
MORALITY, PROFESSIONALISM, AND HAPPINESS

By Benjamin P. Hayek*

Not long ago, with the practice of law came prestige, respect, and personal fulfillment.¹ Not long ago, American lawyers viewed their highest goal to be “the attainment of wisdom that lies beyond technique—a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess.”² Not long ago, lawyers understood that the best among them became not only an expert in the law, but a person of sound practical judgment.³ Not long ago, lawyers were “figure[s] of wisdom and judgment, zealously representing clients but always respecting the dignity of the truth.”⁴ Not long ago, but no longer.

Now, lawyers find it increasingly difficult to believe that their work provides them intrinsic fulfillment of any kind.⁵ “Polls have found that public respect for lawyers is close to an all time low.”⁶ They are often viewed by non-lawyers as “manipulative and deceitful.”⁷ Recent studies suggest that lawyers are two to three times more likely to suffer from depression than society as a whole,⁸ and suffer a higher incidence of depression than any other occupation in the United States.⁹ Some questioned whether incoming law students simply brought their depression with them,¹⁰ but subsequent research showed that incoming students suffer from depression at approximately the same rate as the general population.¹¹ The implication seems obvious: the source of lawyers’ unhappiness is the one thing they all have in common—lawyering.¹²

One place to begin looking for solutions to the problem is the modern law school experience. As everyone who has graduated from law school in the last quarter-century well knows, what occurs between the first day of class and graduation is not only a transformation of mind but, all too often, spirit.¹³ In varying degrees students are forced to set aside their prior identities,¹⁴ and to adopt the so-called zealous “neutral partisan” ideal: entailing that “one . . . does whatever possible, within the bounds of the law, to serve her client’s interests regardless of what the lawyer herself thinks of the client’s ends.”¹⁵ “Many students become convinced that professionalism means being willing to pursue the ends of others[] irrespective of the means.”¹⁶ Hence, many of today’s embryonic lawyers wander the halls of law schools “demoralized, dispirited, and profoundly disengaged from the [traditional] law school experience.”¹⁷

As a result, a significant number of law school graduates enter the legal world armed with the weapons of advocacy but also the delusion that they can completely separate their personal from their professional lives and, in turn, their personal from their professional moralities.¹⁸ Perhaps not surprisingly, then, many new lawyers find their initial foray into the legal world an unhappy one:

[T]he new attorney may begin her professional career with the values and convictions that once guided her life in shambles.

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Today’s post-realist teachers are often masters at showing students that their most cherished beliefs are simply a matter of opinion or supportable only by some more or less plausible arguments that could be countered by other more or less plausible arguments. By making every position respectable, law school can destroy a student’s sense of integrity and personal self-worth, and leave her with the feeling of being unmoored with no secure convictions and hence no identity at all.¹⁹

Dean Kronman refers to these problems as aspects of the collapse of the “lawyer-statesman” ideal, which “is, in essence, a crisis of morale,” and has created “a crisis of identity in the legal profession.”²⁰ It has raised doubts about whether the practice of law can continue to be an intrinsically satisfying pursuit that offers deep personal meaning to those in it.²¹ This spiritual crisis, his argument continues, has “been brought about by the demise of an older set of values that until quite recently played a vital role in defining the aspirations of American lawyers.”²² Even worse,

the demise of the lawyer-statesman ideal means that the lawyers who lead the country will on the whole be less qualified to do so than before. They will be less likely to possess the traits of character—the prudence of practical wisdom—that made them good leaders in the past. Like ripples on a pond, the crises of values that has overtaken the legal profession in the last twenty-five years must thus in time spread through the whole of our political life with destructive implications for lawyers and nonlawyers alike.²³

Leaving for another day an exploration into the intellectual motivation behind purging the lawyer-statesman ideal from legal education and society, this brief article assumes that the *primary* reason for the prevalence of depression among lawyers is based on low-levels of job satisfaction directly attributable to the consequences of the purge.²⁴ This is by no means a novel thesis, but one that deserves continued attention.²⁵ This article assumes that personal morality, and its objective manifestation, professionalism, come part-and-parcel with job-satisfaction. The implication of the foregoing is that the ethical lawyer is the happy lawyer; the happy lawyer is the lawyer that aspires to the lawyer-statesman ideal.

A SOLUTION: ASPIRING TO THE LAWYER-STATESMAN IDEAL

At the heart of the lawyer-statesman ideal was the fundamental belief that the archetypical lawyer was the lawyer who possessed not only superior jurisprudential and tactical skill, but also an abundance of practical wisdom.²⁶ Within this lawyer’s grasp was “a wisdom that lies beyond technique—a wisdom about human beings and their tangled affairs that anyone who wished to provide real deliberative counsel must possess.”²⁷ Hence, the ideal lawyer-statesman was one who possessed great practical wisdom and exceptional persuasive powers, one who was devoted to the public good but yet “keenly aware of the limitations of human beings and their political arrangements.”²⁸ Recognizing that sound legal advice

and legal judgments are rarely far removed from morality, lawyer-statesmen face the inevitable moral questions that arise seriously.²⁹ They possess a devotion to the facts of a case and the reality they reflect, and will respect that reality in the courtroom and counseling room.³⁰ These lawyers also exemplify self-governance and individuality; universal, holistic thinking; an undistorted perception of reality; a superior awareness of truth; are service-oriented and carry a deep awareness and desire for the good; and possess a highly democratic personality.³¹

As Professor Krieger observes, the “values and motivations that promote or attend professionalism have been empirically shown to correlate with well being and life satisfaction, while those that undermine or discourage professionalism empirically correlate with distress and dissatisfaction.”³² This should come as no surprise, since such wisdom was dispensed over two thousand years ago by Aristotle: “[happiness] results from virtue and some sort of learning or cultivation.”³³ For Aristotle, happiness can only be cultivated by activities in accord with virtue, while, as the empirical evidence (cited above) shows, “the contrary activities control its contrary.”³⁴

To be sure, empirical research has consistently shown that when intrinsic values motivate choices, as opposed to extrinsic values (such as money or publicity),³⁵ one tends to experience greater life-satisfaction, happiness, and overall well-being.³⁶ Hence, the happy person is also the intrinsically motivated person, the person who chooses self-directed action from which he derives genuine enjoyment or that furthers a fundamental life purpose.³⁷ The research also shows that the lawyer who chooses her career path for intrinsic reasons will generate better work-product and consistently be happier at work, which in turn has positive effects upon clients, adverse counsel, and court personnel.³⁸

Consequently, a new wave of scholarship suggests that ethical lawyering involves not the *suspension* of moral judgment but rather *the conscious exercise of it*, to determine what justice requires and thus the confines of right action within the context of what one ought or ought not do on behalf of a client.³⁹ Much of this scholarship is premised upon the notion that any model of lawyering lacking a dimension of moral character will be necessarily incomplete.⁴⁰ This notion rests on the fundamental idea that our professional identities as lawyers are *inseparably linked* to our personal moralities.⁴¹ As a result, “[y]ou cannot be a bad person and a good lawyer, nor can you be a good person and a lawyer with sharp practices. A lawyer who behaves like a jerk in court is not an ‘aggressive advocate’ with an ‘assertive strategy,’ but a jerk.”⁴² Hence, everyday practice decisions ultimately reflect character traits, which in turn either nurture or undermine not only each individual lawyer’s reputation but the reputation of the profession as a whole.

CONCLUSION

In composing the *Nicomachean Ethics*, Aristotle sought to provide his readers with an understanding of how we can cultivate happiness: by living an ethical life within society.⁴³ Perhaps Albert Einstein thought of Aristotle when he wrote that “[t]he most important human endeavor is the striving for morality in our actions. Our inner balance and even our very existence depend on it. Only morality in our actions can give

beauty and dignity to life.”⁴⁴ Quite obviously, none of this is new. Rather, both Aristotle and Einstein saw clearly, in order to achieve personal happiness and fulfillment, one must be versed in the “culture of right-doing;” that is, one must be thoughtful, analytical, driven by principle, and grounded by a moral vision of the good.⁴⁵

As lawyers, we can and ought to cultivate happiness within our profession by holding ourselves to the highest moral standards not just of the *profession*—which is almost certainly part of the current problem—but of *humanity*. Doing so will simultaneously satisfy the *egoist* within (by enhancing personal happiness) and the inner *altruist* (by enhancing the happiness of others). In striving towards professionalism, let us do what we can to enhance both.

Endnotes

- 1 See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 2 (1993).
- 2 *Id.*
- 3 *Id.*
- 4 Kenneth W. Starr, *Truth and Truth-Telling*, 30 TEX. L. REV. 901, 902 (1999).
- 5 See KRONMAN, *supra* note 1 at 3.
- 6 Starr, *supra* note 4 at 901.
- 7 Kenneth W. Starr, *Christian Life in the Law*, 27 TEX. TECH. L. REV. 1359, 1359 (1996).
- 8 Gabriel Lerner, *How Teaching Political and Ethical Theory Could Help Solve Two of the Legal Profession’s Biggest Problems*, 19 GEO. J. LEGAL ETHICS 781 (2006) (citations omitted). See also MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 85-91 (1994).
- 9 Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 426 (2005) (citation omitted).
- 10 Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAN. L. REV. 870, 874 (1999) (citation omitted).
- 11 *Id.* at 875.
- 12 *Id.* at 881.
- 13 See DANIEL R. COQUILLETTE, *LAWYERS AND FUNDAMENTAL MORAL RESPONSIBILITY* 1 (1995) (“legal education can be a narrowing experience that displaces the moral vision and perspective gained over a lifetime.”).
- 14 Harvard Law Review Association, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2044 (2006).
- 15 Sharon Dolovich, *Ethical Lawyering and the Possibility of Integrity*, 70 FORDHAM L. REV. 1629 (2002) (citing William Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29 (1978)).
- 16 COQUILLETTE, *supra* note 13 at 2.
- 17 Harvard Law Review Association, *supra* note 14 at 2027.
- 18 Daniel R. Coquilette, *Professionalism: The Deep Theory*, 72 N.C.L.REV. 1271, 1272 (1994).
- 19 Patrick J. Schiltz, *Legal Ethics in Decline*, 82 MINN. L. REV. 705, 723 (1998) (quotations omitted) (citations omitted).

