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Message from the Dean

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I traditionally use my messages in *Law Quadrangle Notes* to examine a quality that helps to define an outstanding attorney. In past years I have discussed how great lawyers pursue intellectual growth and renewal, maintain integrity, teach others about the law, serve as community citizens, bolster our profession's image, exhibit patience, sustain a form of optimism, and deploy their voice. In the coming year, I would like to explore the related qualities of empathy, sympathy, and compassion.

The historian Gertrude Himmelfarb has recently described the evolving discussions of sympathy and compassion over the course of the British Enlightenment. Earlier writers such as John Locke and Thomas Hobbes believed that sentiments such as compassion had to be inculcated through rigorous education. But later writers such as David Hume and Adam Smith insisted that such feelings were innate, an essential aspect of what it means to be human.

Of course, in modern times Adam Smith's name has become popularly associated with a rather callous and unfeeling vision of the free market economy. It is therefore interesting to see how much his economic program was grounded in a vision of moral philosophy which assumed that people identify with and care about one another. In the first chapter of *The Theory of Moral Sentiments*, he offers the following observations:

"How selfish soever man may be supposed, there are evidently some principles in his nature which interest him in the fortune of others, and render their happiness to him, though he derives nothing from it except the pleasure of seeing it. Of this kind is pity or compassion, the

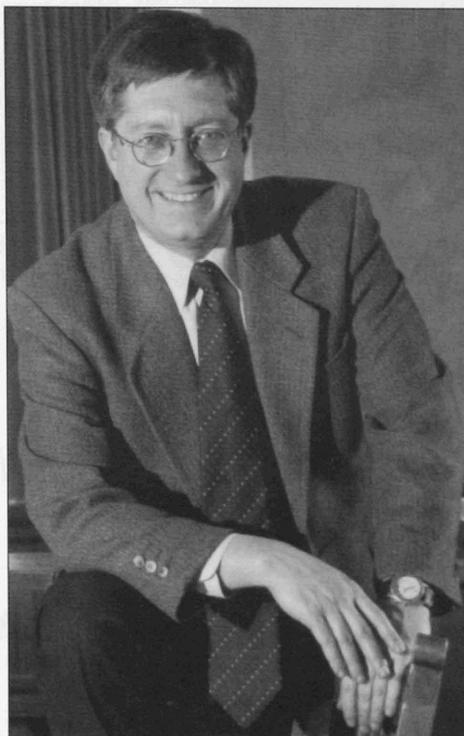


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emotion which we feel for the misery of others, when we either see it, or are made to conceive it in a very lively manner.

"[T]o feel much for others and little for ourselves, . . . to restrain our selfish and to indulge our benevolent affections, constitutes the perfection of human nature."

Passages such as these help to frame the assumptions about how people would behave in a free marketplace that Smith brought to his later work, *The Wealth of Nations*. They help to explain why that book passionately asserts that, "No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable." And they similarly help to explain why so much of the work's second volume is devoted to topics such as the need for public works, universal education, and fair and adequate taxes.

One way to understand some of the challenges that are presently posed to

our economy and to our profession is to wonder whether Smith was too much the optimist. The marketplace frauds perpetrated in our boardrooms, and the daily incivilities practiced in our courtrooms, could all be seen to suggest that many of today's leaders lack even a minimum reserve of fellow-feeling.

Sadly, our own profession is held at least partly responsible for the rising self-interest and declining compassion within our society. And so I think it especially appropriate to consider a more hopeful possibility. In particular, I would like to explore whether strong capacities for sympathy are an essential attribute of the good lawyer, whether effective representation necessarily entails a highly refined capacity to feel for the happiness and misery of others. If so, then regardless of whether Smith was correct that such a capacity is innate in our students when they first enrolled in law schools, we owe it to them to do all we can to nurture and cultivate it so that they have it in abundance by the time they graduate.