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## Ethical Soap: *L.A. Law* and the Privileging of Character

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# Special Issues and Topics

## Ethical Soap: *L.A. Law* and the Privileging of Character

ROBERT ELI ROSEN\*

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### I. THE PROBLEMS OF *L.A. LAW*'S POPULARITY

It's "an old story" that lawyers are immoral because in their role they "*hire out their Words and Anger.*"<sup>1</sup> It's an old story that lawyers' ethical obligations are determined by an amoral morality that excludes "all hazards and costs . . . to . . . [themselves]."<sup>2</sup> But these tales are not told on *L.A. Law*, the popular television series.<sup>3</sup> On *L.A. Law*, legal practice reveals and tests lawyers' character. On *L.A. Law*, neither the requirements of the lawyer's role nor the Bar's ethical rules primarily determine the choices lawyers make. Rather, *L.A. Law* is a soap opera in which action is determined by the characters' "character."<sup>4</sup> On *L.A. Law*, lawyers' practices reveal their character. Conflicts between the dispositions of its characters and the demands

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1. M. FRANKEL, *PARTISAN JUSTICE* 29 (1980) (emphasis in original) (quoting a characterization of lawyers in *THE SPECTATOR* No. 21 (1711)). For a recent retelling, see Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 *WIS. L. REV.* 29, 91-113.

2. *2 CAUSES CÉLÈBRES: TRIAL OF QUEEN CAROLINE* (3 rev. ed. 1874) (speech of Lord Henry Brougham). For a recent retelling, see Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, 1986 *AM. B. FOUND. RES. J.* 613.

3. *L.A. Law* (NBC weekly television series).

4. See *infra* text accompanying notes 42-48. For the meanings of "character," see *infra* note 16.

of professional obligations often create the dramatic incidents on *L.A. Law*. These conflicts are both resolved and evaluated within the constraints of *L.A. Law*'s soap opera frame. *L.A. Law* presents lawyers' words and anger so that lawyers' characters may be judged.

It is an old story that "the public confuses the morality of a lawyer with that of his client."<sup>5</sup> This tale, too, is not shown on *L.A. Law*. *L.A. Law* lawyers represent innocents accused, but they also represent the guilty and the unsavory. Such representations produce plot complications, not damning criticisms. On *L.A. Law*, client character is relevant to, but distinct from, lawyer morality. Not necessarily tainted by their clients, *L.A. Law* lawyers are even likeable.<sup>6</sup> *L.A. Law*'s reception suggests that the public is not so morally immature that it "assumes that a profession which is willing to counsel dishonest and unworthy clients is itself unworthy and dishonest."<sup>7</sup>

*L.A. Law* lawyers question the character of their own and each other's clients as well as the propriety of their representations. The duty of lawyers to provide access to justice sometimes is raised. For *L.A. Law* lawyers, however, the imperatives of the adversary system usually are not sufficient to answer ethical questions. *L.A. Law* tests professional obligations by the hazards and opportunities legal practice poses to the character of lawyers. Questionable representations often are undertaken because they offer opportunities for further revelation of the lawyer's character. Reprehensible clients may be represented, it suggests, but only if the lawyer has the ability to act in character in the vicissitudes of the representation. *L.A. Law*'s reception suggests that the public assumes that law is a desirable profession when lawyers' characters are revealed and tested in their work.

*L.A. Law* is not high art. It is not even consistently high quality television drama. Yet, in this Essay, I take *L.A. Law* seriously. One reason for analyzing *L.A. Law* is that it is a popular imagining of lawyers. It deserves professional attention because it brings "law into the consciousness and understanding of the public at large."<sup>8</sup> I elabo-

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5. Luban, *Calming the Hearsed Horse: A Philosophical Research Program for Legal Ethics*, 40 MD. L. REV. 451, 456 (1981); see also, K. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 149 (hardcover ed. 1960) ("The public does not always understand . . . [the] grave danger in thus lumping counsel and client.").

6. O'Connor, *Likeability can become a Liability*, N.Y. Times, June 7, 1987, § 2, at 35.

7. Luban, *supra* note 5, at 456.

8. ABA COMMISSION ON PROFESSIONALISM, ". . . IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAW PROFESSIONALISM 53 (1986) (quoting an A.B.A. Stanley Commission interview with Professor Paul Freund, December 3, 1985, in which Professor Freund explains the obligation for law professors to contribute to public education about the law); see also *id.* at 47, 53 ("All segments of the Bar should . . . [e]ducate the public about legal processes and the legal system.") (emphasis omitted).

rate the account of legal ethics that *L.A. Law* brings to the public. I find in it a cultural critique of legal ethics. For us, cultural commitments demand that lawyers be afforded the opportunity, within structured limits, to display more of their character than is demanded by current patterns of practice and interpretations of legal ethics.

In depicting character as ethically significant, *L.A. Law* suggests that explicating the scope of lawyers' obligations requires considering not only an impersonal moral standpoint, but also the virtues and personal commitments of actors. The elaboration of this suggestion has been the subject of serious efforts that vary depending on the account given "of the sources of morality, the conditions of practical rationality, and the overall motivational economy of the soul."<sup>9</sup> *L.A. Law* does not provide a serious elaboration, but I take *L.A. Law* seriously to respond to its account of legal ethics. I do not attempt to elaborate an account of how agent's dispositions and commitments ought to be tied to an impersonal moral analysis. Although *L.A. Law* may begin many discussions, my response in this Essay is limited to elaborating the claims of *L.A. Law*'s soap opera frame. Using *L.A. Law* in the classroom necessitates the analysis I present.

*L.A. Law* presents lawyers living well, living what our culture conceives to be the "good life." Presenting lawyers whose lives are recognizably rich, *L.A. Law* overcomes the public's hostility to lawyers. *L.A. Law*'s popularity, if not real lawyers' dissatisfaction with their practices, suggests that an amoral role morality fails to satisfy our culture's vision of living well. Regardless of the ethics of their actions, *L.A. Law* lawyers have practices which enable their characters to be recognized. In our culture, as *L.A. Law* depicts, this is necessary for living well, for living the good life.

It is not necessarily a defect of an account of ethical obligation that the good lawyer does not live a good life. Ethical duties may obligate one not to live well. But the goods of moral action are not the only goods lawyers ought to be able to derive from their practices. Living in the law ought to afford opportunities for realizing these

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Professor Gillers has opined that "'*L.A. Law*' is the single most important social vehicle in America today for the presentation of the work lives of lawyers. Nothing else comes close to presenting the ethical dilemmas lawyers face. People come to law school subliminally influenced by '*L.A. Law*.'" Machlowitz, *Lawyers on TV*, 74 A.B.A. J. 52, 55 (Nov. 1988).

9. T. NAGEL, *THE VIEW FROM NOWHERE* 189 (1986). The (re)construction of ethics to take into account agents' characters recently has been put into question. See C. GILLIGAN, *IN A DIFFERENT VOICE* (1982) (in feminism and moral development); S. HAUERWAS, *VISION AND VIRTUE* (1974) (in philosophy); A. MACINTYRE, *AFTER VIRTUE* (1981) (in philosophy); T. SHAFFER, *AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS* (1985) (in legal ethics); B. WILLIAMS, *ETHICS AND THE LIMITS OF PHILOSOPHY* (1985) (in philosophy).

goods. Our culture's vision of the good life needs to be criticized.<sup>10</sup> Yet, at least when ethical obligations are not thereby compromised, cultural images of the good life provide them with reasons for restructuring the professional role to enable better lives to be led in the law.

In presenting lawyers living seemingly desirable lives, *L.A. Law* challenges the profession to justify legal practice's imposition of not only ethical obligations but also constraints on the good life. "An important, perhaps the most important task of political thought and action is to arrange . . . the institutions under which we live" to "make it possible for us to lead rich personal lives without denying the impersonal claims" of ethics.<sup>11</sup> I take *L.A. Law* seriously to pursue this task by elaborating its depictions of lawyers living well.<sup>12</sup>

*L.A. Law* is not realistic.<sup>13</sup> Yet, I contend that it is descriptive of our culture. Although not realistic, I assume that *L.A. Law* could not succeed if it did not reflect how its audience sees itself or wishes it were. I proceed to interpret *L.A. Law*, offering one account of its success. My account is related to, but substantially different from, a common interpretation of *L.A. Law*: *L.A. Law*'s popularity is generated by its depiction of lawyers who are consumed by carnal and material desires.<sup>14</sup> *L.A. Law* does dwell on our culture's currencies of the self: sex and money. *L.A. Law*, however, portrays lives no more libertine than those depicted in other cultural products with a mass following. And the salient fact in its portrayals of transactions in the currencies of the self is that they are valued by the character of those engaged in them.<sup>15</sup>

Lust and luxury do intrigue viewers, but they do not explain why *L.A. Law*'s depiction of legal practice is so popular with a public that is hostile to the legal profession. Nor, given students' general cyni-

10. Cultural commitments present agents with reasons for acting, and the historical project includes testing their contribution to the good life. T. NAGEL, *supra* note 9, at 186-88; B. WILLIAMS, *supra* note 9, at 200-01; cf. M. WALZER, *INTERPRETATION AND SOCIAL CRITICISM* (1987) (describing how criticism reflectively develops imminent social norms).

11. T. NAGEL, *supra* note 9, at 206-07.

12. *L.A. Law* would be irrelevant for this purpose if the legal practice it depicts cannot be realized except in fiction. *L.A. Law* would be irrelevant if it is assumed that the subordination of lawyer character is a functionally necessary component of the lawyer role, as does Pepper, *supra* note 2, at 615. This assumption, however, needs to be proven. Normally, complex social functions can be realized by a variety of social structures. Cf. A. GOULDNER, *THE COMING CRISIS OF WESTERN SOCIOLOGY* 51 (1970) (functional analysis ought not to introduce the autonomy of social structure as a domain assumption).

13. See *infra* notes 64-65.

14. See, Orey, *Sex! Money! Glitz! In-House at L.A. Law*, AM. LAW., Dec. 1988, at 32.

15. To take a rather trivial example, Arnold Becker (Corbin Bernsen), for all his riches and women, is a lonely character. He stands as ready to forego the pleasures of his latest conquest as he is to seduce her.

cism about the ethics of legal practice, does it explain why so many of them empathize with the moral struggles depicted on *L.A. Law*.

In my reading, *L.A. Law*'s success in no small part hinges on its success as a soap opera. Its characters are admired because their "characters" are privileged, capable of directing their actions and being recognized by others. I argue that *L.A. Law* overcomes the basis of public hostility to lawyers by depicting lawyers who do not separate what they do from who they are. By portraying lawyers, freed from material constraints, who face ethical dilemmas which demand only the display of one's character, *L.A. Law* overcomes student cynicism. In so doing, *L.A. Law*'s portrayals are consonant with, what I term, our culture's "privileging of character."

"Character" and its cognates are not readily defined, but they bespeak a psychological, individualistic, and subjectivized account of moral judgment.<sup>16</sup> By the privileging of character, I mean that the motivations to express and be recognized by one's character are valued.<sup>17</sup> The privileging of character emphasizes that agent-neutral reasons—impersonal moral reasons—do not rule out reasons that derive from the commitments of embodied characters, and that institutional constraints on character demand ethical justification. In short, the privileging of character defers the irony of Polonius' "To thine own self be true."

To say that character is culturally privileged, of course, does not

16. As Professor Frug has noted, the word "character" has "overlapping literary, psychological and sociological overtones" that make it difficult to define, but suit it well for exploring the "interrelated tasks of self-definition and social definition [that] remain the critical political and ethical issues for us." Frug, *Argument as Character*, 40 *STAN. L. REV.* 869, 873, 876 (1988).

At a psychological level, character is one of those "'things' that people 'have' on which they 'base' their decisions." *Id.* at 873 (rejecting this definition for its static implications). Valuing intentionalism accords with the privileging of this meaning of character.

At a social level, it is through "character" that we are recognized. As Professor Kronman notes, one meaning of character is "those involvements and activities that . . . make someone the person he or she *is* and [not] those one merely *has* or *does*." Kronman, *Living in the Law*, 54 *U. CHI. L. REV.* 835, 840 (1987) (emphasis in original). Valuing individualism accords with the privileging of this meaning of character.

At the normative level, character stresses the virtue and personal projects of the actor and the relationship between integrity and responsibility. *See supra* note 9. A commitment to the subjectivity of the moral agent accords with the privileging of this meaning of character.

*Cf.* M. KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* 86-113 (1987) (reviewing positive law's instantiation of commitments to individualism, intentionalism, and the subjectivity of the moral agent).

17. The nature of this valuing is subject to both philosophical and cultural contention, making this definition a weak one. Yet its weakness is deliberate, for the object of this Essay is not to account for moral choice, but to explore how commitments to character affect our concept of the professional role. *Cf.* P. SELZNICK, *LAW, SOCIETY, AND INDUSTRIAL JUSTICE* 4-5 (1969) (arguing for weak definitions and strong conceptual relations in social science).

make it morally privileged. To say that agent-relative reasons are predicates of moral judgment does not make them determinants of the content of ethical judgment. The privileging of character may reflect a conception of self in need of deconstruction<sup>18</sup> or the desiccation of public spheres.<sup>19</sup> Confronting the privileging of character, however, is necessary for two different reasons. For ethical pedagogy—for the teaching of professional responsibility—addressing the privileging of character allows entry into individual experiences of moral choice, in which our shared ethical principles are crystallized.<sup>20</sup> For moral analysis—for determining how lawyers ought to live—addressing the privileging of character allows discussion of how legal practice can provide lawyers with access to the prerequisites of the good life.

The privileging of character explains why “the old story” of lawyers selling their scruples is still with us. Public unkindness to the legal profession does not derive only from lawyers representing scoundrels. As *L.A. Law* suggests, in a culture which privileges character, public ire is roused by the profession’s claim that lawyers ought to be judged by their conformity to professional rules, not by their character.<sup>21</sup>

*L.A. Law* also demonstrates why the debates about role-differentiated ethics have been interminable. As others have recognized, these debates fail to incorporate how “culture and tradition provide a structure of goals and constraints” on legal practice.<sup>22</sup> In a culture whose conceptions of character are deeply rooted in individualism<sup>23</sup> and which idealizes professional status as granting to individuals

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18. Heller, *Structuralism and Critique*, 36 STAN. L. REV. 127, 184-85 n.96 (1984); see also Frug, *supra* note 16, at 876 (rejecting an intentionalist definition of character for mischaracterizing the provisional, creative, and revisionary nature of life). In exploring the privileging of character, I do not seek to raise foundations, believing “[t]he transition is not from illusion to ultimate truth, but from illusion to controlled doubt and irony.” E. GELLNER, *THOUGHT AND CHANGE* 81 (1964). Rather, I hope to suggest that character, like “progress,” is one of those “nominally retained ideologies” that advance “the contemplation of those half-implications and total exclusions, of those now-revealed ranges of possibilities.” *Id.*

19. In a society without public spheres, concern with personal commitments and virtues may replace attention to principles and rules, cutting off moral conversation. Diamond, *Losing Your Concepts*, 98 ETHICS 255 (1988).

20. Cf. Walzer, *Teaching Morality*, NEW REPUBLIC, June 10, 1978, at 12 (encouraging study of morality and ethics).

21. See *infra* notes 50-51 and accompanying text.

22. Shaffer, *The Legal Ethics of Radical Individualism*, 65 TEX. L. REV. 963, 981 n.74 (1987); see also Schneyer, *Moral Philosophy’s Standard Misconception of Legal Ethics*, 1984 WIS. L. REV. 1529, 1535-38.

23. R. BELLAH, R. MADSEN, W. SULLIVAN, A. SWIDLER & S. TIPTON, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 142-63 (1985) [hereinafter R. BELLAH].

autonomy in their work,<sup>24</sup> an amoral professional morality betrays socially sanctioned conceptions of the good life. Consequently, lawyers have socially validated reasons to reject any formulation of an amoral morality. For the resolution of these debates, as well as for cynicism not to attend legal ethics, these reasons demand that lawyers' access to the good life be justifiably limited.<sup>25</sup>

I had not intended to become an *L.A. Law* habitué, but students (and colleagues) pestered me with questions about the ethics of the lawyers on *L.A. Law*. Reluctant to pass up these glimmers of interest in my work, I introduced incidents from the television series as hypotheticals for classroom discussion in my professional responsibility courses. This Essay is warranted by that experience; my reading of *L.A. Law* interprets those conversations.

Surely *L.A. Law* has different types of plots and evokes different responses. My reading centers on the soap opera aspects of *L.A. Law* and one response which is typified in the following comment: "I couldn't believe Anne took that case and did that. It's just not like her."<sup>26</sup> Of course, this response can be dismissed. One might retort, "Anne is a junior partner; she'll take the cases that she is assigned." Or, "If Anne were worthy of your admiration, she'd spend more time worrying about what is in the client's interest, not what she could live with." But these retorts do not "attend to the course of conversation."<sup>27</sup>

*L.A. Law* generates a moral discourse—which might be dismissed as gossip—that values Anne's will and seeks to evaluate whether her will is good. Attending to such gossip, as the philosopher argued two-hundred years ago, can cultivate and exercise moral com-

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24. Parsons, *The Professions and Social Structure*, 17 SOC. FORCES 457 (1939), reprinted in T. PARSONS, *ESSAYS IN SOCIOLOGICAL THEORY* 34 (paperback rev. ed. 1964) (referring to professionals in general); Kagan & Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399 (1985) (referring to lawyers).

25. This proposition may be restated without directly relying on the good life's constraint on the moral life: Role-differentiated ethical rules cover only exceptional cases. A. GOLDMAN, *THE MORAL FOUNDATIONS OF PROFESSIONAL ETHICS* 20-33 (1980) (due to requirements of consistency and universality). If the individual professional does not decide which situations are exceptional, given commitments to individualism, the actor's sense of responsibility will be undermined. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63, 79-81 (1980). If what is exceptional is publicly defined, given professional autonomy, both ethical and unethical actions will be sustained. Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589 (1985). Hence in a society committed to individualism and professional autonomy, an amoral professional morality will be either untenable (Postema) or indeterminate (Rhode). To foster responsibility and limit unscrupulous actions, constraints on lawyer motivations need to be justified.

26. Referring to Anne Kelsey (portrayed by Jill Eikenberry).

27. I. KANT, *CRITIQUE OF PRACTICAL REASON* 157 (L. Beck trans. 1956).



mitments.<sup>28</sup> Although this gossip must be scrutinized, its inclusion in moral pedagogy provides an alternative to the cynicism in which "[Honesty] is praised and starves."<sup>29</sup> Students who display cynicism about their own ethical interests, suprisingly admire the will of *L.A. Law* lawyers to display their character. Cultivating the moral worth of this admiration is a challenge posed by *L.A. Law*.

The following three Sections move from pedagogy to moral analysis. In Section II, I consider the strip-mining of *L.A. Law* for teaching-hypotheticals. Using the teaching of Kuzak's "first case" as an example, I describe the cost of reducing Kuzak to a mask, without an identity.<sup>30</sup> Strip-mining *L.A. Law* for hypotheticals, I conclude, neither captures *L.A. Law*'s enhancement of interest in questions of legal ethics nor its conception of moral dilemmas.

I elaborate *L.A. Law*'s genre, the soap opera, in Section III to explore *L.A. Law*'s conception of moral dilemmas. *L.A. Law*'s privileging of character reflects the soap opera's frame on moral dilemmas. Beginning with the soap opera frame, I return to Kuzak and his ethics. Instead of his compliance with the ethics rules, at issue in this Section is the worth of Kuzak's character. By first elaborating and then criticizing Kuzak's character, I explore *L.A. Law*'s account of legal ethics. I emphasize that Kuzak assumes responsibility for actions under soap opera conditions. It is the absence of these conditions in everyday life that suggests why the "old stories" are still with us.

Finally, in Section IV, I return to the popularity of *L.A. Law*. Its popularity emphasizes that the privileging of character does not lead to ambivalence. Although "we are actually *simultaneously* drawn"<sup>31</sup> to contradictory descriptions of action, I conclude that *L.A. Law*'s popularity speaks of our culture's commitments to designing insitutions in which a lawyer's character counts.

As an account of a (fictive) lawyer's ethics, this Essay addresses one confrontation between character and an ethic of rules. As criticism of one public imagining of lawyers, this Essay claims and confronts our culture's privileging of character, at least for professionals like lawyers. As a report on teaching professional responsibility, this Essay prizes students speaking as if they have emerged not from a

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28. *Id.* at 157-65 ("Storytelling" and "jesting," not moral theory, are the bases for "the method of founding and cultivating genuine moral dispositions.").

29. *Id.* at 164 (citations omitted).

30. *Cf.* J. NOONAN, PERSONS AND MASKS OF THE LAW 27-28 (1976). Noonan recognizes that masks are an often dysfunctional fiction. *Id.* at 26 ("At the point of a legal system where it is too much to recognize that a human being exists, a mask is employed.").

31. M. KELMAN, *supra* note 16, at 87 (emphasis in original).

bath of cynical acid, but one with ethical soap.<sup>32</sup>

## II. STRIP MINING *L.A. LAW* FOR HYPOTHETICALS: MASKS WITHOUT IDENTITIES

*L.A. Law* often tells tales of lawyer morality. In previous television series, lawyers were aligned with their clients and their clients were almost always innocent. Consequently, difficult questions of legal ethics rarely were implicated. Because clients were innocent and justice always prevailed, there was little occasion to question the assumptions or test the limits of the "[a]dversary [s]ystem [e]xcuse."<sup>33</sup> If ethical problems arose, they normally related to issues of competency and diligence. They engaged viewers in the question, "Will the lawyer, this time, have the skill to protect his virtuous client?"<sup>34</sup> *L.A.*

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32. The most sophisticated debate on the content of professional responsibility courses, that between Professors Chemerinsky and Schneyer, appears to turn on the relative contributions of agent-relative reasons and an impersonal moral standpoint to moral judgment. Chemerinsky, *Pedagogy Without Purpose: An Essay on Professional Responsibility Courses and Casebooks*, 1985 AM. B. FOUND. RES. J. 189; Chemerinsky, *Training the Ethical Lawyer: A Rejoinder to Schneyer*, 1985 AM. B. FOUND. RES. J. 959; Schneyer, *Professional Responsibility Casebooks and the New Positivism: A Reply to Professor Chemerinsky*, 1985 AM. B. FOUND. RES. J. 943. Professor Chemerinsky argued that to motivate ethical behavior, professional responsibility courses should focus on students' "personal morality," "encouraging . . . independent moral judgment." Chemerinsky, *Training the Ethical Lawyer*, *supra*, at 962 (emphasis added). Professor Schneyer argued that professional responsibility courses ought to emphasize the rules, teaching that the "rules and moral judgment must and usually can be made to correspond." Schneyer, *supra*, at 957 (emphasis in original). In evaluating *L.A. Law*'s introduction into a professional responsibility course, I suggest one resolution for this debate. First, introducing *L.A. Law* indicates the point where the positions overlap: As empathy with *L.A. Law* characters demonstrate, the moral motive can be experienced. Second, agent-relative reasons can be criticized by a depersonalized moral analysis. See *supra* note 10; *infra* text accompanying notes 52-57 (criticizing Kuzak's character). Third, rules can be criticized from an agent-relative position. At the least, moral duties do not always override shared conceptions of the prerequisites of the good life. See T. NAGEL, *supra* note 9, at 196-97; *infra* text accompanying notes 65-84 (consequences of the privileging of character).

33. Luban, *The Adversary System Excuse*, in *THE GOOD LAWYER* 83 (D. Luban ed. 1984) (discussing conflicts between professional morality and ethical obligation inherent in the adversary system).

34. Although viewers could rely on an affirmative answer to this question, dramatic tension was sustained by the complications of discovery and litigation. On these series, the lawyer's ethical worth was determined by whether his skill unravelled the truth to protect his client before the program ended. These series suggested that truth would emerge from the adversary system, but only if the lawyer was highly competent and diligent. Consequently, a lawyer on these series could smile with confidence and purpose, as Perry Mason so often did, when clients, protesting their innocence, rejected the plea bargains the lawyer had negotiated.

Of course, much more could be said about the messages these lawyer series projected. One might analyze their valuation of individuality, competency, or privacy. Or one might analyze what they did not teach, e.g., the duties of loyalty when defending the abhorrent or guilty client. Their class, sex, and political biases are discussed in Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229 (1987).

*Law*, on the other hand, tests more than the lawyers' skills in investigation and litigation; it tests their commitments to themselves, their clients, and to the adversary system. In an innovation for television, *L.A. Law* depicts lawyers in conflict with compromised and compromising clients.

Extracting these conflicts from the series and presenting them as hypotheticals in a professional responsibility course appears desirable for at least three reasons. First, using *L.A. Law* hypotheticals capitalizes on student interest in the series, stimulating classroom discussion. Second, instead of discussing yet another judicial opinion, using hypotheticals drawn from *L.A. Law* introduces variety into the classroom, perhaps arousing the previously unengaged. Third, hypotheticals from *L.A. Law* promote discussion and self-reflection about the affective aspects of lawyering.

*L.A. Law*'s dramatization of how lawyers feel when placed in ethical dilemmas can stimulate discussion that is not readily generated by case reports. Case reports are not very effective materials for conveying the affective life of lawyering.<sup>35</sup> Yet professional responsibility courses need to discuss lawyers' emotional responses to their work for at least four reasons. First, a lawyer's feelings may influence her actions, particularly discretionary judgments, such as permissive disclosures. Second, lawyers ought to learn to live and to deal constructively with the feelings generated by practice.<sup>36</sup> Third, some of the virtues of exemplary lawyers can be developed best through the process of empathetic identification.<sup>37</sup> Finally, lawyers can choose a career recognizing that differing practice specialties, settings, and organizations elicit and damp different feelings. Thus even teachers who have no need to engage greater attention from their students

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35. R. CRAMTON, AUDIOVISUAL MATERIALS ON PROFESSIONAL RESPONSIBILITY vii (1987).

36. One purpose of law school education in professional responsibility is to provide future lawyers with a safe harbor in which to discuss their fears and anxieties. Professional responsibility classes, like law schools, all too often fail to convince students that they are safe harbors. Then, introducing fictional materials into the classroom can assist students to air, at least partially, their fears and anxieties. As Dean Cramton suggests, discussing fictive surrogates can spare students "embarrassment or undue self-revelation." *Id.* at viii.

37. One way in which we come both to understand and to value a virtue we don't fully possess is by empathetic identification with those who better possess the virtue. We learn, for example, about integrity by empathetic identification with displays of pride and humility by those who possess integrity. More generally, we interpret, in part, to look for ourselves. In this way, thick description becomes a moral resource. C. GEERTZ, *Thick Description: Toward an Interpretive Theory of Culture*, in *THE INTERPRETATION OF CULTURES* 3-6 (1973); cf. P. ROTH, *ZUCKERMAN BOUND* (1985) (describing a character who is neurotically fixated on this interpretive motive).

might benefit by mining *L.A. Law* for hypotheticals, extracting both the conflicts and the emotional responses depicted.

In order to exemplify law school use of this television series, consider Kuzak's "first case," depicted on *L.A. Law*'s premiere episode. Michael Kuzak (portrayed by Harry Hamlin) is a handsome ex-district attorney. He represents a client who is factually guilty. The client, a spoiled brat, is accused of raping and beating a defenseless leukemia victim. Kuzak is forced to suffer the brat because the client's father is an important business client of the firm. During the preliminary hearing, the victim is subjected to a humiliating cross-examination by the appointed counsel of a co-defendant. Rather than admiring the lawyer's skill, Kuzak questions his own commitments. Later, Kuzak tells the victim that he wouldn't lose sleep if she got a gun and blew his client away. The victim replies: "That's the difference between us, I would."

Kuzak's ill will toward his client is concretized when the client, armed, extorts Kuzak in an empty parking garage. Kuzak then seeks out a police acquaintance and inquires as to whether his client is licensed to carry a gun. As a result of this communication, the client is stopped and drugs are found on him. Kuzak pleads his client to eighteen months, thinking that jail-time would do the spoiled brat some good. Kuzak's first case has come to what he feels is a successful conclusion. We later see Kuzak being reprimanded by his senior partner. But looks are deceiving. The senior partner relents: "I might argue with your ethics in this case. But I admire your conscience." The show ends with the victim and Kuzak embracing.

Kuzak's first case might be introduced into a law school classroom to discuss the interplay between the ethical rules on confidentiality, conflict of interest, and withdrawal.<sup>38</sup> Other obvious issues for discussion include the harassing cross-examination, Kuzak's independence from the influence of the client's father, the priority of means over ends, and a comparison and analysis of the public defender's and the private attorney's actions. On the other hand, Kuzak's feelings might be discussed. Affective issues can be elicited from this case. How should Kuzak deal with his prosecutorial habits of the heart now that he is a defense attorney? Can Kuzak represent with zeal a client he hates or fears? What ought to be Kuzak's reactions on seeing his client taken to jail? What should be Kuzak's attitude towards

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38. The cut-aways of the program highlight questions such as: Was it improper to ask the policeman whether his client was licensed to carry a gun? Does Kuzak have a duty to inform his client of his conversation with the policeman? May Kuzak continue the representation if he discloses to his client his conversation with the policeman?

the victim? How should Kuzak deal with his doubts? How should Kuzak feel about being “forced” by the firm to take this case? How can you convey to your client that your loyalty to him is not compromised by declining to represent his son?

In my professional responsibility course, I used Kuzak’s first case to raise these questions with seeming success. But as I used more *L.A. Law* hypotheticals, I discovered significant limitations. Students would continue to add: “Maybe that would have been the right thing to do, but Kuzak couldn’t, and maybe shouldn’t, have done that.” Many of my students, I found, liked to hypothesize about what the series did not portray—what happened during the commercials, so to speak—but only to discuss what alternatives actually were available to Kuzak. The students seemed to lose interest when I posed hypotheticals with facts different from, not additional to, those depicted on *L.A. Law*. Students were not that interested in discussing how Kuzak should have felt, even though they loved imagining how other *L.A. Law* characters such as Arnie or Anne would have handled the brat.

As a solution to the problem of jaded, bored students, *L.A. Law*’s success is limited. As long as students are captivated by *L.A. Law*, they will want to gossip about and rework the problems that face the lawyers of McKenzie, Brackman, Chaney & Kuzak. But students know the difference between analyzing incidents depicted on *L.A. Law* and analyzing abstract hypotheticals whose masks are named Brackman, Kuzak and Kelsey, not Able, Baker and Carr. Enhanced student interest is dissipating capital when the series is used only to launch a discussion that departs from their interest in it. And why not? Students need to be offered more than bait.

As a vehicle for discussing the affective life of lawyering, *L.A. Law* hypotheticals demonstrate the difficulty of conveying the motive and dictates of legal ethics, given the other frames for psychological and moral analyses students possess. Like Kuzak’s senior partner, some students admire Kuzak’s dispositions and actions, even when they agree that continued representation violated valid ethical rules. Beyond disagreements about what the client deserved or what client loyalty demands, others agree there is moral worth in Kuzak’s display of his “conscience.”

Regardless of their understanding of the ethical rules, many students continue to value gossiping about the character of Michael Kuzak. They’ve seen other characters such as Anne and Abby learn how to play the professional game, but they value those moments when these fictive lawyers display their “real” selves. They reject

hypotheticals that are not "true" to the character. They object to my using *L.A. Law* lawyers as masks, mere place-holders, in hypotheticals. More important, they suggest that stripping the characters of their identities alters the moral problem.

Attending to their conversation, I realized that, like me, many of my students were soap opera fans. In order to avoid having legal ethics praised but forsaken in practice, I began to discuss the soap opera genre. We discussed not just the hypothetical, but the manner in which *L.A. Law* frames the ethical dilemmas. I found that the students could better articulate their ethical concerns and convictions when I did not simply strip-mine *L.A. Law* for hypotheticals, but also discussed the lives of soap opera characters.

This result is not surprising. In principle, two problems are raised by the use of nonlegal material in legal education. First, if some nonlegal material explains the law, how do we know when our search outside the case ought to be discontinued? The introduction of such material threatens to lead us into a bacchanalian whirl, seeking truth in ever greater contextuality. For this reason, when we use such material, we often rely on the material to prove a particular point, side-stepping any question of its own interpretability. Second, besides presenting the issues we deem relevant, nonlegal material often presents its own explanations. Nonlegal material makes relevant connections that lawyers are trained to filter. For this reason, we often strip-mine the material, seeking to sever the issue in which we are interested from the connections suggested by the material.

Introducing *L.A. Law* episodes raises each of these problems. First, class discussion is threatened by students bringing fact after fact from the series into the discussion. The firm of McKenzie, Brackman, Chaney & Kuzak comes to assume a verisimilitude it doesn't possess. Second, generating hypotheticals from *L.A. Law* introduces the interpretations and connections that are relevant to the actors on the series. By strip-mining *L.A. Law*, I sought to avoid these problems. But I found that, for at least some students, the decisions and actions portrayed on *L.A. Law* assume a certainty that challenges redescription.

Both of these problems associated with the use of nonlegal materials can be offset by addressing how the materials are themselves framed. Recognizing that the materials are framed interrupts the search for contextuality. Analyzing their frame questions the connections suggested by the material and allows discussion of what is or is not relevant. Understanding *L.A. Law* by its frame presents and holds in question its depiction of moral dilemmas.

To abstract a judicial judgment from the frame in which it appears risks misreading. Understanding how judicial opinions frame facts and policy is necessary to comprehending fully the questions the court addresses and purports to answer. In order to criticize what judges have written or failed to write, however, we must first learn the craft and limits of the genre of opinion-writing.<sup>39</sup>

In order to comprehend the judgments depicted in noncase material, genre criticism is needed. Like cases, such materials have been framed partly by the genre from which they are drawn. We risk misreading the material and losing or misleading students when we introduce material—be it cases, current events, or artistic renderings—and abstract the information contained in them from the frame in which they appear.<sup>40</sup>

In strip-mining *L.A. Law* for hypotheticals, I abstracted the material from its frame. In so doing, I lost not only many of my students, but also an educational opportunity. In order to claim this opportunity, as discussed in the next Section, I considered how the

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39. Today, as yesterday, regardless of our political opinions, law school education is an "impious treatment of cases," as David Riesman observed in 1947. D. RIESMAN, *Toward an Anthropological Science of Law and the Legal Profession*, in *INDIVIDUALISM RECONSIDERED* 440, 442 (1954). Two recent treatments of the opinion genre are Jaff, *Frame-Shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning*, 36 *J. LEGAL EDUC.* 249 (1986) and Paul, *A Bedtime Story*, 74 *U. VA. L. REV.* 915 (1988).

40. This claim should be uncontroversial at least with respect to work that makes some claim to art. Art is not merely data. Art, high or low, may mislead if the audience forgets the art, reducing it to propaganda or positivistic description. For a discussion of the propagandistic reductions (and one form of genre analysis), see N. FRYE, *ANATOMY OF CRITICISM* 5 (1957) ("The artist, as John Stuart Mill saw in a wonderful flash of critical insight, is not heard but overheard."). For a description of the positivistic reduction, see Macaulay, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*, 21 *LAW & SOC'Y REV.* 185, 197 (1987). While I agree with Macaulay that "film and TV offer entertainment and not social science," I do not conclude that "[v]iewers who rely only on these reports for information are badly misled." *Id.* at 197 (citations omitted). Art, even if not positivistically warranted, can be informative. The general problems of uncritical acceptance are compounded with art because there is no neutral artistic realism. All art, not just painting, wears a frame. But analysis of the framing can produce information. Macaulay apparently believes that viewers supply their own frames: "Just as a Rorschach ink blot, audiences can interpret films such as this in many ways." *Id.* at 201. Assuredly, there may be many interpretations of films, but unlike those imposed on an ink blot, not just any one will do.

This claim at first may appear more controversial with respect to reports of current events. But as the students of the language of politics and journalism assure us, because these frames are unreflectively engrained, their analysis is even more important pedagogically. See C. MUELLER, *THE POLITICS OF COMMUNICATION* 11-12 (1973); M. SCHUDSON, *DISCOVERING THE NEWS* 7-10 (1978); see also M. EDELMAN, *THE SYMBOLIC USES OF POLITICS* 14 (1985) (unreflective responses to framed political events results in "greater susceptibility to manipulation by others").

dilemmas of legal practice are framed by *L.A. Law* and its genre, the soap opera.

### III. *L.A. LAW* AS A SOAP OPERA: PRIVILEGED CHARACTERS FREED FROM CIRCUMSTANCE

The creators of *L.A. Law* chose to make it a lawyer soap opera.<sup>41</sup> Its form emphasizes interweaving plots, suspended action, and cut-aways at moments of moral choice. It invites us to gossip; it invites us to predict the characters' perceptions and judgments. A soap opera typically cuts away at the moment that Bill learns that Jean is carrying John's baby (leading and leaving the audience to gauge Bill's reaction, his alternatives for action, Jean's perfidy, John's complicity, and the effects of these events on their community). So too, *L.A. Law* cuts away at the moment Anne learns that her client has lied to her (lead-

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41. At least three other television genres were available to the series' creators. First, they could have created a who-dun-it built around a law firm's case-load. This genre has been done and has its drawbacks. Series about detectives, public or private, I suspect, are superior to lawyer series as who-dun-it vehicles. Raymond Burr, for example, had greater scope to investigate crime and get caught up in the conflict of clues as the physically handicapped Police Chief Ironsides than he did as the legally constrained Perry Mason.

Second, Bochco and Fisher could have created a lawyer procedural. Detective novels fall into two classes: who-dun-its and police procedurals. Bochco's *Hill Street Blues* was a TV police procedural. It avoided engaging the viewer in the solution of crimes. *Hill Street* directed attention away from the bust to what cops do besides finding the tell-tale clue, chasing the bad guys, and cornering them for the arrest. It involved the viewer in police practice, especially its grit and dirt. Its scripts emulated the style not of Agatha Christie, but of Ed McBain.

A lawyer procedural is a desirable genre because the public has little understanding of what lawyers actually do. Our society is inundated by laws and litigation, but the average citizen is legally illiterate. By depicting the variety of law jobs, a lawyer procedural could teach the public that the legal system does more than set up boundaries, generating disputes. In its depiction of legal work, however, *L.A. Law* is common. On *Perry Mason*, too, you would have seen the adversarial disputes, tearful requests for help, forlorn confessions, tense negotiations, and courtroom dramatics that you see on *L.A. Law*. The fact that *L.A. Law* is not a lawyer procedural, however, does not mean that it cannot be instructive about legal ethics. Frames need not be realistic to be informative. See *supra* note 40.

Third, Bochco and Fisher could have created a topical lawyer drama, perhaps modelled after *Lou Grant* or *Quincy*. They might have created a series, like *The Defenders*, about public-interested lawyers, each week investigating a public issue, daring some but not much controversy.

A topical lawyer drama is a desirable genre because the legal profession is one in which the brilliance and moral commitment of some of its practitioners is little known. A bridge designed by an average engineer lasts for decades and is crossed and appreciated by many. But a brief by a first-rate lawyer is ephemeral; it is read and appreciated by only a few, even when it makes new law affecting many. My prideful heart longed for a show like *Quincy*, depicting an exceptionally skilled lawyer who possesses integrity and devotion to professional principles, exposing corruption and foul play, and teaching that, although the lawyer's work is sometimes dirty, it benefits us all. But I would have been content with the moral ambivalence of *Hill Street*.



ing and leaving the audience to gauge Anne's reaction, her alternatives for action, her client's perfidy, her own complicity, and the community's resources to control the consequences).

Soap operas imagine a set of relatively complex characters and place them in incidents of conflict and moral choice.<sup>42</sup> In their responses to these conflicts, the characters display their "character."<sup>43</sup> The morals of the characters govern their actions. Soap operas ask that we judge their characters. As David Thorburn explains, this is why they are called soap "operas":<sup>44</sup>

No one goes to Italian opera expecting a realistic plot, and since applause for the important arias is an inflexible convention, no one expects such works to proceed without interruption. The pleasures of this kind of opera are largely (though not exclusively) the pleasures of the brilliant individual performance, and good operas in this tradition are those in which the composer has contrived roles which test as fully as possible the vocal capacities of the

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42. This formulation says nothing about the nature of the incidents in which characters are placed. In much of its material, *L.A. Law* resembles other soap operas. On prime-time soap operas, the formula stories depict those problems, especially sexual ones, that confront groups of rich, sophisticated individuals.

*L.A. Law* has plenty of this material. *L.A. Law* also tells the same basic type of lawyer and legal stories as the day-time soap operas, with more depth and greater plausibility. On the day-time soap operas, legal practice is depicted as bubbling with soap material. Even more than business, law provides opportunities for manipulation, for characters who grow rich off others' ills, and for dramatic tension concerning whether a character is a hero, saving the needy, or a trickster, terrorizing the innocent. Cf. Mindes & Acock, *Trickster, Hero, Helper: A Report on the Lawyer Image*, 1982 AM. B. FOUND. RES. J. 177 (describing varying perceptions of lawyers as tricksters, heroes, and helpers). For this reason, lawyers populate the daytime soap operas. On *Guiding Light*, for example, Mike Bauer, Ross Marler and Derek Colby all are lawyers. From them, we learn the consequences of being a suspect or being found guilty of fraud. About them, we wonder: Will they be manipulative? How? And, with what consequences? Similarly, *L.A. Law* lawyers also describe others' problems, and we await the consequences of their practices.

Day-time television also is populated by a series of courtroom dramas in which the only continuing character is the judge, the personification of the law. (e.g. The three "court" shows: *Superior Court*, *Divorce Court*, and *People's Court*). The method of these shows may be illustrated by an episode of *The Judge*: Pick a story with soap opera material, like a woman falling in love with her fiancé's brother. Insert a legal controversy: A breach of promise action. Have the testimony relate the story, often developing the tale by the telling: The fiancé's brother reveals the illicit love on the stand. Leave the final resolution to the judge: The judge berates the henpecking mother, depicted as responsible for this mess. Often neither artful nor plausible, these shows convey the law in its most paternal image. *L.A. Law* is much more nuanced, though it also uses such soap material—for example, Kuzak's first case is the story of the spoiled little rich kid who nobody could discipline. It is in the quality of its drama and the introduction of incidents dramatizing lawyers' ethics that make *L.A. Law* plots distinctive.

43. See *supra* note 16 (meanings of "character").

44. Thorburn, *Television Melodrama*, in UNDERSTANDING TELEVISION: ESSAYS ON TELEVISION AS A SOCIAL AND CULTURAL FORCE 73, 79 (R. Adler ed. 1981).

performers.<sup>45</sup>

On television soap operas, moral capacities, not vocal capacities are tested.

All of us fight every day against the force of circumstance—the compulsions of fortune and necessity, the webs of the Greek goddesses Tyche and Ananke. Sometimes, perhaps often, we retreat or compromise. The situation defines us, not the reverse. Unlike most of us, characters on soap operas live in a realm in which social forces do not prevent the display of their character. For example, *Dallas*<sup>46</sup> characters largely are free from the demands the rest of us face in bureaucratic organizations and organized social settings. In real life, even wheeler-dealer oilmen are more constrained by the force of circumstance than are the Ewings. On soap operas, life's ills—e.g., divorce and unemployment—are merely occasions for character expression. On soap operas, actors are depicted “hurtling through time warps of social convention with no aerodynamic drag.”<sup>47</sup>

Like all soap opera characters, the lawyers on *L.A. Law* acknowledge their responsibility and make their decisions on the basis of their characters. On *L.A. Law*, neither the client's morals nor the demands of the lawyer's work determine how a lawyer will act. *L.A. Law* depicts lawyers fighting victoriously to preserve their characters against that tricky nemesis, the force of circumstance. Arnie and Mike—just like *Dallas* characters J.R. and Bobby—display their different characters in the different personal and work choices they make. In resolving the conflicts caused by clients and friends, each lawyer is true to his own character.<sup>48</sup> Viewed within the frame of its genre, *L.A. Law* asks that the characters of its lawyers be judged.

Framed by the soap genre, Kuzak's first case depicts him as seeking to reveal and to preserve his character against the brat's onslaughts and the dictates of his role. Freed from the force of circumstance, he acts according to character. He asks and receives from the senior partner admiration for his conscience.

Why did *L.A. Law* choose this frame? You've heard the joke: “How can you tell whether that run-over thing in the middle of the road was a skunk or a lawyer? There are skid marks by the skunk.”

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45. *Id.*

46. *Dallas* (CBS weekly television series) (depicting the life experiences of the Ewing family, wealthy owners of a successful oil company).

47. Arlen, *Smooth Pebbles at Southfork*, in UNDERSTANDING TELEVISION: ESSAYS ON TELEVISION AS A SOCIAL AND CULTURAL FORCE, *supra* note 44, at 173, 179 (discussing the heroine of the mini-series *Scruples*).

48. Cf. Machlowitz, *supra* note 8, at 54 (*L.A. Law* lawyers “don't give a damn about what anybody else thinks, not even their bosses.”).

Given public hostility toward lawyers, how could the series' creators have hoped to gain an audience? Would anyone but lawyers or lawyers-to-be tune into a series that portrayed the legal profession sympathetically? For a series to have legs, a mass public must empathize with its characters. Given public attitudes towards lawyers, how do you construct a series whose central characters are all lawyers?

*L.A. Law's* producers apparently did not accept that public hostility towards the legal profession rests on a confusion.<sup>49</sup> Instead, they seem to have decided that public hostility stems from the fact that lawyers make moral choices but appear to sidestep responsibility, denying that they ought to be evaluated by the standards used for other characters. Public ire is raised when lawyers are perceived to deny that they are making choices or that they can be held accountable for their choices.<sup>50</sup> To the public, the lawyer seems to say: "Don't

49. See *supra* text accompanying notes 5-7. One of the series' co-creators, Terry Louise Fisher, explained their premise as follows: "These aren't sanitized 'TV lawyers.' Their clients aren't always innocent, their tactics aren't always nice, the issues are never black and white." Monahan, *Who Puts the Law into "L.A. Law?"* 15 BARRISTER 8, 10 (1988).

50. According to this interpretation, it is not that lawyers act in special ways that angers the public. The public knows that different situations require different actions. Public hostility derives from lawyers' apparent denial of responsibility for their choices. If this is true, then the Bar's public relations efforts must be substantive to succeed. They must convince the public that the requirements of legal ethics are responsible ones. Public hostility to lawyers will be lessened only when citizens are convinced that in lawyers' shoes they would act as lawyers are directed to act.

The public is not convinced. The public sees lawyers denying that their characters influence their actions, even when their characters are good ones. I find support for this view in Robert C. Post's admirable collection of cultural imaginings of lawyers. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CAL. L. REV. 379 (1987). His article demonstrates that, when lawyers are heroically depicted, it is because they display their character: Ronald Colman in *The Talk of the Town* must first "fall in love" before he becomes heroic. *Id.* at 381. In Winston Churchill's *A Far Country*, the lawyer becomes heroic as he "acquires a social and moral conscience." *Id.* In *The Man who Shot Liberty Valence*, Jimmy Stewart's heroism emerges when he is "[p]ushed beyond endurance" into himself. *Id.* at 382. Conversely, when lawyers are condemned, they don't display their character. Dryden's Asebia, for example, only had to bribe " 'the Lawyer's Tongue,' " not the Lawyer. *Id.* at 385 (quoting J. DRYDEN, *ALBION AND ALBANIUS: AN OPERA* 23 (1691)).

Post offers a different explanation for public attitudes. He argues that lawyers aren't praised for acting on the basis of their character, but for their finding "a spontaneous, coherent system of values." *Id.* at 385. When lawyers find themselves, according to Post, they find the immanent law. This explanation, however, forgets that our culture is individualistic. Post is wrong to suggest that when our "manner" offers a " 'logic that is unanswerable, that gives no opportunity to any sane mind . . . to refuse the unqualified assent of conviction absolute,' " we have been socially responsible. *Id.* at 384 (quoting D. PHILLIPS, *THE FASHIONABLE ADVENTURES OF JOSHUA CRAIG* 75 (1909)).

We only know we have done what we have to do. If we have become herdic, it is because, like the lawyers portrayed by Ronald Colman and Jimmy Stewart, we have stood alone in our moments of trial. For us,

"the myth says you can be a truly good person, worthy of admiration and love, only if you resist fully joining the group . . . . The cowboy, like the detective, can

blame me if the work I've performed, or the client I've helped, ends up hurting you." In the situation most salient to the public, the institutional justification for why good men act as did the lawyer is at its weakest. The lawyer then can readily be perceived as saying: "Don't blame me. I'm not responsible if my client goes free and kills a dozen people." Lawyers seem to an estranged public to claim that their work and their character are separate.<sup>51</sup>

*L.A. Law* overcomes the basis of public hostility to lawyers by adopting a soap opera format and depicting lawyers who do not separate what they do from who they are. *L.A. Law* lawyers do not conform to the public's image of lawyers. They rarely claim their actions are forced by their job requirements. Even when they do make such claims, they, and we, know they are lying. Ethical rules are tested by their characters and are complied with only when they meet that test. *L.A. Law* both depicts and resolves these conflicts as in a soap opera: Character, not role or circumstance, determines action.

The lawyers of McKenzie, Brackman, Chaney & Kuzak are not just mouthpieces, hired guns, or amoral manipulators. On *L.A. Law*, lawyers with different characters make different decisions, and they accept responsibility for moral choices in every aspect of their practice: the clients they choose to represent, their relations with clients, their attitudes towards staff, and how they handle the choice between family and career. *L.A. Law*'s reception demonstrates that the public can empathize with lawyers whose actions reveal their character.

What Kuzak should have done in his first case is put in issue by *L.A. Law*'s frame in two distinct senses. First, did Kuzak act on the basis of his character? And, if so, what is the moral worth of Kuzak's character? Treating Kuzak as a place-holder in a hypothetical mis-

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be valuable to society only because he is a completely autonomous individual who stands outside it. To serve society, one must be able to stand alone, not needing others, not depending on their judgment, and not submitting to their wishes . . . . A good society thus depends in the last analysis on the goodness of individuals, not on the soundness of institutions or the fairness of laws."

R. BELLAH, *supra* note 23, at 145-46, 183. The lawyer-heroes Post describes have not found the immanent law; they have found their mythic individuality.

51. Admittedly, this separation also is sometimes demanded by clients. This is explained by the disjunction between individual and collective instrumental rationality. When lawyers represent us individually, we may want this separation. Then, we want them to be hired guns. But when they represent others, we want them to exercise their character and to act responsibly. For example, if we were injured by a doctor, we would want a lawyer to bring a medical malpractice suit. But when the lawyer is representing someone else, we complain that lawyers bring too many frivolous suits, driving up malpractice rates and medical costs. The disjunction between individual and collective instrumental rationality, in part, explains why lawyers "are simultaneously praised and blamed for the very same actions." Post, *supra* note 50, at 380.

takes the moral questions framed by this television soap opera. *L.A. Law* asks that we judge Kuzak's legal ethics by the standard used for all soap opera characters: What manner of man is Michael Kuzak? Do we want to be like him?

By the time we meet Kuzak, he has demonstrated that he can play big-league law. He is a successful law firm partner and has reached a stage in his life at which he wants his victories to reveal something about his character, not just his talents at manipulating the system and winning its games. He wants to be secure that he is part of the elect. According to Victor Cifuentes (Jimmy Smits), whom he hired as an associate, Kuzak is "tired of picking up the snails himself and wants to bring in a Mexican gardener." Kuzak now imagines himself involved in something higher than a game.<sup>52</sup> In a classic pattern, Kuzak needs to be able to view his success as a just outcome and not merely the way the dice fell. Do we want to be like him?

Kuzak's character can be judged by his personal choices, not only by his handling of legal cases. *L.A. Law* suggests that we can gain insight into the ethics of legal practice indirectly. If we want to peer into legal ethics, it tells us, we first must peer into personal ethics.<sup>53</sup> We judge Kuzak as a lawyer by judging him first as a person.

What do we know of Kuzak's character from his personal interactions? One thing we cannot forget about Kuzak is that he dressed in a gorilla suit, appeared uninvited at a wedding, and dragged off the bride.<sup>54</sup> How many of us know and like that type of guy? Once we answer that question, *L.A. Law* suggests, we can judge his morals as a lawyer.

Michael Kuzak's character initially was revealed on *L.A. Law* primarily through his pursuit of Grace Van Owen (Susan Dey). He

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52. One also might consider Kuzak in another case. Kuzak is representing a fired TV anchorwoman who lies to Kuzak about her reasons for turning down a settlement offer. Kuzak does not discover the lie until after the jury renders a verdict. Kuzak feels used by his client, even though we know a client has the right to reject a settlement offer for any reason (except primarily to harrass or delay). Kuzak's girlfriend, Grace Van Owen, does not understand his feelings. "She used you for her journalistic kicks and you used her for your lawyer kicks," she says, "You used each other." Unlike Kuzak's senior partner, Grace sees Kuzak as playing a game, not as giving voice to his conscience. Grace doesn't understand Kuzak. She doesn't know that he wants his cases to be representations of his character.

53. This does not mean that lawyers in court need act like parishioners in church. The soap opera genre does not mean that *L.A. Law* lawyers necessarily will reject the actions required by a role-differentiated morality. Soap operas continually present the moral texture, for example, of confidentiality. Viewers of soap operas often are left to judge whether certain circumstances require a confidence to be held or betrayed.

54. I leave it to other culture critics to compare Bochco and Fisher's depiction of an interrupted wedding to the depiction of an interrupted wedding in Mike Nichols' *The Graduate*.

falls in love within moments of first seeing her. Kuzak tells a colleague, who responds: "Take a number." But Kuzak does not believe his passion is common; he sets out to win Grace, who happens to be engaged to another.

In his pursuit, Kuzak does not play by the rules of courtship. When a woman repeatedly says she really does not want to be called again, many men would get the hint. Not Michael Kuzak. He does not bow out gracefully. He hounds the object of his passion, striving to realize what to him is right. He trusts his judgments and passions more than he does the actions of others. He is not deterred by Grace's decision to go through with the wedding. Dressed in a gorilla suit, he breaks up her ceremony.

Kuzak understands passion as involving games. He is such an addicted games-player that he has added a basketball hoop to his office wastebasket. But he does not play all his games by the rules. We learn from his handling of the moral dilemmas of courtship and legal practice, that rules—like taking "no" for an answer or the presumption of innocence—can be set aside or broken when they get in the way of Kuzak's passions.

If Kuzak broke the game's rules because he did not want to lose, he would be immoral. But Kuzak is more difficult to judge. Kuzak is no philosopher or moral paragon: He breaks the rules to serve his passions, which all too often he equates with the good. In one sense, he is not a "pro" because he takes his games personally. He wants his actions to reflect the rule of his heart.

In his relation with Grace, we know how to test the outcome of passionate involvement. Courtship is justly won not by rule-observance, but by love. To tell Kuzak that it is important to respect a woman when she says "no," or to remind him that we live in a society in which date-rape is a serious problem, seems almost beside the point. Grace did leave the wedding. He and Grace are in love.

The soap opera suggests that we might want to be like Kuzak, but only if this love is true. To be able to reveal themselves, soap operas value characters being honest about themselves. Proclaiming his honesty about his own passions, Kuzak does not censor himself in talking with the rape victim and repeatedly pressures Grace to confront whether her love for her fiancé was true. Being honest with others, however, apparently is not required. In order to produce the result his conscience demands, as his first case demonstrates, Kuzak is not beyond shading the truth to his clients. His pursuit of Grace, too, was paved with half-truths, if not lies. He lunches with Grace's fiancé, seeking to gain an advantage in his romantic pursuit, and

doesn't disclose his interest. Kuzak controls others, including—perhaps especially—Grace, not through honesty, but through charm and expertise. The law has not taught Kuzak the values of individual autonomy and of the diversity of opinion, but rather the artful devices of cunning and persuasion.

Kuzak, consequently, is dependent on his being able to control others. For example, after a bar grievance committee disciplined Kuzak, the senior partner, knowing that Kuzak had done wrong but confronting an unrepentant Kuzak, told him: "If you expect us to fall in line with you, you've overestimated your own importance." Kuzak may question whether he acted unethically because of his inability to lead his partners, even if he is morally deaf to the committee's decision and the judgments of his partners.

Kuzak's lack of honesty with others can be criticized within the soap opera frame. Kuzak expresses himself. But are others allowed to express their full selves? He leads others. But does his leadership lead them to value honesty, even as it forces them to turn away from lies?<sup>55</sup> By manipulating others to accord with the dictates of his passions, Kuzak does not so much serve others as stifle their protests against his convictions. Grace does fall in love with Mike. But she has lost not only her judicial race, but also a marriage commitment. Try placing yourself in Grace's shoes during her walk on the beach with Kuzak. Still wearing her wedding dress, she hears Kuzak telling her he is not ready for commitment. Do you feel that she has lost something of value?

Of course, Grace chose to leave her wedding. In displaying the rule of his heart, Kuzak relies on others being free to make their own choices. Grace might not have left with him; it was that which created the dramatic tension in Kuzak's wedding appearance. Had he been wrong, had Grace not walked out with a man in a gorilla suit, his appearance at the ceremony would have been ridiculous. Having correctly judged Grace's response, he is difficult to fault. She did choose him. As *L.A. Law*'s frame suggests, if their relationship is both good and bad for her, she cannot blame Kuzak for making it possible for her to flee her wedding ceremony. Like him, she will bear the burden of her choices.

Even when freely made, however, choices on soap operas must be criticized for the limited costs attached to them. Like all the other ills that beset soap opera characters, Grace's loss of a judgeship does not

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55. Cf. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 197-204 (1981) (describing how the fictional lawyer in H. LEE, *TO KILL A MOCKINGBIRD* (1960) led his community to value honesty).

prevent her from displaying her character. Freed from the force of circumstance, Grace will find next week yet another exciting, rewarding, and revealing challenge.

Kuzak's clients and their families, like Grace's fiancé and family, are not regular characters on the series. How do we judge Kuzak if we take these characters into our concern? Grace may have chosen Kuzak because of his character. But did his clients? Have Kuzak's clients chosen to be part of his community of fate?<sup>56</sup> If not, is Kuzak justified in imposing the demands of his passions on his clients?

*L.A. Law's* portrayal of Kuzak reminds us of the appeal and limitations of characters who follow the law of their heart. We are drawn to such people. They have a child-like innocence. But we must also ask: "What is the cost of such sincerity?" Early in their relationship, Grace cold-shouldered Mike: "It's a nice thing about being grown up. Having feelings doesn't mean we have to act on them." She had a point.<sup>57</sup> In emphasizing that character must be judged, soaps teach an important truth: In devoting ourselves to others, we do put ourselves at risk. In portraying characters, like Kuzak, who follow the law of their heart, unfortunately, *L.A. Law* suggests that all we can do is choose to whose passions we subject ourselves.

If everyone is not free to display her character, or if passions conflict with dependency because the force of circumstance is felt, an individual's display of character may not only be frustrated, but may also be irresponsible. Consequently, especially under conditions of unequal power, we might be leary about displays of character. Professionals hold our fortunes and sometimes our lives in their hands. Can we trust that they will have the character of a Dr. Welby, let alone a Michael Kuzak? Our lack of trust appears to demand that we impose job-rules on professionals to constrain their power.

Yet *L.A. Law* also suggests that clients can choose lawyers on the basis of their character, and be ethically served when their lawyers are

56. An episode in which Cifuentes stopped the passive euthanasia of a young comatose woman emphasized that lawyers can walk out of their clients' lives. The episode ends with closing elevator doors separating a morally troubled Cifuentes from the parent who must continue to care for the comatose client Cifuentes represented.

57. It is a point with a philosophic pedigree. As Judith Shklar stated:

The feeling of being open and sincere in one's relations to others gives one an immediate and certain feeling of one's own purity and goodness. It offers a sense of one's liberty which no amount of rational obedience to duty can rival . . . . Sincerity and contempt for others are intimately related . . . . Egotism in its moral forms is still selfishness.

J. SHKLAR, *FREEDOM AND INDEPENDENCE: A STUDY OF THE POLITICAL IDEAS OF HEGEL'S Phenomenology of Mind* 113 (1976) (summarizing Hegel's criticism of Romanticism).



guided by their own character, not professional rules. The protection of the ethical rules, even if necessary for third parties, is not needed for lawyers and clients who are committed to each other.

We might conclude from this analysis of Kuzak in light of the soap opera frame that we live in a society in which we are so frightened of each other that we demand that both others and ourselves assume the safe role of faceless bureaucrats and consumers. We relegate characters who express themselves to fiction, such as television and novels. In a mobile, complex, pluralistic society, we are ambivalent. We value character, but we need rules to constrain discretion. *L.A. Law* may portray lawyers of moral worth who do not follow the codes of ethics that the profession promulgates and law professors inculcate. But this portrayal, we might conclude, leads to ambivalence: On the one hand, lawyers' consciences are not left at home when they go to work; on the other, shouldn't a lawyer at work be armed with more than her conscience?

Having evaluated Kuzak by *L.A. Law*'s frame, we understand that we are ambivalent about the moral worth of soap operas. Sometimes we see in soap operas the use of dramatic license to deny falsely the compulsive force of circumstance. At other times, we see them teaching us that we cannot blame circumstances for the choices we make.

Yet the popularity of *L.A. Law* demands further explanation. Ambivalence is not the reaction *L.A. Law* usually generates. Even when Kuzak's characterological weaknesses are appreciated, his display of character is admired. In the next Section, I argue that this response derives from our shared commitments to the privileging of character and autonomy for professionals at work. By instantiating these commitments, *L.A. Law* attains its popularity. In depicting lawyers living the good life, *L.A. Law* challenges the legal profession to improve the possibilities for lawyers to display their character in their work.

#### IV. THE PRIVILEGING OF CHARACTER AND LEGAL ETHICS: THE GOOD LIFE AND THE LIFE OF A GOOD LAWYER

Fantasy, as Freud understood, offers a path for insight: Dreams can be interpreted.<sup>58</sup> It is by empathizing with fictional characters like Kuzak that we express our hopes and desires. But fantasies need reality testing. I do not gainsay this response. In the previous Sec-

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58. Thorburn argues that a melodrama even if an "escape from reality . . . must still instruct us, with whatever obliqueness, concerning the nature of that reality from which escape or respite has been sought." Thorburn, *supra* note 44, at 75.

tion, I applied it to Kuzak's character. Yet this response obscures part of the matter. *L.A. Law*'s popular fantasy offers insight into our shared culture. In particular, it helps explain the public's general hostility toward lawyers.

If displays of character must be constrained, why is the public so hostile toward lawyers who practice and teach this truth? Perhaps it is because we hate the messengers of this bleak winter's tale. This explanation, however, forgets that this tale has many tellers not so despised and, as *L.A. Law* depicts, the public does not see lawyers as necessary messengers of this tale.<sup>59</sup> Another explanation of public

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59. Robert Post explains "the special hatred that popular culture holds for the lawyer" as functioning to repress our fear that we don't possess "a stable, coherent, and sincerely presented self." Post, *supra* note 50, at 389. Lawyers show us "our own dark reflection." To distort this reflection, we hate lawyers, those "bearers of that bleak winter's tale." *Id.* at 386.

In appearing to the public to separate their character from what they do, however, lawyers do not reflect the common fear that each of us lacks a stable character. Unlike lawyers, we commonly risk exposure by "the concealed performances we must undertake every day." *Id.* at 389. When we pose—to get a job, for example—we risk both unmasking and, if we get the job, enforced pretense. The public believes that lawyers are different. Lawyers, they believe, have exempted themselves from facing these risks when they pose to win a case; then, their characters are not on trial.

The bar has not done an adequate job of teaching that men and women of good character would pose as lawyers do. Yet lawyers demand class status and personal respect. Accordingly, public hostility toward lawyers primarily expresses anger at a claimed exception from the privileging of character that the public both envies and despises.

Part of the pleasure of Post's analysis is that, by casting the lawyer as the public's reflection, he sidesteps arrogance while presenting the public as unwilling to face the truth. It is not, Post argues, that the public is immature. Everybody, lawyers included, fear confronting their dark reflection.

But has Post sidestepped arrogance, or relocated it? Post argues that the hostility reflects a cultural problem that does not demand a response from the legal profession. The problem is that our culture does not prepare us to see that we are composed of false selves. If so, the Bar should respond to the public's hostility as should a rubber-chicken luncheon audience that hears a speaker telling a sexist joke; by not laughing, we inform the speaker that the joke is on him.

Post's analysis would apply if the speaker was the object of the hostility and vicious humor he describes. The black humor of the operating room and adolescent clowning are explainable because these behaviors relieve pressures and deny dark fears. Coser, *Role Distance, Sociological Ambivalence, and Transitional Status Systems*, 72 AM. J. SOC. 173 (1966). Post's analysis certainly explains the feelings in a law school student show.

Hostility and vicious humor about others, however, expresses ambivalence about relations with the targeted population. Katz, Glass, Lucido & Fauber, *Ambivalence, Guilt and the Denigration of a Physically Handicapped Victim*, 45 J. PERSONALITY 419 (1977). Lawyer humor is closer to racist and sexist humor than it is to defensive, self-denigrating humor. Like relations between sons and mothers-in-law, members of a modern nuclear family, and members of different racial and sexual groups, relations between clients and lawyers are put into issue by using hostile humor about lawyers.

The analysis I am offering suggests that we should not be reassured. In public hostility to lawyers, I see a protest against the status quo. Jokes can be a way of saying, "No." The legal profession must respond because the public is challenging the lawyer exception from our culture's privileging of character. As the previous Section accented, the profession must

hostility is that the public immaturely responds to constraints on character: The public holds lawyers guilty by their association with guilty clients.<sup>60</sup> But the likeability of *L.A. Law* lawyers, even when they represent repulsive clients, suggests the public is not so immature. There is a different explanation of public hostility that does not require derogating the public and is consistent with the popularity of *L.A. Law*: The public is hostile toward lawyers who deny that their characters are at risk in their actions as lawyers. Lawyers, like those on *L.A. Law*, who express themselves in their practices, taking personal responsibility for their difficult choices, do not generate hostility and are even likeable.

*L.A. Law* projects many messages and biases. But to the extent it is a soap opera, it projects commitments to two propositions: First, the privileging of character means that lawyers should practice law differently and should be judged by their characters;<sup>61</sup> second, circumstance—environments and institutions—should be criticized for preventing the display of character.<sup>62</sup> In the previous Section, I noted that judging a character's ethics requires analyzing the situations in which they act. In this Section, I describe how institutions, such as the law, are judged by the opportunities and constraints they offer the

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explain why the demands of legal ethics ought to constrain even good characters. As this Section suggests, it must justify why legal institutions must constrain the characters who inhabit them.

60. See *supra* text accompanying notes 5-7.

61. Each lawyer does possess a personal ethical code. Spiegel, *Lawyering and Client Decisionmaking: Informed Consent and the Legal Profession*, 128 U. PA. L. REV. 41, 117 n.315 (1979). The cultural commitment is to recognize these codes. Martin Luther King did express our culture's values in his dream that someday men and women will "live in a nation where they will not be judged by the color of their skin but by the content of their character," Keynote Address by Martin Luther King during the March on Washington, D.C. for Civil Rights (Aug. 28, 1963), reprinted in 31 NEGRO HISTORY BULLETIN 217 (May 1968), and not by their professional status, nor their compliance with positive rules.

62. According to standard analysis, in our culture, groups are artificial, analyzable only by reference to the individuals who join them. R. UNGER, KNOWLEDGE & POLITICS 125 (1975) (principle of aggregation). As suggested in the previous Section, and by many others, ethical analysis can be distorted by analysis based on the fantasy that we are "true selves independent of any cultural or social influence, being responsible to that self alone, and making its fulfillment the very meaning of our lives." R. BELLAH, *supra* note 23, at 150. Individualism and intentionalism unreasonably taint our ethical reasoning.

In this Section, I suggest that this fantasy reflects a cultural commitment—whose moral significance remains to be explored—to groups and institutions being justified by the range of characters they can support. On television, even police departments are justified by their abilities to employ a wide range of characters. Their ability to catch crooks appears to be less significant than their ability to employ characters like Lieutenant Columbo. Even *Dragnet*, perhaps the most rule-bound of TV police series, was popular primarily because, unlike its many competitors, the public empathized with the character of Joe Friday, "the 'low pressure' cop." R. Denney, *The Plainest Plain-Clothesman*, NEW REPUBLIC, Jan. 31, 1955, at 14. The L.A.P.D., in turn, was legitimized because it allowed Joe Friday to display his character.

characters who inhabit them. As I read *L.A. Law*, one of the principal virtues of McKenzie, Brackman, Chaney & Kuzak is that it offers Benny Stollwitz (Larry Drake), an individual with special needs, the opportunity to work and be recognized.

At its best, *L.A. Law* resembles nothing so much as that antecedent of the soap opera, the novel of manners. While its more recent characterizations and plottings have varied from the standard set by its opening episodes, *L.A. Law* can elicit the tension between the character of the actors and the morality demanded by their society. *L.A. Law* can be an absurdist play, but at its best, by juxtaposing character and incident, it can challenge social institutions by the moralities of its lawyers' characters.<sup>63</sup>

We know that action normally is not determined solely by character, unconstrained by circumstance. We know soap operas normally offer only a thin, one-dimensional depiction of reality. Consider, for example, one of the deals of *Dallas*' J.R. Ewing. We may watch it, smile, and think: "That's J.R. for you." We may see parts of our boss in J.R. But, we know that our bosses, even those we dislike or envy, do not act like J.R. We know they cannot be like J.R., even if they wanted. J.R. may not be a stick figure, but the Ewing business is a thin paste-up of an oil company. We all know that we do not learn much about the oil business from watching *Dallas*.

*L.A. Law* is not a lawyer procedural; it does not portray lawyers' work realistically.<sup>64</sup> Yet *L.A. Law* does generate moments of recognition. Haven't you watched *L.A. Law* and felt you have seen lawyers or judges that you know?<sup>65</sup> Isn't it when *L.A. Law* lawyers sidestep

63. Cf. Coles, *Legal Ethics: The Question of Principalities and Powers*, 21 B.C.L. REV. 1017, 1021-22 (1980) (discussing novels).

64. I can accept the dramatic license in giving the members of the firm of McKenzie, Brackman, Chaney & Kuzak a broader range of clients and cases than is realistic: How many small Los Angeles law firms have work ranging from criminal defense to corporate acquisition? In how many law offices do business executives rub shoulders with violent criminals and divorcing spouses? But all lawyers spend considerable time reading; this is not depicted on *L.A. Law*. Most lawyers spend much more time researching than meeting; on *L.A. Law*, the reverse is portrayed. Litigators spend vastly more time on the grit of discovery and preparation than they do at trial; *L.A. Law*'s lawyers apparently go to court unsupported by painstaking research. The work done prior to negotiations is similarly slighted for the drama of the negotiation itself. Television critic John O'Connor points out that *L.A. Law* fits squarely in the "familiar television abyss of terminal cuteness." O'Connor, *supra* note 6, at 35. From Bochco and Fisher, I expected, at the least, but have not received, lawyers who, like *Hill Street*'s Belker, are continuously frustrated by interrupting phone calls.

65. Judge Abner Mikva has not. Mikva, '*L.A. Law*'—*Is It Law or Is It Just L.A.?*, N.Y. Times, Mar. 15, 1987, § 2, at 31, col. 4. Because it is not realistic, Judge Mikva argues that *L.A. Law* is not informative about legal practice: "'L.A. Law' spends considerable time on the characteristics of the law partners and the relationship between them. In this respect, it does a

the demands of their role or the expectations of others, that lawyers ask each other: "Isn't that just something that Jim would do?" Not because Jim would realistically do just that, but because Jim would like to do that. That is the way Jim treats fortune and necessity when he gets a chance. The Lydian Ring of Gyges does not reveal what is just, but it helps us illuminate our account of motivation. *L.A. Law*'s frame, with its depiction of an unreal freedom and its portrayal of characters who do not blame the force of circumstance for the choices they make, reflects the way in which we approach moral dilemmas: Individuals facing moral conflict reason as if they could control their actions and feel regret for succumbing to the force of circumstance.<sup>66</sup>

The appeal of *L.A. Law*'s frame expresses a commitment that withstands the recognition that even the hands of good character need to be bound by the demands of ethics. By insisting that we judge Kuzak's character, we reveal demands for autonomous work. In gossiping about Kuzak, we express desires to be able to express ourselves in work. Withstanding cynicism, the popularity of *L.A. Law* instances a cultural commitment, whose realization ought to be constrained by ethical demands, that lawyers can have a career that allows them to recognize themselves and others.

*L.A. Law*'s popularity reflects a conjunction between the soap opera genre's depiction of characters freed from the force of circumstance and one of our culturally valued images of modern professionals, including lawyers. The professions have a special place in our society. Professional status ideally affords autonomy at work to individuals. In judging individual actions, we may be ambivalent about the constraints that ethics imposes on characters: Professionals either separate their work from their character, impoverishing them and rousing our hostility, or they express their character, allowing possi-

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good job—sometimes." *Id.* at 37. Nonetheless, Judge Mikva concludes, "the people look three-dimensional but not very real" because the lawyers "appear to work with smoke and mirrors to win tough cases" and "[t]he cases . . . do not sound like the bill of fare of any real law firm." *Id.* I agree that *L.A. Law* is not realistic. I do not conclude that it cannot consequently describe motivations or be informative. *See supra* note 39.

A different explanation for Judge Mikva's position is that he possesses a vision I lack. We know weakness in narrative when character and incident are unconvincingly connected. I may not be able to see *L.A. Law*'s weakness because, unlike Judge Mikva, I (and other *L.A. Law* fans) lack convincing connections between character and incident in legal practice.

66. Williams, *Ethical Consistency*, in *MORAL DILEMMAS* 115 (C. Gowans, ed. 1987) (discussing conflicts of beliefs and conflicts of desire). Such individuals wish to be gentle men and women: "A gentleman can live through anything. He faces anything. A gentleman accepts the responsibility of his actions and bears the burden of their consequences, even though he did not himself instigate them but only acquiesced to them, didn't say No though he knew he should." W. FAULKNER, *THE REIVERS* 302 (1962), *quoted in* Shaffer, *The Legal Ethics of the Two Kingdoms*, 17 *VAL. U.L. REV.* 3, 7 n.15 (1983).

ble self-deceptions and rousing our fears. In judging the professional role, however, we are committed to professional status affording some citizens the privilege of having the autonomy to express their character at work.

It ought to be the genius of the rules of legal ethics that they provide structured limits within which lawyers can practice differently.<sup>67</sup> But exiles from legal practice, the writers of *L.A. Law*, testify that current legal practice does not afford these opportunities.<sup>68</sup> Reports from exiles, of course, are not the most accurate source of information. But they are consistent with a role-differentiated morality that is justified in terms of the interests of clients and the public. Perhaps fearing its materialistic overtones, the profession has not spent as much attention on detailing how the practice of law allows for the good life. Perhaps assuming that living in the law will furnish one with the prerequisites for living well, we have not detailed how practice can express lawyers' characters, a requirement for us of the good life. These questions must be addressed, if not for all lawyers, at least for those students who enter the profession because *L.A. Law* "has made a legal career seem attractive."<sup>69</sup>

The privileging of character means that we demand more than a role-differentiated morality and a vision that the good lawyer obeys ethical rules promulgated by the bar. For us, the ability to express our character tests professional rules. For us, professional rules cannot be justified only by their constituting a balance between individual and social needs. For us, it must be possible for persons to live well as lawyers, including being known by their character.<sup>70</sup>

The profession's ethical rules do ensure opportunities for lawyers

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67. *L.A. Law* certainly reminds us of the truth that discretionary decisions are never just tactical. They are informed and affected by our vision. Lawyers with differing characters do practice differently. Our virtue follows us into both our public and private lives. Consequently, any adequate legal ethic must allow for the presence of character. Cf. Kronman, *supra* note 16, at 871 (judgment is characterological); Schneyer, *supra* note 32, at 956 (codes give "leeway" for lawyer "to take her off-the-job values into account").

68. One left legal practice, he reports, suffering from a self-diagnosed case of "acute motivational deprivation syndrome." Orey, *supra* note 14, at 34. Another left "[t]o escape frustration and boredom as a junior associate." *Id.* at 35. Another describes the conflict he experienced between the realities of practice and "every law student's delusion" that "you're going to practice law in a firm where . . . all the lawyers lead interesting lives." *Id.* at 36.

69. *Id.* at 38 (quoting an admissions officer at Harvard Law School who attempts to explain a rise in law school applications by the popularity of *L.A. Law* in that "everyone realizes that there is an element of truth that the show has made a legal career seem attractive.").

70. According to Monroe Freedman, the ethical lawyer displays character in the decisions to begin and withdraw from representation. Freedman, *Personal Responsibility in a Professional System*, 27 CATH. U.L. REV. 191 (1978). Although Monroe Freedman's argument might demonstrate that a good person can be a lawyer, if these are the only decisions

to live well. Lord Brougham overstates his case:<sup>71</sup> At least some hazards to the lawyer are included in legal ethical reasoning.<sup>72</sup> These ought not to be understood only as concessions to the profession's interest in maintaining its cartel power.<sup>73</sup> If these professional rules do not sustain unethical actions, they are justified by sustaining institutions in which individuals have access to the good life.

The privileging of character means that pedagogy in professional ethics includes convincing students that they have characters that lead them to comply with the demands of legal ethics. It is no accident that law school technical education is conceptualized as teaching students to "think like a lawyer." The privileging of character, reinforced by the autonomy claims of the professions, requires lawyers to "be" lawyers, not just to have certain skills.<sup>74</sup> The old wisdom that every class in law school taught legal ethics reflects a commitment to the practice of law being expressive of character.<sup>75</sup>

The privileging of character also means that our desire for more humane institutions in which we have the freedom to express ourselves is not only or even primarily an ethical imperative. It is a culturally codified choice. The arguments against an amoral morality restate a cultural value.<sup>76</sup> We demand that institutions accommodate various characters and moral deliberation about character.<sup>77</sup> This

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in which lawyer character is recognized, he has not demonstrated that a good lawyer can live a good life.

71. See *supra* text accompanying note 2.

72. Cf. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6(b)(2) (1983) (authorizing a lawyer to reveal confidential "information relating to representation of a client . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client").

73. *Contra* Rhode, *Why the ABA Bothers: A Functional Perspective on Professional Codes*, 59 TEX. L. REV. 689 (1981).

74. Cf. B. BLEDSSTEIN, *THE CULTURE OF PROFESSIONALISM* 159-202 (1976) (describing how careers define professional self-identity).

75. The old wisdom also reflects that, in our society, morality that is differentiated and esoteric does not express character. Such moralities have the status of etiquette. Consequently, the functions of a role-differentiated morality are analyzed by the tools of criticism developed for analyzing etiquette and other structurally created social norms. See Rhode, *supra* note 73.

76. This value is also found in other television shows, like *Ben Casey* and *Dr. Kildare*: "While 'Medic' had focused upon the discipline of medicine, Kildare and Casey dwelt upon its practice." Alley, *Media Medicine and Morality*, in UNDERSTANDING TELEVISION: ESSAYS ON TELEVISION AS A SOCIAL AND CULTURAL FORCE, *supra* note 44, at 231, 233. Alley further stated: "ABC's Casey['s] . . . sense of justice transcended the protocol of his profession . . . . [L]ike Casey, Kildare often found just causes more important than surgical techniques and he was willing to challenge authority for such causes." *Id.*

77. We demand of institutions that which Bernard Shaw depicted about our meta-institution, language. B. SHAW, *ANDROCLES AND THE LION OVERRULED, PYGMALION* (1916). Eliza Doolittle's character is neither oppressed nor limited when Henry Higgins institutionalizes her speech. The discipline of "proper" English, instead, affords her wild, native tongue greater freedom.

charge requires us to design institutions that meet the demands of the textured complexity of character. Institutions that include as characters only shepherds and sheep (rule-enunciators and rule-compliers), for example, fail to meet the test imposed by our privileging of character. In affirming the privileging of character, *L.A. Law* reminds us that we must "consider how institutions need to be changed in order to encourage and sustain a fuller individual and communal life."<sup>78</sup>

Unfortunately, although committed to the privileging of character, our current understandings provide only a thinly developed account of character.<sup>79</sup> For us, cultural criticism is necessary.<sup>80</sup> Kuzak's character might have all the substance of Muzak. For us, integrity may be reduced to sincerity. We might seek exemplars in "stars" projecting contrived images. Individualism may be the content of our morality. But such is our fate. As long as character is privileged, people will empathize with "stars." This empathy represents a strongly embedded, historically funded, and culturally sanctioned vision of the good life. Our task must be to educate people about who is admirable and why. We must be able to distinguish between character and its simulacra.<sup>81</sup> Moral deliberation about character must transcend the conversations depicted on *L.A. Law*, which seem to consist entirely of people saying to each other "do what you have to do." We apparently lack an account of character growth and development. All too often understanding one's motiva-

78. Lasky, "Is One Ethic Enough?," 17 VAL. U.L. REV. 43, 51 (1983).

79. Of course, it could be argued that our cultural privileging of character is itself wrong. I agree that our culture's privileging must be criticized, but I am not convinced that the fact of privileging is not either politically justifiable, *see infra* note 82, or unwarranted. Philip Selznick reminds us of Dewey's insight "that the most important human and institutional choices are character-defining choices." Selznick, *The Idea of a Communitarian Morality*, 75 CAL. L. REV. 445, 459 (1987). In a recent book, Harry Levin, like Robert Post, sees the subject matter of comedy playing along the incongruities created by the fault-lines formed in the struggle between legalism and communitarianism, between form and substance, and between lower and higher aspirations. To Levin, comedy is always about the confrontation between killjoys and playboys. Unlike Post, however, Levin concludes that the comic spirit demonstrates the privileging of the playboy, the privileging of our desire to express ourselves. H. LEVIN, *PLAYBOYS AND KILLJOYS: AN ESSAY ON THE THEORY AND PRACTICE OF COMEDY* (1987).

80. In our culture, for example, an individual's character is taken to be compromised by joining a group. *See supra* note 62 (artificiality of groups); *supra* note 50 (mythic individuality lies outside community). This romantic view demands criticism. As Amanda Cross (Carolyn Heilbrun) observes: "You take the worst feature of the life—subservience for the wife, isolation for the cowboy—and you glamorize it, you give the wives or cowboys the language in which to describe to themselves the romance of their situation. . . . Roman[ce], in my lexicon, means unreal, glossed over with a false attractiveness to entrap those who will not see through the gloss to the truth beneath." A. CROSS, *NO WORD FROM WINIFRED* 30-33 (1986).

81. Our understanding of character is bound up with images and ephemera. *See* D. BOORSTIN, *THE IMAGE: A GUIDE TO PSEUDO-EVENTS IN AMERICA* (1987).



tions is taken as equivalent to improvements in moral capacity.<sup>82</sup>

*L.A. Law* ought to remind us as well that we significantly repress, or at least do not readily accept, that institutions can justifiably form or limit characters.<sup>83</sup> In empathizing with characters freed from the force of circumstance, we fail to consider how institutions ought to socialize character. *L.A. Law*, like other cultural products, significantly represses how “[t]he individual still depends upon shared and coherent institutions to achieve stability and responsibility for life.”<sup>84</sup> We avoid confronting this dependence, preferring to institute formally impersonal rules, rather than detailing how character can both preserve and erode institutions.<sup>85</sup>

Because of the privileging of character, we demand from institutions that they do more than efficiently allocate decisionmaking: We want honest wares, upright lines, sterling labors, virtuous attempts, and solid citizens. But we find ourselves like Babbitt, the famous student of the spiritual and moral side of American institutions, forming “mechanical friendships”<sup>86</sup> and beset by “a cold feeling of insignifi-

82. For example, on a day-time courtroom drama, *The Judge*, an Assistant District Attorney justifies the seemingly immoral imposition on her of a child abuse case by the fact that it led her to remember her own abuse as a child. Even if we disregarded the quality of representation she was able to deliver, it takes a rather strong intentionalism to move from memory to moral development, especially if we take into account the lack of social support that many women are offered. But this triumph of ego also marks American culture and must be confronted. See R. JACOBY, *SOCIAL AMNESIA: A CRITIQUE OF CONFORMIST PSYCHOLOGY FROM ADLER TO LAING* (1975) (ego psychology develops in America, instead of a more radical psychological theory); PHILIP RIEFF, *THE TRIUMPH OF THE THERAPEUTIC: USES OF FAITH AFTER FREUD* (1966) (medical curing therapy arises in America, instead of a more socially-contextualized and conditional practice).

83. Consequently, “[t]hese cultural sources also tell us that bad people cause problems, rather than society and its institutions.” Macaulay, *supra* note 40, at 208.

84. Lasky, *supra* note 77, at 51. Soap operas confirm this repression:

Since the characters are destabilized, they can do anything; but since they answer neither to God nor to any framework of social conventions, it is hard to know whom or what they do answer to. ‘Themselves’ is probably the missing word, but since these new selves appear to consist of such replaceable circuitry, it’s hard to know what that means, either.

Arlen, *supra* note 47, at 180 (drawing similarities between characters in *Dallas* and *Scruples*). Emphasis on the display of individual character falsely idealizes free subjects, blocking inquiry into the preconditions and quality of their freedom.

85. For example, recently we have elected Presidents who portray themselves as anti-bureaucratic loners. We need to understand the consequences of such character myths. We have found, somewhat to our shock, that, once in office, such characters are prone to incompetency and manipulative evasion of bureaucratic regulations. Voters may have wanted a President who would staff the bureaucracies with men like Oliver North. At the same time, the costs of electing such characters were not recognized. Like the artist in B. SHAW, *THE DOCTOR’S DILEMMA, GETTING MARRIED, AND THE SHEWING-UP OF BLANCO POSNET* (1911), we value displays of self, without envisioning how this might help our doctors find it easier not to save our lives.

86. S. LEWIS, *BABBITT* 234 (1922).

cance in his heart.”<sup>87</sup> To the question of whether or not Kuzak should have accepted his cases, we have little to say except either that he should not do what he does not want to do, or that, if he could not have followed the rules, he should not have put himself in those situations.<sup>88</sup> The weakness of legal ethics has its source in the weakness of our understanding of how the good life is linked to the virtue of institutions.

Given deficits in our understanding of the social dependence of character, the privileging of character concentrates attention on the attitude individuals take toward the force of circumstance—including ethical rules. What do we accept as given? When do we refuse to be held accountable? What do we take as the results of fortune? These have become, for us, the choices of moral significance.

Nonetheless, the appeal of *L.A. Law* reaffirms that, for us, the character we display is a moral choice. What institutions we serve and how we serve them reflects our character. Our morality—our character—is determined, at least in part, by our choices about where and what to practice and what to leave unchanged when we enter those contexts. In short, *L.A. Law* teaches that our individual morality matters. Sounds sappy. But what did you expect from a discussion of television?

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87. *Id.* at 162.

88. The text summarizes my teaching experience. I suspect it does not indicate an artifact of my teaching. Public discussion of Oliver North was consistent with my experience. Those who criticized him normally did so for his violation of laws or his political vision. Not many criticized him for having the wrong character for the job he had assumed. As usual, Christopher Hitchens was largely alone: “Men like North can be found at gun clubs, beer-belly reunions and charismatic tent meetings from sea to polluted sea. . . . The only interesting question about such a classic, banal type is this: How did he become the special executioner for a nominally democratic government?” Hitchens, *Minority Report*, 245 *NATION* 80 (Aug. 1/8, 1987). Denby argues that our valuing of sincerity demonstrates that we “no longer have a culture and a set of standards . . . short of the law, of judging anything.” Denby, *Ollie North, The Movie*, 197 *NEW REPUBLIC* 9 (Aug. 3, 1987); see also Post, *supra* note 50, at 386 (“[W]e are in a state of such uncertainty concerning the meaning of authenticity.”). Denby warns us against valuing self-displays: “North is a classic authoritarian personality—charismatic, self-dramatizing, a dreamer who dreamed himself . . . . When we look at his face we should feel not love but fear. Or rather: one thing to be frightened of is the love that the face inspires.” Denby, *supra*, at 9. Like Denby, I agree that popular appeal must be counted and analyzed. Unlike Denby, I find in our culture a value: The privileging of character. I share Denby’s fear of authoritarian personalities. But I believe that a recognition of the privileging of character and moral deliberation about its demands are better avenues to guard our future than shouting at people not to idealize stars. It is an open question whether privileging character will lead to authoritarianism or a rich pluralism. I am only slightly reassured by the fact that, like Hitchens, we can condemn North for being the right character in the wrong movie.