

THE LAWYER'S MYTH: REVIVING IDEALS IN THE LEGAL PROFESSION¹REVIEWED BY MAJOR GRETCHEN A. JACKSON²

*The incapacitation for moral growth . . . begins in law school. It is replicated in the profession and is the primary reason many lawyers are ailing in their personal and professional lives.*³

The popular perception of lawyers today is of devious insiders who manipulate the system for their personal benefit by feeding off of the misfortune of others. This perception is perpetuated in books, television, and movies, and in reality, by multi-million dollar verdicts and sleazy law firm advertisements. Walter Bennett issues a challenge to fellow lawyers to join him on his quest to revive ideals in the legal profession by seeking moral purpose, "If the legal profession is going to save itself, we are the people who must do it."⁴

The author began his own search for professional ideals when he left thirteen years of trial practice to go back to school for his LL.M. He hoped to escape his "self-made rut" of long hours and intense preoccupation with cases.⁵ He observed that there were accomplished lawyers living balanced lives, but could not see how to emulate them. After completing his LL.M., Bennett took a job as a clinical professor of law at the University of North Carolina Law School.⁶ Although his task was to teach the skills of lawyering, he felt he owed his students something more.

I knew by that point in my life that there was much more to living a lawyer's life than graduating from law school and being minimally competent at practical skills. I knew, or at least suspected, that in order to do it well and

¹ WALTER BENNETT, *THE LAWYER'S MYTH: REVIVING IDEALS IN THE LEGAL PROFESSION* (2001).

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³ BENNETT, *supra* note 1, at 27.

⁴ *Id.* at 12.

⁵ *Id.* at 1.

⁶ *Id.* at 2.

to avoid the descent that so many lawyers take into the narrow tunnel of one-mindedness—of thinking like a lawyer and doing or being little else—a reorientation of the soul was required, a reopening of the intellectual and emotional gates that so many people begin to shut in law school.⁷

In the process of teaching legal ethics, Bennett discovered two fundamental attitudinal problems in his students; compulsion to moral minimalism and feelings of impotency and loneliness.⁸ Moral minimalism derives from a law school focus on repressing morality in order to keep it from complicating legal analysis.⁹ Moral impotency comes from law students' realization that, burdened with enormous educational debt, they will not have the luxury to control their own moral decisions and will have to play by the moral rules fashioned in the real world.¹⁰ Loneliness is a function of an adversary system where young lawyers are consumed with winning as the measure of success.¹¹

In an attempt to insert a moral dimension back into legal training, Bennett sought to expose his students to “morally meaningful narrative.”¹² This narrative came from the stories of fellow lawyers guided by a moral purpose and a commitment to professionalism. Bennett accomplished this by developing a course on oral histories of lawyers and judges in North Carolina. By having his students interview prominent members of the legal community, he gave the students the opportunity to exercise those moral predilections set aside in the remainder of their law studies. Through their reports on fellow lawyers and judges, the students gained insight into how lawyers can achieve balance in their personal and professional lives. Bennett offers excerpts of these narratives throughout the book, which provide vivid accounts of North Carolina lawyers incorporating their beliefs and values into their practice of law.

⁷ *Id.*

⁸ *Id.* at 5.

⁹ *Id.* at 3. The author provides an example of this removal of morality from legal studies experienced during his first year of law school in the 1970s. At the end of a particularly frustrating round of Socratic dialog in a torts class, one first year student suggested that the ultimate goal of the case at hand was to achieve justice. The professor shouted at the student, “Don’t speak to me of justice! I do not wish to hear about justice. I wish to hear about the rule of law.” *Id.* at 14.

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 5.

¹² *Id.* at 23.

Central to the author's analysis of the legal profession is his reliance on the importance of myths in any society. "Myths are narratives, but they are narratives of a special and powerful kind Myths help us define ourselves in relation to our communities and to our greater society and help explain our and our society's eternal significance."¹³ In addition to providing this orienting function, myths serve a community on a primal level, which C.G. Jung called "the dark realm of the collective unconscious."¹⁴ The tools for myth formation are already present in this collective unconscious, "[b]ut the shape of the myths which evolve and manifest themselves, and how we use those myths and what they teach us, depend upon real-world experience and the conscious act of valuing myths and their teaching power."¹⁵

The author relies heavily on the myth of the Fisher King and Percival's search for the Holy Grail as an analogy to the myth of the legal profession.¹⁶ As the story goes, the Fisher King reigned over a great and prosperous land until he was wounded. As the king suffered, so did his land and his people. This suffering would not stop until a knight seeking the Holy Grail asked the question, "Whom does the grail serve?"¹⁷ Percival, an uneducated young man, endeavored to become a knight and ultimately to attempt to save the kingdom.¹⁸ Bennett equates Percival's quest to that required of lawyers:

[Percival] must first learn that his soul is out of balance, that he has an exaggerated view of his own importance and a deficient understanding of his duty toward other people. Only then can he begin to grow socially and spiritually so that he eventually gains sufficient consciousness to ask the question that will heal the king and save the community.¹⁹

¹³ *Id.* at 51.

¹⁴ *Id.* at 52. Carl Jung (1875-1961), a colleague of Sigmund Freud, was especially knowledgeable in symbolism of complex mystical traditions of various beliefs. Jung's theory divided the psyche into three parts, the ego, personal unconscious, and the collective unconscious. Jung referred to the contents of the collective unconscious as archetypes; an unlearned tendency to experience things in a certain way. Dr. C. Geroge Boeree, *Personality Theories* (1997), at www.ship.edu/~cgboeree/jung.html (last visited July 7, 2004).

¹⁵ BENNETT, *supra* note 1, at 59.

¹⁶ *Id.* at 9-12.

¹⁷ *Id.*

¹⁸ *Id.* at 12.

¹⁹ *Id.*

Although Bennett at times strays too far into the weeds of mythology (e.g., detailed discussions of “the keys to the transcendent, precognitive truths of our existence”),²⁰ his basic premise is sound; a profession should be a community built upon the experiences of professionals dedicated to something greater than itself. Stories of the experiences become the professional mythology, and professional ideals provide the perspective or proper relationship between the profession and the greater community.²¹

As the legal profession developed in America, the stories of the profession helped define who lawyers were and their role in society. “The favorable stories about lawyers crystallized into ideals of professionalism and the good lawyer. The unfavorable ones crystallized into archetypal stories of the bully, shyster, and trickster.”²² Bennett notes that professional ideals are particularly important for lawyers.

The lawyer’s role as advocate is fraught with moral ambivalence, and the lawyer’s morality exists in a constant tension between the actuality of what he is doing and a vision of higher ideals which must be implicit in his work. Added to the burden of moral ambivalence is the public’s limited understanding of lawyers’ work, which breeds a cynical view of lawyers and what they do. The public often sees only the shadowy, trickster side, which is that part of themselves that they most readily identify in lawyers. Thus there are powerful messages both from the public’s limited perception of lawyers’ work and from the reality of the work itself that push us toward the caricature of the trickster. A powerful vision of higher ideals is an essential counterweight to these messages in order for lawyers to maintain a life of moral purpose.²³

The goal of the legal profession should be to learn from the shyster image and to strengthen professional ideals.²⁴

²⁰ *Id.* at 53.

²¹ *Id.* at 54-55.

²² *Id.* at 28.

²³ *Id.* at 71.

²⁴ *Id.* at 69.

A professional mythology may only be perpetuated by a community passing its ideals from one generation to the next. As Bennett sees it, “[T]he true, comprehensive problem facing the legal profession [is that] we no longer exist as and do not perceive ourselves as a community.”²⁵ He provides several explanations for the disintegration of professional myths and community among lawyers. There have been major demographic changes in the legal profession. Lawyers are no longer of one race, one gender, or one social class.²⁶ The stories of great lawyers of the past have lost much of their metaphorical power for women and minorities in the profession.²⁷ The role of narrative in the legal profession has been devalued, and lawyers no longer have the time or space for storytelling.²⁸

Bennett insists that lawyers must understand the true meaning of profession in order to rebuild their community and to develop ideals worth passing on to the next generation of lawyers. A profession is “a community of people similarly trained and with shared ideals, which is consciously in service to that which is greater than itself.”²⁹ The primary purpose of the legal profession is not simply service to one’s clients, but service to the public and to the greater community. Bennett suggests that

[W]hile service to clients is itself a form of public service and is a basic moral obligation society has conferred upon lawyers, service to clients must be weighed in the greater context of service to the whole. Does work for a client, in its totality, provide more service than harm to other people?³⁰

This idea implies that a lawyer must sacrifice a particular client’s interests for those of the public. This would often be contrary, however, to the very nature of the lawyer’s work for the client, whose interests may directly conflict with those of the community.³¹

²⁵ *Id.* at 72.

²⁶ *Id.* at 74.

²⁷ *Id.* at 77.

²⁸ *Id.* at 78-80.

²⁹ *Id.* at 93.

³⁰ *Id.* at 128.

³¹ See MODEL RULES OF PROF. CONDUCT R. 1.7 (imposing duties of loyalty and independent judgment on a lawyer representing a client, and proscribing conflicts of interest between the interests of a client and those of the lawyer or a third party).

Although at first it appears that the author wants lawyers to allow public interests to trump client interests, he goes on to explain that the key is for lawyers to reinstate their own morality and to assert the moral prerogative into their relationship with their clients.³² This might be accomplished simply by raising the moral perspective with the client and encouraging the client to consider it. Although clients may still choose to ignore the moral ramifications, such ramifications would at least be considered along with the experience and expertise of the lawyer. Bennett correctly observes that it would be difficult for many lawyers to shift their focus from total commitment to their client's cause to consideration of the interests of the greater public. Lawyers, however, are equipped with the training to handle moral dilemmas and as professionals they are expected by the society they serve to exercise this training responsibly. "In order for lawyers to undertake such a task with competence and humility, they must be part of a professional community that promotes the ideal of public service and articulates the public good which is served."³³

There exists today, a community of lawyers devoted to public service and committed to ideals; namely, military lawyers in the Judge Advocate General's (JAG) Corps. Lawyers in America willing to take Bennett's challenge should take their lead from military lawyers. Military lawyers are dual-hatted professionals, both Soldiers and lawyers. They recognize that participation in a profession, whether of arms or of law, is a privilege that is accompanied by responsibility to the greater good. Military lawyers have answered a higher calling to use their legal expertise to serve their country. They constitute a community with common ideals and support an organization that prides itself on maintaining honor, loyalty, integrity, dignity, and respect through selfless service.³⁴ For most military lawyers, service is a source of personal and professional pride. Money or power does not drive their lawyering in the military. Instead, service to society and commitment to the good of the service by providing legal advice to command leadership and to individual Soldiers, drives the military lawyer.³⁵ As a result, military

³² BENNETT *supra* note 1, at 137.

³³ *Id.*

³⁴ These values are central to the military leadership doctrine. See e.g., U.S. DEP'T OF ARMY, FIELD MANUAL 22-100, ARMY LEADERSHIP: BE, KNOW, DO (31 Aug. 1999).

³⁵ The military services also impose duties of professional responsibility on military lawyers through service regulations. These military rules largely mirror the ABA Model Rules regarding individual client responsibilities, but they also reflect the unique responsibilities of military lawyers to their respective services as clients, *i.e.*, Army, Air

lawyers do not fit the “shyster” image many people associate with the legal profession.³⁶

Although military lawyers strive for success like any other lawyer, the “win-at-all-costs” attitude that Bennett cautions against, is tempered by the nature of their assignments.³⁷ Military lawyers rotate duty positions every one to three years. Therefore, a military lawyer may spend two years advising commanders about regulations, followed by a year assisting individual Soldiers with legal issues, followed by two years as a prosecutor or trial defense counsel. Frequent assignment changes have several effects on these professionals. First, they are reminded of the greater good that they serve through exposure to many aspects of the military community. Second, they are able to maintain a balanced perspective with regard to individual and community interests by representing different sides of legal issues. Finally, they are invested in the relationships with fellow military lawyers through the small size of their legal community and the frequent position changes. Military lawyers rely heavily on their predecessors to help prepare them for their new assignments.

The Army community, like the other branches of the armed forces, recognizes the value of its long tradition and history. Through publications like *Judge Advocates in Combat: Army Lawyers in Military Operations from Vietnam to Haiti*,³⁸ Army lawyers have attempted to perpetuate their own professional mythology through the stories of fellow lawyers. The need for such narrative history has prompted the U.S. Army Judge Advocate General’s Legal Center and School to create LL.M. course credit for projects to interview and report on famous lawyers within the Department of Defense.³⁹ The current leadership of the Army JAG Corps plans to establish a JAG Corps regimental historian position and develop plans for a JAG Corps museum.⁴⁰ These efforts to

Force, Navy, Marine Corps. *See e.g.*, U.S. DEP’T OF ARMY, REG. 27-26, LEGAL SERVICES: RULES OF PROFESSIONAL CONDUCT FOR LAWYERS R. 1.13 (1 May 1992) (Army as Client).

³⁶ BENNETT *supra* note 1, at 28.

³⁷ *Id.* at 82.

³⁸ FREDERIC L. BORCH, *JUDGE ADVOCATES IN COMBAT: ARMY LAWYERS IN MILITARY OPERATIONS FROM VIETNAM TO HAITI* (2001).

³⁹ Major Eugene Baime, Address to the 52d Graduate Course, The Judge Advocate General’s Legal Center and School (Sept. 17, 2003).

⁴⁰ Major General Thomas J. Romig, Address to the 52d Graduate Course, The Judge Advocate General’s Legal Center and School (Sept. 10, 2003).

maintain the history of the JAG Corps are consistent with Bennett's charge to perpetuate a professional mythology.

Although military lawyers belong to a community dedicated to professional ideals, they must join in Bennett's quest to revive ideals in the legal profession at large. As members of a profession, lawyers are responsible not only to society but to each other. They must join together to show America that the popular perception of lawyers is flawed. Military lawyers are only a small subset of the American legal profession. It is not necessary for all lawyers to risk deployment to a combat zone in an effort to show their commitment to the greater good. Every day lawyers make choices that reflect their commitment to something greater than themselves. *The Lawyer's Myth* is a rally cry for lawyers throughout the profession to come together to restore professional ideals and a moral purpose. Some hear that cry loud and clear, while others must be trained to listen for it.

Bennett's book pushes hard for reform in the law school curricula, teaching style, and grading, in an attempt to reorient the legal profession toward a moral purpose.⁴¹ Although law schools would be wise to include moral discourse in their training of law students, the better approach to revive professional ideals is his proposal for mentoring lawyers both young and old.⁴² The goal should not be to create a new breed of lawyers who are taught commitment to professional ideals. Instead it should be to reacquaint all lawyers with those values and ideals that motivated them to pursue a legal career in the first place. Lawyers must prove to themselves, and ultimately to society, that they have rediscovered their capacity for moral growth and their willingness to exercise their moral consciousness—not to manipulate society, but to serve it. Those lawyers who answer the call of *The Lawyer's Myth* will ensure their place in a professional heritage worth saving.

⁴¹ BENNETT *supra* note 1, at 169-178.

⁴² *See id.* at 195-202.