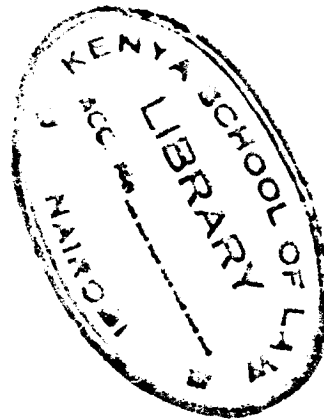


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29

The Law as a Profession

ANTHONY T. KRONMAN

I.

The field of legal ethics, or professional responsibility as it is often called, appears to consist of an immense accumulation of rules. This is how the subject looks to students when they first approach it, and the manner in which it is taught, and then later tested on bar examinations, tends to confirm this impression.

In this century, legal ethics has indeed become an increasingly rule-bound discipline. The number of rules governing the ethical conduct of lawyers has grown enormously, and the rules themselves have become more and more detailed. The Canon of Legal Ethics, which was promulgated by the American Bar Association in 1909, consisted of a few hortatory injunctions. By contrast, the Model Rules of Professional Conduct, adopted by the ABA in 1983, has the appearance of a full-blown code. It is tempting to assume that one becomes an ethical lawyer by mastering the complex body of rules that govern a lawyer's relations with clients, adversaries, officials, and other third parties, and to infer that these rules define, perhaps exhaust, the subject of professional responsibility.

But that is too narrow a view. One becomes a professionally responsible lawyer by entering the profession, a process that includes the mastery of certain rules, but which taken as a whole is better conceived as the process of acquiring the habits of a culture. This culture provides the setting for the rules of legal ethics, and the meaning of these rules cannot be grasped, nor conflicts among them meaningfully argued, apart from the culture in which they are set. Every education in legal ethics must in this sense be an induction into a culture, into a distinctive way of life, into the profession of law—a concept that cannot be reduced to the rules of legal ethics, but rather is indispensable to their understanding and application.

The way in which lawyers acquire a sense of professional responsibility resembles the process by which we learn to speak any natural language, like English or Arabic or Italian. Every language has its rules of grammar, and these must be studied at some point in the process of learning to speak it, if one aspires to speak the language in a formally correct manner. But fluency can never be achieved by studying these rules alone. That requires something more. It requires the speaker to be at home in the habits of the language, to have acquired these habits himself, to be a participant in what Wittgenstein called the "form of life" that every language represents.¹ The legal profession is also a form of life, and a lawyer's sense of professional responsibility can no more be reduced to a knowledge of the rules of legal ethics than command of English can be reduced to a knowledge of the rules of English grammar.

But a form of life can be strong or weak. It can grow, acquiring new vitality and incorporating additional areas of human experience within its range. Or it can shrink, losing potency and territory, and eventually wither and die. Today, for example, the form of life which the language of Homeric Greek once vividly expressed has disappeared, and only the grammar of the language remains—only the rules of its construction, its semantics and syntax, from which we must attempt to reconstruct, artificially and incompletely, some notion of the vanished form of life that formed the setting of the language—that formed the language—a world now irrecoverably lost.

Among American lawyers at the end of the twentieth century, there is a growing fear that something like this may be happening to the culture of professionalism that formed the setting within which the rules of legal ethics have evolved. These rules are today vastly more numerous and detailed than they were a hundred years ago, but the culture in which they are set, and are meant to express, is thought by many lawyers to be weakened and in danger of collapse. There is a widespread anxiety, within the legal profession, that professionalism itself has lost much of its vitality and meaning for lawyers, and like a language that is falling out of use but whose formal rules of grammar survive, may soon become a dead culture whose outlines can still be seen in the now-inert rules of legal ethics to which the culture of legal professionalism once gave meaning and life. Judging by the frequency with which it is discussed at bar association meetings, and other informal gatherings of lawyers, and by the number of books and articles devoted to it, no topic possesses a greater urgency for lawyers at century's end than the death of legal professionalism.² The demise of professionalism in other fields—in medicine, for example—has of course been a subject of anxious discussion, too.³ But the amount of time that lawyers have devoted to the subject, and the intensity of the concerns they have expressed about it, reflect a particularly acute disturbance in the self-understanding and self-confidence of the legal profession, whatever the situation may be in other fields, and whether or not the present crisis of legal professionalism—for *crisis* is the right word to describe the cultural anxieties that lawyers are now experiencing—is part of a wider crisis of professionalism generally.

Despite the breadth and seriousness of this crisis, however, the concept of legal professionalism itself has not been well examined. Many have complained, with justification, about its demise, but few have attempted to say what it is, and even fewer have tried to explain why anyone outside the profession should be at all concerned about its continuing vitality.⁴ This is what I hope to do in my brief introduction to this collection of essays.

I seek, first, to identify those features of law practice that make it a profession as distinct from a business or trade, and that explain the "status pride" of lawyers—the high self-regard they experience as the members of a profession.⁵ Second, I aim to describe the contribution that legal professionalism makes to the wider social order in which lawyers work, a contribution of importance to those outside the profession as well as those within it. In a concluding section I shall quickly survey the forces that today put the culture of legal professionalism under such stress, and that together have provoked the anxieties that so many lawyers, in every branch of the profession, now share.

II

Every profession is a job. Every professional makes a living by doing what he does. But not every job is a profession. Not every job is a way of life. The word *profession* suggests a certain stature and prestige. It implies that the activity to which it is attached possesses a special dignity that other, nonprofessional jobs do not. For centuries, the practice of law has been considered a profession, both by lawyers and laypeople, and legal education has always been thought of as a form of professional, and not merely vocational, training. What lies behind these ancient assumptions? What makes the law a profession?

My answer to this question has four parts. The practice of law has four characteristic features that make it a profession and entitle those engaged in it to the special respect this word implies.

The first characteristic is that the law is a public calling which entails a duty to serve the good of the community as a whole, and not just one's own good or that of one's clients. In the second chapter of *The Wealth of Nations*, Adam Smith makes the famous observation that "it is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest."⁶ Smith goes on to explain how each of these, pursuing his business with an eye solely to his own advantage, produces by means of an invisible hand an addition to the public good. With lawyers, it is different. Like the butcher, the brewer, or the baker, the lawyer also expects an income from his work. Like them, the lawyer generally is not motivated by benevolence to do what he does. But, in contrast to Smith's tradesmen, it is a part of the lawyer's job to be directly concerned with the public good—with the integrity of the legal system, with the fairness of its rules and their administration, with the health and well-being of the community that the laws in part

establish and in part aspire to create. We say that every lawyer is "an officer of the court."⁷ What we mean is that lawyers, like judges, are bound by their position to look after the soundness of the legal system and must take steps to insure its justice—conscious, direct, and deliberate steps, not those indirect and unanticipated ones that lead the butcher and his friends from a preoccupation with their own advantage to the surprising and wholly unintended production of a public good.

This is not to say that lawyers are exclusively concerned with the public good. Of course they are not. Lawyers represent clients and causes whose partisan interests often contribute nothing to the public good and sometimes conflict with it. But a lawyer must always keep at least one eye on the public good, and make sure it is well-protected against the assaults of private interest, including those of his own clients. And a lawyer must do this not just occasionally, not just in the fraction of time he devotes to pro bono activities, but constantly and consistently, in every moment he is practicing law. A lawyer who is doing his job well dwells in the tension between private interest and public good, and never overcomes it. He struggles constantly between the duty to serve his client and the equally powerful obligation to serve the good of the law as a whole. Adam Smith's tradesmen do the latter automatically and unthinkingly by doing the former, and so never experience a tension between the two. The lawyer does because, unlike the butcher, brewer, and baker, he is charged with a conscious trusteeship of the public good that cannot be discharged by any mechanism other than his own direct intervention. This is what is implied by the claim that every lawyer is an officer of the court, and the law a public calling, the first of the four features of law practice that explains its standing as a profession.

The second is the nonspecialized nature of law practice. The legal profession remains, to a surprising degree, a generalist's craft, whose possessor can move from one field to another—from criminal law to bankruptcy to civil rights—with only modest readjustments. The law is not a form of technical expertise but a loose ensemble of methods and habits easily transported across doctrinal lines, and a lawyer is not a technician, trained to do one thing well, but a jack (or jill) of all trades. Here again, the practice of law differs from the other activities that Adam Smith takes as his paradigm of modern economic life: pinmaking, for example, a process marked, he says, by the division of tasks into ever finer parts, each the province of a specialist with a tremendously developed but excruciatingly narrow expertise.⁸ Lawyers, by contrast, perform a range of different tasks—counseling clients, drafting documents for them, negotiating and litigating on their behalf, touching, in the process, on a dozen different areas of law—and move about among these tasks with a flexibility unthinkable in Adam Smith's pinmaking factory.

The education that lawyers receive reflects this. The purpose of a legal education is not to produce experts, as many nonlawyers wrongly believe. It is to train students, as the saying goes, to think like lawyers, which means: to be attentive to the facts and to know which ones, in any given situation, are important; to be able to tell a story with the facts, to master the power of narration; to recognize what others hope to

achieve, even—or especially—when they have a hard time defining their own ambitions; and to appreciate, empathically, a range of purposes and values and ideals wider than one's own. The man or woman who lacks these qualities will never think like a lawyer, no matter how much doctrinal knowledge he or she possesses. By contrast, the man or woman who possesses these qualities need have only the most elementary knowledge of legal rules and procedures to be well-prepared for the practice of law, to have the kind of preparation that the best law schools provide. From the standpoint of the pin factory and all the other modern forms of enterprise whose success depends upon the division of labor and the cultivation of a deep but narrow expertise, the fact that the law remains a generalist's craft can only be interpreted as a sign of its dilettantism and amateurish backwardness. But viewed in another light, with pride and not embarrassment, the nontechnical nature of his work constitutes a second enduring source of the lawyer's claim to be a professional with a freedom and range of activity that specialization destroys.

A third source of the lawyer's professionalism—related to this second one—is the capacity for judgment. I said that the goal of legal education is not to impart a body of technical knowledge but to develop certain general aptitudes or abilities: the ability, for example, to see facts clearly, and to grasp the appeal of points of view one doesn't embrace. To do this requires more than intellectual skill. It also requires the development of perceptual and emotional powers, and hence necessarily engages parts of one's personality other than the cognitive or thinking part. A good legal education is a process of general maturation in which the seeing, thinking, and feeling parts of the soul are reciprocally engaged. It is a bad mistake to think that legal training sharpens the mind alone. The clever lawyer, who possesses a huge stockpile of technical information about the law and is adept at its manipulation, but who lacks the ability to distinguish between what is important and what is not and cannot sympathetically imagine how things look and feel from his adversary's point of view, is not a good lawyer. He is, in fact, a rather poor lawyer, who is more likely to do his clients harm than good. The good lawyer—the one who is really skilled at his job—is the lawyer who possesses the full complement of emotional and perceptual and intellectual powers that are needed for good judgment, a lawyer's most important and valuable trait.⁹ And because of this, the process of training to become a lawyer, and the subsequent experience of being one, gather the soul's powers in a way that confirms one's sense of wholeness as a person and the sense of being wholly engaged by one's work—in contrast to all activities that can be mastered by the mind alone, which often produce, among the technicians who perform them, a sense of partial engagement only. The good lawyer knows that he needs all his human powers to do his job well, and the knowledge that he does gives his work a dignity no expertise, however demanding intellectually, can ever possess. This is the third feature of law practice that entitles us to call it a profession.

The fourth, and last, concerns time, and the location of law within it. Every activity has a past. Every activity therefore has a history, which can be studied and writ-

ten down in books. I am sure that even pinmaking has been studied by historians. But the law has a special relation to the past. The law's past is not only something that can be observed from the outside; it also possesses value and prestige within the law itself. In pinmaking, the fact that pins were made a certain way before is no argument at all for continuing to make them this way now. We may do so, out of habit, but prior practice has no normative force in pinmaking, or computer chipmaking, or any other line of manufacture. Put differently, precedent is not a value in these activities; at most, it is a fact. By contrast, precedent is a value in the law: not always the final or weightiest value, but a value that must always be taken into account. The fact that a law has been in existence for some time is always a reason for continuing to respect it, and this reason must be considered and weighed even when we reject it.

The law is internally connected to its past—connected by its own defining norms and values—and not just externally connected, as every enterprise is, through the story an observer might tell about its development over time. To enter the legal profession is therefore to come into an activity with self-conscious historical depth, to feel that one is entering an activity that has long been under way, and whose fulfillment requires a collaboration among many generations. It is to know that one belongs to a tradition. By contrast, in many lines of work—even those with a long history—all that matters is what is happening now, and the temporal horizon of one's own engagement in the work shrinks down to the point of the present. I imagine the experience of those in the computer industry, which seems to undergo a revolution every two years, to be like this, though I am only guessing. What I do know, from my own experience and from the experience of my students, is that the work of lawyers joins them in a self-conscious colleagueship with the dead and the unborn,¹⁰ and that this widening of temporal outlook is part of what lawyers mean when they describe their work as a profession.

I have now identified the four features of law practice that make it a profession. The practice of law is a public calling and a generalist's craft that engages the whole personality of the practitioner and which links him to a tradition that joins the generations in a partnership of historical proportions. Together, these four features give the practice of law a dignity that is the source of the lawyer's professional pride, of his belief that what he does for a living constitutes a way of life with special worth. They form the basis of the culture of professionalism in which this approving self-image is anchored and through which it is transmitted from one generation of lawyers to the next. It is therefore easy to understand why the weakening of this culture must be of great concern to lawyers, for their own high self-regard—the special value they assign their work and hence themselves—is rendered less secure by the enfeeblement of the culture of professionalism that supports and affirms it.

III

But why should anyone else care whether legal professionalism is alive or dead? That is a harder question to answer.

It is appropriate to begin by recalling how large a role lawyers play in American life. Despite the fact that we have always viewed our lawyers with a measure of distrust—inevitable, even salutary, in a democracy in which lawyers possess the keys to the house of the law and, with that, a disproportionate share of power—we have also assigned them a leading role in arranging our affairs, both public and private. Fearing and even occasionally loathing lawyers, we have nevertheless entrusted them with great powers and responsibilities, and made them, to a remarkable degree, the stewards of our republic. Behind all the cynicism and fashionable disgust, behind all the complaints—many of them justified—about the excesses of the adversary system and the partisan exploitation of loopholes and technicalities, lies this basic fact of trust, the huge trust we have placed in our lawyers. We have trusted our lawyers to play a central role in the design and management of our society, and if one asks why, a partial answer would be that we have done so because the same four features of legal professionalism that constitute the basis of their status pride also equip them to play a leading role in the government of society, a role that lawyers become less able to perform in proportion to the weakening of their professional culture. Let me explain.

We live today in a sprawling, heterogeneous, and highly interdependent society, the most complex society the world has ever known. The great nineteenth-century European sociologists who observed the development and growth of this novel social order were struck by its economic and cultural connections and by the assimilative powers linking its many parts, powers that have increased in strength with the spread of democratic institutions and, above all, with the expansion of the capitalist system of production. But these same observers were also impressed by the disintegrative forces at work within our modern world, and by the need to find a counterweight that might resist them.

The forces of disintegration they identified were four.¹¹ The first was privatization, the tendency in a large free-enterprise economy for individuals to concern themselves exclusively with their own private welfare, and to neglect or forget entirely the claims of public life, which the Greeks and Romans, and their humanist successors, had pursued with such memorable passion.¹² The second was specialization, whose inexorable tendency is to separate those in different lines of work and to reduce their fund of shared experience, the common world of similar endeavors.¹³ The third was alienation, the sense of detachment from one's work, and secondarily from other human beings, the experience of being only partially engaged by—and hence only partially revealed through—the activities that constitute one's living.¹⁴ And the fourth disintegrative force that Tocqueville, Marx, Durkheim, Maine, and Weber identified as a threat to the farflung interdependencies of modern social life was forgetfulness, the loss of a sense of historical depth, and the consequent disconnection of the present moment—characterized by the idiocy of material comfort—from all that went before or is to follow, from the pain of the past and the calling of the future.¹⁵ We are witnessing, these thinkers said, the evolution of a form of life

more complex and interconnected than any seen before, but in the heart of this new order lurk forces of disintegration powerful enough to nullify its achievements: the forces of privatization, specialization, alienation, and forgetfulness, the loss of one's sense of location in time.

To each of these four forces of disintegration, one of the four elements of legal professionalism may be paired as a remedy of sorts. Thus, for example, the lawyer's obligation to promote the public good—the public nature of his calling—may be thought of as a counterweight against the strictly private concerns of his clients, who for the most part want only to succeed within the framework of the law but take no interest in the well-being of the law itself. Lawyers serve the private interests of their clients, but they also care about the integrity and justice of the legal system that defines the public order within which these interests are pursued. In this way, they provide a link between the realms of public and private life, helping to rejoin what the forces of privatization are constantly pulling apart.¹⁵

To the disintegrative effects of specialization, the generalist nature of law practice offers valuable resistance. Because they represent clients of many sorts, in many different lines of work, lawyers are in a position to evaluate the social order from a broader point of view unrestricted by the narrowing assumptions and experience of any single expertise, and to provide a kind of connective tissue among different forms of enterprise, which lawyers are often called upon to join, through a sort of shuttle diplomacy and the transactional schemes they design. If their commitment to the ideal of justice prepares them to provide a horizontal linkage upward from the realm of private concerns to that of public values, the fact that theirs is a generalist's craft equips lawyers to provide vertical linkages across the increasingly specialized world of work.

So far as alienation is concerned, it would of course be foolish to suggest that lawyers can combat its spread or soften its effects. We have all experienced, to one degree or another, the sense of separation from the world which the word *alienation* implies, and have known the loneliness associated with it, and there is little that lawyers, or anyone else, can do to change this basic fact of modern life. But to the extent the law remains a profession that engages the whole person, that calls upon all the powers of the soul—perceptual and emotional as well as intellectual—it offers those who enter it the hope of a complete engagement in their work, an engagement that is the antithesis of alienation, and which provides an image, at least, of what unalienated work can be.

And, finally, the historical traditions of the law, which give the lawyers who work in it a self-conscious sense of their location in a continuing adventure with a past and future as well as a present, are a counterweight against the forgetfulness, the obliviousness to time, that characterizes our life today, with its rush of transient moments, each disconnected from the rest, in a contented but timeless present where the partnership among the generations—the great *primaeval* contract of eternal society," as Burke called it¹⁶—is literally disintegrated, and forgotten. Much of the shall-

lowness of our life—our fickle fascination with celebrities, for example, and the brevity of their fame—is the result of this loss of a sense of location in time. All those forms of work for which a sense of historical depth continues to be needed should be valued for the resistance they offer to the temporal flattening of experience. Among these forms of work, the practice of law remains especially important.

The four features of law practice that make it a profession are significant, therefore, not only because they justify the status pride of lawyers (which others often find grating), but also because each in a different way helps to ameliorate one of the four disintegrating forces which the very developments that have produced our wealthy and complex world have themselves unchained. The legal profession is an integrative force in a world of disintegrating powers, and this is one reason why, despite the natural suspicion that lawyers arouse in a democratic society like our own, they have been entrusted with such large responsibilities in matters of governance. It is also why everyone—and not just lawyers—should be concerned by a threat to the culture of legal professionalism. For the values that define this culture are the key to the work that lawyers do in bridging the divisions of our world, divisions whose disintegrative effects are at once the most familiar and most dangerous features of modern life.

IV

But are these values threatened today? Can we be confident that the culture of legal professionalism will survive? Is the self-esteem of lawyers secure? Will they continue to be able to play the same socially valuable role they have played in the past? I am troubled by doubts. I fear that things are changing rapidly, and for the worse. I am worried that legal professionalism is in danger—deep danger—and I want to conclude by briefly explaining why.

In the last quarter-century, the American legal profession has been transformed by a series of sweeping changes that have compromised each of the four features of law practice that justify its claim to be a profession. In the first place, the commercialization of law practice, especially in its upper reaches, at the country's largest and most prestigious firms, has introduced an element of competitiveness that has caused many lawyers in these firms to view their public responsibilities as a luxury they can no longer afford in the frantic scramble to attract business by appealing to the self-interest of clients.¹⁷ This tendency has been exacerbated, I am bound to say, by the official pronouncements on legal ethics made by the American Bar Association and other organized groups, which increasingly endorse the view that lawyers serve the public best by serving the private interests of their clients with maximum zeal, in effect treating lawyers like Adam Smith's tradesmen, who count on an invisible hand to transmute their pursuit of private advantage into a benefit for the community as a whole.¹⁸

At the same time, the pressure for increased specialization in law practice has

been growing, and it is uncertain how much longer this pressure can be resisted. In part, the demand for specialization reflects a change in the relationship of lawyers to clients, who today increasingly expect their lawyers to supply highly specialized instructions for a narrowly defined range of problems, and not the general, all-purpose advice that legal counselors a generation ago were often asked to provide. The sheer increase in the number and complexity of legal rules to which we are subject today has also increased the pressure for specialization. Vast quantities of new laws are enacted each year, and countless courts issue innumerable opinions construing them. In the expanding world of law, it seems increasingly unrealistic to expect any one lawyer ever to master more than a small portion of it, and so the demand for specialization grows, and with it, the demand for a more specialized law school curriculum.

Today, a higher percentage of lawyers work in large institutions—law firms of fifty or more—than ever before. This shift has meant, inevitably, an increase in bureaucracy and management, something every large organization requires. The result has been the development of a culture—again, most visible in the country's leading firms—marked by the managerial delimitation of assignments and responsibilities, by the substitution of teams for individuals, and by the emergence of relatively inflexible hierarchies of command in place of the older collegial arrangements that existed even in the largest firms two decades ago. Is it any surprise that many lawyers in these firms—the young lawyers especially—report a growing sense of detachment from their institutions, and from the work they do within them? Is it any surprise they complain, as workers in bureaucracies often do, about their diminished feeling of personal fulfillment and growing sense of alienation?¹⁹

And finally, like everything else in our world, the practice of law is today in danger of losing its temporal range and shrinking down to a series of disconnected points. The growing volume of law and the multiplication of decisions interpreting it has weakened the precedential value of each single judgment—since one can now often find many conflicting answers to the very same question—and this weakening of precedent has cut the practice of law off from its normative base in the past.²⁰ Technology has also, in a different way, foreshortened the temporal horizon of lawyers. The phone (now portable), the fax (now ubiquitous) and the computer (now able to generate documents and changes in documents at the speed of light) have together had the effect of accelerating the practice of law to the point where many lawyers today complain that their clients expect an instantaneous reply to every question and give them no time to think. The result is a fragmentation of experience, and the narrowing of one's temporal frame of reference, an inward state of mind that is outwardly reflected in the growing tendency of lawyers to move from one firm to the next with dizzying speed (a pattern that suggests the weakening of interest in, and attachment to, any institution that outlasts oneself).

In short, lawyers are today less public spirited and connected to their past, and more specialized and alienated from their work, than they were a quarter-century ago. Each of the four pillars of legal professionalism is today under assault. No one

will deny that the legal profession has made dramatic gains during this same period, most notably by opening its doors (part way at least) to groups that had been barred from the profession by a prejudice unworthy of lawyers. But the profession to which these groups have with such justice been admitted is now in danger of losing all of the characteristic features that make it a profession and not just a job. If this happens, it will be a terrible irony for the profession's newest recruits and a blow to the self-esteem of all lawyers. But more important, it will be a blow to America, for the features of legal professionalism that are under such strain today have been a vital integrating force in the construction of our country and our way of life. If the pillars of legal professionalism crumble, we will all be hurt. The disintegrating tendencies of modern life will all meet with less resistance. The common ground on which we all depend will shrink and become less stable. The collapse of the culture of legal professionalism is something none of us can afford, and the challenge it presents, which transcends the field of legal ethics narrowly conceived, is one that lawyers and non-lawyers alike have a stake in meeting.

Notes

This essay was previously published, in a slightly altered form, as Anthony T. Kronman, *Chapman University School of Law Groundbreaking Ceremony*, *Chapman L. Rev.* 1 (1998).

1. Ludwig Wittgenstein, *Philosophical Investigations* § 19, at 8c (G.E.M. Anscombe trans., Macmillan 2d ed. 1967) (1953).

2. See, e.g., Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* (1994) (documenting the current "crisis" in legal professionalism); Arlin M. Adams, "The Legal Profession: A Critical Evaluation, Remarks at the Tresolini Lecture at Lehigh University" (Nov. 10, 1988) in *Dick. L. Rev.* 643 (1989) (observing how rising commercialism has eroded legal professionalism); Norman Bowie, *The Law: From a Profession to a Business*, 41 *Vand. L. Rev.* 741 (1988) (describing the shift from law as a profession to law as a business); Chief Justice Warren E. Burger, *The Decline of Professionalism*, 63 *Fordham L. Rev.* 949 (1995) (observing that "the decline of [legal] professionalism has taken on epidemic proportions"). See also ABA Commission on Professionalism, "In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism," reprinted in 112 *F.R.D.* 243, 251, 254 (1986) (asking, "[h]as our profession abandoned principle for profit, professionalism for commercialism" and "what, if anything, can be done to improve both the reality and perception of lawyer professionalism"); and Colin Croft, Note, "Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community," 67 *N.Y.U. L. Rev.* 1256 (1992) (tracing the history of legal professionalism and its decline and suggesting a model structured on a deliberative moral community). See generally Jonathan Harr, *A Civil Action* (1995) (chronicling an environmental lawsuit wherein leukemia-stricken families find themselves at the mercy of greedy and frequently unprincipled lawyers); Sol M. Linowitz & Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (1994) (exploring the conflict between lawyers' role as advocates and their status as independent professionals); Lincoln Caplan, "The Lawyers' Race to the Bottom," *N.Y. Times*, Aug. 6, 1993, A29 (arguing that "the practice of law has become hollow at its core").

3. Even more so than in law, the decline in medical professionalism has been linked to rising commercialism (and the growing prevalence of health management organizations). See,

e.g., John H. McArthur and Francis D. Moore, "The Two Cultures and the Health Care Revolution: Commerce and Professionalism in Medical Care," 277 *JAMA* 985-87 (1997) (arguing that commerce's "invasion" of medical care has eroded medicine's professional tradition); Linda Emanuel, "Bringing Market Medicine to Professional Account," 277 *JAMA* 1004-5 (1997) (arguing that doctors must impose limits on profit-seeking behaviors to protect medical professionalism); Richard Gunderman, "Medicine and the Pursuit of Wealth," 28 *Hastings Center Rep.* 8-11 (decrying rising greed in the medical profession and physicians' consequent abandonment of their nobler aims); and George D. Lundberg, "The Business and Professionalism of Medicine," 278 *JAMA* 17803-4 (1997) (noting that while medicine has always been a balance between a business and a profession, the scales have tipped dangerously toward the business end during the 1990s).

4. A variety of scholars and professional organizations have noted the general lack of clarity about the nature of legal professionalism. See, e.g., ABA Commission on Professionalism, 261 (declaring that "[p]rofessionalism is an elastic concept the meaning and application of which are hard to pin down"); and Commission on Lawyer Professionalism, Florida Bar, Professionalism: A Recommitment of the Bench, the Bar, and the Law Schools of Florida 11 (1989) (acknowledging that "there is no universally accepted definition of 'professionalism'").

Available definitions of legal professionalism are frequently highly controversial. See Richard A. Posner, "Professionalism," 40 *Ariz. L. Rev.* 1, 15, 17-19 (1998) (arguing that the "final end" of legal professionalism should be "the transformation of law into a goal-oriented policy science consecrated to the perfection of instrumental reasoning"); and Richard L. Abel, "A Critique of Torts," 37 *UCLA L. Rev.* 785, 790-91 (1990) (interpreting legal professionalism as an artifice devised by lawyers to "separate[] tort victims from the means of redress" and thus "expropriate[] a fourth to a half of . . . victim[s] recovery"). Rob Atkinson documents several competing views of legal professionalism in "A Dissenter's Commentary on the Professionalism Crusade," 74 *Tex. L. Rev.* 259, 271-76 (1995) (arguing that protagonists in the contemporary "professionalism crusade" "use the terms 'profession' and 'professionalism' in four overlapping but distinct senses": "'Professionalism' as Description[,] . . . 'Professionalism' as Explanation[,] . . . 'Professionalism' as Locus of Regulation [and] . . . 'Professionalism' as Focus of Aspiration").

5. Max Weber, *Economy and Society* 1307 (1914; Guenther Roth and Claus Wittich, eds., Ephraim Fischhoff et al., trans., Bedminster Press, 1968).

6. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* 14 (1776; Edwin Cannan, ed., Random House, 1937).

7. See Model Rules of Professional Conduct: Preamble § 1 (1995) ("A lawyer is . . . an officer of the legal system"); Burger, *Decline*, 949 ("The bedrock of our profession from Blackstone's day has been the professional ideal: the lawyer as an officer of the court").

8. Smith, *Inquiry*, 4-5.

9. I have described at greater length the all-important, but mysterious, faculty we call judgment in Anthony T. Kronman, *The Lost Lawyer*, 16, 56-101 (1993).

10. See Edmund Burke, *Reflections on the Revolution in France*, 85 (1790; J. G. A. Pocock ed., Hackett 1987).

11. See Alexis de Tocqueville, *Democracy in America*, 540-41 (13th ed., 1850; J. P. Mayer, ed., George Lawrence, trans., HarperCollins, 1969).

12. See Emile Durkheim, *The Division of Labor in Society*, 294-95 (1893; W. D. Halls, trans., Free Press, 1984).

13. Karl Marx and Frederick Engels, *The German Ideology*, 53-56 (1846; C. J. Arthur, ed., Lawrence & Wishart, trans., International Publishers, 1970).

14. For an imaginative exploration of the struggle to retain historical depth in the face of

a government campaign to induce mass forgetting, see Milan Kundera, *The Book of Laughter and Forgetting* (1978; Michael Henry Heim, trans., Alfred A. Knopf, 1980). Hannah Arendt provides an equally inspired meditation on the roles of memory and forgetfulness in her essay on "The Gap Between Past and Future"; see especially Hannah Arendt, *Between Past and Future*, 6 (1954; Penguin Books, 1977).

15. See Robert W. Gordon, "Corporate Law Practice as a Public Calling," 49 *Md. L. Rev.* 255 *passim* (1990); Robert W. Gordon, "The Independence of Lawyers," 68 *B.U. L. Rev.* 1, 11, 13 (1988).

16. See Burke, *Reflections*, 85.

17. See Gordon, "Corporate Law Practice," 257.

18. See Model Rules of Professional Conduct: Preamble § 7 (1995) ("when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done"). As Robert Gordon observes:

Even the ABA's Model Rules of Professional Conduct were drafted (largely upon the insistence of the trial bar) to give primacy to the advocate's role and to reduce dissonance between pursuit of law-embodied norms and the client's immediate interests in favor of acquiescence to the client. See *id.* Under these rules, for example, lawyers are not to counsel or assist clients to engage in criminal or fraudulent conduct, see *id.* Rule 1.2, but have no positive duty to urge compliance or to go beyond "purely technical" advice, see *id.* Rule 2.1 cmt., if that is all the client wants; see *id.* Rule 1.2, and have virtually no formal leverage over clients who persist in illegal conduct, since they may disclose misconduct to outsiders only in extreme situations, see *id.* Rule 1.6, and may not even resign unless the company's highest authority resolves to proceed with a "clear" violation of law likely to result in "substantial injury" to the organization, *id.* Rule 1.13. The lawyer who cannot count upon factual uncertainty, legal ambiguity, and vaguely worded client assurances that it will clean up its act, to relieve her of any pressure to invoke these (in any case nonobligatory) sanctions is sadly deficient in the casuistical and rationalizing defense-mechanisms of her profession.

Gordon, "Corporate Law Practice," 279.

Meanwhile, the codes of professional responsibility prepared by some state bar associations imply that lawyers' role as officers of the court is subsumed in their role as zealous advocates. See, e.g., New York State Bar Association Code of Professional Responsibility EC-7-1 (1996) (describing the lawyer's duty to the legal system as consisting of zealous representation within the bounds of the law).

19. See, e.g., Boston Bar Association Task Force on Professional Fulfillment, *Expectations, Reality and Recommendations for Change*, vi-vii, 7-11 (1997), describing the "growing sense of isolation and alienation expressed by many attorneys," in particular, young associates at large firms; and Chief Judge Carl Horn, "Restoring the Foundations: Twelve Steps Toward Personal Fulfillment in the Practice of Law" 10 *S.C. Law.* 32, 35 (1998): "The survey data and anecdotal evidence [show] . . . that many lawyers are working harder but enjoying it much less."

20. See Grant Gilmore, *The Ages of American Law*, 70-71, 80-81 (1977).