Scholarly Works                                    Faculty Scholarship

1998

# Introductory Note: Symposium on Lawyering and Personal Values – Responding to the Problems of Ethical Schizophrenia

Samuel J. Levine
slevine@tourolaw.edu

# INTRODUCTORY NOTE: SYMPOSIUM ON LAWYERING AND PERSONAL VALUES - RESPONDING TO THE PROBLEMS OF ETHICAL SCHIZOPHRENIA

## SAMUEL J. LEVINE[*]

In recent years, legal practitioners and scholars alike have identified a growing crisis in the legal profession.[1] As the American Bar Association Commission on Professionalism observed in 1986, "[t]he public views lawyers, at best, as being of uneven character and quality."[2] Not unrelated to the negative public perception of lawyers,[3] though perhaps more disturbing, is the

---

[*] Assistant Legal Writing Professor & Lecturer in Jewish Law, St. John's University School of Law; L.L.M. 1996, Columbia University; Ordination 1996, Yeshiva University; J.D. 1994, Fordham University; B.A. 1990, Yeshiva University.

Symposium: Lawyering and Personal Values, was inspired in part by a series of conversations by the same name, conducted in the past year at St. John's University School of Law. A number of individuals have contributed to the success of the conversations, including John Barrett, Maria Ciampi, Mary Ann Dantuono, Judith Hagley, Father Richard Kehoe, Erica Smith-Klocek, Susan Stabile, and Brian Tamanaha, many of whom have helped me organize my thoughts for this Introduction.

[1] See, e.g., American Bar Association, Commission on Professionalism, " . . . In the Spirit of Public Service:" A Blueprint for the Rekindling of Lawyer Professionalism, 112 F.R.D. 243 (1986) [hereinafter, ABA, 1986]; American Bar Association, Commission on Professionalism, Teaching and Learning Professionalism (1996) [hereinafter, ABA, 1996]; MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993); SOL M. LINOWITZ & MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERS AT THE END OF THE TWENTIETH CENTURY (1994); Russell G. Pearce, The Professionalism Paradigm Shift: Why Discarding Professional Identity Will Improve the Conduct and Reputation of the Bar, 70 N.Y.U. L. REV. 1229 (1986); Edward D. Re, The Causes of Popular Dissatisfaction With the Legal Profession, 68 ST. JOHN'S L. REV. 85 (1994).

[2] ABA, 1986, supra note 1, at 254.

[3] See generally Kenneth Lasson, Lawyering Askew: Excesses in the Pursuit of Fees and Justice, 74 B.U. L. REV. 723 (1994).

145

perception lawyers have of themselves. Increasingly, lawyers feel dissatisfied with the roles they are expected to play and the conduct demanded of them. In particular, many lawyers see a widening gap between their personal values and those employed in legal practice.[4]

In response to the dichotomy between personal and professional values, some lawyers attempt to develop a corresponding dichotomy in their personalities, separating the "professional self" from the "personal self."[5] Such a response, however, may lead to a kind of "ethical schizophrenia," a condition in which an individual is placed in the position of trying to adhere to competing and inconsistent ethical systems. On an emotional level, this balance may be difficult to maintain. As Richard Matasar put it, "split personalities are not necessarily happy ones."[6] On the contrary, he suggests, lawyers attempting to operate under such a condition are often "masses of contradictions. Something must give someplace."[7] Forced to choose between the two selves, and the corresponding competing ethical systems, most individuals can be expected to allow the professional self to prevail. In so doing, they will, to some degree, adopt into both their characters and their personal lives the ethical values of their professional lives.

In addition to the practical problems presented by ethical schizophrenia, some lawyers may find this condition unacceptable in principle. Individuals with aspirations of adhering to a single set of ethical values must reject the option of trying to compartmentalize the ethical self into different areas of life. Instead, the same ethical ideals that guide and govern personal life

---

[4] *See* Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975 (1990); Thomas L. Shaffer, *On Living One Way In Town and Another Way at Home*, 31 VAL. U. L. REV. 879 (1997). *See, e.g.*, ABA, 1996, *supra* note 1, at 4 (observing "a growing sense of dissatisfaction with law practice as being incompatible with personal values and goals"); Russell G. Pearce, *Symposium: Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075, 1081 (1998) ("[I]ndividual lawyers find themselves unable to discover a satisfactory way to reconcile their personal and professional aspirations with what they perceive as the harsh realities of the legal marketplace.").

[5] *See* Matasar, *supra* note 4, at 981-82 (describing the phenomenon of individuals "separat[ing] their private selves from the roles they play as lawyers"); Shaffer, *supra* note 4, *passim* (contrasting conduct of a lawyer "in town," or at work, with conduct "at home").

[6] Matasar, *supra* note 4, at 982.

[7] *Id.*

must be maintained in professional life as well. Thus, rather than allowing the ethically objectionable professional self to influence their character, such individuals will strive and struggle to conduct their professional lives in a manner consistent with their personal values. In the words of Thomas Shaffer, an individual "might want to live in the office as he lives at home."[8]

There exist numerous and varied sources of ethical values available to lawyers. One such source, potentially common to all lawyers, is the Model Rules of Professional Conduct, adopted by the American Bar Association in 1983. Yet, the rules, like other codes, have been found to be sorely lacking in offering meaningful guidance to lawyers facing difficult ethical questions.

According to Mary Ann Glendon:

> [F]ormal codes of ethics never aimed at capturing the entire ensemble of understandings that lawyers observe in their dealings with one another, with clients, and with the courts. The codes mainly set forth a small body of fairly obvious duties with which lawyers must comply.... Where ethical problems of great complexity are concerned, formal canons afford little guidance. They are often least helpful when most needed.[9]

Moreover, as Professor Matasar has noted, "ethical rules are manipulable. The rules set minimum, oft-times flexible, ethical standards that depend upon a lawyer's good faith. The rules are subject to a broad range of escape mechanisms."[10] Indeed, even the 1986 ABA Commission on Professionalism, while praising the implementation of the rules, admitted that "lawyers have . . . tended to look at nothing but the rules; if conduct meets the minimum standard, lawyers tend to ignore exhortations to set their standards at a higher level."[11]

As a result of the inadequacy of the rules, lawyers searching

---

[8] Shaffer, *supra* note 4, at 883.

[9] GLENDON, *supra* note 1, at 78-79.

[10] Matasar, *supra* note 4, at 977. An additional problem is that, as a result of flexibility of the rules, "even if a lawyer has personal qualms about conduct, the lawyer faces strong pressure to act instrumentally when that conduct will benefit the client and be judged as ethical." *Id.* at 978. Ironically, then, "[t]o do less is inconsistent with ethical obligations of the profession." *Id.*

[11] ABA, 1986, *supra* note 1, at 259; *see also* Pearce, *supra* note 4, at 1081 ("[T]he organized bar has not found a successful means of inspiring lawyers to meet their ethical obligations."); Shaffer, *supra* note 4, at 882 ("[T]he town side of a lawyer's life, at least since the days of the robber barons, has invoked an exalted set of grand words while it lived by a consistently crude set of professional rules that would not, and did not, get in the way of getting ahead.").

for ethical guidance have looked to other sources of values. Religious values, in particular, have gained increasing prominence in the arena of legal ethics, as they present a comprehensive system of ethics for lawyers seeking to integrate their personal and professional lives.[12]  Many religious systems reject the notion of restricting ethical values and behavior to specific areas of life while allowing other parts of life to remain bereft of such values. In describing Judaism, for example, Rabbi Joseph Soloveitchik has emphasized that an individual "stands before God not only in the synagogue but also in the public domain, in his house, while on a journey, while lying down and rising up."[13]  Thus, Jewish thought does not accept the "strange, obscure, psychic dualism" through which "[t]he man in the sanctuary and the man in the marketplace are two separate and distinct personalities who have absolutely nothing in common with one another."[14] Similarly, Rabbi Yitzchak Hutner urged his students to strive to live a "broad life," integrating their profession with their values, rather than a "double life," which would involve separating the personal self from the professional self.[15]

The success of religious values in responding to the ethical needs and problems of lawyers has resulted in what Russell Pearce has called a "religious lawyering movement."[16]  Professor Pearce documents the early history of the "movement," leading up to two recent symposia exploring the relationship between religious values and lawyering.[17]  In 1996, Professors Thomas Baker and Timothy Floyd organized the Faith and the Law Symposium[18] in the Texas Tech Law Review, asking "lawyers, judges and law professors . . . to reflect on how they have recon-

---

[12] *See generally* Pearce, *supra* note 4.

[13] JOSEPH B. SOLOVEITCHIK, HALAKHIC MAN 93 (Lawrence Kaplan trans., 1983) (originally published in Hebrew as *Ish ha-halakhah, in* I TALPIOT 3-4 (1944)).

[14] *Id.* at 92-93 (Judaism "does not compartmentalize reality" and rejects "[t]he strange, disturbing dualism . . . grounded in the fragmentation of life into many different sectors . . . a deep fissure in one's psychic identity . . . a personality split . . . a spiritual schizophrenia").

[15] YITZCHAK HUTNER, PACHAD YITZCHOK, LETTERS AND WRITINGS NO. 94 (1991). *See generally* Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession,* 27 TEX. TECH L. REV. 1199 (1996). *Cf.* Shaffer, *supra* note 4, at 884 ("The late Christian lawyer William Stringfellow . . . said he avoided thinking of himself as a 'professional.' He was, he said, a biblical person who worked as a lawyer.").

[16] *See* Pearce, *supra* note 4.

[17] *See id.* at 1075-77.

[18] Symposium, *Faith and the Law,* 27 TEX. TECH L. REV. 911 (1996).

ciled their professional life with their faith life."[19]  The sympo-
sium consisted of "essays in the nature of personal narratives,
exercises in storytelling, which might inform and perhaps inspire
others."[20]

For three days in June of 1997, organizers of "The Relevance
of Religion to a Lawyer's Work: An Interfaith Conference," at
Fordham University School of Law, brought together "lawyers,
legal scholars, clergy, and theologians . . . to examine the impli-
cations of religion for lawyers."[21]  The conference proceedings,
published in the Fordham Law Review,[22] include "a scholarly lit-
erature which ... address[es] systematically the range of theo-
retical issues raised by the existing religious lawyering litera-
ture," as well as "agendas for further scholarship, teaching, bar
programs, and congregational activities."[23]

The present issue of The Catholic Lawyer, devoted to a
Symposium: Lawyering and Personal Values, aims to continue
these conversations, recognizing the important role that religious
and other ethical values can play in the lives of lawyers.  This is-
sue presents a variety of perspectives, all of which share a com-
mon goal of promoting personal values in the legal profession.

Daniel O. Conkle, a law professor, provides an analytical
framework illustrating various ways lawyers that he inter-
viewed, whom he calls "Professing Professionals: Christian Pilots
on the River of Law," have integrated their personal and profes-
sional lives.  James W. Perkins, a practicing lawyer for more
than four decades, documents the ethical crisis in the legal pro-
fession and explores the relationship between "Virtues and the
Lawyer," suggesting "virtue ethics" as an alternative to rules.
Professor Charles J. Russo describes how his academic career led
him to pursue justice in Bosnia, "At the Table in Sarajevo: Re-
flections on Ethnic Segregation in Bosnia," and he calls on law
schools and lawyers to emphasize human rights.  Finally, Stan-
ley Morris, a practicing attorney in Colorado for more than
twenty-seven years who has seen "The View From Main Street,"
describes a decline in the sense of values held by lawyers and

---

[19] Thomas E. Baker & Timothy W. Floyd, A Symposium Precis, 27 TEX. TECH L.
REV. 911 (1996).
[20] Id.
[21] Pearce, supra note 4, at 1075.
[22] Symposium: The Relevance of Religion to a Lawyer's Work: An Interfaith Con-
ference, 66 FORDHAM L. REV. 1075 (1988).
[23] Pearce, supra note 4, at 1077.

advocates internalization of ethical values as a way to reverse that decline.

The contributors to this symposium thus provide a number of approaches and viewpoints, based in various value systems, in an effort to combat the current ethical crisis felt by so many lawyers. Through different methods, but sharing a common emphasis on personal values, they offer a variety of responses to the problems of ethical schizophrenia that continue to plague the legal profession.