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William T. Braithwaite
Assoc. Prof. of Law, Loyola University of Chicago, School of Law

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Why, and How, Judges Should Study Poetry

William T. Braithwaite*

FOREWORD

These observations were originally presented as a lecture at the final session of the Illinois Judicial Conference's seminar "Ethical Issues in Law and Society," May 28-30, 1987, in Galena, Illinois. Some revisions have been made for publication, and footnotes added.

The Galena seminar, with some changes in the content of the program (but not in its character), was repeated in Urbana, Illinois October 8-10. Eighty-nine trial and appellate judges attended the two offerings of the seminar. The program was very popular with participants; over ninety-eight percent of the written evaluations were positive, and almost no judges gave either offering a negative overall evaluation. Virtually one hundred percent of the judges submitting evaluations at both locations answered "yes" to the questions whether they would attend another similar program and would recommend it to other judges.

The "Ethical Issues" seminar was the Judicial Conference's first law-and-literature program. Besides being new, it was also, by comparison with previous Conference seminars, unconventional in both form and content. Its content was literature, not cases and statutes; its form, small-group discussions (seminars), not lectures (save the one published here and a different one presented at Urbana, which will be published separately).

The first such program for judges, during the past decade, probably was that for Massachusetts district court judges in 1981, organized by Brandeis University's Legal Studies Program, Professor Saul Touster, Director.1 According to Professor Touster, the Brandeis Program has organized or helped to organize such programs for judges in fifteen states. The National Judicial College in Reno, Nevada has had such a program annually since 1985.

The proposal for the Illinois program originated with Judge

* Associate Professor of Law, Loyola University of Chicago School of Law; B.A., 1961, Virginia Military Institute; J.D., 1964, Washington and Lee University.
Kenneth Gillis of the Circuit Court of Cook County, a member of the faculty of the National Judicial College, and Professor Marc Kadish of IIT Chicago-Kent College of Law. The Judicial Conference's Executive Committee recommended the proposal favorably to the supreme court in October 1986, and the court promptly approved, authorizing the Galena seminar to be held the following May.

The principal aim of the program was to provide participants an opportunity to reflect on the process of judging and on what it means to be a judge. The literary works used were an ancient Greek tragedy, Sophocles's *Anigone*; a short nineteenth-century novel, Herman Melville's *Billy Budd, Sailor*; and two twentieth-century short stories, Susan Glaspell's "A Jury of Her Peers" and George Orwell's "Shooting an Elephant."

The small-group seminars were the core of the program. At each location, a team of two seminar leaders was responsible for one work (or the two short stories together). Participants were divided into three groups, and the groups rotated among the three teams of instructors. Over half the participants named the seminars as the most interesting part of the program.

At both locations, there were also evening and Saturday morning sessions. At Galena, the movie "A Man for All Seasons" was shown Thursday evening, a staged reading of the trial scene from Shakespeare's "The Merchant of Venice" was presented Friday evening (followed by discussion), and the lecture following this Foreword was given Saturday morning. At Urbana, the movie "Rashomon" was shown Thursday evening, an optional seminar on Guy de Maupassant's short story "The Assassin" was held Friday evening, and the Saturday morning session was an oral argument competition based upon a fictional domestic murder case using the literary works as legal "authorities." In addition, a lecture, "Argument in Literature," was given at the opening lunch in Urbana.

I.

Merely to describe what we have been doing reminds us how radical it must seem to be, how unconventional it surely is: sixty judges and a couple of law professors meet for two days to read literature and to ask what questions it raises about "Ethical Issues in Law and Society." Today's closing session gives us the opportunity to think together about the meaning of what we have been doing.
For the typical Judicial Conference seminar, the materials are historical — cases and statutes. The method of instruction is the lecture. The aim is to convey information and some knowledge of what the information means. The program is purposefully practical. The judges who come do so because they want to learn something that will be directly useful in their work.

All of us know the present seminar is not typical. It is so far from typical that its every element is unconventional — materials, method of instruction, aim, character, and the motives of the participants. Our materials are not historical but literary. The method of instruction is not lecture but questioning and disciplined conversation. The aim is not to convey information but to raise and examine fundamental questions — questions that, if properly stated, can be seen as not likely to have clear-cut or definitive answers. The program is purposefully thoughtful rather than practical: it emphasizes thinking rather than doing, deliberation rather than deciding. And while the faculty hope very much, and believe, that the program will have a salutary effect on those who take part, we assume that most of the participants are not moved primarily by the expectation of acquiring something directly useful in their everyday work.

Of course, there is no bright line separating deliberation from decision. Thinking about how a case should be decided moves ineluctably and by vegetable gradations into the actual decision of it. All judges know from experience of this integral relation between thinking about what should be decided and deciding what they have been thinking about. A judge who decides without thinking, without deliberating (for whatever length of time the circumstances permit, and that sometimes is not very much), avoids injustice only by chance, unless he happens to have formed the kinds of habits of thought which help move him, under pressure, toward right action.

Is there not a proper place in judicial education for studying the very process of deliberating and deciding questions of right and wrong, that is, of ethics? The study of substantive law there surely must be, of principles, rules, and particular decisions of higher courts, but why not also the study, at once theoretical and practical, of how and why judges deliberate and decide the way they do?

This is the Illinois Judicial Conference's first venture into this more philosophical kind of judicial education. It is therefore a duty to our profession as well as an obligation to our supreme court, the Judicial Conference, the Conference's Executive Com-
mittee, and the Sub-committee on Judicial Education, that we take
time this morning to ask what, really, have we been doing at this
seminar? and why should judges do it? and what good is it?

II.

Most of us would call the readings for this seminar "literature."
"Literature" can mean anything written in books, however, includ-
ing appellate court opinions and statutes, neither of which we ordi-
narily call "literature." To call what we have been reading
"poetry" would be more precise, even though to do so runs across
the grain of the popular notion that "poetry" means verse that
rhymes. Notwithstanding this popular notion, the root sense of
this word does not signify rhyming verse, but simply something
made. The word "poetry" comes from a Greek verb that means
"to make." Thus any literary work that is made can properly be
called poetry, even though it may not appear in the form of rhym-
ing verse. In this sense, "poetry" means (to put it colloquially)
made-up, invented out of the artist's imagination. This is the sense
in which I am using the word on this occasion.

Some works that appear to be made, made-up, invented out of
the artist's imagination, are not so in fact. The difference between
a literary work that is truly made and one that is not, can be seen
by a careful comparison of Sophocles's Antigone with George
Orwell's "Shooting an Elephant."

None of the events in Antigone actually happened to the charac-
ters in the play. It is commonly said that Sophocles drew upon a
myth, or legend, or folk-tale, in writing his play. However that
may be, we in fact have no text or manuscript, other than that of
the play itself, telling this myth in the richness of detail we find in
Antigone. For all practical purposes, the play is not only the best
evidence, but also the only evidence, of the myth. Thus the charac-
ters themselves, as they appear in the play, are creatures of the
artist's imagination. Since the events, the characters, and their
words and deeds all come from artistic imagination rather than
from real-life, the whole work is, strictly speaking, a made thing.

Orwell's story, on the other hand, is the first-hand account of a
real event that actually happened to the writer. It is essentially
autobiography. To the extent it could be said to have what some
might call a "literary" aspect, that aspect comes from the writer's
report, as the story unfolds, of what he thought and felt. Some
book reviewers and literary people today call this kind of story
"psycho-history" or "psycho-biography."
Such a story can be written in either the first or the third-person. Orwell's story is in the first-person. He tells us: I did this and that, and then something else happened to me, and this is what I was thinking and feeling at the time. A story told from this perspective characteristically gives as much emphasis to what was going on in the actor's mind as to what he said and did. In Antigone, by contrast, the characters never tell us directly what they are thinking and feeling; rather, we must infer their thoughts and passions from their words and deeds.

Orwell's story contains, essentially, only one deed of any consequence, and that is the shooting of the elephant. There is almost no conversation. Does the almost complete absence of conversation provide a clue to the writer's capacity truly to understand what his senseless act signifies about his character? However this may be, and regardless whether we call "Shooting an Elephant" history or autobiography (with or without the prefatory "psycho-"), the thing we need to notice for present purposes is that it reports a real event. As a report of a real event, it is not different in principle from a book about the Battle of Gettysburg or the statement of facts in Suvada v. White Motor Company. The events in all three accounts are inimitably particular, forever fixed in time, place, and circumstances.

The events in Antigone, on the other hand, being a product of Sophocles's imagination, did not happen at a definite and identifiable time in the past. In some sense, they happen anew each time we read the play. What Antigone and Creon say and do is always, for the reader, taking place in the present—a present that will always be present, as long as there are readers of the play, an eternal present. At line 609 the Chorus speaks of Zeus, the king of the gods, as "Unaged in time." Antigone was first produced, as far as scholars can tell, over 2,400 years ago. Is not the play itself, like Zeus, also "unaged in time," outside time, therefore time-less?

The place and time of the action in Orwell's story are Burma and the British colonial occupation early in the twentieth century. Are not the specific time, place, and circumstances essential to how we understand this story? The writer's preoccupation with the

2. 32 Ill. 2d 612, 210 N.E.2d 182 (1965).
moral ambiguities of British colonial rule, and of his place in the regime that enforces that rule, makes it difficult for the reader to imagine these events taking place in other times or places or in somewhat different circumstances. True, empires have always had colonies. The empire of ancient Athens, which was at its glorious height just at the time Antigone was first produced, had colonies scattered throughout the eastern Mediterranean. Orwell's emphasis, however, is not so much on the nature and problems of empire as such, at whatever time and place (though he does hint at these subjects), as on the nature and problems of the British empire in particular. He tells the story in such a way that the events in it really make sense only in the specific setting in which they actually occurred. The story is bound to its time and place.

The place of the action in Antigone is Thebes, a city in Greece. Is this locale critical to our understanding of what happens in the play? Is it hard to imagine such events taking place in, say, Rome, Cairo, or even London? Have not men always and everywhere known that beliefs and opinions about death, burial, treason, and the role of the gods in human affairs touch upon deep and sometimes terrible passions?

Nor are such opinions and passions limited to the ancient world. They are as close to us today as Lebanon and Northern Ireland. Consider the report in an American newspaper in April, 1979 that an Iranian mob tried to prevent the burial in Tehran's Moslem cemetery of Amir Abbas Hoveida, Prime Minister under the Shah for thirteen years, who was arrested when the Shah fell and was later executed for treason. Hours after his execution, according to the report, his body lay unclaimed in a Tehran morgue. The report did not say whether any family member had asked for it.

Such a report reminds us that the principal themes of Sophocles's play touch upon problems in human life which are not unfamiliar to us here and now. The comprehensiveness of Sophocles's view of human life is indicated by the range and diversity of subjects he not only touches upon but thoughtfully explores.

The Chorus's fourth speech (Ode III) deals with love, Antigone's final speeches in scene 4 with marriage. The family—relations between husband and wife, parents and children, brother and sister—is a theme throughout, as is the more general topic of the political character of relations between men and women. "No woman rules me while I live," Creon says at line 526. "We must

remember,” Ismene cautions Antigone at line 61, “that we two are women so not to fight with men.” The man who believes there is nothing in which he should be ruled by a woman and the woman who believes she must always submit to men are timeless and universal human types. At this seminar we met them again in an isolated rural Iowa farmhouse, in Susan Glaspell's 1918 story “A Jury of Her Peers.” Some of you have observed to me during this seminar that you daily see varieties of these human types in your courtrooms, and not only in divorce and custody cases.

Law, its source and nature, is another principal theme of Antigone. Creon is the archetypal spokesman for positive law, the view that law is the will of the legislator. “Is the town to tell me how I ought to rule?... Am I to rule by other mind than mine?... custom gives possession to the ruler,” he tells his son Haemon, to which Haemon replies, “You’d rule a desert beautifully alone.” Antigone is the archetypal spokesman for higher law, the view that the law made by men, whether in Washington, Springfield, or the City Council in Galena, must be subject to a law above man’s law, and Antigone seems to believe that that law is divine in character. “Nor did I think your orders were so strong,” she says to Creon, “that you, a mortal man, could over-run the gods’ unwritten and unfailing laws. Not now, nor yesterday’s, they always live, and no one knows their origin in time.”

Antigone’s reminder to Creon of his mortality points to another of the play’s major themes—how human life should be lived in light of the inevitability of death. In Ode I, the Chorus comments on man’s unique place in the order of the world, his capacity to cross the sea, to wrest a living from the soil, to rule the animals, to found governments, to conquer nature by providing himself “shelter against the cold, refuge from rain” and contriving cures for “illnesses once beyond all cure.” One thing, however, the Chorus reminds us, man cannot change: “There’s only death that he cannot find an escape from.”

Mortality is something all of us share, not only with each other but also with Sophocles, and his play is a sobering reminder of this fact, however much we may sometimes allow ourselves to be deluded by the charming achievements of modern science into believing that we are somehow closer to knowing what popular writers like to call “the secret of life.” Man’s effort to escape death by conquering nature was known long ago, to Sophocles and to the human writer who first put on paper the words of the first book of the Old Testament. Because that effort continues today, we need
to remember, especially we in the law, that the same mixture of curiosity, ambition, and pride which gave us birth control, artificial insemination, *in vitro* fertilization, and surrogate mothers (and all the tangled questions of law these technologies lead to) also gave us acid rain, Hiroshima, Three Mile Island, and Bhopal. The ancient story that Teiresias was struck blind when he saw the goddess Athene bathing① reminds us of the possibility that divine power may have intended limits to man’s curiosity, that perhaps there are some things we would be better off not knowing. Much the same point is made by the story related in Genesis of the Temptation and Fall in the Garden of Eden.

Not only law, but also politics and government are themes of *Antigone*. In Ode I, the Chorus speaks of man having taught himself “Language, and thought like the wind and the feelings that make the town” (lines 352-53). What *are* the feelings that make the town, according to this play? Is there not a suggestion that before there can be a “town,” that is, a real political community, there must be some common feeling about the answer to that most fundamental question in government, namely, who should rule? Is not the cause of Creon’s fate precisely his failure, or inability, to understand what things are properly subject to his rule and what things are, in the language of the law, beyond his jurisdiction?

Creon is a ruler, a husband, and a father. He spurns the counsel both of his subjects, those he seeks to rule, and of his son, whom he also seeks to rule. He seeks no advice from his wife. In political life, in marriage, and as a parent, Creon is the archetype of the man who is blind to the possibility that someone else may be, as to some things, wiser than himself. His blindness brings him, his family, and his city to disaster.

We may wish to note, in this connection, that the text of the play permits the interpretation that the action begins about dawn, with the Chorus’s speech (the *parados*) celebrating the end of the war and thanking the gods for the city’s deliverance, and the action ends about dusk, with the Chorus’s speech (the *paean*) a prayer to the gods for deliverance from the “grim disease” (line 1140) with which Creon’s blindness has infected his city. Thus the play begins in light and ends in darkness, whereas Creon begins in darkness (he cannot see what he should see) and ends in light (his blindness is cured). In a touch of profound irony, Creon’s blindness is cured by a blind man, Teiresias. By the time Creon sees the light, however,

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his life has been enfolded by eternal darkness. Can we imagine what the silent meditations of his lonely old age will be like, as he daily remembers what he will daily yearn to forget?

When we look at Antigone this way, we see that its subjects and the questions it raises are universal and timeless. They are the problems of the human condition, the problems we have because we are human. To be human, the play seems to say, means to rule the animals but to be ruled by the gods; it means having some power of choice, which animals lack, but perhaps not having fully decisive power over one’s fate, which remains at least partly with the gods; and it means having a curiosity, of which erotic love is one form, greed another, ambition yet another, which prompts us to pursue immortality through the conquest of nature, a pursuit in which we may, like Teiresias when he saw the goddess Athene bathing, bring ourselves to see things we would be better off not seeing.

The Chorus speaks the last speech of the play, and the first sentence of that speech is “Our happiness depends on wisdom all the way.” This suggests that our fate, whether good or ill, does not depend decisively upon the capriciousness of the gods but rather upon wisdom, something accessible to human knowing. Creon is presented as a man who cannot see what he should see. Is Sophocles hinting that human wisdom means knowing the difference between the things we can and should see, if only we use our mind’s eye properly, and the things we perhaps can see but should not? Consider, in this connection, the prayer that invokes divine help for strength to change what can be changed, for grace to accept what cannot be changed, and the wisdom to know the difference.

Self-evidently, a work of literary art, a piece of poetry, made over two thousand years ago could not speak to us today with the wonderful intelligibility and relevance of this work unless it somehow captures the essence of what is real and permanent in the human condition. Here, in comparing Sophocles’s play and Orwell’s story, we find an interesting paradox. On first reading, Orwell’s story seems the more real, or realistic, of the two works. It is like the statement of facts in an unusually interesting case. We are charmed with its immediacy, its concreteness, its specificity. Antigone, on the other hand, seems on first reading to be distant, vague, abstract.

A different picture emerges, however, on a second or third reading. We have already noticed the depths that lie beneath the surface of Sophocles’s play. What do we find beneath the surface of
“Shooting an Elephant”? We find, it seems to me, a somewhat intelligent man conscientiously concerned about the moral ambiguity of the position in which he finds himself who believes, after the event is over and he comes to write about it, that he has learned something about the nature of tyranny. The work itself, however, does not go much deeper than that. There are in it neither words nor deeds relating to love, marriage, and the family, nor to the source and nature of law whether human or divine, nor to the relations between man and the gods, or to the nature of politics and government, or to most of the other subjects found in Antigone.

We are driven to the conclusion that whatever our first impression of the two works, Antigone, after the careful study we have given it over the last two days, is the more real of the two. It is more real because it presents life in all its complexity, variety, passion, blood, splendor, and confusion—life, in a word, as it really is. From Orwell we learn about the life of a young British colonial police officer in Burma early in the twentieth century. From Sophocles, however, we learn about all those things in our own lives which unite us with those who have lived before us and those who will live after us. We learn about human life as such.

It is, I believe, for these reasons that an ancient Greek thinker (roughly contemporary with Sophocles) said “poetry is something more philosophical and of graver import than history.” Antigone is poetry. “Shooting an Elephant” is history. Philosophy means “love of wisdom.” The assertion that poetry is more philosophical than history, therefore, means that although history, the study of particulars, may be useful for some, or many, or even most purposes, poetry, the study of universals, of what is true of all men and women not only here and now but also at all times and everywhere, will bring us closer to that kind of wisdom the Chorus refers to when it says “Our happiness depends on wisdom all the way.”

That is the first sentence of the closing speech. The last is “So wisdom comes to the old.” The word “So” refers us back to the preceding sentence, which is, “Great words by men of pride bring greater blows upon them.” This sentence echoes a line from the Chorus’s first speech (the parados): “The boasts of a proud tongue are for Zeus to hate” (line 128). The apparent sense of the Chorus’s closing lines is that pride brings disaster, and it is by this means that “wisdom comes to the old.”

Is this a counsel of hope or a counsel of despair? Is the Chorus

6. Aristotle, Poetics, 1451 b 6-7 (McKeon trans.).
saying that experience, trial and error, making your own mistakes and learning from them, is the only way to real wisdom? Or is it possible to learn from the mistakes of others and thus to avoid making those same mistakes ourselves?

We cannot, on this occasion, try to give any further answer to these questions beyond what has emerged from our conversations over the last two days. We can, however, all take Sophocles's play away from this seminar, to read again at our leisure and thereby to nourish our further reflections on these questions. The opportunity to do this suggests an answer to one of the questions in the title of this lecture. That question is, why should judges study poetry? The answer is that poetry, being universal, permits us to rise above the particulars of history. It gives us a higher place to stand as we try to bring into a more intelligible focus our own lives, the lives of the students who pass through our classrooms on their way to becoming lawyers, and the lives of the lawyers and clients who pass through our courtrooms seeking justice. Because poetry permits us to stand on higher ground, it helps us to see farther.

III.

Let us turn now to the other question in the title of this lecture. How should judges study poetry? The effort to answer this question brings us back to the second of the two fundamental ways in which this Judicial Conference seminar differs from the conventional kind. The first difference is what we read. We read poetry, instead of history, Sophocles instead of Supreme Court decisions. The second difference is what we do with what we read. The method of instruction at the typical Judicial Conference seminar is the lecture. This method of instruction assumes, first, that the lecturer knows something the listeners do not know—the latest developments in the law of search and seizure, for example. It assumes, second, that whatever the lecturer knows can be told to the listeners, and that they can learn from the telling. And it assumes, third, that the listeners, having come to the lecture to acquire information and knowledge, can by means of the lecture acquire what they want and take it away with them when they leave.

The method of instruction here, by contrast, has been, with the sole exception of the present occasion, what would commonly be called discussion. If we who have led the small-group seminars have done our jobs properly, you should have left with a feeling that the discussion was actually a disciplined conversation. The English noun "conversation" is derived from a Latin verb meaning
“to turn around,” which signifies that in a genuine conversation, the subject is turned around by and among the participants, so that it can be seen from all sides. A discussion that has no guide, focus, or discipline soon degenerates into a mere exchange of opinions, which, however entertaining for the moment, is not likely to be very instructive. A discussion that is too highly focused, on the other hand, often turns out to be a lecture in disguise, an occasion for the leader to ask questions designed to elicit answers in support of an argument he has already worked out.

A proper discussion, or seminar, is a mean between these two extremes. It is the leader’s task to guide the conversation, to keep it on track, so to speak, but not necessarily to decide in advance where the conversation will go. The aim and destination of the conversation is left to be worked out as it proceeds. In this way, the participants, including the leader, learn from one another, and the leader is himself a participant in the learning process as well as its guide.

These kinds of disciplined conversations, or seminars, work best, in my experience, when the leader is himself genuinely curious about the interpretation and meaning of the text being studied. He should, of course, be better prepared than those he leads, else he cannot be truly a leader; but he must also share their curiosity, else he cannot himself expect truly to learn anything. This expectation by the seminar leader that he will himself learn something is the essential difference between the aim of a seminar and the aim of a lecture. At a lecture, the listeners expect to learn from the lecturer. In the seminar, the leader expects to learn from the participants. I have the impression that this expectation has been realized here, that all of us on the faculty have learned a good deal about the works we have been reading and studying together with you.

How does all this, one might ask, bear upon the question, how should judges study poetry? The answer lies in one further observation to be made about the way a seminar works when it is working the way it should. A great teacher of mine put the point this way. The teacher should always assume, he said, that in the class there is one silent student who is more intelligent than he is. When we study the greatest books, the poetry that is a product of the greatest minds and the greatest imaginations, the assumption just stated is self-evidently true. In each of the three seminars on Antigone that I have helped lead, there has, indeed, been at least one silent participant more intelligent than any of us. That silent and intelligent participant was, of course, Sophocles.
But has he really been silent? Has he not, on the contrary, spoken to each of us, and eloquently, through this immortal and wonderfully-wrought play, a piece of poetry not even 1400 lines long? Can we not regard our discussions of this work as a kind of continuing conversation with Sophocles, a conversation in which we, as readers, are prompted by the play to ask it questions, questions to which the poet, speaking through his play over the space of twenty-four centuries, gives certain answers?

It might be objected that nothing can be learned from a conversation in which one of the conversants says nothing. That would not be a correct description of this conversation, however. We cannot say that Sophocles says nothing unless we are prepared to say that his play says nothing, for either he speaks to us through his play or he does not speak to us at all. Between these alternatives there is no middle ground. True, Sophocles does not speak aloud, but, then, neither does a love-letter, or any letter, for that matter. Cannot Sophocles's play speak to us in our minds in the same way a letter does?

Moreover, it is not true that nothing can be learned from a one-sided conversation. All of us have had the experience of hearing one side of a telephone conversation. Were we able to understand nothing whatever? Or is it not the fact that we could always understand something, though perhaps not all, of what was being said by the speaker whose voice we could not hear? Perhaps it is relevant here to recall Cromwell's argument at More's trial that sometimes silence can be eloquent in what it betokens.7

These observations are meant to suggest an answer to the question, how should judges study poetry? That answer is, I believe, judges should study poetry the same way all intelligent men and women study something serious about which they have a genuine curiosity—by asking questions, and by remaining open to being instructed by whomever, with regard to the subject at hand, may be wiser than ourselves, whether that person be a long-dead Greek poet, a less-long-dead English poet (Shakespeare), or a nineteenth-century American novelist (Melville). Can we ever be truly open to learning unless we have a genuine wish to know? Can we have a genuine wish to know unless we recognize that there may be things we do not yet truly understand?

Our program is entitled "Ethical Issues in Law And Society." The same ancient Greek writer who asserted that poetry is more philosophical than history also observed that ethics is a political rather than a philosophical subject. To understand what this observation means, we must first ask what he meant by "political." Our English words "politics" and "political" come from the Greek word _polis_, for which the best, though not an entirely precise, translation is "city." It is sometimes also translated "town" or "state." The essential sense of _polis_ is "political community," which meant, for the Greeks of Sophocles's time, families living together and sharing common beliefs about the most important things in human life—love, marriage, family, death, the gods, the nature of the good, the beautiful, and the true.

For the ancient Greeks, who are credited with having been the first to discover the art of politics (though they were not of course the first to practice it), a political community had both a shared past and the expectation of a shared future. It had both memories and hopes, because, being based on the family, it looked both backwards, to its elders, forebears, and ancestors, to what was traditional, and also forward, to and through its children and its children's children. From this perspective, politics, like judging, is a high and noble art, because it is the art of civic virtue, of making judgments about the life of the city, always with a view to the common good.

Politics thus understood, as it comes down to us from the ancient Greeks, has, like any art, both a theory and a practice. In ordinary American-English usage today, we call the theory of politics "political philosophy" or "political science," and this is a subject studied in colleges and universities. We call the practice of politics simply "politics," and this is a subject learned in elections, party caucuses, and the legislative chambers of village, town, and city.

The student of the practice of politics can learn this aspect of the art the way one of this seminar's faculty did when he entered public life some years ago, running, as a Republican, for a City Council seat during the Daley era in Chicago. He learned from his defeat, he told his fellow faculty members, his first lesson in Chicago politics. That was: become a Democrat.

The student of the theory of politics, on the other hand, begins

his study of the subject with the first treatise ever written on it, by Aristotle, titled *Politics*. It is in this book that Aristotle observes that ethics is a political rather than a philosophic subject. Politics, he says, decides which actions are required in a state and which are forbidden. Politics decides both immediate and transitory questions, such as whether a Republican can win a seat on the Chicago City Council while Mayor Daley is in office, and also enduring questions, such as what is the meaning of due process of law.

While politics, according to Aristotle, decides which actions are required and which are forbidden, ethics decides which actions are right and which are wrong. Politics, in the form of Creon's edict, may forbid that Polyneices be buried, but ethics decides whether he was right or wrong to do so, and the play says quite clearly (through Teiresias) that he was wrong, although it is not so clear in saying whether Antigone was right.

In the Venice of Shakespeare's play, politics, operating through law, decides that contracts shall be enforced, but only ethics can tell us whether Shylock's insistence on the strict letter of his bargain and Portia's ingenious way of defeating him are right or wrong.

In the London of Henry VIII, politics, operating through the Supremacy Act passed by Parliament, called upon all true and loyal English subjects to take an oath of allegiance to the king as Supreme Head of the Church in England. We must turn to ethics, however, to search for an answer to the questions whether this statute and Sir Thomas More's refusal to comply with it were right or wrong.

These works do permit, indeed encourage, us to wonder whether the arguments for Henry VIII, Creon, Captain Vere, and Shylock, are really quite so weak as we may think them, in the first flush of our admiration for the nobility, virtue, or innocence of their admirable opponents. *We*, after all, are not asked to be personally responsible for the renewal of civil war which reasonable men in Henry's time might have believed could occur if Henry had no male heir. *We* are not asked to take the risk that the public funeral of an opposition political leader will lead to a turmoil (as has happened more than once in South Africa) that threatens the possibility of restoring order after a fratricidal civil war. *We* are not asked, in consequence of judging Billy Budd by his morally innocent intent rather than his factually guilty act, to risk a mutiny that could threaten the safety of his ship and even of the fleet of which the Bellipotent is a part.
Melville's narrator has a caution for those who might be too quick, after the fact, to make judgments about the right or wrong of an action, whether it be the action of the captain of a warship (Billy Budd, Sailor), a member of a persecuted race and religion living in an alien city (“The Merchant of Venice”), a morally confused young British police officer in far-off Burma (“Shooting an Elephant”), or an isolated Iowa farm-wife ground down by the wretched loneliness of her condition (“A Jury of Her Peers”). Those who later judge the ethics of judgments made in such circumstances Melville's narrator cautions thus:

Says a writer whom few know, "Forty years after a battle it is easy for a noncombatant to reason about how it ought to have been fought. It is another thing personally and under fire to have to direct the fighting while involved in the obscuring smoke of it. Much so with respect to other emergencies involving considerations both practical and moral, and when it is imperative promptly to act. The greater the fog the more it imperii is the steamer, and speed is put on though at the hazard of running somebody down. Little ween the snug card players in the cabin of the responsibilities of the sleepless man on the bridge."9

When Aristotle says ethics is a political rather than philosophic subject, I take him to mean something like this. The subject of philosophy is thought; its activity is intellectual, and its focus is what men think when they are truly thinking. The subject of politics is action, specifically, civic action—action directed toward the life of the community. The subject of ethics is the right and wrong of actions. Even if there is a philosophy of ethics, it is not of much use to men and women in public life, such as judges. They learn practical ethics, quite properly, through action—taking actions of their own (making decisions) and observing the actions of others, through, for example, reading the newspaper and the advance sheets.

Of course, taking and observing actions in the world of practical affairs does suppose that one is always as deliberate as circumstances permit. The time for making a decision is always short, as every practicing lawyer soon learns. When the complaint or opinion has to be finished by three this afternoon, there is no time for reading Sophocles or Shakespeare. On the other hand, is it reasonable even to hope to avoid injustice (to say nothing of achieving justice, which is harder still) unless we sometimes stop and deliber-

9. Billy Budd, Sailor (An Inside Narrative) 114 (Harrison Hayford and Robert M. Seals eds., The University of Chicago Press, 1962). This was the edition used at the seminar.
ate about the meaning of what we are doing? Is there any better catalyst for such deliberation than the long-enduring thoughts of the greatest minds (preserved in the greatest books) on the most fundamental things?

V.

I have tried so far in this lecture to answer four questions: In what ways is this seminar different? What is poetry? How should poetry be read? And what is ethics?

In what ways is this seminar different? The answer is, what we have read and the method followed in reading it. What we have read is poetry.

What is poetry? It is literature invented out of material found in the imagination of a thinker who is also an artist. Poetry is here to be understood as distinct from history. A poetic book, being different from an historical book, calls for a different method of reading.

How should poetry be read? The answer is that in reading the greatest poetry, one should read with great care, a truly open and a genuinely curious mind, and as if one were having a conversation with a very intelligent man, a man much wiser than oneself. To read with great care means to assume the artist knew what he was doing and had a reason for doing it the way he did, that nothing in the work is accidental. It means to assume the poem has parts that together make a whole and that the parts and the whole have an intelligible relation to one another, in the same way that the parts of an appellate brief, as prescribed by Supreme Court rule, have an intelligible relation to one another.

The fourth question was what is ethics? Ethics is ideas of right and wrong made manifest in specific actions by real men and women, living in a particular time and place, under a particular political regime.

Why should judges study ethics through poetry? Because poetry, which deals with the timeless, the universal, the permanent in human life, gives us higher ground on which to stand, in comparison with history, which deals with the time-bound, the particular, the accidental, the transitory. When we stand on higher ground, we get a longer and better view of the human condition. We can see farther behind us as well as farther ahead. We can see the present in light of the past and the future in light of both. Judges should study poetry for the same reason all of us should—because from it we can learn what it really means to be human.

These observations provide the beginning of an answer to the
sixth and last question of this lecture, what good is it for judges to study poetry? The remainder of the answer to this question, we, your faculty, must now leave you to figure out for yourselves, as you today return to your homes and chambers to deliberate on whether the time we have spent together, reading and talking about poetry, has been well-spent.