self-promotion we presume are the engines driving all people. If we had to invent from scratch our own version of the Waste Land, a milieu characterized by emptiness and alienation, by failures to connect, we could not invent a more fitting constitutional religion.

So one problem inherent in the combative nature of the adversary system is our inability to contain it, to limit its influence. There are no commuters to the Waste Land; you can't work there sixty hours a week and then shed its influence as you return to the more civilized suburbs. But even within its acknowledged sphere, even where it belongs—in professional advocacy—the form of intellectual warfare in which we are trained is simply the wrong way to solve many problems. Divorce and child custody spring to mind. In fact, I sometimes think that “family law” is a contradiction in terms. When anything even remotely styled a “family” invokes “the law” as currently practiced, it is clear that there will ultimately be two sides to a dispute and that both have already lost.

I do not mean to imply that adversarial litigation is per se illegitimate or evil. Although zealous combative advocacy is utterly inappropriate in some contexts, in others it is perfect. Nobody would deny that before society incarcerates or executes an accused criminal, he or she deserves a zealous defense. Likewise, when sophisticated business people in our society conduct arm's length transactions it makes perfect sense to presume that each wants to increase her own advantage to the necessary detriment of the other—although there are many other societies in which such a presumption would be regarded as demented and preposterous.

Nor do I mean to imply that lawyers have a monopoly on adversarial conduct. Although we do have a state-granted monopoly on access to the machinery of state violence—we are the professionals through whom every citizen or government must work in order to legitimately deprive others of life, liberty, or property—an adversarial mind-set is by no means exclusive to lawyers. Rather, we live in a larger world in which all social institutions teach that people deserve everything they can take and keep within the limits of the law, other people be damned. The adversary system, this institutionalization of paranoia and trial by combat, is just one more expression of beliefs so familiar we tend to regard them as self-evident facts instead of speculative hypotheses, cultural constructs, or historically contingent decisions. These beliefs include the basic idea that human beings are by nature rational maximizers of their own self-interest, and the de-

rivative idea that community happiness and prosperity will flow naturally from a system in which each individual or special interest group is free to pursue its own selfish ends, limited only by the rights of others to do the same.

The adversary judicial system and the adversarial role of attorneys are inseparably linked to these ideas. They share the assumption that conflict is not only inevitable but ultimately good; that it is part of a larger scheme governed by an invisible hand that magically turns private vices like greed and aggression into public virtues like prosperity and stability.<sup>17</sup>

It is difficult to examine these ideas about the necessity and value of conflict with any objectivity because we hold them at such a fundamental level. They act as the lens through which we perceive, and attempting critical analysis of them is like trying to train the eye on itself. Suffice it to say that through most of human history, thoughtful observers would have treated these ideas as absurd and deranged, fitting only for a nursery, an insane asylum, or a Waste Land.

Aristotle, for example, declares that humans are by nature community-dwelling animals, and that the community is prior to the individual. In other words, to define a "community" as the result of allowing a collection of individuals to exercise their rights consistent with others' exercise of theirs is to define not a community at all, but a collection of isolated, atomized, and alienated sub-humans.<sup>18</sup> In this view, the community, its laws, other people and their desires, friends, family, and colleagues are not obstacles to the individual's fulfillment lurking out there ready to pounce the instant she lets down her guard. Rather, they are the very instrument of that fulfillment: this community of others provides each of us with our identities and our roles; it binds us together in a web of support and obligation, and in this way makes it possible for us to be *human* animals. As Socrates expresses it, even as they are about to execute him, the community and its laws are his mother and his father.<sup>19</sup>

Or take this example from my own field, constitutional law. For years mainstream constitutional scholars presumed that the underlying purpose of our founding charter was to secure individual liberty from the predations of tyranny, including tyranny of the majority. Thus, went the argument, the Constitution erects a government in which each branch is presumed to check the others because each is

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17. The classic enunciation of this parable is found in B. MANDEVILLE, *THE FABLE OF THE BEES: OR, PRIVATE VICIES, PUBLIC BENEFITS* (9th ed. 1755).

18. ARISTOTLE, *POLITICS* 1-7 (E. Barker ed. & trans. 1958).

19. PLATO, *Crito*, in *EUTHPHRO, APOLOGY, CRITO* 60 (F. Church trans. 2d ed. 1956).

naturally motivated by an inexorable dynamic of self-aggrandizement. Government itself is checked by the Bill of Rights, which is designed to protect a core of individual dignity from governmental interference. Moreover, a legislature of elected representatives will guarantee that every interest group will be able to participate in the pitched battle of policy choice, so that whatever policy emerges can be presumed to reflect the will of those able to muster a majority and defeat their opponents.<sup>20</sup> It is not difficult to perceive at the center of this vision the same presumptions that also enshrine the adversary legal system. This vision, viewed from the vantage point of a Waste Land, projects onto the Constitution and the Founders merely an earlier version of today's world and its presumptions.

But modern scholarship has shown that this account of the Constitution and its founding is incomplete and distorted.<sup>21</sup> Individualism was not the only or even the principal political theory driving the Founders; the Bill of Rights, after all, was an afterthought. The principal goal of the Constitution, expressed in the concepts of federalism and separation of powers, was to erect a structure that allowed the people to participate in deliberations that would affect their lives and shape their values. The principal purpose of checks and balances was to insure that no measure became law until it had been fully and widely debated. And the representatives who conducted this deliberation were not mere conduits of their constituents' selfish goals and naked preferences, but were people who, by their record of leadership and wis-

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20. This account is drawn from such traditional scholarship as E. CORWIN, *The Foundations of American Constitutional and Political Thought*, in 1 CORWIN ON THE CONSTITUTION 45 (1981); M. VILE, *CONSTITUTIONALISM AND THE SEPARATION OF POWERS* (1967); Katz, *The Origins of American Constitutional Thought*, in 3 PERSPECTIVES IN AMERICAN HISTORY 474 (Bailyn & Fleming eds. 1969).

21. I refer to, and in the remainder of the paragraph draw upon, the scholarship of the so-called "republican revival." Major contributions to the literature in American history include: W. ADAMS, *THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA* (1980); B. BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967); J. POCOCK, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975); I. H. STORING, *THE COMPLETE ANTI-FEDERALIST: WHAT THE ANTI-FEDERALISTS WERE FOR* (1981); G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787* (1969). Major contributions to the literature in political theory include: H. ARENDT, *ON REVOLUTION* (1963); H. ARENDT, *THE HUMAN CONDITION* (1958); B. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (1984); A. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (2d ed. 1984); H. PITKIN, *THE CONCEPT OF REPRESENTATION* (1967); M. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982); S. WOLIN, *POLITICS AND VISION* (1960). Major contributions to the literature in legal scholarship include: Michelman, *Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1986); Sunstein, *Naked Preferences and the Constitution*, 84 COLUM. L. REV. 1689 (1984); and essays collected in *Symposium: The Republican Civic Tradition*, 97 YALE L.J. 1493 (1988).

dom, were best qualified to participate in discussion about public matters. That discussion, in turn, was conceived not as a free-for-all process of interest-bargaining, but as a rational search for common ground, guided by a virtuous desire to find and promote the common good.

The purpose of this pedantic excursion is not to change your understanding of constitutional history, but to demonstrate that like our conception of the Constitution, our ideas about what law is and what lawyers do are threads in a larger fabric, and that the fabric itself is a creation and not a fact.

It would be tempting to conclude that because a combative profession and judicial system fit so well within the larger political and social context, there is nothing we can do to alleviate its detrimental effects short of complete political and social revolution. And it would be tempting to suggest some utopian alternative social context and imagine a different role within it for law and lawyers. Take, for example, an Aristotelian world in which politics was not the battleground for opposing power blocs overseen by a referee-state, but rather the rational, deliberate, public, and inclusive search for common ground. We might envision a legal system in which each party to a divorce, bankruptcy, or tort claim might have full discovery and extensive dialogue, with one opportunity to submit a proposed outcome to a neutral adjudicator, who would be obliged to choose the proposal she found most just to everybody. The skills needed to represent a party before such a tribunal would be strikingly different from those we value today in lawyers, and quite foreign to the Waste Land. The best lawyer would be the one with the most highly developed ability to empathize with and incorporate the opponent's viewpoint; to engage in inclusive, conciliatory, and compassionate dialogue; and to find a solution that put justice before advantage. Zealous advocacy, relentless promotion of the client's interest, paranoia as a lifestyle, mutually assured destruction, and other forms of Waste Land litigation would disappear because the lawyer who operated that way would always lose to the opponent whose proposal was even marginally more humane.

But this is not the occasion for a utopian manifesto. This Essay deals with Law in the 1990s, not "Adventures in Fantasyland." Besides, I have probably painted too bleak a picture of the profession and thereby implied too bleak a future. Eliot, after all, is not in despair at the end of "The Waste Land."

At that juncture, Eliot relates a sermon spoken in thunder, foreshadowing moisture—and with it renewal and life. Here is what the

thunder says (the thunder speaks in Sanskrit, which I provide along with Eliot's translation): *Datta*, *dayadhvam*, *damyata*. Give, sympathize, control.<sup>22</sup> Can these three commandments apply to our professional lives, within the existing world, in such a way as to make us more connected and whole? Let me offer a few ideas.

*Datta*. Give. This command does not concern charity, which implies condescension; nor surrender insofar as that term implies loss. Rather, Eliot has in mind the kind of generosity that expands both the giver and the receiver. This quality is related to the Renaissance virtue of magnanimity, from *magnus animus*, or largeness of soul, and encompasses an attitude in which one expands the universe of voices to which one might attend by abandoning a strict and stubborn adherence to one point of view. How might we work this quality into lawyering? One way might be to work toward building a bar that includes and values voices and experiences that have traditionally been consigned to the margins, opening the bar to women, minorities, poor people, and lesbians and gay men.

*Dayadhvam*. Sympathize. Again, this is not pity, which is merely a form of condescension, but *syn pathos*, or together-feeling, compassion, and recognition of common ground. Can our profession, built as it is on abstract, rational, and unfeeling rules that are used in order to gain benefits for one person at the expense of another—a profession devoted to mechanically sifting winners from losers—accommodate an attitude that values the destruction of distinctions and emphasizes the oneness of us all? Can lawyers be sympathetic without being fools or suckers? Or is “sympathetic lawyer” a contradiction in terms? Sympathy requires the recognition of our own humanity within others; yet in some respects, our profession rewards us precisely to the extent we become adept at refining out the ecstatic, grieving, gloating, suffering, sweaty, arrogant, or pathetic humans and replacing them with faceless, soulless abstractions like plaintiff, claimant, state, and respondent.

In our professional lives, when a human being walks into our office, we listen to her story and try to discover what type of case she is and what rule to apply in resolving it. When students die in an accident on a school-sponsored trip, we spot an issue sounding in negligence; when a tavern refuses to serve black people we think of a section 1983 claim; when a leveraged buy-out closes a lumber mill we turn our thoughts to control shares legislation. None of these reactions is wrong or evil, but none heeds the command to sympathize.

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22. T.S. ELIOT, *supra* note 4, at 49, 54.

And yet as lawyers we have another side to our training. In law school we learn to argue either side of any case, and in practice we sometimes find ourselves with cases in which we would prefer to trade places with opposing counsel. Some say that this aspect of our profession turns us into moral chameleons, and of course that danger exists. But it might also train us to find in either side of any dispute some motive, some longing, some frustration, or some rage that we can recognize and understand—with which we can sympathize.<sup>23</sup> The spotted owl champion might learn to sense the impotence of the dislocated and unemployed logger, and the logger's advocate might learn to sense the holiness of old growth.

The case method and the habit of arguing either side might nurture nihilism, giving rise to the belief that nothing is right or wrong; but it also might nurture the more sophisticated conviction that every dispute involves people and every person has a soul like our own. Shelley recognized the relationship between soul and law when he said that poets are the unacknowledged legislators of the world,<sup>24</sup> meaning that a poet, speaking the language of the heart, speaks truths that resonate and apply generally. I suggest that in our practices we should see the possibility that lawyers are the unacknowledged poets of the world, meaning that as we speak the language of rationality and universal applicability—the language of law—we speak at least partly to, and partly from, the heart as well as the brain. This might make our practices less comfortable, but it might also make them less arid—less of a Waste Land.

*Damyata.* Control. At first blush this might seem an easy commandment for lawyers. Control implies hierarchy and domination, and as critics (including me) never tire of telling us, ours is a profession of domination. Again, control in this sense fails to capture the lesson of the thunder sermon. By this term, Eliot means neither management, which is the manipulation of individuals into doing what you want them to do, nor forceful repression. A similar confusion has overtaken control's synonym, authority. Yet as Hannah Arendt explains, when force or manipulation begins, authority already has ended.<sup>25</sup> As Eliot intends the term, control or authority inhere in people or institutions or practices not by virtue of force or the threat of

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23. Anthony Kronman makes a closely related point throughout his essay *Living in the Law*, 54 U. CHI. L. REV. 835 (1987).

24. P. SHELLEY, *A Defence of Poetry*, in SHELLEY'S PROSE, OR THE TRUMPET OF A PROPHECY 297 (D. Clark ed. 1954) (1st ed. 1840).

25. H. ARENDT, *What is Authority*, in BETWEEN PAST AND FUTURE: SIX EXERCISES IN POLITICAL THOUGHT 93 (1961).

force, but by virtue of respect. An authority, a person with the ability to control, is someone who has been right so often in the past that her counsel cannot wisely be ignored.<sup>26</sup> Legitimate controlling authority does not manipulate existing preferences or constrain freedom, it guides, enlightens, and enables and, in that sense it “authors,” or “authorizes.” When Dante refers to Virgil as his “author” or authority,<sup>27</sup> and when Chaucer uses the term for Boccaccio,<sup>28</sup> it is their highest tribute; they mean that those men are their creators, their sources of inspiration and identity, their enablers.

What role can this kind of controlling authority play in our profession? I suggest that we are ideally placed to exercise authority in this benevolent sense. We are not only advocates, we are also counselors. People come to us for advice—for wise counsel. Most lawyers presume that their clients have decided on their goals and know what their interest is—they want a divorce, they want to leverage a buy-out, or they want to stop the harvesting of old growth—and that the lawyer’s task is to counsel and aid them in achieving these goals or promoting these interests within the law. I think we sometimes act as though offering counsel as to the wisdom or morality of the goals themselves, or engaging the client in a dialogue that will lead to the discovery of her true interest, is a professional sin. Yet nothing in the Disciplinary Rules prevents these measures. Nothing prevents us from reminding the arbitrator that the buy-out will achieve a quick buck at the expense of a viable and well-run company, or reminding the developer that the shopping center will substitute faceless franchises for a Main Street of family-owned businesses. Nothing prevents this except the fear of losing clients. But maybe we will decide to pay that price in order to ensure that our vocation is more meaningful than selling fast food, and that we are more than alienated instruments for the achievement of goals decided elsewhere.

And further, we can take our training in the provision of wise counsel into the public arena. We are, after all, especially qualified to participate in the public life of the community; we are lawyers, and as most of us believed before we came to law school, law is the sinew of the community. Law is a system of values made manifest, the fruit of public discussion and debate about what constitutes or

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26. J. SCHAAR, *Legitimacy in the Modern State*, in LEGITIMACY IN THE MODERN STATE 25-26 (1981).

27. D. ALIGHIERI, *INFERNO* 6-7 (L. Binyon trans. 1933) (“*Tu se’ lo mio maestro e ‘l mio autore*”: “Thou art my master and my author.”).

28. G. CHAUCER, *Troilus and Criseyde*, in THE WORKS OF GEOFFREY CHAUCER 401 (F. Robinson ed. 1957).

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promotes a life of virtue—not what some treatise says about remedies for anticipatory breach. We can try to be “lawyers” in this larger sense of law, to use our access to the machinery of the system not only to promote the private interests of litigants, but also to forge a public life worth living—a life outside the Waste Land.

Socrates tells us that no evil can ever befall a good person.<sup>29</sup> Socrates was no fool, and neither are we. We all know that a good person is as likely as a bad one to get hit by a truck. What Socrates meant was something like this: A person with a well-ordered soul is immune from the only kind of evil that matters, corruption and perversion. To what extent we are a profession of good people in the 1990s remains to be seen. Some would say that our chances are slim. I disagree. I believe that if we attend to the thunder’s charge—to cultivate magnanimity, search for common ground, offer wise counsel—we will be able to say that we have been to the Waste Land of paranoia, isolation, and alienated labor, and that we have escaped.

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29. PLATO, *Apology*, in EUTHYPHRO, APOLOGY, CRITO, *supra* note 19, at 48-49.

