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## BOOK NOTE

IN THE SHADOW OF THE LAW. By Kermit Roosevelt.<sup>1</sup> New York: Farrar, Straus and Giroux. 2005. Pp. iii, 467. \$24.00.

Is that justice? Well, it's law. Law would value the lives lost; it would assign the rights and liabilities, and what more could you ask of it? (p. 447).

Professor Kermit Roosevelt's recent novel about the legal profession, *In the Shadow of the Law* (*Shadow*), forges a new genre in legal fiction, highly useful and long overdue. Unlike in *Bleak House*,<sup>2</sup> *The Trial*,<sup>3</sup> or *The Stranger*,<sup>4</sup> the law here is not merely a metaphor for a general existential dilemma (although there is some of that at work). But neither is it merely an arbitrary situs for murder and mayhem, as another, more modern novelistic tradition would have it.<sup>5</sup> In *Shadow* readers finally receive a contemporary depiction of the numerous monolithic law firms that ingest so many law school graduates each year. A landscape of acute and immediate concern for many legal professionals and soon-to-be's finally comes into focus.

Yet *Shadow* is far from a social realist novel, and readers seeking a grim, objective assessment of the economy of legal practice — one that would do for firms what *The Jungle*<sup>6</sup> did for stockyards — will be disappointed. *Shadow*'s examination of law firms and the legal profession is conducted primarily through psychological drama on a wide and systematic scale. Over the book's more than 450 pages, each member of its variegated cast of characters confronts (or reluctantly re-confronts) fundamental life decisions and psychological watersheds, their struggles observed in subtle detail by the novel's omniscient narrator. By the book's end, their sum forms a panoramic view of the careers offered by firms, each character's fate a different response to law firm life.

This Book Note provides a thematic lens through which to comprehend *Shadow*'s rich psychological fare. After introducing *Shadow* and its cast of characters, it first focuses on a series of issues that each character faces, showing how each issue amounts to one of three fundamental choices: whether to acknowledge moral obligations in all their complexity and fullness or to be content with fulfilling merely le-

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<sup>2</sup> CHARLES DICKENS, *BLEAK HOUSE* (Nicola Bradbury ed., Penguin Books 1971) (1853).

<sup>3</sup> FRANZ KAFKA, *THE TRIAL* (1925).

<sup>4</sup> ALBERT CAMUS, *THE STRANGER* (1942).

<sup>5</sup> See, e.g., JOHN GRISHAM, *THE FIRM* (1991) (describing a young Harvard Law School graduate's experience at a law firm that upon closer inspection turns out to be a front for a mafia money laundering operation).

<sup>6</sup> UPTON SINCLAIR, *THE JUNGLE* (1906).

gal ones; whether to accept the uncertainty of a career pursued as an individual or to be assimilated into a corporate body like a firm; and whether to seek out emotionally fraught intimacy with others or to retreat into secure and stable solitude. From a higher altitude, these several choices all resolve into a single one, representative of a unified worldview that is here for convenience dubbed “engaged vulnerability” — that is, a worldview that understands man’s life as a fundamental choice between engagement, adventure, and vulnerability on the one hand, and alienation, boredom, and security on the other. Declining to opine on the merits of this formidable philosophy, this Book Note only notes its ability to explain *Shadow*, as well as its resonance with perspectives advanced by other legal scholars. However, the Book Note does point out a substantial flaw in the novel’s structure, a dissatisfying gap at its very end, in which its vision fails to find meaningful and concrete expression: in *Shadow*’s closing moments, when it attempts a definition of a lawyer’s proper role, the novel manages only to express a trite and utopian mantra, which at best expresses but one side of the legal profession’s ethical dilemma. The book thus leaves the earnest reader skeptical that Professor Roosevelt accomplishes much beyond the vivid elaboration of a thoroughly pessimistic view of the legal world.

#### I. K STREET IN PAPERBACK

In all its essentials, the firm in which the novel transpires is indistinguishable from a hundred of its kindred. As *Shadow* opens in the fall of 2000, Morgan Siler is a huge Washington, D.C., law firm occupying thirteen floors on K Street. Several founders of the firm have passed away, lending the firm an air of impersonality and immortality: associates cycle through and partners are promoted, but the letterhead remains unchanged. All the familiar hallmarks of a sprawling firm are present: there is a combination of corporate, litigation, and bankruptcy departments, providing the client with the convenience of one-stop shopping (pp. 170, 177–78); a continuous succession of associates with predictably short-lived tenures (p. 283); formidable billable hour requirements that keep associates chained to their desks, with the cold comfort of an expensed 7 p.m. take-out meal (p. 16); enormous volumes of document review (p. 251); an unending series of futile research memos farmed out to junior associates (p. 32); a distinctive class of paralegals and secretaries who, better than any transient associate, manage to dutifully carry out their jobs while keeping themselves decidedly above the compromising fray (pp. 124, 137–38). The author has clearly assembled this fictional firm with the help of much closely

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observed personal experience, and the result is a flash of recognition for anyone who has spent any time in such a firm's halls.<sup>7</sup>

The firm's overwhelming and nearly tangible reality is offset by the novelistic fantasy of *Shadow's* plotlines and the archetypal nature of its characters. The characters fall into two groups, corresponding to the perpetual division between cynicism and idealism — which, as it happens here, roughly corresponds to the distinction between partners and associates. The novel's cynics predictably comprise the firm's old guard: Peter Morgan, the firm's managing partner and the hard-working scion of its founder; Harold Fineman, the ruthless Brooklyn-born litigation partner; Wallace Finn, the burnt-out former corporate partner, put out to pasture in the pro bono department, where it is assumed he can do neither harm nor good; and corporate partner Anthony Streeter, who believes in the reality of the corporate entities he calls into being with an astounding faith (pp. 78–79) comparable to the overactive ontology of a cloistered medieval scholastic.

In counterpoise to the partners with their time-hardened convictions, the book's four junior associate characters reflect youthful uncertainty or comical blitheness. Two of the associates answer to this latter description, being perfectly indifferent to the firm's faults because they are lost in their own personal fantasies. Walker Eliot, a former Supreme Court clerk (pp. 25–26), breezes through his assignments at work so that he has more time to indulge in his pendants: cashmere socks (pp. 53–54), illegally downloaded music (p. 32), and luxuriant shoes with full-leather linings (pp. 128–30). He is content so long as he is asked only to write briefs for the firm, in which he masterfully slaloms betwixt precedents and exploits the Byzantine beauty of the law that only he can see (pp. 33–34). His counterpart is Ryan Grady, an over-the-top caricature of a philistine who bills voluminous hours only in order to better enjoy his off hours spent in mad pursuit of female companionship (pp. 53–64). A thick stack of men's magazines tops his coffee table, where he diligently researches methods of predation. He radically overbills his clients (pp. 32, 62–63) not, like Walker, out of a feeling of superiority, but because he is convinced of the fundamental ruthlessness and meaninglessness of the entire enterprise (pp. 63, 100–01).

The other two associates lean more toward realistic portrayals, providing the benchmarks that young lawyers will measure themselves against. Katja Phillips represents the life of discipline and emotional divestment. She jogs to work; once there, jogs steadily through the as-

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<sup>7</sup> Even the law student who has merely tasted the fancified life of the summer associate will find much of the description familiar. Morgan Siler's managing partner offers perhaps the maximally cynical take on the summer associate experience (pp. 18–19).

signments laid before her; and then, at the end of the day, jogs back home, constantly maintaining a disciplined focus and zen-like abstraction from the legal world. She has firmly achieved control over her body, work, and life (pp. 14–16, 35, 57, 81–82), though admittedly at the expense of abstracting and alienating herself from all three. In contrast, Mark Clayton is never able to summon the necessary spiritual discipline to maintain such a regimen and plunges regularly into despair (pp. 10–13). He cannot help attributing spite to the partners who hand him his crushing assignments (p. 11), nor can he distinguish those assignments' inevitable futility from the quality of his own efforts. The line between his life and work dissolves; consequently, both assume an aspect of hopelessness (p. 32). With their distinctive approaches to work, Katja and Mark together form the book's gateway into associates' inner lives. In the process, they also provide the source of the exclamations of astonished horror about firm life that many beleaguered associates will cherish as vindication. In one scene in which the associates muse about their shared misery over beers, Katja wonders:

“Can you imagine what the interviews would be like if they told you the truth?”

Mark smiled. “Don't worry if you don't like the associates you meet,” he said. “They'll all be gone by the time you get here!”

“Right,” said Katja. “And when they talk about the classes you should take. ‘Forget Bankruptcy. I highly recommend Proofreading. And Document Review. And Staying Up All Night Because a Partner Called You at Seven.’”

“Really, they shouldn't have interviews,” said Mark. “They should just bring us all in and see how long we'll hold our hand over a candle flame. Last thirty get the job.”

“Oh, it's not just a job.”

“It's an indenture?”

“It's a lifestyle.”

“It's two or three really terrible jobs all stuck together is what it is,” Mark said. (p. 283)

These moments of reverie, however, are only lightly sprinkled throughout the novel, which briskly guides this allegorical cast through a series of revealing confrontations with the law. The first of the two central plotlines begins with the entire firm mobilizing to address a recent explosion at a chemical storage facility in Texas that is owned by one of the firm's clients (pp. 58–61). The associates, led by the venerable partners, are shepherded onto a plane to Texas, where they tour the damage that their firm has been hired to control: the ruined air, the decimated economy, the bereaved families (pp. 233–60, 274–91). The explosion, which at first seemed merely negligent in ori-

gin, after further inspection takes on an aspect of breathtaking recklessness (p. 389). Strange orders also begin to issue from the client (pp. 298–99), which when combined with unusual events in Texas (p. 290) begin to lend the series of events the look of a conspiracy. The partners ignore the warning signs, intent upon satisfying their fickle client (p. 363). However, Mark and Katja inspect deeper, until with Wallace Finn's help they unearth an elaborate and malicious corporate conspiracy behind the fatal accident. Despite having been instructed in the cynical tactics of discovery warfare (pp. 251–53), in a moment of moral resolution the two associates decide to answer obligingly the plaintiffs' discovery request for "all relevant documents" by including the incriminating files (pp. 443–44). The novel ends as, with the fate of their client sealed (p. 447) and the law firm potentially destroyed (p. 449), the two associates, their moral duty fulfilled, stride arm-in-arm into the dawn of a fresh and promising day (p. 449).

Meanwhile, the second plotline runs alongside the first, paralleling its developments. It begins when Mark reluctantly accepts an assignment to a pro bono death penalty case (p. 80), a matter for which he has neither the time nor the training (p. 32). His client, a retarded man named Wayne Harper, has damning DNA evidence against him, which Mark cannot even begin to find a way of challenging (p. 123). Mark nevertheless perseveres, comforted by the fact that Walker Eliot, the firm's resident legal genius, is supervising him (pp. 68–69). Yet Mark ultimately finds himself arguing the petition and appeal by himself when Walker, haunted by phantoms from his past (pp. 212–13), abandons Mark at the eleventh hour (pp. 357–58). Seeing the case through on sheer pluck, Mark is present for a miraculous set of last-minute revelations that uncover unimagined fraud on the part of the prosecutor's office (pp. 426–29). Harper's life is thus ultimately saved, and Mark returns to the firm unheralded, just in time to aid Katja in delivering the coup de grace to the corporate conspiracy.

As these plotlines unravel, the characters' personal lives also take several decisive turns. Peter Morgan abruptly decides to divorce his wife of thirty years (pp. 299–301); Harold Fineman falls in love with Katja's innocence and idealism (pp. 73–74, 379–81) and, while out jogging with her, succumbs to a fatal heart attack (p. 398); Wallace Finn attempts to begin a new life — by asking Peter's newly divorced wife on a date (pp. 446–47); Walker turns out to have abandoned Mark not only for reasons lying in his past, but also to devote himself to searching for a job as a law professor (p. 383); Ryan Grady adopts the persona of Peter Morgan, seeking to style his entire life after him (pp. 343–46, 449); and Mark and Katja begin a relationship with each other, after an extremely gradual and hesitant rapprochement (pp. 79–81).

Yet what might seem at first a mere welter of personal decisions resolves itself upon closer examination into a coherent thematic frame-

work and worldview. The first step toward that insight is the identification of these events and others as mere variations on one of three fundamental choices: hearkening to moral or merely legal obligations; embracing an independent career or allowing oneself to be assimilated by the firm; and accepting the demands of human intimacy or retreating into solitude.

## II. WHAT TRANSPIRES IN THE SHADOW OF THE LAW

The book's title provides the starting point for an exploration of the first of these fundamental choices, which bears upon the law's domain. The phrase "in the shadow of the law" carries with it a number of divergent connotations; although each use of the phrase denotes the implicit presence and influence of the law, its connotation in a particular use reflects the speaker's underlying valuation of the law. The law's shadow can thus be benignly conceived as the prefiguration of divine perfection, as in the reference to the law's shadow in the tenth chapter of *Hebrews*;<sup>8</sup> understood negatively as an obstacle to justice, as in Dickens's "perplexed and troublous valley of the shadow of the law, where suitors generally find but little day";<sup>9</sup> or used neutrally in the sense of "bargaining in the shadow of the law," wherein the prospect of litigation merely figures as an additional consideration in parties' cost-benefit analyses.<sup>10</sup> In *Shadow*, the phrase appears only once, ostensibly in this last, neutral sense; importantly, its utterer is Peter Morgan, the avatar of big-firm legal practice. Secure in his marital rights thanks to a prenuptial agreement, he muses upon the consequences of his impending divorce:

Bargaining, his law school professors had told him, occurs in the shadow of the law . . . . But it wasn't just bargaining, not anymore. Law's reach was broader now, its influence more pervasive. As older forms of social ordering receded, relationships that had been personal became legal. One day, Peter thought, there would be no other kind, nothing but the clean efficiency of statute and rule. . . . Peter watched and understood what most did not: that we live all our lives in the shadow of the law. (p. 300)

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<sup>8</sup> See *Hebrews* 10:1 (King James) ("For the law having a shadow of good things to come, and not the very image of the things, can never with those sacrifices which they offered year by year continually make the comers thereunto perfect.").

<sup>9</sup> DICKENS, *supra* note 2, at 504.

<sup>10</sup> See Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 959–77 (1979) (describing how participants in a divorce alter their behavior in light of the potential outcomes, costs, and delays stemming from litigation). Professors Mnookin and Kornhauser appear to have coined this nowadays prevalent phrase. See, e.g., Haini Guo & Bradley Klein, *Bargaining in the Shadow of the Community: Neighborly Dispute Resolution in Beijing Hutongs*, 20 OHIO ST. J. ON DISP. RESOL. 825, 899 (2005) (crediting Professors Mnookin and Kornhauser with the phrase's conception).

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The context of this passage indicates the return of the phrase's negative coloring —owing both to its ominous tone and to Peter's cold-blooded calculations regarding this matter of the heart. A new shade of meaning is in the process of being born.<sup>11</sup>

The phenomenon that the passage describes is one of law's traditional tasks: articulating the duties that people owe one another. Peter's novel observation is that this process of articulation is evolving, and perhaps accelerating, in defining those duties. In support of Peter's intuition, relatively modern examples of law's encroachment abound: prenuptial agreements, through which the grandiose idea of lifelong partnership is given concrete (and often cynical) content; partnership agreements, through which joint venturers painstakingly define the limits of their duties of loyalty, their attention focused securely upon the date when business sours and colleague becomes competitor; court-developed tort law on accidents and injury, defining the specific extent of a store owner's duty of care toward customers on her premises; employment safety regulations, stipulating just how much safety an employer must guarantee her employees; and so forth. Although fairness, honor, affection, or some other vague and encompassing norm has defined, and still does define, these relationships, the law has taken upon itself the specification of just what duties are owed — beyond the observance of which it does not deign to intrude.

Legal duties never simply replicate the relationships they define. Basic considerations of law's nature and power demonstrate that legal relationships — and the shadows they cast — must always amount to less than what personal relationships can be. The moral duties people owe toward one another, due either to the categorical relationship between them (parent/child, employer/employee, director/stockholder, etc.) or to more particular bonds or events, can never be completely reduced to legal duties. Sometimes the specific and concrete relationships between people give rise to moral duties of such a particular sort that the law, with its directives in the form of rules applicable to general classes of circumstances, can never hope to reproduce them; other times the duty, though important, is of such a vague or indeterminate

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<sup>11</sup> In *Uncle Tom's Cabin*, Harriet Beecher Stowe uses the phrase in a manner *almost* exactly like Peter Morgan's use:

Whoever visits some estates there, and witnesses the good-humored indulgence of some masters and mistresses, and the affectionate loyalty of some slaves, might be tempted to dream the oft-fabled poetic legend of a patriarchal institution, and all that; but over and above the scene there broods a portentous shadow — the shadow of law. So long as the law considers all these human beings, with beating hearts and living affections, only as so many things belonging to a master . . . so long it is impossible to make anything beautiful or desirable in the best regulated administration of slavery.

HARRIET BEECHER STOWE, *UNCLE TOM'S CABIN* 12 (Kenneth S. Lynn ed., Belknap Press 1962) (1852).

nature (for example, “loyalty” or “fairness”) that the blunt duties imposed by law will inevitably be over- or underinclusive. Lawyers’ continual ability to find exceptions and counterprinciples is both source and proof of the distance that separates legal and moral duties.

Our endlessly complex moral duties toward our fellow man thus continue to confound the law, spawning confusion and difficulty that it can never hope completely to eradicate or clarify. Of course, certain moral duties, such as that owed an employee by an employer, can be neglected to such an extent that the law’s intervention is an unquestionable boon. Even then, though, the intervention will be coarse and incommensurate with the full complexity of the relationship.<sup>12</sup> The law might strive but will always fail to instruct people in just how they should act, just as every series of subsequent legal interventions will also fail in this task. Since the law can only posit general, definite rules, it will always and only define some skeletal frame of duties, if even that. The flesh and blood — the full range of complexities attendant to human interaction, which make all relationships so fraught — will always elude it.

### III. THE TEMPTING SHELTER OF THE LAW’S SHADOW: THE CHOICE BETWEEN LEGAL AND MORAL DUTY

*Shadow* enriches the insight about the relationship between law and morality by illustrating it through a cast of characters whose well-limned psychologies demonstrate how the shadow of the law can come to blot out the light of actual personal relationships. Such illustration might be thought unnecessary; after all, the delusion that we owe our fellow man only what the law commands might seem at first too extreme for anyone to harbor. It seems to recapitulate the age-old theory that the law *is* morality, a notion soundly put to rest by, most notably, Oliver Wendell Holmes<sup>13</sup> and H.L.A. Hart.<sup>14</sup> In fact, *Shadow* addresses this issue’s persistence as a psychological problem: that despite Holmes’s and Hart’s undeniable insight, the tempting idea that the law exhausts our moral duties continues to beckon, siren-like.

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<sup>12</sup> For example, the law of sexual harassment prohibits numerous forms of despicable behavior, but in the process it also often reduces the scope and intimacy of unobjectionable interactions. Employers concentrate upon avoiding liability, and the relationships amongst coworkers are distorted as a result. See, e.g., Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2191 (2003) (“In the name of preventing sexual harassment, employers increasingly ban or discourage employee romance, chilling intimacy and solidarity among employees of both a sexual and non-sexual variety.”).

<sup>13</sup> See Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 459–64 (1897).

<sup>14</sup> See, e.g., H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958).



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*Shadow* renders this temptation vivid by offering plausible portraits of individuals willfully stumbling about within the law's shadow, deprived of the light of moral reflection. The portraits exhibit some variety, since one can succumb for a number of reasons to the delusion that one's obligations toward others are coextensive with one's legal duties: because the law's obvious authority and power seem to eclipse the merely emotional ties that bind us, because one has simply rejected interpersonal emotional ties as constraining and unpleasant, or because one *wishes* one could leave behind the frustrations of emotional ties reluctantly acknowledged. Every character in *Shadow* seems to have been led to the delusion by each of these paths.

Of all the characters, Peter Morgan is the one most enveloped in the law's shadow, having nearly succeeded at completely excluding others' moral and emotional demands from his attention (p. 65). Thus, in the same passage in which he contemplates his impending divorce, he unabashedly revels in his ingenuity and foresight at using the pre-nuptial agreement to shield himself from the resulting fallout: "The finely ordered lattice of legal relations that made up his life gave him not only order but flexibility. It insulated him from what otherwise might have been the costs of certain choices . . ." (pp. 300-01). Peter appreciates and respects the binding character of legal duties; relationships, however, "could be broken; they constrained only those who agreed to be bound" (p. 300). Peter has become so fixated upon the shadow of the law that he can barely even register the substance of the personal relationships that it overcasts.

Other characters are not quite so beyond help, and the novel charts the path of their growing consciousness of what they deny by exalting the law. Every character in the book thus comes to face a watershed decision: either to embrace full moral responsibility for their actions, or to find shelter and comfort in the delusion that the law exhausts the duties they owe others. For Walker, who is not nearly so inured to the moral life as Peter, this choice remains a pressing one. The shadow's obscurity powerfully attracts him, since his love of the law is accompanied by a fear that personal duties will corrupt it. A flashback reveals an axial moment when, as a Supreme Court clerk, he reviews a death penalty petition, poorly drafted because submitted under desperate time pressure. He notices that a crucial argument, with a substantial chance of success, has been omitted in the rush to file (p. 211). He hesitates only briefly over the possibility of remedying the omission himself. The practice of law, he is convinced, is about "[c]hoosing the interpretation that shows the law in its best light, that makes it most beautiful" (p. 117). The petition before him is merely a plea to reexamine the factual record, or more accurately, a plea to bend existing doctrine so as to spare a man his life. For Walker, such "facts" — whether the facts in the record, or the fact of a man's life — are beside the point: "[i]f the facts threatened the law, he thought, so much the worse

for them” (pp. 115, 206–07). His assumed role is guardian of the law “in its pureness and intricacy” (p. 108). He thus has little trouble making his decision, and declines to make any addition before handing the petition over to the Justices, who predictably deny it (p. 211). Devoted to the law’s purity and beauty, an ideal which rescued him from the apathetic lawyer’s life that law school portended (pp. 107–08), Walker ignores the nonlegal considerations in the case before him, including the prospect of a man’s death (p. 349). Yet, unlike Peter, on some level Walker remains conscious of the moral consequences of his actions. The filter of the law has not entirely obscured the duties he owes people as people; for him, they are not yet merely parties to litigation. After the denial of the petition, he returns home and promptly vomits (p. 212).

Other characters in *Shadow* are faced with the similar, semi-conscious temptation of growing accustomed to an impersonal, crepuscular existence within the law’s shadow. Harold must choose between following his ultra-profitable, alpha-male lifestyle as a litigator (pp. 55–57) and acknowledging the injustice that his litigating wreaks (pp. 158–60, 193). Conversely, Wallace Finn must choose between accepting the perfunctory nature and inefficacy of his firm’s pro bono department and embracing his realization of the justice his skills allow him to achieve (p. 443). And as for Mark and Katja, both must decide at the book’s end whether merely to carry out their legal duty as advocates or to do justice by frustrating their client’s malevolent plan.

#### IV. THE PSYCHOLOGICAL DIVIDENDS OF FIRMS: THE CHOICE BETWEEN SANCTUARY AND A SELF-DETERMINED CAREER

The temptation posed by the shadow of the law is not the only one faced by *Shadow*’s characters, however. That temptation assails every legal practitioner, whereas *Shadow*’s cast is subject to the additional enticements that firms as institutions have to offer. Like the motivations for living within the law’s shadow, the pull of these enticements varies from one character to another, each yearning for at least one aspect of what the firm has to offer: luxury, definiteness, reliability, security, and immortality. Of these, luxury is clearly the least in need of explanation or illustration. We need not read about Walker luxuriating in his hand-made shoes (pp. 128–30) and cashmere socks (pp. 53–54), Mark gratefully sinking into the bedsheets at a first-class hotel (p. 137), or Peter Morgan’s lavish Georgetown dinner party (pp. 192–204) to understand the hold upon the human heart of the well-remunerated firm lifestyle.

But the reader also need not be told that the vice of luxury ultimately captures only the pettiest of hearts. *Shadow*’s characters generally find themselves attracted most powerfully to the subtler benefits that firm life promises: definiteness, reliability, security, and even a

taste of immortality. Of course, firm life need not possess any of these qualities, but their potential nevertheless seduces *Shadow's* characters into turning away from a more independent life and from the opposite (and at first glance, unappealing) qualities that it offers: an ambiguous goal and obscure, potentially limitless demands upon one's person; flux and mutability; individual responsibility and vulnerability; and mortality. Peter Morgan, for example, finds enormous satisfaction in the definiteness that the firm lends his life (p. 8).<sup>15</sup> Because the firm's demands are concrete and measurable — hours of effort in exchange for money — he knows just how to satisfy the firm (pp. 9–10), as well as the exact extent of his success and worth. Unlike personal relationships, the firm makes no vague or boundless demands (pp. 402–03).<sup>16</sup> From the firm's perspective, every good legal case boils down to the monetary judgment it promises (p. 199). Similarly, firm lawyers looking for a definitive measure of success and worth need look no farther than their bank statements (p. 181). The firm provides reliability, too, thanks to its eternally and purely commercial character. Firms never experience midlife crises; they adapt their business plans.<sup>17</sup> Ryan is the character who most fully capitalizes upon the reliability of the firm, utterly giving himself over to the ready-made existence it offers — and therewith enjoying the freedom it bestows from all of life's bewildering choices and frustrating uncertainty.<sup>18</sup> Security comes from the transpersonal character of the firm: no one person ever bears sole responsibility for the firm's losses in court, as Mark comes to appreciate during his (suddenly) solo work on a pro bono case (p. 393).

The final lure offered by firms, immortality, is the most abstract and existential: an opportunity to contribute to something that can transcend the limits of finite, individual lives. A number of *Shadow's* characters find varying forms of consolation in the firm's immortality. Thus, Archie Morgan — Morgan Siler's founder and Peter's father — exults in the firm's independent and enduring existence, confessing

<sup>15</sup> Peter's attachment to the firm clearly substitutes for the neglected personal relationships in his life: "The body he dreamed of mounting was neither corporeal nor female; it was corporate and immortal" (p. 267).

<sup>16</sup> Similarly, Harold Fineman is grateful for the innumerable hours he works, because this allows him to have someone tend to his senescent mother in place of him. The firm thus enables him to avoid the imploring look his mother's eyes always possess and to which he never knows just how to respond (p. 230).

<sup>17</sup> Thus, when a "sea change in the nature of legal practice" occurs late in the twentieth century (p. 52), Morgan Siler changes tack from white-shoe to one-stop shopping (p. 48). Only the firm's founder, Archie Morgan, feels betrayed by this about-face.

<sup>18</sup> Ryan comes to a sudden realization about the scope of what the firm has to offer:

There was the money, of course; there was the cycling certainty of litigation, the license to advocate free of doubt. But more, there was identity complete at a stroke. The firm would embrace him, encompassing as the oceans that wrapped the earth. It would be his whole life, if he let it. (p. 411)

that “his loyalty, his love, belonged not to the [lawyers of Morgan Siler] but to the benign, immortal abstraction he’d birthed” (p. 170). Peter meanwhile harbors a tyrannical variant on Archie’s paternal yearnings. He cherishes the firm because it serves as “a child that would never leave and continued to grow” (p. 269) — in other words, as an entity eternally under Peter’s thumb, independent of the fluctuations of human relationships.<sup>19</sup> Wallace finds in the firm freedom from the mortality that clouds every other scene in his life (pp. 196, 304). According to him, firms never force you “to think about dead people” (p. 303).<sup>20</sup>

#### V. THE LEAP INTO THE ARMS OF THE OTHER: THE CHOICE BETWEEN ATTACHMENT AND SOLITUDE

The third challenge and temptation faced by the characters in *Shadow* does not implicate the law except indirectly; nonetheless, it completes the thematic scheme undergirding all of *Shadow*’s dramatic events. That challenge comes in the moment when each character confronts the opportunity for intimacy, when the risk-laden realm of human affection beckons. Risk-averse and risk-aware as they all are, *Shadow*’s characters are quick to recognize the dangers that human intimacy presents: rejection, betrayal, misunderstanding, and all other varieties of harm that one human can visit upon another. Faced with the question of whether to accept such manifold vulnerability, the characters all naturally hesitate.

Thus, when Peter confronts his wife at a stage when she has, in his mind, outlived her roles as both trophy and mother, he is tempted to abandon her rather than make the difficult assessment of what their relationship was and still is. Harold similarly is tempted to suppress his budding feelings for Katja (pp. 397–98) — feelings of a sort he has never heeded before and which powerfully disrupt his life. Mark and Katja must each decide whether to make an overture toward the other, despite their respective histories of rejection (pp. 39–40, 67–68, 80–81) and betrayal (pp. 96–97). Both have recently adopted the profession and habits of lawyers, and in their new mindset they must choose what conclusions to draw from those well-remembered wounds. Ryan

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<sup>19</sup> The most striking example of Peter’s perspective on the firm’s immortality emerges at Harold’s funeral. Peter thinks to himself: “The ceremony showed nothing, except that the firm continued. It did not commemorate Harold so much as deny him; deny that he was essential, deny that his death could change things” (p. 414).

<sup>20</sup> Harold’s own more combative temperament conceives of the firm as an immortal warrior because, no matter how many times it is slain by adverse judgments, it always returns to argue another day (p. 161). For a variant on the yearning for immortality, notice Walker (whose concerns tend to the trivial when the law is not at stake) and his infatuation with the idea of Italian shoes that can last an entire lifetime (p. 198).

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comes to a romantic watershed when he realizes that the women he has been pursuing are not hostile enemies, but rather vulnerable persons like himself. This insight paralyzes him; he can no longer casually engage in predation, knowing that his romantic tactics might damage women's self-confidence in the same way that their own countertactics almost constantly damage his (pp. 340–43). For his part, Wallace faces the formidable challenge of beginning romantic life anew after the age of sixty. And even Walker must in some sense decide whether to risk approaching his beloved — whether to retreat to a celibate, devotional life in the academy or to grasp hold of the law and actually engage with it in the rough world of litigation.

#### VI. “ENGAGED VULNERABILITY”

The third choice thus reveals itself as a variation on the same fundamental duality manifested in the other two temptations *Shadow's* characters face. In all three, the characters confront a crucial and basic choice: either to accept the uncertainty, vulnerability, and responsibility that flow from their moral, individual, and romantic existences, or to retreat into a sheltered realm — be it the law, a law firm, or romantic solitude — where neither the dangers nor the benefits of a fully engaged life exist.

This fundamental choice running throughout the lives of *Shadow's* characters embodies a worldview that might be termed “engaged vulnerability.” In its essence that worldview amounts to three insights, easily stated but far-reaching. The first is that life presents man with an option: either to engage with the surrounding world or to retreat into a realm of shelter, isolation, and stasis. The second states that, between these two options, only engagement can provide real fulfillment — whether through the love that flows from personal relationships, the self-transcendence that can come from challenging one's own limitations, or the sense of belonging that community can bestow. The third proposition counterbalances the second, observing that risk and pain inevitably accompany this engagement; indeed, vulnerability is the precondition for the self-transformation represented by love, self-transcendence, or true membership in a community.

Although the above formulation is meant to describe the worldview underlying *Shadow*, its basic contours resemble those of theories deployed by several legal theorists. For example, Professor Roberto Unger's extensive and profound work on the human condition incorporates a variant of engaged vulnerability into its understanding of human nature, even though the advanced theoretical development of

that understanding makes its common roots less than obvious.<sup>21</sup> Meanwhile, in its implications for interpersonal relations, engaged vulnerability strongly resembles the notion of altruism, posited by Professor Duncan Kennedy as a polar force — along with its counterpart, individualism — in shaping American law.<sup>22</sup>

Consonant with the concept of engaged vulnerability, the individual fates of *Shadow*'s characters unambiguously indicate that fulfillment presumes vulnerability. Peter's future exemplifies that worldview in the grimmest way. Not only does his firm-bound existence deny him fulfillment in love or any other form, a fact that might be termed the "positive" argument for an engaged life, but he also suffers tremendous loss, thus learning the hard way the "negative" argument for an engaged life, summed up in an insight from the occasionally vatic Wallace Finn: "You can't decide what you will keep . . . . You can decide only what you lose first, for in the end you lose it all. Pain and infirmity wait[] in the future, with the patience of the ineluctable" (p. 306). True to Wallace's words, the book ends with Peter's divorce papers having just been signed and, though he does not yet know it, his firm in danger of collapse, thanks to Katja's and Mark's discovery-related activities (p. 449). Peter may thus soon find himself bereft of the supposed rock of his existence — the firm — as well as estranged from his wife and daughter, whose love might have helped him persevere through this catastrophe.<sup>23</sup> By the book's end, his former aspect of invulnerability (pp. 67–68) has entirely disappeared. His fortress made of law, supposedly feeding on mankind's misery rather than partaking in it, has potentially been laid low. Lacking any remaining prospect of fulfillment, Peter is threatened by total loss.<sup>24</sup>

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<sup>21</sup> See, e.g., ROBERTO MANGABEIRA UNGER, *THE SELF AWAKENED: PRAGMATISM UNBOUND* (forthcoming Mar. 2007) ("We may seek to escape the painful dialectic of desire and insatiability by casting on ourselves a spell of satisfaction and resignation. We then renounce what we suppose to be the vain objects of desire. . . . The result, however, is a shrinking of experience."); ROBERTO MANGABEIRA UNGER, *PASSION: AN ESSAY ON PERSONALITY* 24 (1984) ("We advance in self-understanding and goodness by opening ourselves up to the whole life of personal encounter rather than by seeking communion with an impersonal, non-human reality.")

<sup>22</sup> Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1717–18 (1976) (identifying individualism and altruism as competing ideologies within American law, and describing altruism as entailing "a vulnerability to non-reciprocity").

<sup>23</sup> Adding to his looming misfortunes, an earlier passage alludes to Peter's prostate problems. As Peter stands at a urinal next to Mark, Mark notices "[a] weakly musical noise ar[ising] at his side, trickling up and down the scale like an idiot child practicing piano. That man has prostate problems, Mark thought" (p. 63). Should this turn out to be cancer, it would render Peter at least as helpless and vulnerable as his father-in-law, whose illness turned a proud and self-reliant man into someone who could not but rely upon the love of the family that had always been there for him (p. 403).

<sup>24</sup> Ryan's own decision to imitate Peter entirely (pp. 343–46, 449) seems to secure for him the same fate, though the book ends before one can tell for sure.

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Walker's decision condemns him to a fate more prolonged and subtle. He fears the power he has over the law, as well as the power he wields over people through the law (p. 106), and in response he makes the same basic choice as Peter — except whereas Peter suppresses his feelings toward others before proceeding onto the battlefield of litigation, Walker still possesses his moral faculties and thus opts to withdraw into the ivory tower. From that vantage point, Walker need not engage with the frustrating moral complexities of litigation, where humans are involved and people get hurt; he believes himself to have evaded the Wayne Harpers of the world. However, as *Shadow* makes clear, he will find no refuge there. Walker's love — the law — will continue to be shaped in the courts by the clash of human destinies, and Walker will be left to protest ineffectually from his academic aery. His joy at escaping the firm's deadening clutches is soon to be replaced by the eunuch's cries of frustration.

The only salvation, ambiguous and tentative as it may be, is granted to Wallace, Katja, and Mark,<sup>25</sup> each of whom in the book's final pages embarks upon a vulnerable and open-ended new life. Wallace's own intrepid move in the final pages is especially daring, since by that point he is already over sixty years old, near the end of a life he sees as a disappointment (pp. 17–18). Yet by helping Mark and Katja to frustrate the corporate conspiracy, Wallace receives a hint of the excitement that a morally engaged life might bring, and soon after he takes the further step of making a hesitant plea for love — as it happens, to Peter's ex-wife. The book ends before Wallace finds out whether his gambit has worked; in fact, it ends just as he balances upon the edge of rejection. But true to the notion of engaged vulnerability, at just this final moment the reader is informed that Wallace's heart is “r[ising] and expand[ing]” (p. 446).

Of all the characters' fates, however, Mark's and Katja's most clearly reflect the book's fundamental worldview. In *Shadow*'s final pages they choose vulnerability along all three dimensions: departing from their roles as mere lawyers, as they recognize the effects of their legal actions and take responsibility for them; spurning the firm and its emoluments in order to effect justice; and embracing one another in a daring romantic leap of faith. By its end they are the novel's indisputable champions, having undone both conspiracies, asserted their independence from the firm, and found one another in what seems a bud-

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<sup>25</sup> Arguably the most ambivalent fate is granted to Harold, who — when he makes a hesitant overture to Katja and is rejected — dies shortly after embarking upon a life more vulnerable. Yet the brief period leading up to his death exhibits such tumult, joy, and adventure compared to the unremitting aggression of his former life that perhaps even the fateful turn of events triggered by Katja's entrance can be seen as ultimately positive.

ding romance. Accompanied by Mark and Katja, “engaged vulnerability” ends the novel triumphant.

#### VII. CONCLUSION: *LEGES SINE MORIBUS VANAE*

Having exhaustively sketched a psychological and existential panorama of the firm lawyer’s life, the question remains whether it is at this final, crucial moment that the novel leaves the legal profession and its frustrating problems behind. In its closing pages, *Shadow* offers a notion of a lawyer’s proper role, one that Mark presents as a justification for his actions and as an ostensible guide for the future. Yet that notion proves so incommensurate with the complex problems arising in legal ethics as to leave the earnest reader wondering what caused such an astute portrait of the legal world to veer off in its final moments into glib dicta. Thus, ultimately no positive prescriptions for a fulfilled legal career offer any relief from *Shadow*’s impressive but deeply pessimistic portrayal of lawyers’ psychology.

*Shadow*’s ethical paradigm for the legal profession emerges from the mouth of Mark in an epiphany at the book’s end. By this point Mark has won his habeas appeal, saving Harper from death, and Katja and he have just finished delivering the final blow to the corporate conspiracy. Surveying the justice he has done, Mark reflects:

*Leges sine moribus vanae*, . . . the Penn motto: Laws without morals are useless. He’d seen it every day at school, carved in one of the courtyard walls, and thought it a relic of older times. Everyone knew that law and morality were distinct. But now he was seeing the aphorism in a different light. It didn’t mean that you needed morals in the law. It meant you needed them in the lawyers. . . . [I]t’s people who do justice. (p. 448)

Mark’s interpretation of the school motto, as he himself recognizes, is revisionist. He is far beyond the classical notion that law and morals coincide, for he clearly accepts the positivist thesis that “law and morality [are] distinct” (p. 448). Rather, he concludes that lawyers themselves, if the law is to do justice, must exhibit moral virtue: in the cases they choose to take on, and in the way they treat not only their clients but also their opponents. The ultimate force of Mark’s words becomes clearer in light of their utterance in the immediate aftermath of his morally daring and professionally suspect acts. Mark clearly intends something far surpassing the ethical dictates of professional guidelines. Mark and Katja have just finished sending to their opponents a discovery request in which they have deliberately placed documents incriminating their client and rendering it massively liable. Mark’s and Katja’s behavior thus represents no minor ethical innovation, and indeed their acts prove impossible to reconcile with any coherent notion of professional duty. None of this is to deny that Mark and Katja might have done (or probably did) the morally superior thing. The question, rather, is whether the book — up until this point



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so well anchored in the legal profession and its concerns — has slipped free of those moorings unannounced.

Most clearly, Mark's new ethical paradigm exists in tension with the entire American adversarial system, raising anew all the typical and basic debate topics of legal ethics classrooms.<sup>26</sup> Are lawyers supposed to stop short of zealous advocacy whenever they grow ethically uncomfortable with the justice of their client's claims? Or, if that principle of conditional zealousness proves unworkable, are they supposed to exercise their ethics through their choice of clients? And would that not in turn infringe upon the universal right to representation? These questions, fundamental and frustrating, raise serious doubts as to whether Mark's paradigm really lends any justification or rationality to his and Katja's *professional* actions.

Katja's and Mark's own attempts to extricate themselves from this fundamental tension are to no avail. To themselves, they justify their behavior by envisioning themselves as "officers of the court"; thus, submitting the documents is "no more than their duty" (p. 444).<sup>27</sup> However, if Mark and Katja are to be mere "officers" performing their "duty" and not usurping the role of the court itself, they must know in advance what the law demands. Yet they cannot attain objective knowledge of the law or its inherent purposes, for the law does not offer such things. As a Supreme Court Justice in *Shadow* acknowledges, "[v]alue-free adjudication is an illusion, and a dangerous one" (p. 117). To discern the law, every "officer of the court" must choose amongst warring values, which is to say that every "officer of the court" must adjudicate. By imagining that their actions can be justified as the actions of "officers of the court," Mark and Katja usurp the role of adjudicator. Thereby they also depart from their role as lawyers.

These considerations reveal that Mark's and Katja's final actions occur outside of the legal profession, in a realm of do-goodery or (depending on to whom you talk) vigilantism. Mark's paradigm offers no help in justifying their actions, presenting as it does only one side of a fundamental tension in professional ethics; and the reader experiences real doubt whether their talk of being "officers of the court" is disingenuous or entirely delusional. From all appearances, when *Shadow* describes Mark's and Katja's final actions, it has left the legal world and its concerns far behind.

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<sup>26</sup> See, e.g., ANDREW L. KAUFMAN & DAVID B. WILKINS, PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 331-46, 545-95 (4th ed. 2002) (describing situations in which a lawyer's desire for justice conflicts with a client's specific wishes).

<sup>27</sup> Compare this with Walker's own self-description toward the end of the book: "It's just business. I am an advocate. I do not appear here as *amicus curiae*. I am no friend of the court" (p. 271).

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But what admits of no doubt is that Mark's paradigm banishes firm practice from the legal world. In the legal world that *Shadow* depicts, market forces inevitably tend to bring firm lawyers' ethics into line with clients' wishes, with the result that those lawyers can fulfill Mark's paradigm only in the case in which the client's desired result is the just result. The book's flashback to the days of Morgan Siler's founding describes this process by which the unyielding demands of the firm's clients systematically erode the firm's principles. In an increasingly fluid legal market, clients shift from one firm to another in response to how thoroughly the firms can satisfy their demands, and Archie Morgan helplessly watches over the years as his firm loses business owing to its professional fastidiousness. Gradually, the inevitable occurs: the firm's ideals collapse, the leadership correspondingly changes, and Morgan Siler emerges as a thoroughly mercenary organization under Archie's successor, Peter. Archie notes that the "depravity" of Wall Street has spread to his firm and that "the bar [is] corruptible in a way it hadn't been before" (p. 168).<sup>28</sup> "Corruption" it might be; certainly, the firm has been brought within Wall Street's own operating paradigm, at the decided expense of professional ethics.

Unfortunately, although Archie can recognize that principle, *Shadow* itself does not seem to take account of it or its implications. Given the novel's account of firms' subjugation to market forces, Mark's parting, oracular words are both revolutionary and incongruous. His paradigm demands that firms (and perhaps all private practitioners) act in a way precluded by the market; taken to its logical conclusion, it demands the breakup of all existing firms. Perplexingly, Mark's paradigm is posited somewhat cavalierly at the novel's end as he walks off into the sunset. The reader thus cannot discern what has happened: either one of the novel's heroes has just struck a revolutionary stance, or mere dicta have been tossed off, their implications left unconsidered.

Whether the paradigm is ill-considered utopianism or merely ill-considered, the effect is the same: the novel's bold exposition of the psychology of lawyers trails off into a frustrating and unhelpful hint as to how lawyers can lead more moral careers. Mark's and Katja's decision to leave the firm seems like the right first step; their foiling of the corporate conspiracy also seems indisputably right (that is, as a matter of every sort of ethics besides professional ethics); but based on *Shadow's* discussion of a lawyer's proper role, the reader cannot rea-

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<sup>28</sup> *Shadow* also acknowledges a variant on this principle in its observation that "[a]fter a certain number of years, lawyers start[] to resemble their clients, either in analogy to the pattern of married couples or on the theory that you are what you eat" (p. 140).

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sonably even guess what sort of legal career, if any, Katja and Mark are headed toward at the book's end.

*Shadow* thus does not end with the realization that the legal system needs morals in its lawyers. It ends rather with the discovery that the legal profession has yet to find its visionary.<sup>29</sup> And, in the absence of any obvious candidates, it might be a long wait before such a visionary arrives. In *Shadow*, it was Walker the academic who ultimately took up the pen. The next important dispatch will be from Mark or Katja after their years of wandering, reporting about what the life of the engaged and fulfilled lawyer looks like.

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<sup>29</sup> Nevertheless, Professor Roosevelt's effort certainly deserves credit — for its ambition, scope, vividness, and substantial success.

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