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Choice of a Profession

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Choice of a Profession*

John T. Noonan, Jr.**

Friends, faculty, alumni of Pepperdine University, the profession of law has never been more prosperous. There has been, it is true, in the last two years a slight recession, a dip, in the prosperity. But in the last decade practice has never been more profitable. The sums spent on it would have staggered our forbears. The federal judicial budget alone, providing the bare substructure for one section of practice, is \$3 billion. The top 100 law firms are estimated by *The American Lawyer* to gross nearly \$15 billion annually. The total gross of the profession is said—it is difficult to get precise statistics—to be over \$200 billion. Another estimate puts the figure at one percent of the gross national product.

If we turn from practice to the schools that produce this prosperous profession, the picture is similar. Our student bodies are unmatched in caliber anywhere in the world or anytime in the history of the world. Our students include persons equipped with doctorates in English, in philosophy, in art history, in engineering, in medicine. Racial discrimination has been ended, forever. The gender bar has been broken, forever. Never has such a trained, talented, diverse body of students entered our schools.

And the schools themselves are thriving. Once upon a time, in the first century of America, there were no law schools at all, and not many lawyers. Then there was one school, William and Mary, and one law professor George Wythe, then two or three schools and five or six professors. At the beginning of this century there were still only a handful of schools that were first-rate and the faculties were still small. Today, I am confident in saying after studying many clerkship applications and interviewing many clerkship candidates and visiting many law schools, there are a substantial number of first-rate schools spread throughout this state and this nation. The faculties are large and vigorous; the spe-

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cialists in every area of law, many. The research possible and performed by computer is unequalled. The high level the legal culture has achieved is uniform throughout the land. It makes lawyers, as Alexis de Tocqueville once described them, the American aristocracy, bonded by a common discipline, by a common method of reasoning by analogy and by common habits of learning, reflection, and application.

Yet today is not a good time to enter on the practice of law. The practice of law as it appears to too many of our talented young entrants is a drudgery that absorbs nearly all their energies, excludes almost any avocation, eats voraciously into their family lives, stifles their creativity, stunts their sense of responsibility, and puts them at risk of being dumped at any time as not profit-making enough. On the partnership side, what was once the equivalent of tenure has been turned in many instances into a contract at will. Because, in the terms of the relevant statute, partners are "high policy-makers," they are not even protected by the prohibition against age discrimination written into law. The mega firm, with profit centers scattered here and abroad, has become prototypical. Law partnerships themselves, once loyal associations of lawyers who knew and trusted each other, have buckled and cracked under the driving pressure, the insatiable craving, for money. The line between law as a business and law as a profession has become blurry. It has nearly disappeared.

For Judge Learned Hand, one of the great figures of an earlier time, law was a craft; and for him craftsmanship was where, if anywhere, the salvation of humankind lay. Of course, law is a craft, a laborious and exacting skill with special rules and special language and special purposes mastered only by personal application and effort. But unless law is more than a craft, it will become a business; and neither craft nor business is where salvation lies. Law is a profession.

What does it mean to be a profession? It means that one takes responsibility in some respect for the good of another person; that the work undertaken is performed by norms of responsibility set for the health of the work as a whole, as an institutional process; and most especially that one is called to provide this special kind of service to another and, as one called, has become accountable. Each of these characteristics of a profession do not look to maximal financial returns but to what will preserve the integrity of the relationships, personal and institutional, that a profession requires. The calling that constitutes a profession—the profession of a physician, the profession of the ministry, the profession of a teacher, the profession of a lawyer—consists in a personal recognition that one has abilities that fit one specially for the performance of the service. For those who believe in God it is a recognition, a personal acknowledgment, of gifts from the Creator, a recognition and acknowledgment of what the evangelical parable calls

talents that must be accounted for. The calling is not self-selection; it is a response to an invitation from the Master. And the accounting is not mere introspective self-criticism, still less is it financial. It is answerability to the Supreme Judge for the use made of the talents he has given.

Personal service to another, adherence to norms of institutional responsibility, commitment to a vocation, accountability—these are what have made the practice of law a profession. They survive in many groups of government lawyers and many public defenders and many judges and many law faculty and many individual lawyers in private practice. They are not nourished by those firms where a bottom line mentality has become predominant.

To profess in its root sense is to make a public declaration of faith; a profession is such a declaration of faith. What are lawyers professing? At a minimum, a belief in the ability of human beings to communicate with each other by means of rational argument. At a slightly deeper level, a belief that human beings can arrange their affairs fairly. At a still deeper level, a belief in the value of purposeful process. Beyond these beliefs, the lawyer may be professing something more. In the context of this school and its ideals I can do no better than repeat the advice James Madison—the father of our Constitution, the champion of our religious freedom—gave William Bradford, later the first Attorney General of the United States, then a young man hesitating between the ministry and law. Young Madison wrote young Bradford: “You should always keep the Ministry obliquely in view whatever your profession be.” For Madison that meant keeping close to what he called “the sublimest of the Sciences,” theology. For Madison that meant, as he put it to Bradford, becoming in time one of “the fervent advocates of Christ.”

With the ministry obliquely in view, the lawyer will have in mind the full dimensions of the task embarked upon—will know that he or she is answering a call, employing God-given talents, and becoming accountable to the Giver for their employment. With the ministry obliquely in view the lawyer will bring a faith and a hope to the work and a charity to animate that work as a service to others, a response to the call received, an accounting to the One who measures all.

