

## LEGAL PROFESSIONALISM\*

ANTHONY T. KRONMAN\*\*

The legal profession in America is passing through a period of anxiety and self-doubt, an identity crisis of unprecedented proportions. Any identity crisis has at its center the question, "Who am I?" or "Who are we?" and begins by unsettling old certainties about the answer. Most of the time, the majority of us go about our business without worrying too much about who we are. However, once in a while something happens that provokes us into a spasm of self-reflection. The entire legal profession in America seems, these days, to be caught up in a spasm of just this kind.

The question around which the legal profession's identity crisis revolves could be phrased in terms of the meaning of legal professionalism. To ask, "Who are we?" is to ask, "What is the nature of the profession that we occupy and practice?" Put differently, what is it that makes the law a profession in the first place?

It is a cliché that ours is a profession and not a trade. We all believe this. We all badly want to believe it. It is an important thought for us to hold onto. To say this is, however, to say something merely negative, to define ourselves by contrast or opposition to something else. But when one shifts from the negative to the positive, and asks what values and aspirations the notion of legal professionalism implies, things become more difficult.

I would like to briefly examine two different sorts of questions implicated in the current debate about the meaning of legal professionalism. One I will call the internal question and the other, by contrast, the external question.

The internal question concerns the meaning for lawyers themselves of the work they do. Many lawyers take pride and pleasure in the work they do. They derive fulfillment from it. Many believe, moreover, that the intrinsic fulfillment of the work they do as lawyers is linked to its professional character. If we concede, for the sake of argument, that the law is a trade, a business and nothing more—just another way of making money—many practicing lawyers would, I think, say that such a characterization ignores the very thing that makes their work personally rewarding for them—its capacity to be intrinsically fulfilling. Of course, there are many opportunities for fulfillment outside the realm of work, and many people, most perhaps, don't look for fulfillment in the work they do. They look for it after hours, in their family lives, in their personal relationships, in their hobbies, in the reading they do, or in their leisure activities. They don't expect fulfillment in their work. But many lawyers do, and the anxiety they are experiencing today is the consequence, in part, of their fear that the loss of those qualities that make the

---

\* Keynote address at Florida State University College of Law Symposium, *Defining and Refining Professionalism: Assessing the Roles and Regulation of Lawyers in the Twenty-First Century* (February 12, 1999).

\*\* Dean, Yale Law School.

law a profession may very well deprive law of the power to provide those in it with the kind of intrinsic fulfillment they seek.

It may eventually happen that the world of work shrinks to a point where it no longer seems reasonable to look for fulfillment in it. As the realm of work shrinks and that of leisure grows, the idea that we should look for the deepest meaning in our lives in the work we do may come to seem increasingly implausible. Karl Marx believed that the world of work would eventually wither away, that we would be left with nothing but free time on our hands, and that we would then have to find fulfillment in our leisure activities.<sup>1</sup> But that day has not yet arrived, and until it does, the demand for meaning in one's work will continue to be pressed by lawyers and others.

Where does this demand—the demand that one's work be intrinsically satisfying in some deep personal or perhaps even spiritual sense—come from? The origins of the idea of meaningful work are obscure, but one thing seems clear: It is not an idea first advanced by the Greeks. Indeed, to the Greeks, the notion that one should look for meaning in the realm of work would have seemed absurd. Aristotle believed that freedom begins only where leisure starts.<sup>2</sup> The Greek word for leisure is *scholia*, from which we get our English word “school,” among others. Aristotle identified both the life of the mind and the life of active citizenship with leisure and relief from work. Work, he thought, was for slaves: You had to have slaves to do the work that needed to be done, in order to live a life of leisure and engage in those activities that are genuinely meaningful. But the idea that work itself might be intrinsically meaningful—for Aristotle, this would have seemed a preposterous claim.

I believe that this idea is, at its heart, a Judeo-Christian invention. Recall the story of The Fall and the expulsion from Paradise.<sup>3</sup> In Paradise there was no work that needed to be done. The fruit ripened and fell on its own. Adam and Eve lived a life without labor. One of the consequences of their sin and expulsion into the human world of mortality and labor is that now we must all work in order to live.<sup>4</sup> The work we do is the badge of our spiritual condition as fallen creatures who have disobeyed God and been expelled from Paradise, and every time we get up in the morning and go to work or wash the dishes at night, the sense of “fallen-ness” is with us.

In the Judeo-Christian tradition, work thus acquires a spiritual value it never possessed for the Greeks. To be sure, this was, at first, a negative value: Work is something to which we have been condemned as a punishment for sin. But in time, work comes to be viewed in a different light: as an arena for spiritual progress, for fulfillment, and perhaps even for redemption. This is an idea that is prominent in the ascetic Protestant

---

1. See KARL MARX, *THE GERMAN IDEOLOGY* 20-23 (1947).

2. See ARISTOTLE, *POLITICS* (Benjamin Jowett trans., Clarendon Press 1905) (1885).

3. See *Genesis* 3:1-24.

4. See *Genesis* 3:17-19.

tradition, as Max Weber and others have pointed out.<sup>5</sup> But the idea that work can be a theater of positive spiritual activity is one that only becomes intelligible against the background of the story of *The Fall*, which, to begin with, assigns it a negative spiritual meaning.

The notion that work has spiritual value is with us still, although the scaffolding of religious ideas that accompanied its invention has largely fallen away. Today, the notion of meaningful work survives mainly in a secularized form, although the introduction of the factory system, the rationalization of work, the division of labor, specialization, and all the other characteristically modern features of the labor process have made it harder and harder to find in work the kind of spiritual fulfillment for which the great Protestant ascetics, among others, encouraged us to look.

There is, however, one branch of the work world, which has been, until now, relatively immune from these processes of specialization, rationalization and the like, and that is the branch occupied by the professions. The professions, and the legal profession in particular, have been relatively insulated from the pressures of rationalization and specialization, which have caused the world of work to become an increasingly less attractive or suitable venue for the pursuit of fulfillment and meaning in life.

Many people today look for meaning in their lives outside the world of work. But we professionals hang on to the idea that we can find fulfillment in the work we do. We are reluctant to give this idea up, but we are being forced by events to question whether we can continue to affirm it. From the internal point of view—from the point of view of the concerns that lawyers themselves have about the work they do and the satisfaction it can offer—from this internal point of view, the crisis of professionalism we are now passing through reflects, I believe, a gnawing doubt that work has become for us, too, an aspect of our lives in which it is impossible to find the satisfaction for which every human being yearns. This is a satisfaction that we, like the factory workers Marx described a century and a half ago,<sup>6</sup> can no longer hope to find in the activities by which we make our living.

The current anxiety surrounding the meaning of legal professionalism can be understood from two different perspectives. The first, which I've called the internal perspective, emphasizes the growing concern that lawyers have about the possibility of finding personal fulfillment in their work. The second, the external, starts with a very different concern—not whether the demise of legal professionalism has caused lawyers to be less fulfilled in their work, but whether the qualities or attributes that we summarize under the rubric of legal professionalism can be connected in any meaningful way with the good of society as a whole. Do the qualities of legal professionalism help to promote the welfare of the larger society

---

5. See MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Talcott Parsons trans., Scribner 1958) (1930); see also R.H. TAWNEY, *RELIGION AND THE RISE OF CAPITALISM* (1926).

6. See 1 KARL MARX, *CAPITAL* 255-330 ("The Working Day"); 405-556 ("Machinery and Modern Industry") (Modern Library ed. 1906).

we all inhabit? If the answer to that question is yes, then of course everyone—and not just lawyers—should take an interest in the current crisis of legal professionalism, for if this crisis is a consequence of the weakening of those elements that make the practice of law a profession, and if these very elements contribute in some demonstrable way to the good of society as a whole, then society's welfare is implicated directly in the demise of legal professionalism, which should be of concern to us all.

What are these elements? How exactly do they contribute to the welfare of society? I shall mention three aspects of legal professionalism, which, in my judgment, contribute in a real and measurable way to the good of society as a whole.

The first of these is the most familiar. It is reflected in the well-known claim that the law is a public calling. Lawyers are obligated by the oaths they swear upon admission to the bar to take an interest in the public good. In everything they do in their professional capacities—in every bit of advice they give and every litigation they conduct—lawyers are duty-bound to keep an eye on the public good and to take care that the well-being of the law is served. What does this familiar idea imply? The easiest way to answer this question is to contrast the idea of a public calling with another idea, the idea of the market, which Adam Smith discovered.

Smith famously described the order of society as the product of a coordinating but invisible hand which weaves the self-centered actions of countless individuals into an organized whole through the amazing institution we call a market. At the very beginning of *The Wealth of Nations*, Smith observes that the baker and the brewer contribute to the good of society not out of concern for the well being of society itself, but solely through the pursuit of their own advantage, each looking only to the profit he hopes to make from the patronage of his customers or clients.<sup>7</sup> Through the coordinating mechanisms of a price system, these self-centered actions are integrated in a system of remarkable order, in a market, whose properties Smith was the first systematically to explore.

Today, we live in the age of markets. Our confidence in the ordering power of markets is nearly boundless. Indeed, the idea of the market is so powerful that we are forever revising our understanding of all other human activities in terms of it. Today, there are theories of marriage as a market, of charity as a market, and of morality as a market. These theories have the appeal they do because the idea of the market—Adam Smith's idea—is one of the most powerful ever discovered.

But there is one fundamental point we must keep in mind as we contemplate the market, and that is that no market can ever be a perfectly self-regulating system of order. Every market requires framing conditions that stabilize it and protect it against its own pathological excesses. Even the freest market requires a frame of this sort and cannot exist without it. Even the freest market requires law, without which economic life would be ruined by force and fraud, and all authority generated from the barrel of a gun.

---

7. See ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 10 (Encyclopedia Britannica 1952) (1776).

Law is an essential condition for the existence of a market, and those who make the law, those who build the house of law, which provides the necessary stability for any market system, cannot be acting in the same self-centered way that Adam Smith's tradesmen do. They must have an eye out for the good of the whole. They must be directly concerned with the structure of law that frames the market and cannot rely on the invisible hand to produce or sustain it.

I don't mean to suggest—what of course is not true—that lawyers are exclusively concerned with the public good. Lawyers have divided allegiances. Every lawyer is at one and at the same time the representative of a particular interest, a particular client, a particular claim, and also an officer of the court, concerned for the well being of the law as a whole. Lawyers live in this division of allegiances. It defines the moral experience of law practice. By contrast, Adam Smith's brewer and baker have no divided allegiances. Their only duty—if one wants to call it that—is to themselves, and through their preoccupation with self-interest comes the magnificent complexity of a market system.<sup>8</sup> But if this system is to endure, there must be some within it who have a divided allegiance that causes them to be attentive to the welfare of the system as a whole as well as to the interests they represent within it. When we say that the law is a public calling, what we mean to emphasize is the latter allegiance, which Adam Smith's brewer and baker, productive though they be, do not share. Through their public-spirited devotion to the integrity of the legal system that enframes the market-based and market-driven world in which we live, lawyers make a crucial contribution to the good of society as a whole.

The second and third aspects of the legal profession that have some connection to the well being of society I shall mention only briefly. One concerns the relatively unspecialized nature of the work that lawyers do, and the other their distinctive relation to the past.

Legal education continues to be, to a degree that one might find surprising, generalist in nature. Students come to law school, learn a bit of this and a bit of that, but don't really become *experts* in anything at all. Occasionally, one hears complaints about this from the organized bar. But so far, none of these complaints has caused a significant revision in the structure of American legal education.

The generalist nature of legal education in fact seems quite appropriate, for the well-trained lawyer must be prepared to move from one branch of work to another, using broad skills and a general body of knowledge that is transportable across doctrinal lines. The lawyer's professional wisdom does not consist in the mastery of any technical expertise, but rather in the possession of an ensemble of aptitudes that can be deployed in virtually any legal matter. These are the qualities of mind and heart that a good legal education shapes and nourishes.

In the society we inhabit, which is increasingly divided into distinct and specialized branches of work, the relatively unspecialized nature of law work is a powerful counterweight to the process of fractionation—of

---

8. *See id.*

division into ever smaller slivers—that is so characteristic of our world. Moving among the different spheres of social and economic life, with their distinctive concerns and specialized practices, the lawyer helps to connect them and to build them into a whole. In this respect, the generalist nature of law practice performs an integrating function much like the public-spirited attention that lawyers pay to the well-being of the system of law, which enframes our market economy and gives it its stability and order.

Finally, I want to say a word about the special relations that lawyers have to the past. Every activity has a history; every form of work has a past. But, the relation that lawyers have to their pasts is special. For lawyers, the past is not just a fact. It is also a value. From the very first day of law school, lawyers learn to justify their arguments by appealing the past. For lawyers, the past is a great stockpile of precedents that carry weight, that have value and force, and to which we defer, not slavishly or mechanically, but thoughtfully, inventively, creatively. In the law, it is always an argument that we should continue to do something a certain way now because it was done that way before. This is not always a compelling argument—often we reject it upon reflection—but it is where discussion always begins.

The belief that lawyers have in the value of the past also makes an important contribution to the social order we inhabit. That is because our world today is characterized by an increasing forgetfulness of the past. We live in a world of fragmentary moments, of fifteen-minute episodes, a world that is literally disintegrating in a temporal sense. Against the obliviousness to the past, the inattention to its weight and value, that makes our contemporary world at times seem so transient and superficial, the lawyer's critical devotion to the past is a counterweight of considerable integrating power.

The qualities of professionalism that I have mentioned—the lawyer's concern for the public good, the generalist nature of law training and law practice, and finally the high value that lawyers attach to the past—each of these qualities helps to counterbalance the various disintegrating forces that are constantly threatening to pull our complex world apart. Most of the wealth and much of the freedom that we enjoy today we owe to the liberating power of the market, to specialization, and to our giddy independence from the past. But each of these liberating forces has a destructive potential too, and it is against their destructive tendencies that the qualities I have gathered under the rubric of legal professionalism provide much-needed balance. That is why the preservation of these qualities is important not only to lawyers, as they pursue fulfillment in their work, but to society as a whole, and why everyone—lawyers and non-lawyers alike—have a stake in their protection.

Our profession is now being remade in the image of the market system, a system that itself needs the integrating professionalism of lawyers. But paradoxically, the more the legal profession is recast in this image, the more it becomes just a business like any other, the more urgently we appreciate the value of the very qualities this “paradigm shift”

seeks to expunge. Let us resolve to hold on to these qualities as long and as best we can.