

1999

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Recommended Citation

Robert J. Cosgrove, *Damned to the Inferno? A New Vision of Lawyers at the Dawning of the Millennium*, 26 Fordham Urb. L.J. 1669 (1999).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol26/iss5/14>

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DAMNED TO THE INFERNO? A NEW VISION OF LAWYERS AT THE DAWNING OF THE MILLENNIUM

Robert J. Cosgrove*

Introduction

Through Me the Way Into the Woeful City,
Through Me the Way to the Eternal Pain,
Through Me the Way Among the Lost People,
Justice Moved My Maker on High,
Divine Power Made Me and Supreme Wisdom and Primal Love;
Before Me Nothing Was Created But Eternal Things and I
Endure Eternally.
Abandon Every Hope, Ye That Enter.¹

So engraved are the gates of Hell in Dante's *Inferno*. In the deepest regions of hell, damned for all time, lie the fraudulent and treacherous — those individuals who used their great skills, their great powers of reason, for ends contrary to the common good.² Here, in the eighth and ninth circles of the inferno, forever rest the souls of those to whom much was given, much expected and very little returned. Most prominent among the damned of these circles are the religious, political and legal leadership of ancient times who failed to use their authority³ to bring their community closer to happiness.⁴ Rather than using their power to pursue basic goods,⁵

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1. DANTE ALIGHIERI, *THE DIVINE COMEDY* 47 (John D. Sinclair ed. and trans., 1939).

2. *See id.* at 329. As used in this Comment, the phrase "common good" will refer to those self-evident basic goods whose pursuit leads to integral human fulfillment or *eudymonia*. Basic goods are basic reasons for action. They are the only aspects of human well-being that are self-evident and indemonstrable. Through "non-inferential acts of understanding by the mind working inductively on the date of inclination and experience" basic goods are made known to humans. ROBERT P. GEORGE, *MAKING MEN MORAL* 13, 15 (1992).

3. As defined by John Finnis authority is the power of those in command to order the polis' activities in accordance with the pursuit of the common good. *See* JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 246 (1980).

4. *See* ARISTOTLE, *NICOMACHEAN ETHICS* vi (David Ross, ed. and trans., 1925) (discussing Aristotle and his conception of the most enviable form of life). When I

these souls successfully lined their own pockets with ill-gotten gains.

If American public perception is to be believed,⁶ the modern American lawyer will soon be joining individuals like Fra Gomita⁷ and Ulysses⁸ in the bowels of hell. Certainly, disrespect for the legal profession is nothing new.⁹ From the ancient Goths¹⁰ to the writings of William Shakespeare,¹¹ lawyers have often borne the brunt of public discontent. The plethora of lawyer jokes available today is firm evidence that this trend continues.¹² Indeed, a 1997 *New York Times* review of the film, "The Devil's Advocate" went

use the word happiness, what I am really talking about is eudymonia. Eudymonia is the end of all action, the good for man and woman. Eudymonia is sought for its own sake. It is human flourishing that results from living a virtuous, good life — a life in which the basic goods are sought. See CAMBRIDGE DICTIONARY OF PHILOSOPHY 44 (Robert Audi ed., 1995).

5. See, e.g., FINNIS, *supra* note 3, at 86-89 (listing his conception of basic goods: life, knowledge, play, aesthetic experience, friendship, practical reasonableness and religion).

6. See Robert F. Cochran, *Lawyers and Virtue*, 71 NOTRE DAME L. REV. 707, 707 (1996) (discussing popular discontent with the legal profession in the aftermath of Watergate).

7. Fra Gomita was the deputy of Nino Visconti, Judge of Gallura, a division of Sardinia, a part of medieval Italy who was hanged for his knavery. See DANTE, *supra* note 1, at 277.

8. In his *Inferno*, Dante turns the classic tale of Ulysses on its ear. He places Ulysses in the eighth bolgia, the circle of hell reserved for the evil counsellors who used their great mental gifts for guile. Because of their greater natural endowments, "their sin is reckoned greater, and their place is lower than that of thieves." Here, rather than focusing on the heroic, Dante stresses Virgil's description of Ulysses as the "contriver of crimes." *Id.* at 329-332.

9. For an old-fashioned lawyer bashing, see the work of Samuel Coleridge, "He saw a lawyer killing a Viper on a dunghill hard by his own stable; And the Devil smiled, for it put in mind of Cain and his brother Abel." Samuel Taylor Coleridge, *The Devil's Thoughts*, in THE COMPLETE WORKS OF SAMUEL TAYLOR COLERIDGE 320 (1912), reprinted in CORPUS JURIS HUMOROUS 251 (John B. McClay & Wendy Matthews eds., 1994).

10. See MONTESQUIEU, THE SPIRIT OF THE LAWS 308 (Anne M. Cohler et. al. eds. and trans., 1989) (when speaking of the Goths, noted approvingly, "They cut out lawyers' tongues and say, "Viper, stop hissing.") The Goths were "a Germanic people who settled near the Black Sea around the second century A.D." The western branch of the Goths, the Visigoths, was instrumental in the sacking of Rome in 395 A.D. The Goths were what are popularly known as barbarians. See WEBSTER'S NEW WORLD ENCYCLOPEDIA 477 (1992).

11. See Lorie M. Graham, *Aristotle's Ethics and the Virtuous Lawyer*, 20 J. LEGAL PROF. 5, 6 (1995/96) (discussing Shakespeare's well-known comment on killing all the lawyers).

12. For an illuminating and often humorous analysis of this phenomenon, see Thomas W. Overton, *Lawyers, Light Bulbs, and Dead Snakes: The Lawyer Joke as Societal Text*, 42 UCLA L. REV. 1069, 1107 (1995).

so far as to ask, "What does it say about our society that the worst guy we can imagine is a fast-talking lawyer?"¹³

But why such hostility toward lawyers? Easy answers abound. According to some, it is the disproportionate amount of influence that lawyers wield in American politics that stirs the flames of resentment.¹⁴ Others contend that the problem lies in the high salaries and extravagant lifestyles, commonly thought to be the norm of the lawyer's life, but foreign to most Americans.¹⁵

Such explanations are largely unsatisfactory however. Lawyers as a group are particularly active in politics, but this has been true since the dawn of the republic when respect for the legal profession was far greater than it is now.¹⁶ As for the perceived salary gap, it is present when one compares the salaries of the highest paid lawyers at America's largest law firms with the average American income, but only a small percentage of practicing lawyers work for such firms. Most lawyers work for far less money at much smaller organizations.¹⁷ The root cause of public hostility thus must lie elsewhere.

This Comment argues that the problem lies not in the behavioral practices of lawyers, i.e., not in their societal function or consumption habits, but rather in a cultural shift of the purposes and ends of law itself.¹⁸ Specifically, this Comment contends that as the result of several historical trends, great popular confusion about the end or Aristotelian final cause¹⁹ of law has arisen. To deal with the

13. Michiko Kakutani, *Whatever Happened to the Devil?*, N.Y. TIMES MAG., Dec. 7, 1997, at 36.

14. See HEINZ EULAU & JOHN SPRAGUE, *LAWYERS IN POLITICS* 11 (1964) (providing a statistical analysis of the number of lawyers in positions of power in federal and state governments).

15. See Donald B. Ayer, *Stewardship*, 91 MICH. L. REV. 2150, 2153 (1993) (noting the pervasive "yuppie" mentality of new associates at big firms).

16. See 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 272 (Daniel Boorstin ed., 1990) (noting lawyers' role as America's governing class).

17. See MARY ANN GLENDON, *A NATION UNDER LAWYERS* 87-91 (1994).

18. Thus, I do not view the crisis in legal ethics or professionalism as one of business/professional paradigmatic thinking. See, e.g., Russell G. Pearce, *The Professional Paradigm Shift*, 70 N.Y.U. L. REV. 1229 (1995) (discussing business/professional paradigmatic thinking); Timothy Terrell & James Wilson, *Rethinking Professionalism*, 41 EMORY L.J. 403 (1992) (same). Rather, my tack is much broader and sweeping and makes great use of interdisciplinary sources. In my view, the problem with lawyers is not that they do not act in accordance with academic predictions or recommendations. Instead, the problem lies in the American psyche and how law itself is viewed.

19. For a discussion of Aristotelian causation, see DANIEL ROBINSON, *AN INTELLECTUAL HISTORY OF PSYCHOLOGY* 89-90 (1986).

If we examine a statue, there is a sense in which we attribute the cause of it to the substance of which it is made, for example, stone. Here, we have what

resulting uncertainty people have channeled or directed their hostility²⁰ toward the law and ultimately its high priests, lawyers.²¹

To support this position, five issues will be addressed: (1) the definition and purpose of law; (2) the republican theory of lawyering;²² (3) the realities of the modern law school and its effectiveness in training republican lawyers; (4) whether or not a republican theory of lawyering is in line with modern American realities; and (5) prescriptions for the future.

Before entering the heart of this Comment, a brief word on the importance of this issue is in order. Why does it matter if law and the legal profession are the subject of scorn and ridicule resulting from confusion? The answer is simple. America, unique among all other nations, is built upon the rule of law.²³ Law is the glue that molds this nation of diverse immigrants into a relatively unified and stable polis.²⁴ Absent faith in law, America cannot survive and prosper in the next millennium²⁵

Of perhaps greatest concern is disenchantment with the law in America's urban centers. It is in urban centers that lawyers are most heavily concentrated.²⁶ America's cities house her largest law firms, need the most criminal prosecutors and defense attorneys

Aristotle referred to as the material cause. The difference between a lump of stone and a statue is that the latter has a certain essence or form – not any single one, but one that is not random . . . [This is the essence of a statue] . . . or its formal cause. Returning to the statue, one might attribute the cause of it to the changes produced by hammer and chisel. Blow by blow, these changes lead to the finished work. A causal explanation based upon these actions expresses what Aristotle called the efficient cause [The final cause] is the goal or end of the artist." [It is why stone is changed into statue.]

Id.

20. An analysis of transference of emotion and ingroup-outgroup behavior is beyond the scope of this Comments. Generally however, sociologists use the term "ingroup" to refer to those groups whose members identify themselves primarily by their common hatred for another group, an "outgroup." For a more detailed discussion, see JOAN FERRANTE, *SOCIOLOGY: A GLOBAL PERSPECTIVE* 162 (1995).

21. This explanation has the added advantage of helping to explain why so many lawyers are dissatisfied with their own lives. See GLENDON, *supra* note 17, at 84 (discussing the unhappiness of many lawyers).

22. The republican theory will be exclusively examined for the simple reason that it best ties in with the classical formulation of law argued in this Comment.

23. See GLENDON, *supra* note 17, at 11.

24. See GEORGE KENNAN, *AROUND THE CRAGGED HILL* 157 (1993).

25. For a discussion of the importance of something to believe in as a precursor to societal order, see Benedetto Croce, *Of Liberty* 92, reprinted in *THE AMERICAN ENCOUNTER* (James F. Hoge Jr. & Fareed Zakaria eds., 1997).

26. As an example of this phenomenon, note that almost all of the top-grossing American law firms are based in major metropolitan areas, most notably, New York. See generally John E. Morris, *The Global 50*, *AM. LAW.* Nov. 1998, at 45.

and have the greatest demand for classical public interest²⁷ lawyers.²⁸ The modern American is most likely to have contact with a lawyer in the big city, and it is from these urban contacts that their conception of what the law can be is shaped.

At the same time, it is the cities that receive the bulk of new immigrants to the United States.²⁹ As has always been the case, these immigrants bring with them their own cultural values and norms. But unlike the immigrants of the nineteenth century, modern immigrants do not come primarily from a homogenous Europe.³⁰ This makes their incorporation into a society where the rule of law is paramount more difficult. To insure the continued viability of American democracy, great effort must be expended to make certain that the newest of Americans are blended into the polis by keeping law as the glue that binds Americans together.

I. Law: Definitions and Purpose

Any definition of law must first take into account human nature.³¹ The vision of human potential that one accepts will largely dictate one's conception of law (i.e., is the purpose of law to make men more moral³² or to constrain human weakness).³³ Pared down to its essence, there are two visions of human nature, often intertwined, that have exerted the most influence on the development of legal philosophy over the centuries: humans as reasonable animals or humans as self-interested individualists.

The theory of humans as reasoned animals gets its start in Greek philosophy.³⁴ According to Plato, the mark of a good man³⁵ was a rational and cultivated mind, for it was the power of reason that

27. That is, poverty law. See MARTHA F. DAVIS, *BRUTAL NEED* 14-16 (1993) (discussing the formation of The Legal Aid Society).

28. In his remarks at Fordham University in the spring of 1997, Peter Edelman noted this very fact. See generally Peter Edelman, *Opening Address*, 25 *FORDHAM URB. L.J.* 685 (1998) (remarks at a conference entitled "Lawyering for Poor Communities in the Twenty-First Century").

29. See ANDREW BOYD, *AN ATLAS OF WORLD AFFAIRS* 197 (9th ed. 1991).

30. See EDWARD N. LUTTWAK, *THE ENDANGERED AMERICAN DREAM* 181-183 (1993).

31. See ANTHONY KRONMAN, *THE LOST LAWYER* 175, 176 (1993); Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 *VA. L. REV.* 543, 547, 548 (1986) (discussing the interaction between conceptions of human nature and the rule of law).

32. See GEORGE, *supra* note 2, at 1.

33. See ALEXANDER HAMILTON, JAMES MADISON & JOHN JAY, *THE FEDERALIST PAPERS* 79 (5th ed. 1961).

34. See DANIEL ROBINSON, *WILD BEASTS & IDLE HUMOURS* 16 (1996).

separated man from the animals.³⁶ In one of their rare moments of agreement, Aristotle built upon Plato's work and argued that man was by nature a political animal who found greatest happiness in the development of his faculties of practical wisdom³⁷ in the community.³⁸ In the middle ages, Thomas Aquinas built upon the writings of Aristotle and conceived of man as the lone being in the universe with intelligence, will and reason.³⁹ Underlying these conceptions is the idea that humans are perfectible; that through the powers of the polis — societal pressure and law — men and women could be helped to lead more virtuous lives.⁴⁰ Also fundamental to these theories was the idea that, from the moment of birth, humans were fundamentally unequal. Whether speaking of Plato's myth of the metals⁴¹ or Aristotle and Aquinas' beliefs that justice was not a function of arithmetic, but rather distributive or role based equality,⁴² the conception of individuals who possessed different rights and obligations, despite their common orientation to the good, runs strong through this classical tradition.

In contrast is the seventeenth-century notion of man as nothing more than a supreme individualist, who if not constrained by the powers of the law, would surely destroy all those around him.⁴³ Unlike their classical counterparts, the moderns, led by Hobbes,⁴⁴ argued for the universal fundamental equality of all humans who differed only in their relative strength and power. In this tradition, humans are not considered pre-ordained to the good or to a communal life. Rather, their sole concern is the acquisition of and sus-

35. "Man" is Plato's choice of words, not mine. All future such references should be assumed to be a specific reference to the work of the individual philosopher discussed.

36. See PLATO, *THE REPUBLIC* 260 (Richard Sterling & William Scott trans., 1985).

37. Practical wisdom is in its essence, reason, virtuously exercised. See CAMBRIDGE DICTIONARY OF PHILOSOPHY, *supra* note 4, at 44.

38. See Miriam Galsto, *Taking Aristotle Seriously*, 82 CALIF. L. REV. 331, 338 (1994).

39. See THOMAS AQUINAS, *SUMMA THEOLOGIAE* 56 (R.J. Henle ed. and trans., 1993).

40. See, e.g., Russell Hittinger, *Natural Law and Virtue* 62-63 in *NATURAL LAW THEORY* (Robert George ed., 1992).

41. See PLATO, *supra* note 36, at 113. He writes, "We should tell them [the people] that although they are all brothers, god differentiated those qualified to rule by mixing in gold at their birth. Hence they are most to be honored. The auxiliaries [the guardian class] he compounded with silver, and the craftsmen and farmers with iron and brass."

42. See AQUINAS, *supra* note 39, at 72.

43. See ROBINSON, *supra* note 19, at 304.

44. See generally, THOMAS HOBBS, *LEVIATHAN* (C.B. Macpherson ed., 1985)

tained dominance over sources of wealth — namely property.⁴⁵ The purpose of law in this tradition is not to make men and women more moral, but rather simply to constrain their otherwise hostile and antisocial tendencies.⁴⁶

The development of American law has largely been a product of the latter school of thought.⁴⁷ But although our system of law is premised on this notion, in political discourse, Americans do not think of their legal system as a constraining mechanism on human vice, but rather as a vehicle through which the common good of the nation can be achieved.⁴⁸ This has resulted in a schizophrenia in our collective consciousness. We cannot understand why the law is talked about as the bedrock of America (e.g., “we are a nation of laws and not of men”⁴⁹), but then used to further unsavory ends.⁵⁰

A large part of the problem lies in the distinction, which we have somehow lost, between private and public law.⁵¹ As in the days of the Romans, private law is and should be concerned primarily with the transactional relations between individuals.⁵² It is in this arena that lawyers should generally follow the advice of Lord Brougham and do all that they can to save the client and further his or her ends.⁵³ Here the lawyer has an obligation to ensure that in reciprocal exchanges, principles of equality are upheld.⁵⁴ This is not to suggest that the lawyer should use any means available to achieve his or her objectives, however. Rather, operating within the “spirit of the laws,”⁵⁵ the lawyer should attempt to provide her client with the best counsel available.⁵⁶

45. See ROBINSON, *supra* note 19, at 305.

46. See NORMAN BOWIE AND ROBERT SIMON, *THE INDIVIDUAL AND THE POLITICAL ORDER* 13-14 (2d ed. 1986).

47. See Sherry, *supra* note 31, at 543.

48. See George Kennan, *Moralism-Legalism*, reprinted in *MAJOR PROBLEMS IN AMERICAN FOREIGN POLICY* 3 (Thomas Patterson ed., 1989).

49. GLENDON, *supra* note 17, at 8.

50. See Ayer, *supra* note 15, at 2154.

51. *But see* Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 22 (1988) (for a discussion of the problems with this approach). After all, in a very real way, all private disputes have a public component and vice-versa.

52. See BARRY NICHOLAS, *AN INTRODUCTION TO ROMAN LAW* 8 (1962).

53. GLENDON, *supra* note 17, at 40.

54. See ARISTOTLE, *supra* note 4, at xiii-xiv; *see also* AQUINAS, *supra* note 39, at 72.

55. By “spirit of the laws,” I borrow from Montesquieu and refer to the idea that law has purpose — specifically to help man abide by his moral, political and civil duties. See MONTESQUIEU, *supra* note 10, at 5.

56. See KRONMAN, *supra* note 31, at 143

Consider, for example, the case of a local merchant, Peter.⁵⁷ His livelihood depends on the sale of oranges which he buys from Sally, a local orange farmer. The contract he signed with Sally provides in relevant part that, for the next ten years, Sally will provide Peter with all the oranges he needs for one dollar an orange. No lawyers participated in the drafting of this contract.⁵⁸ Five years into the contract, terrible weather destroys the bulk of the region's orange crop. Only Sally, through her use of expensive precautionary measures, is able to save her crop. Because of these measures selling Peter oranges for one dollar each would result in a great pecuniary loss to Sally. At the same time, on the open market, oranges are being sold for five dollars each, a price certain to inflict hardship on Peter. Sally obviously wants to get out of the contract — her financial security depends on it. Peter obviously wants to keep the contract — his financial future depends on it. They each seek counsel after recognizing that they cannot amicably resolve their dispute.⁵⁹ What should the contacted lawyers do?

In this case, Lord Brougham's motto is a point well-taken. Given an ambiguous fact pattern with neither party entirely right or wrong, there is nothing wrong with the lawyer using all the tools at her disposal to achieve the best result for her client.⁶⁰ In the hypothetical case of Peter and Sally, neither party is all right or all wrong. After all, when Peter and Sally entered the contract, neither party could have known that bad weather would destroy the bulk of the region's crop, nor that Sally would save her crop only at considerable expense.⁶¹ Obviously, it was not either party's intent to sell or buy oranges at a price far below market value. Rather, Sally wanted to ensure a buyer of and Peter a supplier for oranges at reasonable market value.

To assist the parties in cleaning up the mess they created, aggressive advocacy by lawyers for both sides is essential. Sally needs a lawyer who, stressing contractual principles of "unjust enrichment," can convince a judge or jury that the contract is void on its

57. This hypothetical assumes that, as a matter of law, a Corbinian public policy emphasis is placed on contract interpretation. See generally A.L. CORBIN, CORBIN ON CONTRACTS (1950).

58. This point is important, for it assumes equality of bargaining between Peter and Sally when they drafted the contract. The implications of the scenario in which only one party is represented by a lawyer is beyond the scope of this Comment.

59. Again so that equality of bargaining is assured.

60. It is in such circumstances that the idea of zealous advocacy is best pursued.

61. Certainly, if they had acted more prudently they could have created an "exigent circumstance" opt-out provision, but such foresight was not shown by either party.

face. Peter, on the other hand, needs a lawyer to argue that parties are bound to finish what they have begun; once assumed, a responsibility is not so easily shirked. Both arguments have merit. The ultimate question of who can best bear the loss (or rather on whom the loss should fall) is a factual question on which reasonable people can differ. In this private law matter, lawyers act best when they work to ensure their client gets a fair shake — that an equitable result is reached.

In contrast, public law concerns itself with the promotion of the common good, with the pursuit of integral human fulfillment. It is, in Aquinas' words, "a dictate of practical reason, for the Common Good, made by him who has the care of the community, and promulgated."⁶² Here the primary emphasis is not on relationships between individuals, but rather on the coordination of societal resources and talents so as to assist individuals in realizing happiness.⁶³ The lawyer's role in this scheme is to act as guardian, as a high priest of the law. The realization of basic goods⁶⁴ should be the desired end.

Consider again for a moment the case of Peter and Sally. Assume now, that for nutritional reasons, oranges are a necessary part of life in Peter's town. No supplements are available. Without the oranges, the entire population of Peter's town will become bedridden. Peter is the only seller of oranges in his town and the people cannot afford more than one dollar an orange. Should Sally's lawyer act in the same way she did in the first scenario?

No reasonable person can contend that public policy is best served by letting the inhabitants of Peter's town become ill.⁶⁵ If this is an unreasonable intellectual premise, why should a lawyer be allowed to make such an argument in court? The public good is not served by Sally's winning. Rather, it is only furthered if the people of Peter's town can stay healthy and are given the opportunity to lead productive lives. In reality however, many lawyers would make just such an illogical argument.

For example, it is clearly not in anyone's best interest to have toxic paints in schools, yet lawyers in mass tort cases defend the

62. AQUINAS, *supra* note 39, at 51.

63. See FINNIS, *supra* note 3, at 276.

64. In this scenario the public policy favoring upholding the bargain between two parties (see FRIEDRICH KESSLER, *CONTRACTS* 21 (3d ed. 1986)) is outweighed by the competing social policy of self-preservation (see FINNIS, *supra* note 3, at 86).

65. In making this assertion I explicitly reject the notion that the operation of the market or the "Invisible Hand" always results in the best possible end.

producers of these paints.⁶⁶ What good is served by such a defense?⁶⁷ None quickly springs to mind. In dealing with such a case, or the case of Sally, the lawyer should factor these public policy considerations into his or her decision-making process. In cases where one party is clearly acting improperly, the goal of representation should not be winning the client's case at all costs. Rather, the focus should be on achieving a result that most accords with the culpability of the client's behavior and the public policy interests involved. This certainly requires the lawyer to exercise his or her practical wisdom, but so what? That is the mark of humanity,⁶⁸ the reasoned animal, whose most notable creation is law itself.

This vision of lawyering begs the question: should the legal profession require lawyers not only to represent clients to the best of their abilities, but also to determine the culpability of their clients and whether a particular factual dispute is private or public? Yes. As Ulysses failed to learn, from those to whom much is given, much is expected. The privilege of practicing law carries with it a certain burden — the burden of exercising practical wisdom. It is not too much to ask to require lawyers to use their great education and experiences to make judgement calls. Indeed, this is what they do every day right now. What is different in this approach is the requirement that lawyers consider the ends for which they are working.

The problem with this theory however is that it is foreign to the modern (post 1960s) lawyer's sensibilities. It is not what he is taught in law school. It is not what she is taught in a firm. Value neutrality, the predominant religion of the modern law school,⁶⁹ makes judgement calls as to ends difficult. And this value neutrality is emphasized as being equally valid in application to either private or public transactions. But, as has been discussed, public law is fundamentally not about value neutrality. Rather, it is about choosing ends that most benefit the entire community. While reasonable people might differ as to what the best end is, there is a

66. See Peter Passell, *The Split Over Punitive Damages*, N.Y. TIMES, July 10, 1997, at D2 (discussing the implications of lead paint and tobacco class action suits).

67. Here, I am not suggesting that the adversarial system is completely flawed, nor without merits in and of itself. In an imperfect world, with imperfect information, it is often the only way we have to insure that a just result is achieved. But in making such a statement, I am reminded of Churchill's saying on democracy — it is the worst form of government except for all the rest.

68. Reason as the hallmark of humanity is an idea first articulated by Pericles, the ancient Athenian orator. See ROBINSON, *supra* note 19, at 45.

69. See Roger C. Cramton, *The Ordinary Religion of the Law School Classroom* 29 J. LEGAL EDUC. 247, 255 (1977).

marked difference between saying that in a range of good options "x" is better than "y," and claiming that any option regardless of its wisdom is valid. It is in the latter camp that most modern lawyers fall.⁷⁰ While this is fine in the realm of private law, it does nothing to promote the common good on issues of concern to the entire community.

Most Americans do not understand this vision of lawyers. They think of law as a chalk-line that separates right from wrong, permissible from impermissible conduct.⁷¹ Moreover, philosophical distinctions between issues of public and private law are difficult to draw. In the resulting maelstrom of confusion, lawyers have become a distrusted, feared and sadly, often hated, group. Unless changes are made to the development of the modern American lawyer, such popular distaste is only likely to grow.

In brief then, part of the popular discontent with the legal profession and law itself is a failure to recognize the distinction between private law that holds individuals' needs paramount and public law that inculcates virtue in the citizenry thereby promoting the flourishing of the "good life" for the broader community. This dichotomy must be better explained both to lawyers and the general populace if law is to regain a position of respect within society. Otherwise, the current norm of mercenary lawyers and a dissatisfied public will continue.

II. The Republican Theory of Lawyering

Thus far, this Essay has detailed some of the current problems affecting the law and the legal profession. It has hinted that lawyers should take the lead in undertaking the kinds of systemic reforms needed to re-fuse law with popular culture. What has not been answered is why lawyers should assume this mantle. An analysis of classical republican theory provides an illuminating answer.

In its broadest sense, the phrase "classical republican" refers to a philosophical school of thought that traces its roots back to Aristotle's contention that man is fundamentally a political animal.⁷² What this functionally means is that humans have within them the potential to develop virtue through a process of education and habit leading to happiness. This can best happen within the framework of a political society. To achieve this end, it is of paramount importance that the individual assumes an active role in the affairs

70. *Id.* at 247.

71. *See, e.g.,* AMERICA'S PURPOSE 2 (Owen Harries ed., 1991).

72. *See Galsto, supra* note 38, at 339.

of this polis, for it is only through such activity that character can be developed.⁷³ Underlining this concept is the classical notion that the communal life in which humans work together is an essential element of what it means to be human in the first place.⁷⁴ To be fully human, one must work with other humans to create an end result that is greater than the sum of its parts.

Traditionally, however, this did not mean that every member of a society should play the same role.⁷⁵ Rather, given the unequal distribution of talents and resources within a community, each citizen should be provided the opportunity to fulfill his or her role based on their interests and ability.⁷⁶ Particularly important in the ordering of a society was that certain individuals assume the authority and power necessary to organize communal affairs for the common good.⁷⁷

In America, this role was filled by lawyers.⁷⁸ De Tocqueville remarked that in nineteenth-century America, lawyers fashioned the country to suit their own needs.⁷⁹ So too, was the pattern of behavior for lawyers in the early twentieth century. From judges like Learned Hand⁸⁰ to lawyer-statesmen like Dean Acheson,⁸¹ lawyers attempted to create order out of chaos, thereby (consciously or not) re-shaping America in their own image. Of primary note here is the emphasis these lawyers placed on the rule of law, on the idea that it is law and law alone that separates the civilized life from the barbaric.⁸²

The lawyers' legal ethics code has roots in this republican ethos.⁸³ George Sharswood argued that a lawyer's primary mission

73. See Martin Diamond, *Ethics and Politics* 80-81 in *MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC* (Robert Horwitz, ed., 3d ed. 1986).

74. See FINNIS, *supra* note 3, at 88.

75. See generally SEBASTIAN DE GRAZIA, *MACCHIAVELLI IN HELL* (1989) (discussing Macchiavelli's political and moral theories).

76. Taken to extremes, you have Plato's myth of the metals. See PLATO, *supra* note 36, at 113-115.

77. See FINNIS, *supra* note 3, at 242.

78. See MARK MILLER, *THE HIGH PRIESTS OF AMERICAN POLITICS* 1-6 (1995).

79. See DE TOCQUEVILLE, *supra* note 16, at 280.

80. See generally GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* (1994).

81. See generally WALTER ISSACSON & EVAN THOMAS, *THE WISE MEN* (1986).

82. Acheson, for example, played an instrumental role in the establishment of the United Nations. This transnational institution is premised on the idea that sovereign states can be obligated to follow a common ethos as to permissible and unacceptable conduct. See MARK JANIS ET. AL., *EUROPEAN HUMAN RIGHTS LAW TEXT AND MATERIALS* 19 (1995).

83. Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Code*, 6 *GEO. J. LEGAL ETHICS* 241 (1992).

was the service of the polis' common good – even when such service conflicted with the needs and wishes of the lawyer's own client.⁸⁴ This contention was widely accepted until the 1960s when economic pressures began to change the dynamics of the provision of legal services.⁸⁵ It was during this decade that idea of republican lawyering met its demise.⁸⁶

Of particular importance is the fact that during the 1960s, lawyers began to lose the distinction between public and private law. Too often, lawyers advocated positions in politics that they as citizens would never deem acceptable. The age of value-neutral lawyer/technicians had begun.⁸⁷ Lawyers began to think of their role in society not as guardians/promoters of the common good, but rather as zealous-advocates or hired guns, willing to do whatever it took, regardless of the social cost, to ensure their client's victory. Too often victory for the individual was won at the cost of communal good.

The net result today is a nation under lawyers who fail to understand the purpose of law. This is why Americans are unhappy with lawyers and why so many lawyers are unhappy with themselves. Law used to be a calling which had, as an added bonus, the potential to provide one with a comfortable life.⁸⁸ Today, law as a calling is an idea foreign to practicing lawyers. Thanks to the value neutrality of the legal academy, lawyers view their work as just another job, another way to make a living.

Yet despite all of this, law schools continue to produce a sizable percentage of all future political leaders and staffers in America.⁸⁹ Thus, whatever the flaws of the current system, the reality is that those who find the idea of law appealing are also among the most likely to find a career in politics rewarding. America is still a nation under lawyers. The trick is to make sure lawyers are up to the task.

84. See *id.* (discussing Sharswood's conception of a lawyer's obligation to the common good).

85. See Gordon, *supra* note 51, at 2-3.

86. See KRONMAN, *supra* note 31, at 50.

87. See Gordon, *supra* note 51, at 2-3.

88. See Sol Linowitz, *Speeches from the Cornell Law School Centennial Celebration, April 15-16, 1988 — Keynote Address*, 73 CORNELL L. REV 1255, 1256 (1988).

89. See MILLER, *supra* note 78, at 1-6.

III. The Modern Law School: Toward a Guardian Class or a Community of Sophists?

Complicit in the shifting tides of public favor for the legal profession are the actions of the modern law school. As any second-year student can tell you, the pressures to enter a big firm, even at schools renowned for their public interest slant, are intense.⁹⁰ These pressures are all the more persuasive given the value skepticism taught as an integral part of the law school curriculum.⁹¹ Law students are thereby shorn of their idealism and left in the position of being very well-educated Sophists⁹² who see the application of their talents to the pursuit of money as valid as any alternative schema.

The birth of the modern law school can be directly traced to Christopher Langdell and the Harvard legal science revolution of the 1870s. There law changed from being a magico-mystical pursuit in which law was derived from universal norms to a hard-nosed science in which, through the application of the case method, legal truths could be derived from the available case law.⁹³ In line with the scientific faith of the time,⁹⁴ the Harvard revolution caught on and became the predominant method of American legal education. Of paramount importance to this philosophical school was treatise writing in which the principles of specific bodies of law were laid out in a systematic fashion.⁹⁵

This notion of legal scientific certainty came under much attack in the twentieth century — first from the legal realists and later from the critical legal theorists and law and economics adherents. Legal realists argued that law was nothing more than the result of the personal biases of judges and lawyers.⁹⁶ Critical theorists con-

90. See Brett S. Martin, *Why Most Law Schools Are Failing at Public Interest Law*, NAT'L JURIST, Oct. 1997, at 7. Martin argues that in most law schools career planning offices encourage students to pursue jobs in firms without fully discussing the public interest alternatives available.

91. See Cramton, *supra* note 69, at 247, 255.

92. Sophists were ancient Greeks who professed to teach, for a fee, rhetoric, philosophy and how to succeed in life. They have historically been portrayed as intellectual charlatans. Sophist philosophers were among the first to argue that there is no truth, only opinion. See CAMBRIDGE DICTIONARY OF PHILOSOPHY, *supra* note 4, at 752.

93. See Robert Gordon, *Legal Education and Practice: The Case for and Against Harvard*, 93 MICH. L. REV. 1231, 1231 (1995).

94. See, e.g., SIGMUND FREUD, *THE FUTURE OF AN ILLUSION*, (James Strachey ed. and trans., 1961) (arguing that the long-cherished "opiate of the masses," religion, should be replaced with faith in science).

95. See GLENDON, *supra* note 17, at 185.

96. See *id.* at 189.

tended that law could only be taught through an interdisciplinary approach in which black-letter law was understood simply as an attempt by existing elites to maintain their grasp on power.⁹⁷ Proponents of the law and economics school proposed that law is intelligible only if viewed through the lens of the insatiable human desire for the acquisition of property.⁹⁸ More than their revolutionary predecessor of legal science, these schools of thought devalued the notion of universal or transcendental norms.⁹⁹ They devalued the notion of laws as a means through which societal good can be realized. They are the norm of the modern academy.¹⁰⁰

These academic battles for the heart and soul of the modern law school have had several results. First, and perhaps most frightening, they have fostered within law students, and thus America's future oligarchs, a cynicism and distrust of law as anything more than personal perspective.¹⁰¹ Take for example, a typical first year constitutional law class. The professor who runs the class is likely to emphasize the "principles" on which the justices of the Supreme Court base their decisions. But often lost in the discussion is whether these principles actually benefit society. Certainly, law students need to learn how to interpret Supreme Court opinions, but in analyzing these decisions why is the question of whether the opinion is right or wrong never asked? Put another way, why are not students asked to give the best possible result given a *tabula rasa*?¹⁰² Perhaps, it is simply a lack of time. But if lawyers are not challenged to think through the theories which underscore their beliefs in law school, then when will it happen? Given the lack of a universal undergraduate curriculum,¹⁰³ there is currently no institu-

97. *See id.* at 210.

98. *See* KRONMAN, *supra* note 31, at 227.

99. *See* BRIAN BIX, *JURISPRUDENCE: THEORY AND CONTEXT* 159-197 (1996).

100. *See* KRONMAN, *supra* note 31, at 225.

101. *See* Cramton, *supra* note 69, at 255.

102. By "*tabula rasa*" I mean a blank tablet on which empirical experiences have not yet formed an imprint. *See* CAMBRIDGE DICTIONARY OF PHILOSOPHY, *supra* note 4, at 439.

103. *See generally* HAROLD BLOOM, *THE DEATH OF THE WESTERN CANON* Chap. 1 (1994). The problem with students who do not speak the same language by virtue of the same basic grounding is simple — they cannot understand each other, much as the best educated German cannot understand the best educated Arab. Lacking this common linguistic currency, a discussion on the best end to be pursued is impossible. Such is the lesson of the biblical tower of Babel. There is a reason that medieval philosophers were so concerned with the question of how many angels could fit on the head of a pin. *See generally* STEPHEN JAY GOULD, *DINOSAUR IN A HAYSTACK: REFLECTIONS IN NATURAL HISTORY* Chap. 4 (1994).

tion where students are given the opportunity to challenge each other's beliefs on the same points after studying the same material. This does not bode well for the judges and leaders of tomorrow, whose personal beliefs never will have been challenged.

The net result of all this is lawyers who do not believe that law really can orient people toward the good. While distrust of law is certainly a feature of law in despotic societies, it is a harmful attitude in a democratic one based on the rule of law.¹⁰⁴ For if lawyers do not believe that the damsel they are sworn to protect is anything more than a harlot in disguise, how can they lead a nation premised on the notion that law has moral force?¹⁰⁵

Second, these academic battles have had little relation or connection to the larger legal community. Because of a combination of radical political beliefs and an increasing specialization, legal scholars have become an "insular minority" incapable of communicating with the outside world.¹⁰⁶ As a general rule, most law professors have limited work experience — usually a clerkship and two or three years of practice.¹⁰⁷ And the limited experience they have received, because of the problems outlined previously, has re-cemented their close-mindedness toward the law. Since most students do not eventually become law professors, this is quite worrisome. Law students are being sent out in the world, with no real sense of the intricacies of their practice or the skills needed to run a nation.¹⁰⁸

This previous point is particularly troublesome in light of the breakdown of the old system in which law school taught you to think like a lawyer and the firms taught you the actual intricacies of being a practicing lawyer — specifically the human side of the law.¹⁰⁹ Today starting associates have limited contact with their superiors, as they spend several years alone in a library researching and drafting memos. Client contact does not come until late in the

104. See Bilahari Kausikan, *Asia's Different Standard*, 92 FOREIGN POLICY 24, 226 (1993).

105. See RICHARD HOFSTADTER, THE FOUNDING FATHERS 62-74 (discussing moral conceptions of the Founding Fathers and their impact on America legal development) in MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC, *supra* note 73.

106. See GLENDON, *supra* note 17, at 221.

107. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 2191 (1992).

108. See generally Richard Cappalli, *The Disappearance of Legal Method*, 70 TEMPLE L. REV. 393 (1997).

109. See Linowitz, *supra* note 88, at 1257.

game.¹¹⁰ The human thus becomes foreign and the notion of community dissolves in the bargain.

Finally, because of the decreased emphasis on public service in terms of both theory courses that teach students about the common good and clinical courses that apply the taught theory, law students are increasingly incapable of meeting the demands of being republican lawyers.¹¹¹ In most cases, in most law schools, law students are not encouraged to take a public service legal job. Often, jobs in public service are seen as a fall-back for those law students who did not make the cut for the prestige firms. This is hardly the kind of attitude that should be inculcated if law students are someday going to be the ruling elite.

Despite these flaws however, law schools remain the best place to train a guardian class. Barring a fundamental change in America's undergraduate institutions, only in the legal academy will students be versed in a common language. Knights of old were trained in the ways of the swords and the principles of chivalry before they were sent out on the fields of battle. Today, our battles are fought not on open fields, but rather in courtrooms and senate chambers.¹¹² Our knights thus must be trained in procedure and legal method, before they are allowed to fight the fights needed to achieve social justice and order.

III. Modern Realities: Can Law Be Saved?

There's an old cliché that states "you can take a horse to water, but you can't make him drink." It is a particularly apt description of the current crisis in American law. Thus far this Comment has argued that (1) there is general popular confusion as to the nature and purpose of law; (2) lawyers have the potential, by virtue of their status as American oligarchs, to assist in the lifting of this veil of ignorance; and (3) that despite its structural flaws, the American law school remains a valid vehicle through which a guardian class can be taught. The net conclusion derived from these arguments is that lawyers can help America regain her faith in the law. What has not been asked is whether Americans want to regain their lost faith.

Several historical developments warrant attention. First is the increased distrust Western civilization has had for universal themes

110. See generally P.Z. Parsa, *The Drudge Report: Brief Grief*, NEW YORK MAG., 24-31, June 21, 1999.

111. See KRONMAN, *supra* note 31, at 269.

112. As an example of this phenomenon see DAVIS, *supra* note 27, at 39.

since the Enlightenment.¹¹³ Effectively, Enlightenment philosophers began to attack the Christian vision of "God" and a universal end which made the cosmos intelligible.¹¹⁴ For political reasons, the power of divine sovereigns was questioned and the notion of "good" set to rest on majority opinion. While there is nothing wrong with democratic rule, the work of J.S. Mill and other writers stressed majority will as the dispositive factor.¹¹⁵ This belief represented a dramatic shift from the Athenian notion of democracy with its conception of some things being fundamentally "right" or "wrong."¹¹⁶ Conceptions of right and wrong came to be seen merely as vehicles through which leviathans could maintain their dominion over society.¹¹⁷ In place of the gods of old the Enlightenment raised the new idol of science and scientific method.¹¹⁸ Faith in science however has never satisfied the human subconscious to the extent that its proponents once believed it would.¹¹⁹ But, since the gods have already been destroyed, all that is left is a hole in the self — a missing center of identity and definition as part of a larger community.¹²⁰

Further complicating matters is the increased weakness of the nation-state, the building block of Western order since the Treaty of Westphalia in 1648.¹²¹ For a long time, it was the state that filled the void created by the death of religion. In an attempt to find meaning, citizens were willing to trust, believe in and ultimately fight for the nation.¹²² In a world in which great power battles and showdowns are increasingly rare,¹²³ it is unlikely that faith in the

113. See ROBINSON, *supra* note 19, at 204.

114. See PAUL JOHNSON, *THE BIRTH OF THE MODERN* 820-821 (1991).

115. See BOWIE, *supra* note 46, at 35-38.

116. See, e.g., AQUINAS, *supra* note 40, at 76-79 (discussing why temperance is better than indulgence).

117. See BOWIE, *supra* note 46.

118. See generally RICHARD WEAVER, *IDEAS HAVE CONSEQUENCES* (1948).

119. *Id.* at 300. Although it is still a popular idea. See *Resolved: Science Is at an End. Or Is It?*, N.Y. TIMES, Nov. 10, 1998, at F5.

120. Also note that Enlightenment philosophers moved away from the notion of distributive equality. This has had the effect of weakening public support for the idea that some people's skills and talents are best used in leadership capacities — in orienting the community toward the common good. The hole in the self can also be attributed to this phenomenon.

121. See generally JEAN-MARIE GUEHENNO, *THE END OF THE NATION STATE* (1995).

122. See generally GIDON GOTTLIEB, *NATION AGAINST STATE: A NEW APPROACH TO ETHNIC CONFLICTS AND THE DECLINE OF SOVEREIGNTY* (1993) (examining the role of nationalism in the formation of the modern state).

123. See, e.g., JOHN MUELLER, *RETREAT FROM DOOMSDAY: THE OBSOLESCENCE OF MAJOR WAR* (1996).

nation will continue to suffice for many people. For in the absence of war, of a chance to define oneself by what one is not, how can states possibly hope to garner the faith of their populace?

In such an era, where there are no gods and no states, is it any wonder that the human thymos¹²⁴ is currently most satisfied in the pursuit of a capitalist commercial life?¹²⁵ The commercial life, is, as Fukuyama argued, the one quasi-warlike creative vice left through which the individual can be defined.¹²⁶ The last man of the modern era is the businessman-capitalist not the lawyer-statesmen or the philosopher-king, for kings and statesmen no longer have kingdoms to rule. Tomorrow's battles will seemingly be fought in the world of economics. The question is for how long?

Psychology teaches us that, the one constant, throughout all time, across all civilizations, is the need of a society to believe in something — to have something to fight for.¹²⁷ The mere pursuit of money has never been a sufficient something.¹²⁸ Something else must take its place. But what? Given the diversity of religions, political viewpoints, etc., in modern America, it is unlikely (and indeed undesirable) that a new Christendom or the like can be founded. But what all Americans do have in common is a faith, however skeptical or bruised, in law.¹²⁹ If lawyers can begin to renew their understanding and commitment to the law as the efficient cause¹³⁰ of the common good and happiness, this faith can fill the void left in the wake of the destruction of the old gods. In so acting, American society can move beyond its current fixation on the stock market and on to more pressing issues in social justice and welfare.¹³¹

124. Thymos is an "innately political virtue necessary for the survival of any political community, because it is the basis on which private man is drawn out from the selfish life of desire and made to look toward the common good." FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 183 (1992).

125. See generally *id.*

126. See *id.* at 190.

127. See ABRAHAM ROSMAN & PAULA G. RUBEL, *THE TAPESTRY OF CULTURE* 190 (1995) (discussing humanity's need to have its cognitive, substantive and psychological needs fulfilled — an end historically achieved through the use of religion).

128. See PAUL KENNEDY, *THE RISE AND FALL OF THE GREAT POWERS* 538-541 (1987) (for a discussion of how great economic powers have historically translated that power into military and political clout).

129. See STEPHEN SOLARZ, *OF VICTORY AND DEFICITS* 89-95, in *AMERICA'S PURPOSE*, *supra* note 71.

130. See *supra* note 19 (discussing Aristotelian causation).

131. See David Hendelman, *Stocks Till We Drop*, N.Y. TIMES, June 17, 1999, at A31.

IV. Recommendations for Change

It is apparent that structural reforms need to be undertaken, both within the legal community and in the community at large, if "we are to remain (or return to being) a nation of laws and not of men."¹³² Three reforms in particular seem warranted. Through the application of these reforms, the intrinsic advantages possessed by lawyers can be brought to the forefront. Consequently, a greater return on those to whom much was given can be demanded.

Most importantly, the modern law school needs to be re-examined. There needs to be an increased acceptance in law school faculties of classical notions of law. Students must be taught that belief in law as something more than random whim of judges and politicians is acceptable. Studies in ethics seminars which include both a theoretical and service component should become an essential element of every law student's curriculum. These programs should include not only discussions of traditional *pro bono* work, but also of non-traditional legal jobs such as public service or government work.¹³³ Law schools also need to better fund post-graduate public interest legal programs, thereby manifesting a greater commitment to public interest law. Given the great cost of such an undertaking, law schools would be wise to work with the leaders of the bar to create a greater number of post-graduate fellowships and loan-forgiveness programs that are in part funded by the profits of the large firms.¹³⁴

Second, law schools and the bar associations need to work closely together to implement legal public education programs at the nation's high schools and universities. Much as Sol Linowitz has suggested,¹³⁵ both high school and college students need to receive training about the purpose of law, the content of law, the

132. See GLENDON, *supra* note 17, at 8.

133. A good example of just this type of program exists at Fordham University School of Law. Members of Fordham's Stein Scholars Program in Law and Ethics (a competitive public interest program that designates certain students as Stein Scholars based upon their previous public interest experiences and desire to perform such work in the future) are required to take a semester long course in the spring of their second year which incorporates both a theoretical and clinical component. For example, during my second year, I was fortunate enough to work with Lawyers Alliance for New York on the incorporation of a day-care center in an under-developed area of Brooklyn, New York. The practical work on this project (e.g., meeting with the client, drafting the articles of incorporation and by-laws) was supplemented with heavy academic reading in theories of lawyering and public interest law.

134. For a fuller discussion of this idea, see Edelman, *supra* note 28.

135. See Linowitz, *supra* note 88, at 1257.

notion of rights — both collective and individual — and finally of obligations. Not only would this benefit the majority of Americans who will never attend law school, but it is also likely to have the added bonus of increasing the dialogue between academics and practitioners. They will have to cooperate to design a curriculum.

Finally, perhaps it is time to do more than re-examine the zealous advocacy paradigm of lawyering. While alternative notions of lawyering abound (e.g., community activist, community liaison, community empowerer, etc.) in the main, the organized bar remains wedded to the notion of zealous advocacy.¹³⁶ As has been noted however, zealous advocacy does not properly take into account public law's concern for the common good. Alternative visions that place a greater emphasis on practical wisdom, need to be better integrated into the legal mainstream. Active lobbying by academics and concerned practitioners for such changes would do much to put the ball in motion.

Conclusion

In summary, this Comment has argued that because of a series of historical events, Americans have become confused about the purpose of law. Rather than seeing law as a culture specific derivation of eternal principles, many Americans now see law as an arbitrary and capricious device — which does not equate with their understanding of what law should be. Such a belief is reinforced by lawyers, who in pursuit of the client's interests, fail to care for the common good. Law schools, in their training of the high priests of the law, have hardened this principle into their willing clay, first through the Holmesian legal science revolution and more recently through legal realism, law and economics and critical legal studies. It is of little surprise then, that the "best and brightest" of the modern law-student do not attempt to become philosopher-kings or lawyer-statesmen, but rather value-neutral technicians.

Such a state of affairs cannot stand if America is to prosper into the next century. Today's lawyers, despite their training, given their continued role as a political elite, must begin to return the law to its purpose as the instrument for the realization of basic goods and ultimately happiness. To achieve this end, law schools must be reformed, new education techniques implemented in high schools and colleges, and the credo of individual client first, last and always re-examined. The fruits of this labor, while not likely to be imme-

136. See Pearce, *supra* note 83.

diately apparent, have long term significance for a more healthy, greater good. For not only will we have saved law and the legal profession, but more importantly, we will have begun to save ourselves. People need to believe in something and the erection of a "god of law" is at least something all Americans can believe in.

If such changes can be realized, perhaps, unlike our predecessors, we will not be doomed to the lowest reaches of hell. Rather, we can be a modern Virgil,¹³⁷ who, through our developed practical wisdom and a touch of grace, can lead the American populace up to Paradiso,¹³⁸ up to our own golden city on a hill. If used wisely and creatively, the law has within it the power and potential to implement the systemic reforms necessary to reshape America into the "champion and vindicator of liberty" that John Adams once promised she would be.¹³⁹ Such a course will not be without its challenges and it certainly will not come easy. But as Virgil once counseled Dante, "Here must all distrust be left behind, here must all cowardice be ended."¹⁴⁰ For it is only through the rejection of our fears and doubts, that great things can be done.

137. In Dante's *Divine Comedy*, Virgil, the ancient poet, plays guide to Dante, the poet and pilgrim, who has lost his way in the "middle of the journey" of his life. See ALIGHIERI, *supra* note 1, at 23.

138. Dante's end journey in the *Divine Comedy*. See DANTE ALIGHIERI, *PARADISO* (John D. Sinclair ed. and trans., 1948).

139. See ARTHUR SCHLESINGER, JR., HUMAN RIGHTS AND THE AMERICAN TRADITION 384, in *THE AMERICAN ENCOUNTER*, *supra* note 25.

140. ALIGHIERI, *supra* note 1, at 47.