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STEWARDSHIP

*Donald B. Ayer**

It is not learning but the spirit of service that will give a college place in the public annals of the nation.

—Woodrow Wilson[1]

I. THE DECLINE OF LEGAL PROFESSIONALISM

In the second sentence of his article, Judge Edwards expresses the fear that "our law schools and law firms are moving in opposite directions."[2] While this is true in one sense — they seem today to have less and less to say to each other — it is false and misleading in another. For lawyers and law professors are moving in very much the same direction in their loss of a sense of stewardship for the law as an institution.[3]

What appears to have changed most on the law school side since I attended law school in the early 1970s is not the degree to which law school prepares one to practice law, but the degree of active disinterest, even disrespect and disdain, of many faculty members at elite institutions toward the work of practicing lawyers and judges.[4] Some view law as a subject matter inherently lacking in interest and so easy as not to deserve serious attention.[5] Many in the academy apparently view

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1. Woodrow Wilson, *Princeton in the Nation's Service, in* 10 THE PAPERS OF WOODROW WILSON 30 (Arthur S. Link ed., 1971).

2. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession,* 91 MICH L. REV. 34, 34 (1992).

3. Judge Edwards himself has previously remarked on this loss. *See* Harry T. Edwards, *A Lawyer's Duty To Serve the Public Good,* 65 N.Y.U. L. REV. 1148, 1161 (1990) (noting that an attitude like the profession's lack of "public spiritedness . . . pervades our nation's law schools. This attitude excuses legal academics from confronting the problems facing the profession on the ground that theoretical contemplation should not be subordinated to the demands of legal practice.").

4. There are apparently many more courses now that proceed on a theoretical level, suiting one to remake the world but not to function as a lawyer in this one. Thus, in the 1970s there was a greater likelihood of being taught a subject in a way that touched basic elements of legal doctrine. But those basic doctrinal courses likewise left students with little sense of what working as a lawyer would be like, and with no preparation in practical skills. The higher incidence today of clinical courses and of ethical instruction arguably makes current legal education more "practical" than formerly, at least in preparing one for a lawyer's day-to-day work. As set forth below, I believe that the measure of the academy's performance lies elsewhere than in how closely law school instruction anticipates law practice.

5. *See, e.g.,* George L. Priest, *Social Science Theory and Legal Education: The Law School as University,* 33 J. LEGAL EDUC. 437, 437-40 (1983) ("The social sciences . . . deny the importance

law practitioners as several cuts below plumbers in both the intellectual challenge and moral utility of their work. Imbued with this view, hundreds of law school graduates are sent forth each year to pursue a livelihood that they are encouraged to see as redeemed only by the lucre with which it will line their pockets, at least for awhile.

As for law practice itself, it is certainly true that its character of life has fundamentally changed in recent years. The number of lawyers has grown at an extraordinary pace.[6] Law practice has become more competitive and specialized, with an increased emphasis on securing business, prompting the remark that it is now "more like a trade than a profession, with an emphasis on money and profit rather than on service and justice."[7] With ever growing specialization, personal horizons have narrowed, hours have become longer, and the focus on law as an enterprise driven by the demands of the marketplace has become more and more central.

Lost in both of these developments is the concept of the law as a vocation, in which the lawyer and the law professor owe principal duties not only to self and to client (or to student), but to the courts, to the institution of legal rules, and ultimately to the public.[8] It is a vocation that demands both a measure of detachment and an ability to deal

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of law as a subject. . . . Today, virtually every law-school faculty member is able to teach every subject in the curriculum.").

6. The 1992 Report of the ABA Task Force on Law Schools and the Profession states that in 43 years we have moved from a total of 169,000 lawyers, or one per 790, in 1947-1948, to 777,000, or one per 320, in 1990-1991. THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM (1992) 15 [hereinafter LEGAL EDUCATION]. These figures are mirrored in other statistics, relating to such things as the percentage of GNP spent on legal services, the exponential rate of growth in the pages of legal publications, and the growth of federal regulatory agencies. *See* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 37-48 (1991).

The usual interpretation of this remarkable growth trend is an ominous one, and there is no doubt that the numbers and resources commanded contribute greatly to the public's hostility to lawyers. Without suggesting that this phenomenon has been an unmixed blessing, or that it can or should continue indefinitely, there is much to be said for Dean Robert C. Clark's careful analysis arguing that the growth in the profession is responsive to real needs and productive of genuine benefits. Robert C. Clark, *Why So Many Lawyers?*, 61 FORDHAM L. REV. 275 (1992) (ascribing the expansion in legal services in part to greater internationalization and other forms of interaction, greater diversity of population, changes in wealth levels, and greater involvement of the workforce in formal organizations).

7. Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1232 (1991).

8. I make this claim with some hesitation, being far from the first to bemoan the decline of legal professionalism and conscious that one might wonder whether things can really be declining in this way for so long. *See* Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 2-5, 49 (1988) (including quotations from Louis Brandeis, Woodrow Wilson, and Harlan Stone to a similar effect).

with human problems.[9] Thus, the traditional concept of the lawyer as a professional embodies not only duties to the legal system, but a role for the lawyer in helping a client focus his true interests, based on considerations of the law, ethical rules, and prudence.[10] He thus offers legal advocacy tempered by wise counsel and dampens the stresses on the system otherwise arising from the pell-mell assertion of individual interests.

More generally, the lawyer as professional bears a duty to look after the well-being of the system in which he works. Court work loads, the effective functioning of procedural rules, the education of young lawyers, and the provision of service to those in need are just some of the concerns beyond client and self that weigh as his responsibilities. In moving away from this broader concept of the lawyer's role, we are changing fundamentally the role that lawyers play in a way that diminishes both them and our system of justice.[11] Both the profession and the academy must provide a part of the solution.

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9. *See* Erwin N. Griswold, *Law Schools and Human Relations*, 1955 WASH. U. L.Q. 217 (suggesting a need in law school curriculum for greater attention to issues of human relations).

10. The lawyer's role as a counselor helping the client to realize his enlightened self-interest is well-illustrated by Archibald Cox's discussion of the lawyer's responsibility — when asked by his client to write his children out of his will — to

> remind the father of all the unhappy implications of what he proposes, to speak of the son's strength of character even though misdirected in the particular instance, and to suggest that if the client were to die in surgery and could return twenty years later, he would probably regret his decision.

Archibald Cox, *The Conditions of Independence for the Legal Profession*, *in* THE LAWYER'S PROFESSIONAL INDEPENDENCE: PRESENT THREATS/FUTURE CHALLENGES 60 (1984).

11. Robert Gordon has examined the historical and analytical roots of the concept of legal professionalism to which I make reference here. Gordon's "Ideal of Law as a Public Profession" embodies the notion of a broader duty to public concerns as well as to the pursuit of individual client interests. He expresses his own view, with which I agree, that the "vision of lawyering as a public profession has real historical content . . . [and] tremendous . . . potential to transform lawyers' practical conceptions of their work in constructive ways." Gordon, *supra* note 8, at 11, 13.

Gordon's discussion of the ideal of the lawyer's public role in the early Republic and Paul Carrington's extensive account of the part played by law teachers at the same time bear particularly upon my assertion that both the bar and the academy are moving away from roles as members of a public profession. Gordon notes:

> Lawyers were to be the guardians, in the face of threats posed by transitory political and economic powers, of the long-term values of legalism . . . . They are to repair defects in the framework of legality, to serve as policy intelligentsia, recommending improvements in the law to adapt it to changing conditions, and to use the authority and influence deriving from their public prominence and professional skill to create and disseminate, both within and without the context of advising clients, a culture of respect for and compliance with the purposes of the laws.

Id. at 14 (footnote omitted). With regard to academics, Carrington observes that:

> Law teaching in America was a response to the fear that the Revolution would dissolve into disorder and despotism, the same fear that gave rise to the Constitution. A republic could stand only as long as the people maintained a measure of mutual trust. This appeared to require, at the very least, leadership that would merit general public trust. To win such trust, it was believed, the legal and political elite would need to pursue the classical republican virtue of making and supporting public decisions based on selfless concern for the interests of all.

II. Changes in the Practice of Law

To some significant degree, I believe that the decline of legal professionalism among practicing lawyers — including the loss of notions of stewardship and service to institutional objectives greater than oneself — is a product of forces outside of the profession. Only those in the law, however, can alter that trend.

Judge Edwards has pointed to the self-indulgent, yuppie mentality of the 1980s and the professional amorality of the hired gun model of legal representation as the two principal culprits.[12] Both of these have no doubt had a major impact upon the legal profession, but together they fall short of offering a full explanation. The excesses of the 1980s, of course, were pervasive, and something more specific to the law is necessary to explain the changes which have occurred there. The concept of zealous advocacy of one's client's interest has high standing in the profession, and it has long been seized on by many in the law as a mandate to surrender their own moral compass. Moreover, zealous advocacy for one's client is an aspect of the advocate's professional identity that is fundamental to our adversary system of justice, and few would abandon it entirely — or even significantly.[13]

There is another element to be considered, which will not be denied by anyone who has lived in the private practice of law for the past five years. It has affected adversely not only the practicing lawyer's dedication to a professional ideal of service and stewardship, but also the assimilation of new lawyers into the practice of law and the attitudes of those in the academy toward the work of lawyers. It is the change that has occurred during the last decade or so in the nature of the legal marketplace.

Law, like every other form of gainful economic activity, has been subjected in recent years to intense competitive pressures, so that enterprises have looked to the lawyers able to give the best assurance of realizing the business goals critical to a company's overall strategy.[14]

Paul D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, 41 Duke L.J. 741, 756 (1992).

12. Edwards, *supra* note 3, at 1153.

13. Judge Edwards, for example, while identifying the "total commitment" model of legal representation as a principal culprit in the diminution of public spiritedness in the law, recognizes its fundamental role in the context of litigation under the adversary theory on which our system is based. When all is said and done, he "accept[s] the classical understanding of the lawyer's obligation to represent her client as a partisan insofar as the lawyer is called upon by the legal system to be an advocate." His concern for the "suspension of independent moral judgment" applies only "when the lawyer acts as a counselor." *Id.* at 1154 n.28.

14. While much has occurred in the last decade, recent developments are the logical onset of a sequence of events with much deeper roots. Starting around the turn of the century, the transformation of law practice to an enterprise primarily concerned with the affairs of business has

Just as business has had to respond to immediate economic pressures to survive, law firms have had to meet the ever tightening demands of their clients for service measured in terms of concrete results.[15]

One of the most critical developments in the legal profession has been the breakdown of the old pattern of long-term relationships between law firms and clients. To a significant extent, clients now hire not law firms but individual lawyers — those in each area of practice who seem best positioned to deliver the desired result. Lawyers have scrambled to meet the market demand to be there the quickest with the most — with success measured in terms of helping clients to realize their business objectives. In such an environment, only the most secure lawyers are likely to give the full benefit of their considered judgment when it is at odds with concerted corporate objectives.[16]

In a world where reality influences perceptions but perceptions ultimately govern, lawyers have become active marketeers, spending substantial portions of their time on various types of business development efforts, identifying and approaching clients as potential sources of the type of work they do. Much time is also spent writing articles

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focused and made more demanding the nature of the enterprise. Erwin N. Griswold, *Educating Lawyers For A Changing World: A Challenge to Our Law Schools,* 37 A.B.A. J. 805, 805 (1951). As Chief Justice Stone noted in 1934, it did not take long for that development to raise many of the concerns we feel today:

> The changed character of the lawyer's work has made it difficult for him to contemplate his function in its new setting, to see himself and his occupation in proper perspective. No longer does his list of clients represent a cross section of society; no longer do his contacts make him the typical representative and interpreter of the community. The demands of practice are more continuous and exacting. He has less time for reflection upon other than immediate professional undertakings. He is more the man of action, less the philosopher and less the student of history, economics, and government.
>
> The rise of big business has produced an inevitable specialization of the Bar. The successful lawyer of our day more often than not is the proprietor or general manager of a new type of factory, whose legal product is increasingly the result of mass production methods. More and more the amount of his income is the measure of professional success. More and more he must look for his rewards to the material satisfactions derived from profits as from a successfully conducted business, rather than to the intangible and indubitably more durable satisfactions which are to be found in a professional service more consciously directed toward the advancement of the public interest.

Harlan F. Stone, *The Public Influence of the Bar,* 48 HARV. L. REV. 1, 6-7 (1934).

15. One can anticipate an argument against a "tougher marketplace" explanation for the decline in public spiritedness, which relies on the substantial increases in the compensation of private practitioners experienced during the 1980s. My impression is that the substantial compensation gains made in the boom years of the 1980s and before have in fact aggravated the pressures of the marketplace by becoming a floor for future expectations even in the less flush times we are now experiencing. For example, the great jump in associate salaries initiated by Cravath, Swaine & Moore in 1985, Gordon, *supra* note 8, at 60, which has been imitated and carried forward in succeeding years, has at the same time intensified the pressures which are often noted as making life unpleasant.

16. It has thus been argued that although "lawyers in large firms adhere to an ideology of autonomy in their perceptions of both the role of legal institutions in society and the role of lawyers vis-a-vis clients . . . this ideology has little bearing on their practice." Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Firm,* 37 STAN L. REV. 503, 504 (1985).

and giving presentations on legal subjects.[17]

This increasingly competitive marketplace, in which long-term loyalties play a diminished role, is directly related to many aspects of legal practice that are unsettling to new law graduates.[18] It has much to do with the all-consuming nature of legal work in a large firm, with very long hours and singleminded dedication to the pursuit of a good (measured in terms of the client's interest) result. In this respect, the law business is no different from all intensely competitive enterprises, which uniformly demand almost total dedication as the price of success. This pressure also has everything to do with the drive for specialization: to become truly expert in a narrow discipline and thus to be the one called upon as best qualified when that particular need arises.

Some of the criticism of present-day law practice takes the form of reports of new lawyers' reactions to the experience they find in their law firms. To some degree, I believe the negative responses of many new initiates must be discounted — indeed rejected — as part of the problem that Judge Edwards has identified as the root of the decline in public responsibility in the law. The reality of an increasingly unforgiving marketplace has been uncongenial in part because of the unreal and irresponsible attitudes of yuppie law graduates. It is precisely those new lawyers who have been the principle conduit to the law of the "narcissistic and self-indulgent individualism that emphasizes rights, downplays responsibilities, and constantly whines 'what's in it for me?' "[19]

Still, it cannot be denied that, in certain of its ramifications, the effects of this intensely competitive marketplace are felt especially by those new to the profession. As subordinate members of a team, they tend to see slivers of projects that are pulled together into a coherent package by someone else. Senior lawyers, responding to the pressures of the market and of the calendar, often neglect to share with their

17. One friend of mine has observed that the value for legal business development in appearing at continuing legal education programs is primarily in getting one's name, and hopefully one's picture, into the brochure that is mailed to thousands of in-house and outside lawyers. From the standpoint of efficient business promotion, he observes that it is regrettable that one cannot simply appear on the brochure and take a pass on preparing materials and making a presentation.

18. *See* Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Paths*, 41 STAN. L. REV. 567 (1989); Johnson, *supra* note 7, at 1242; Robert A. Kagan & Robert Eli Rosen, *On the Social Significance of Large Firm Practice*, 37 STAN. L. REV. 399 (1985).

19. Judge Edwards includes this quotation from Roger Cramton to elaborate his first and apparently primary explanation for the decline in public spiritedness among the private bar. Edwards, *supra* note 3, at 1153 (quoting Roger C. Cramton, *Professionalism, Legal Services and Lawyer Competency*, *in* AMER. BAR ASSN., JUSTICE FOR A GENERATION 144, 153 (1985)).

younger colleagues a sense of the big picture that is being pursued in a given matter, even after the project has been completed. Young lawyers are often treated and made to feel like pieceworkers.

Young associates are subjected to intense work pressures of several different types, the least significant of which is the pressure simply to bill large numbers of hours. Of greater difficulty are the pressures simultaneously pressing young lawyers in opposite directions. One may be directed to produce a top-quality product by an unrealistic deadline or within budget limits set in order to meet client expectations. Not infrequently, lawyers must work hours which, reasonably or not, they feel constrained not to report, lest they appear inefficient or disappoint expectations that they believe others have. At that point, the pressure to bill hours begins to bite, not just as a priority in its own right, but as a pressure in tension with other perceived requirements.

In addition, young associates sometimes bear much of the brunt of the marketing efforts, which most often are presented primarily as the promotion of a partner. As invested time which is not itself directly productive of firm income, these client development efforts must be pursued in parallel and in balance with one's billable efforts — work that must be done but for which one may receive little "credit."

Add to all of this the downturn in firm fortunes in recent years, in which ever spiraling upward growth curves have flattened and in many cases been reversed, and the current high turnover within the associate ranks of large firms becomes understandable. In many large firms there have been layoffs of associates, and in those in which this has not occurred, the logistics of making partner in a pyramid whose base is no longer expanding are at best difficult. For many in the associate ranks, life resembles Hobbes' state of nature — nasty, brutish and, by theirs or their firm's choice, short.

There is no doubt that these pressures of the marketplace have borne adversely on the private practitioner's willingness or ability to dedicate time to public service in a variety of forms. Lawyers view themselves as having less time than previously to pursue various kinds of public service, and pro bono representation has been reduced in many firms.[20] Sometimes public service work is undertaken, if at all, only on the basis of careful firm decisions to dedicate the efforts of certain persons for a predictable period of time.

In sum, heightened competition in the marketplace for legal services has contributed greatly to the decline in emphasis on service and

20. Professor Gordon notes that "[t]he period from 1900-1975 may look thin on public service compared to 1770-1860 or 1880-1900, but to many older lawyers it seems a true Golden Age compared to the present." Gordon, *supra* note 8, at 60.

stewardship among private practitioners. The fact that this narrowing of the attorney's field of view has some describable causes — and thus is not fairly viewed, as some have argued, simply as the result of greed, sloth, and small-mindedness — does not change the fact that practitioners have come increasingly to view the law as a milieu for personal advancement and self-realization, rather than a calling whose critical features include service to the common good.

III. ACADEMIA'S LOSS OF LEGAL VOCATION

The phenomenon observed by Judge Edwards and others[21] as the failure of the academy to serve the courts and the practicing bar effectively — indeed the rejection by increasing numbers in academia of the relevance and worth of practical legal education — is one that I am less qualified by experience to evaluate.[22] Nonetheless, the signs appear overwhelming to me that prominent amidst a collection of other causative factors is the same loss, being experienced by the profession, of a vocation in the law as a fitting and needy object of service.

Law, as the collective means by which we maintain social order through rules and processes for resolving disputes, has somehow come to seem unworthy of academic attention. Professor George Priest, for example, apparently views legal doctrine as "easy,"[23] and the study of law as so inherently uninteresting that "those with true intellectual courage would abandon the law and become full-time social scientists."[24] As to those areas of theory and social science to which scholars increasingly direct their efforts, there is frequently a distinct air of moral superiority. Unlike the profession, which is tarnished by its need to deal daily with clients and practical realities, the academy prides itself in being engaged in a quest for truth in a less cluttered setting.[25]

It is thus not that academia is lacking in idealism. But the ideals to

21. *See, e.g.,* John S. Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?,* 39 J. LEGAL EDUC. 343 (1989); Judith S. Kaye, *One Judge's View of Academic Law Review Writing,* 39 J. LEGAL EDUC. 313 (1989).

22. It appears that the ability to generalize about the situation in academia is confined to particular subgroups among law schools. Judge Edwards' comments about the dominance of theoretical and social science scholarship and teaching appear to hold only at the 20 or so elite law schools. Moreover, the controversy about law school curricula is clearly not ended by a resolution that law school has a duty to serve the profession, the courts, and the law as an institution because there are a myriad of choices remaining about how one goes about accomplishing these objectives. *See, e.g.,* Elson, *supra* note 21, at 349 (arguing for a "pedagogy suited to professional development," which is seen to be at odds with "the prevalent neutral doctrinal focus of most law school teaching").

23. Edwards, *supra* note 2, at 40.

24. George L. Priest, *supra* note 5, at 439.

25. *See* Anthony T. Kronman, *Foreword: Legal Scholarship and Moral Education,* 90 YALE

which it is tied are increasingly unrelated to any notion of service to the law as an institution or to the people who are governed by the law. The academy's tie to the real world, in which legal rules and institutions either function effectively or fail to do so, is increasingly tenuous and incidental. Many law schools, like many law reviews, increasingly seem to exist not to meet a public need for effective education and scholarship relevant to the law as it is and could be, but rather to satisfy the desires of faculty and students for intellectual and moral gratification. This comes across clearly in Priest's notion of the future law school as a sort of supergraduate school in subjects of extreme specialization:

> The Enlightenment is coming. Its source seems to be the increasing specialization of legal scholarship. . . . The law school will be comprised of a set of miniature graduate departments in the various disciplines. Introductory courses may be retained (if not shunted to colleges). . . . The ambitious scholars on law-school faculties will insist on teaching subjects of increasingly narrow scope. The law-school curriculum will come to consist of graduate courses in applied economics, social theory, and political science. Specialization by students, which is to say, intensified study, follows necessarily.[26]

What is neglected in this vision, or at least consigned a minor role to allow academics full room for personal growth and self-realization, is the focus on matters more fundamental to the real-life functioning of the legal system — like legal reasoning, doctrine, ethics, and an emphasis on the lawyer's responsibility to look after the effectiveness of legal processes. As Judge Edwards contends, these are hardly inconsequential matters.[27] Moreover, Priest's vision is a far cry from the concept of a university law school as Jefferson envisioned it, as a bridge between "the worlds of ideas and affairs, supporting traffic in both directions to bring academic thought into contact with reality and practical governance into contact with disinterested inquiry, with benefits flowing in both directions."[28]

Looking at the current state of both private law practice and the law schools, it thus seems that concepts of service and stewardship — of duty to the law as a vital public institution — have given way to a heightened focus on the personal advancement and self-realization of the individual lawyer or professor.[29] Regardless of precisely how this

L.J. 955 (1981) (arguing that law schools should view their role primarily as the cultivation of moral virtues, including the pursuit of truth).

26. Priest, *supra* note 5, at 441. Priest's suggestion oddly echoes the increasingly specialized state of the legal profession.

27. Edwards, *supra* note 2, at 61.

28. Carrington, *supra* note 11, at 792 (describing Jefferson's view).

29. This reality, derived here by extended discussion, is not lost on the general public. Hence

change has taken place, this development carries the implicit premise that the law can be taken for granted, that it is simply a "given" institution which offers an arena in which individual legal professionals do their stuff.[30] The obvious incorrectness of this premise offers the foundation for a renewed focus on service and stewardship, by practitioners and professors alike.

IV. The Need for Service and Stewardship in Law

Judge Edwards has called for a renewed "public spiritedness" among lawyers.[31] I would make the same point in a slightly different way. There is a need for a new emphasis on the lawyer's duty of service to and stewardship for the law. Our system of legal rules and institutions has been enormously successful and produced great social good, as compared with legal institutions as they have existed throughout most of the rest of the world. But it is not self-perpetuating. If those who pursue their livelihood in the law do not assume responsibility for the maintenance, support, and improvement of legal institutions, who will?

In major part, this is indeed a call for rejection of the self-realization model of professional life, which Judge Edwards has decried. As Roger Cramton said, "[t]he strident vulgarity of our materialistic culture, with its extraordinary emphasis on individual self-realization (frequently forgetting that our individual identity is shaped by the community of which we are part), does push selfish advantage to the fore and erode communal values."[32] Lawyers and law professors need to make adult decisions, much as does a new parent, to take seriously the long-term responsibility that they bear. This duty is not a denial of the increasingly competitive environment in which practitioners work, nor of the challenge and attraction of theoretical scholarship. It is simply a recognition of a higher calling, a duty of service and stewardship to the rule of law.

One cannot observe the state of the world today without being struck by the fact that law as a system of predictable rules evenhandedly applied, within which individuals freely go about their business, is, for the run of mankind, not to be taken for granted. Somalia's rov-

the oft-heard comment that the only ones who benefit from involving lawyers in a problem are the lawyers themselves.

30. Priest came close to making precisely this statement in describing the social science academic's view of law as "a constraint on individual behavior" that is lacking in theoretical interest precisely because it is taken "as given." Priest, *supra* note 5, at 438.

31. Edwards, *supra* note 3, at 1150.

32. Roger C. Cramton, *The Trouble with Lawyers (and Law Schools)*, 35 J. LEGAL EDUC. 359, 361 (1985).

ing gangs and vacuum of central authority, and the former Yugoslavia's nationalist carnage among aspiring ethnic states, are but two of the most recent and obvious examples of total breakdown. The problems of the former Soviet Union and of Eastern Europe, of implementing rules for private interaction and economic development on the foundation of long-term submissiveness to a central authority, are less catastrophic but no less sobering illustrations of law's contingent nature. More generally, even where order does not seem to be in doubt at a given moment, the norm throughout the world is much more that of major and petty tyrannies than of legal rules reliably applied to protect the rights of even the unpopular. The periodic instances of mob violence in the United States make clear that we are not immune from the breakdown of social order that is a way of life throughout much of the world.

Thus, one need not be a Chicken Little to suggest that the continued viability our legal system is not entirely free from doubt.[33] The remarkable popular hostility to lawyers as a profession is only the most immediate barometer of the level of public dissatisfaction with the workings of the legal system.[34] There is much to dislike in the ways of the law. All of us in the profession are well aware of the ever-growing complexity and confusion of legal rules and regimes, and of the glut of litigation that clogs our courts. Dispute resolution is too expensive to be available to any but large corporations and the most wealthy individuals. Yet those of more modest means also have needs. There is the problem of criminal enforcement; every few years we have multiplied our expenditures in enforcement and litigation dollars with little noticeable positive effect on the state of public order. In an era of declining economic expectations, the stresses on the systems for maintenance of civil order will be accentuated, and these and other shortcomings will become even more significant. All of these developments seem to proceed in parallel with a decline in civility and mutual respect among those involved in the law. These are not the signs of a healthy enterprise.

All of our efforts will be required to meet the challenges that the

33. Derek Bok's comments 10 years ago stand as a near total indictment of the practical functioning of our legal system. Derek C. Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570 (1983). While not everyone agrees with Bok, I am familiar with no one who thinks that the situation has improved since that time.

34. It is indicative, as Judge Edwards has pointed out, that in 1990 the President's press secretary could conclude that the possibility of electoral advantage was all on the side of bashing lawyers and state publicly that "lawyers certainly deserve all the criticism they can get . . . . Those are universally held feelings by everyone who has ever dealt with the legal establishment." Lisa Gelb, *Talking of Lawyers*, WASH. POST, May 8, 1990, at B5, *quoted in* Edwards, *supra* note 3, 1149.

years ahead will bring. Apart from the dedication of time to law reform and other efforts directed at strengthening our legal institutions, lawyers in their daily work must reflect a realization that it is the fabric of social order with which they are dealing. The adversary system's ethical mandate of nearly unchecked, zealous advocacy thus deserves a serious look, with an eye toward its effect of reducing the lawyer's position to that of an amoral actor, capable of immense harm in the name of professional duty. One aspect of the lawyer's duty that cannot be ignored, however inconvenient it may be, is the provision of basic legal services to the needy. When all is said and done, lawyers in our society must work harder to temper the various roles that they are employed to play with substantial consideration of what it is necessary for them to do if the legal process is to function effectively and serve its purpose.

It is less easy for me to say what role the academy should play than to say that a duty of stewardship for the law should be at the heart of its work. It does seem clear that law professors should focus principally on the problems of law and legal systems. Law schools must assume an obligation to identify and hand down the ideals and ethical values of the profession if they are to be preserved. They must encourage creativity and idealism in the context not just of wholly theoretical matters, but of day-to-day work within the legal system. The academy should probably spend more time than it does addressing matters of legal doctrine and training law students in the techniques of reading cases and construing statutes, which are the tools of legal analysis.[35] At the same time, legal theory, economics, and other areas of social science can be essential to the development of the normative side of a lawyer who acts out of a greater public purpose. But these subjects should be taught in a manner relevant to preparation for a career of service in the law.[36] Scholars who do not wish to make legal issues and the effective functioning of the legal system their ultimate subject

35. As Dean Griswold has observed:

> The law schools should remember more clearly that they do not need to teach their students all the law. What the students should be taught is the background, the spirit, the traditions, the methods — how to deal with questions, how to make themselves expert on new questions in a relatively short time. This is after all really about what the finished practitioner knows.

See Erwin N. Griswold, Speech at the T.C. Williams School of Law of the University of Richmond (Oct. 15, 1954) (transcript on file with the *Michigan Law Review*).

36. Legal writing, as obviously fundamental as it is, is given short shrift at most law schools. The answer that college graduates should come to law school able to write clear, simple English is correct but too often contrary to reality. Law schools must provide the training necessary to bring their students to a level of basic functionality or decline to let them graduate. This means something more than a pass-fail course taught by teaching assistants.

matter should seek appointment elsewhere than in a school where people come to be trained as lawyers.

The precise balance between the teaching of doctrine, legal analysis, clinical subjects, ethics, social science, and theory[37] is ultimately less important than the need for those subjects to be taught by someone with a mission to support and strengthen our system of laws, who presents the subject matter from the perspective of its relevance to law as it functions in the real world. From the perspective of stewardship to the law, what is most "practical,"[38] to use Judge Edwards' term, is a balance of work focused both on essential knowledge and skills and on normative and theoretical concerns, with the latter presented sympathetically from the perspective of one who takes the rule of law personally and wants it to succeed.[39]

While I agree with much that Judge Edwards has proposed, I thus submit that his formulations of the problem are partial — a bit like those of the blind men examining different parts of the elephant. The law's current unhappiness is only partly described as that of law schools and practicing lawyers going in different directions, of law practice becoming too commercial, or of law schools failing to serve the needs of the practicing lawyers and judges with practical teaching and scholarship. All of these observations, while correct as far as they go, miss the root of the problem, which has a common solution — the reinvigoration of those in the law with a sense of duty and vocation for the legal institutions of which we are all stewards.

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37. The subject of how the law school "preparation of lawyers for practice could be improved" is discussed in detail, with reference to particular skills and information needed to be mastered, in the 1992 Report of the ABA Task Force on Law Schools and the Profession. LEGAL EDUCATION, *supra* note 6, at 123-221.

38. Edwards, *supra* note 2, at 35.

39. I doubt that law schools should attempt to address or simulate extensively in a clinical setting a wide range of the practical realities that a lawyer is likely to meet in practice. *But see* Elson, *supra* note 21, at 345-46 (noting that the "most obvious failing of the traditional law school curriculum" is in neglecting a multitude of general and specific competencies that mark the excellent practitioner). Such an approach will ultimately fail to provide more than a fleeting exposure to a few real-life situations, while foreclosing pursuit of a range of doctrinal and theoretical subject matter that will be less easily acquired after law school.