



TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

**Digital Commons @ Touro Law
Center**

Scholarly Works

Faculty Scholarship

2003

Professionalism Without Parochialism: Julius Henry Cohen, Rabbi Nachman of Breslov, and the Stories of Two Sons

Samuel J. Levine
Touro Law Center, slevine@tourolaw.edu

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>



Part of the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

71 Fordham L. Rev. 1339 (2003).

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

PROFESSIONALISM WITHOUT PAROCHIALISM: JULIUS HENRY COHEN, RABBI NACHMAN OF BRESLOV, AND THE STORIES OF TWO SONS

*Samuel J. Levine**

INTRODUCTION

In recent years, legal scholars and practitioners have engaged in a voluminous debate over the characterization of legal practice as a business or a profession.¹ In the face of increasing evidence suggesting that areas of the practice of law have at least begun to resemble business, many scholars have resisted the conclusion that law has now become more a business than a profession.²

Some of this resistance has taken the form of a rather parochial view of law as distinct from—and, in some sense, superior to—other

* Associate Professor of Law, Pepperdine University School of Law; LL.M., Columbia University; J.D., Fordham University; Ordination, Yeshiva University; B.A., Yeshiva University.

I thank Russ Pearce for inviting me to participate in “The Legal Profession: Looking Backward.” I thank Bruce Green, Andrew Kaufman, Larry Mitchell, Tom Shaffer, Keith Sharfman, and Fraida Liba for helpful conversations and Yehudah Tzvi and Aryeh Shalom for their encouragement.

1. See, e.g., Samuel J. Levine, *Faith in Legal Professionalism: Believers and Heretics*, 61 Md. L. Rev. 217, 218-20 & nn.6-14 (2002) (citing sources); Russell G. Pearce, *The Professional Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. Rev. 1229 (1995); Symposium, *Conference on the Commercialization of the Legal Profession*, 45 S.C. L. Rev. 875 (1994); Symposium, *Defining and Refining Professionalism: Assessing the Roles and Regulation of Lawyers in the Twenty-First Century*, 27 Fla. St. U. L. Rev. 1 (1999).

Notably, the issue of law as business or law as profession has taken on a global significance. See, e.g., Okechukwu Oko, *Consolidating Democracy on a Troubled Continent: A Challenge for Lawyers in Africa*, 33 Vand. J. Transnat'l L. 573, 640 (2000) (“The notion of materialism celebrated by Nigerian lawyers has resulted in a decline in professionalism and has engendered public contempt for the legal profession The public will never support or appreciate a legal profession that is more interested in making money than serving the public.”); Detlev F. Vagts, *Professional Responsibility in Transborder Practice: Conflict and Resolution*, 13 Geo. J. Legal Ethics 677, 679 (2000) (“Each legal system of a developed country that I have examined has had contradictory impulses in situating itself along the continuum between the strictly business/economics and the strictly professional.”).

2. See Levine, *supra* note 1, at 231-35, 238-41.

occupations.³ As one leading ethics scholar has suggested, “[t]he lawyer’s claim that the practice of law is an *honorable* profession is in itself an elitist claim” because “[t]he implication is that we are in an honorable profession, [and] others are not.”⁴ It is further arguable that “[t]he elitist nature of the legal profession may be most apparent in the vehement claims that it is a profession, not a business.”⁵ Indeed, a leading commentator on the state of the legal profession has recently emphasized the distinction between lawyers, who are professionals, and such “tradesmen” as “the butcher, the brewer, or the baker.”⁶

Although the issue continues to be raised and considered with increasing urgency and attention, the question of law as business or profession is not a new one; in fact, the current discussion is but the latest manifestation of a phenomenon that has proven to represent, in the words of one scholar, a “perennial debate.”⁷ This essay attempts to examine the concept of law as profession through a look back at one of the earliest works examining the question, Julius Henry Cohen’s appropriately titled 1916 book, *The Law: Business or Profession?*, which anticipates many of the concerns that inform the contemporary debate.⁸

3. See Thomas Ross, *Knowing No Other Duty: Privity, the Myth of Elitism, and the Transformation of the Legal Profession*, 32 Wake Forest L. Rev. 819, 828 (1997) (“Lawyers view their occupation as distinct from most other occupations: they are ‘professionals.’”).

4. Robert F. Cochran, Jr., *Honor as a Deficient Aspiration for “The Honorable Profession”*: *The Lawyer as Nostromo*, 69 Fordham L. Rev. 859, 887 (2000). See also Thomas L. Shaffer & Mary M. Shaffer, *American Lawyers and Their Communities: Ethics in the Legal Profession* 49 (1991) (asserting that “[p]rofessionalism is as elitist as class is” and that “the hubris of its rhetoric is so arrogant as to begin to sound like worship”).

5. Cochran, *supra* note 4, at 887-88; cf. Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society* 70 (1994) (“[L]awyers’ stubborn refusal to recognize their affinities with other highly skilled, well-educated sellers of services seems to rest either on the arrogant assumption that businesspeople have no ethics or on the dubious proposition that businesspeople invariably place short-term profits ahead of all other considerations.”).

6. Anthony T. Kronman, *Chapman University School of Law Groundbreaking Ceremony*, 1 Chap. L. Rev. 1, 3-4 (1998); see Anthony T. Kronman, *Legal Professionalism*, 27 Fla. St. U. L. Rev. 1, 4-6 (1999); Anthony T. Kronman, *Professionalism*, 2 J. Inst. Stud. Legal Ethics 89, 91 (1999); Anthony T. Kronman, *The Fault in Legal Ethics*, 100 Dick. L. Rev. 489, 496-97 (1996). But see Steven Lubet, *Professionalism Revisited*, 42 Emory L.J. 197, 198 (1993) (insisting that “the quest for professionalism is hardly a contest between occupations”).

7. Bruce A. Green, *The Disciplinary Restrictions on Multidisciplinary Practice: Their Derivation, Their Development, and Some Implications for the Core Values Debate*, 84 Minn. L. Rev. 1115, 1130 & n.66 (2000).

8. See Julius Henry Cohen, *The Law: Business or Profession?* (1916).

A number of law review articles cite Cohen’s book as an early discussion of the issue of law as business or law as profession, but none appears to engage the book in a substantive or substantial manner. See, e.g., Green, *supra* note 7, at 1130 & nn.66-69; Steven H. Hobbs, *Ethics in the Age of Entrepreneurship*, 39 S. Tex. L. Rev. 599,

Specifically, the essay considers the lessons that may be learned from Cohen's fictional story⁹—a parable of sorts¹⁰—of two sons, whose different ethical natures and corresponding career paths symbolize two different approaches to the practice of law. At the same time, the essay looks back more than one hundred years further into the past, finding significant parallels to Cohen's story in a tale by a Chasidic master, Rabbi Nachman of Breslov,¹¹ who presents a parable of two sons whose lives and career paths similarly signify fundamental differences in character and personal integrity.¹² The

603 (1998); Erik M. Jensen, Book Review, 1990 Colum. Bus. L. Rev. 133, 160; Herbert M. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 Law & Soc'y Rev. 713, 722 n.17 (1999); Kenneth Lasson, *Lawyering Askew: Excesses in the Pursuit of Fees and Justice*, 74 B.U. L. Rev. 723, 730 n.34 (1994); Milton C. Regan, *Law Firms, Competition Penalties, and the Values of Professionalism*, 13 Geo. J. Legal Ethics 1, 3 & n.9 (1999); S.S. Samuelson & L. Fahey, *Strategic Planning for Law Firms: The Application of Management Theory*, 52 U. Pitt. L. Rev. 435, 437 n.18 (1991); Ted Schneyer, *Policymaking and the Perils of Professionalism: The ABA's Ancillary Business Debate as a Case Study*, 35 Ariz. L. Rev. 363, 369 n.44 (1993); Vagts, *supra* note 1, at 679 n.7.

9. See Cohen, *supra* note 8, at 173-76.

10. Professor Green refers to the story as a "parable," Green, *supra* note 7, at 1130, apparently because of the underlying message it conveys. Rabbi Nachman's stories are more classically categorized as parables, with intended alternate levels of meaning beyond those evident from a plain reading of the stories. See Adin Steinsaltz, *The Tales of Rabbi Nachman of Bratslav*, at viii (1993) ("On the one hand, any child can read [the stories] as one would a tale of ancient days, as the author himself put it; and, on the other hand, one can as an adult read them again and again, analyze and study them, and constantly discover in them layer upon layer of hitherto unrevealed symbol and meaning.").

11. See Nachman of Breslov, Sippurey Ma'asiyth [Rabbi Nachman's Stories] 160-96 (Aryeh Kaplan trans., 1983) [hereinafter *Rabbi Nachman's Stories*].

It should be noted that "[t]here seems to be considerable confusion among English writers about how to spell Rabbi Nachman's city." Aryeh Kaplan, *Gems of Rabbi Nachman* 181 (1980). For example, "Bratzlav, the spelling adapted by most contemporary writers, is based on a transliteration of the modern Russian," while "[o]ther variant spellings are Brazlaw, Braclav, Bratslav, and Braslavl." *Id.* (citations omitted). Nevertheless, "the spelling Breslov is preferred by all English speaking readers of Rabbi Nachman" and "[t]here is considerable evidence from oral tradition that this was the way the name was pronounced in the time of Rabbi Nachman." *Id.* Similarly, the name "Nachman" is an English transliteration that also appears as "Nahman." See, e.g., Steinsaltz, *supra* note 10 (using the spellings "Nachman of Bratslav"); Elie Wiesel, *Souls on Fire: Portraits and Legends of Hasidic Masters* 169 (Marion Wiesel trans., 1973) (using the variant spellings "Nahman of Bratzlav").

12. This essay, which focuses on stories by Julius Cohen and Rabbi Nachman, aims, in part, to contribute to the body of ethics scholarship relating to narrative and storytelling. As one scholar recently observed, a list of "[t]he works of legal scholarship focused on or exemplifying storytelling no longer fit in a symposium, let alone in a footnote." Barbara Stark, *After/word(s): "Violations Of Human Dignity" and Postmodern International Law*, 27 Yale J. Int'l L. 315, 321 n.40 (2002). For one collection of such works, applied to a broad range of legal issues, see Samuel J. Levine, *Halacha and Aggada: Translating Robert Cover's Nomos and Narrative*, 1998 Utah L. Rev. 465, 467-68 n.8. For a discussion of narrative in the work of several leading ethics scholars, see Samuel J. Levine, *Taking Ethics Codes Seriously: Broad Ethics Provisions and Unenumerated Ethical Obligations in a Comparative Hermeneutic Framework*, 77 Tulane L. Rev. (forthcoming 2003) (manuscript at n.112,

essay relies on these two stories to offer a more inclusive model of legal practice, one that views law as a potentially noble profession, but a profession whose virtues may find nearly universal expression in other occupations as well.

I. RABBI NACHMAN OF BRESLOV'S STORY OF TWO SONS

It may be helpful to introduce Cohen's story of two sons by first looking at a narrative analog that not only predated Cohen's story by more than one hundred years but that first appeared in a cultural milieu far different from that of the lawyers whose work Cohen examined.¹³ Among the most famous and influential of the European Chasidic masters, Rabbi Nachman of Breslov was perhaps most renowned for the parables he told.¹⁴ According to one contemporary translator, these stories, "among the great classics of Jewish literature[,] . . . have been recognized . . . for their depth and insight into both the human condition and the realm of the mysterious."¹⁵

Since they were first published, the stories have provided fertile ground for exploration and explication by both devotees of Rabbi Nachman and other scholars, some of whom have uncovered allusions to the Bible, Talmud, Midrash and Kabbalah,¹⁶ others who have focused on the literary style of the tales, finding them "[m]ore daring than the most daring of the surrealists,"¹⁷ with parallels to the work of Franz Kafka.¹⁸ At the same time, however, as Rabbi Nachman's chief

on file with author).

13. As Professor Gerald Torres has observed, "[t]he context within which the story is told and the context within which the story is heard are critical in determining the meaning of the story Thus, because every narrative is rooted in a particular time and circumstance, retelling the 'same' story in a different context changes its meaning." Gerald Torres, *Translation and Stories*, 115 Harv. L. Rev. 1362, 1366 (2002).

In a sense, the comparison of Rabbi Nachman's story of two sons to that of Julius Cohen operates inversely to the principle set forth by Torres, suggesting that two "different" stories may share a similar meaning when understood in the context of the time and circumstance in which each is rooted.

14. For English discussions of the life and teachings of Rabbi Nachman, see, e.g., Aryeh Kaplan, *The Chasidic Masters and Their Teachings* 103-21 (2d ed. 1989) [hereinafter Kaplan, *Chasidic Masters*]; Kaplan, *Gems of Rabbi Nachman*, *supra* note 11, *passim*; *Rabbi Nachman's Stories*, *supra* note 11, *passim*; Steinsaltz, *supra* note 10, *passim*; Wiesel, *supra* note 11, at 169-202.

15. See Aryeh Kaplan, *Translator's Introduction to Rabbi Nachman's Stories*, *supra* note 11, at x.

16. *Id.* See Aryeh Kaplan, *Translator's Notes on Rabbi Nachman's Stories*, *supra* note 11, *passim* [hereinafter Kaplan, *Translator's Notes*]; see also Steinsaltz, *supra* note 10, at xix (stating that "sources from which the [stories'] details of plot and tale are drawn are many and varied," including "Kabbalah, folk tales, Bible and Halachah, history and contemporary events").

17. Wiesel, *supra* note 11, at 180.

18. *Id.* at 172; see Steinsaltz, *supra* note 10, at xvi (stating that Kafka's work "has much in common with" Rabbi Nachman's); see also Kaplan, *Chasidic Masters*, *supra* note 14, at 106 (observing that in Rabbi Nachman's tales, "we encounter kings and

disciple and collector of the stories relates, the tales were intended for the masses, embarked upon after Rabbi Nachman concluded that “my lessons and conversations are not having any effect in bringing you back to God,”¹⁹ and told in the Yiddish vernacular so that they could be understood by all.²⁰

Typical of Rabbi Nachman’s stories, “The Sophisticate and the Simpleton”²¹ contains many of the characteristic elements that fascinate scholars, but also sends a more evident message, one relevant beyond the realm of the Chasidic adherents to whom the tale was addressed. The story tells of two wealthy individuals who live in the same city and send their respective sons to the same school.²² These sons, however, are of substantially differing character, accounting for the story’s title. “One of these sons had deep understanding and was quite sophisticated. The other one was simple; he was not lacking in intelligence, but had a straightforward, humble approach, without any sophistication.”²³ Elaborating on this description, Rabbi Aryeh Kaplan notes that “wisdom is usually

generals rubbing shoulders with mystics and beggars in a fairyland of Kabbalistic symbolism,” and noting that “[m]any books and learned articles have been written in an attempt to unravel this symbolism, using everything from Jungian psychology to the Kabbalah itself”). One contemporary scholar has compared Rabbi Nachman’s work to a Breughel painting, “where even the seemingly trivial or scarcely seen detail is portrayed as exactly as the central figures themselves,” and to the work of Chagall, consisting of “pictures of figures of speech.” Steinsaltz, *supra* note 10, at xx-xxi, xxii.

19. See Rabbi Nathan Sternhartz of Nemerov, *Introduction* to Rabbi Nachman’s Stories, *supra* note 11, at 9; see also Steinsaltz, *supra* note 10, at xvii (quoting Rabbi Nachman as declaring “[f]rom now on I will tell you tales” and “adding that he believed that thus he would be better able to explain his teachings in a more profound and penetrating way”).

Some contemporary American legal scholars have similarly explained the use of “narrative form” in place of the “legal voice.” As one article has observed, “First, the narrative form of discourse permits the author to express a range of emotions.” Robert L. Hayman, Jr. & Nancy Levit, *The Tales of White Folk: Doctrine, Narrative, and the Reconstruction of Racial Reality*, 84 Cal. L. Rev. 377, 435 (1996). Specifically,

[t]here are some things that just cannot be said by using the legal voice . . .

Rage, pain, elation, the aching, thirsting, hungering for freedom on one’s own terms, love and its joys and terrors, fear, utter frustration at being contained and constrained by legal language; all are diffused by legal language.

Id. at 436 (quoting Lucinda M. Finley, *Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 Notre Dame L. Rev. 886, 903 (1989)). “Second, narrative form is not confined or limited to formal legalistic arguments.” *Id.*

Though more expansive than the concise statement attributed to Rabbi Nachman, these rationales appear consistent with Rabbi Nachman’s explanation for his turn to storytelling.

20. See Rabbi Nathan Sternhartz of Nemerov, *Second Introduction* to Rabbi Nachman’s Stories, *supra* note 11, at 28; Wiesel, *supra* note 11, at 179.

21. See Rabbi Nachman’s Stories, *supra* note 11, at 160-96.

22. See *id.* at 160.

23. *Id.* at 161.

considered a positive trait.”²⁴ Yet, in the context of the story, the connotation of the original term²⁵—translated here as “sophisticated”—refers to wisdom that is not “accompanied by humility and piety,” but instead is in the nature of “arrogan[ce] and skeptic[ism] . . . often le[ading the Sophisticate] to conclusions that [are] totally wrong.”²⁶ Conversely, Rabbi Kaplan continues, the “simple”²⁷ son is more fully understood as “without guile, and shunn[ing] casuistry and roundabout reasoning.”²⁸

The difference in nature of the two sons finds expression in their choice of occupation. The Simpleton learns the trade of a shoemaker,²⁹ evoking Kronman’s reference to the butcher, the brewer and the baker.³⁰ In fact, it appears that Rabbi Nachman’s choice of a shoemaker was specifically intended to epitomize a lack of public esteem. As Rabbi Kaplan suggests, of all the trades, “[a] shoemaker is usually seen as the lowliest of occupations.”³¹ The Sophisticate,

24. Kaplan, Translator’s Notes, *supra* note 16, at 161.

25. In Yiddish, the term “*chakham*” is used. *See id.*

26. *Id.* Thus, the term “sophisticated” is used in the sense of “deceptive” or “misleading.” *See* Random House Webster’s Unabridged Dictionary 1820 (2d ed. 1997) (definition 3) [hereinafter Dictionary].

Similarly, as Maimonides and others have explained, God’s command not to eat from the “tree of knowledge” in the Garden of Eden, *see Genesis 2:17*, was not to prevent humans from obtaining knowledge *per se*, but to prevent the use of “knowledge” in an improper and intellectually dishonest manner. *See* Maimonides, *The Guide of the Perplexed 1:2*. *See generally* Samuel J. Levine, *The End of Innocence*, Hamevaser, Dec. 1989, at 8.

Rabbi Kaplan notes a further similarity to the Garden of Eden in the Torah’s depiction of the deceptive serpent as “clever” or “subtle,” similar to Rabbi Nachman’s characterization of the Sophisticate. Kaplan, *Translator’s Notes, supra* note 16, at 161 (citing *Genesis 3:1*). Indeed, another contemporary translation of the story refers to the “Clever Man and the Simple Man,” Steinsaltz, *supra* note 10, at 165, and describes the simple man as having a “plain mind, not subtle.” *Id.* at 167.

27. As Rabbi Kaplan further notes, the term “*tam*,” used in the original, is also the biblical term whose root is used to describe individuals of “simple”—or pure or complete—virtue, such as Noah, Abraham, and Jacob. *See* Kaplan, *Translator’s Notes, supra* note 16, at 162 (quoting *Genesis 6:9; 17:1; 25:27*).

28. *Id.* at 162. The Simpleton thus stands in contrast to the Sophisticate, whose name derives its negative connotation from the term “sophism.” *See* Dictionary, *supra* note 26, at 1820 (offering definition 5 of “sophistication” as “the use of sophistry; a sophism, quibble, or fallacious argument,” and definition 1 of “sophistry” as “a subtle, tricky, superficially plausible, but generally fallacious method of reasoning”).

29. *See* Rabbi Nachman’s Stories, *supra* note 11, at 163.

30. *See supra* note 6 and accompanying text.

31. Kaplan, *Translator’s Notes, supra* note 16, at 163. Rabbi Kaplan attributes this attitude to the fact that shoes are often unclean, a condition that, he observes, carries with it ritual ramifications as well. *Id.*

The picture of a simple or honest shoemaker as a model of virtue has older roots in Jewish thought. In *Genesis*, the Torah states that “Enoch walked with God.” *Genesis 5:22*. A midrashic exegesis of this verse describes Enoch as a shoemaker, who worshipped God with each stitch. *See* 1 Eliyahu Dessler, *Michtav M’Eliyahu 34* (Aryeh Carmell & Alter Halpern eds., 1954); *see also* Steinsaltz, *supra* note 10, at 203 (noting the similarity to Enoch).

however, repeatedly deems himself worthy of a more prestigious line of work, which he sets off to pursue in a number of other cities.³² Starting as a merchant's apprentice, he achieves a number of different positions until he ultimately studies medicine and becomes a physician.³³

Nevertheless, just as the name of each of the sons, in a sense, belies the value of each one's character—the Simpleton being of higher ethical character than the Sophisticate³⁴—the success each has attained belies the level of happiness and sense of personal fulfillment each possesses. With each additional success, the Sophisticate finds himself more dissatisfied with his position.³⁵ Because of his constant concern for status and personal glory, he worries that if he remains away from his home, “who will know what I have accomplished?”³⁶ Therefore, he determines that he must return home for all to see what he has achieved. Even upon his return, however, his work is not appreciated by those he serves.³⁷ In addition, while the Sophisticate travels abroad in pursuit of his ambitious goals, there is no one to care for the possessions he leaves behind, and thus the mansion—metaphorically, the set of values—he inherits from his father is “neglected and in ruins, so that nothing remain[s] of it.”³⁸

Meanwhile, the Simpleton, despite his relative lack of financial success and status, is content with his life.³⁹ Moreover, in sharp contrast to the Sophisticate, when confronted with the opinions of those who compare his product and profit to those of others, he responds: “What do I care about that? That is their work, and this is my work! Why must we speak of others?”⁴⁰ Finally, because he

Analyzing this explication of the verse, some later commentators were troubled by the possible implication that Enoch engaged in some form of prayer while working, potentially distracting him and detracting from his work, and thereby violating the duty to place all of his efforts in the job for which he was hired and paid. Therefore, some interpret the midrashic reference to worshipping God on more of a metaphorical level, suggesting that Enoch worshipped God through careful, faithful, and meticulously ethical performance of his job. Dessler, *supra*, at 34-35. That such conduct, according to this understanding, is singled out in the Genesis text as a form of “walking with God” powerfully mirrors the lesson of Rabbi Nachman's tale, emphasizing the importance of personal virtue instead of societal status.

32. See Rabbi Nachman's Stories, *supra* note 11, at 163-64; see also Steinsaltz, *supra* note 10, at 200 (noting that the Sophisticate is “attracted to the most superficial characteristics of status”).

33. See Rabbi Nachman's Stories, *supra* note 11, at 164-67.

34. See *supra* notes 26-28 and accompanying text.

35. See Rabbi Nachman's Stories, *supra* note 11, at 164-67.

36. *Id.* at 167.

37. *Id.* at 176.

38. *Id.* at 174.

39. See *id.* at 168. Rabbi Kaplan notes the allusion to the Talmudic dictum, “Who is [truly] wealthy? One who is satisfied with one's lot.” Talmud, *Avoth* 4:1, cited in Kaplan, *Translator's Notes*, *supra* note 16, at 168.

40. Rabbi Nachman's Stories, *supra* note 11, at 171-72.

remains at home, the Simpleton inherits and lives in his father's mansion.⁴¹

Though the story continues,⁴² with the metaphors and their meanings becoming more complex and mysterious,⁴³ for the purposes of the current study, the clear lessons about the ultimate and overriding value of personal ethics and integrity provide a fitting introduction to a discussion of Julius Cohen's story of two sons, which would appear more than one hundred years later in New York City.

II. JULIUS COHEN'S STORY OF TWO SONS

Cohen dedicates the second section of his book, titled "Profession?," to a discussion of aspects of the practice of law that he deems more befitting a business venture than the profession of law.⁴⁴ Cohen opens the section with the story of two sons.⁴⁵

Immediately evoking Rabbi Nachman's parable, Cohen's story also presents a shoemaker as a central character in the narrative, in the figure of a father of one of the sons.⁴⁶ In fact, Cohen puts the reader in the place of the hypothetical shoemaker, setting forth the parallel legal careers of "your son" and the "son of Thompson."⁴⁷ "Your" son, at the age of twenty-five or twenty-six, opens a law office, "maintaining always the standards of the profession which you yourself honor sufficiently to desire him enrolled in its ranks."⁴⁸ Owing to hard work and "[h]is personal character," he develops "the small commercial litigation with which all lawyers of the preceding generation began their practice."⁴⁹ "Gradually," approaching the age of thirty and "thoroughly trustworthy in all his dealings," he gains the respect of courts and clients.⁵⁰ Finally, at the age of thirty-five or thirty-six, he has "the best commercial practice in your part of the country."⁵¹

41. *Id.* at 174.

42. The brief summary offered here digests less than half of the complete story, which follows the sons' individual journeys. Ultimately, the Simpleton becomes ruler of the land while the Sophisticate's condition repeatedly and increasingly deteriorates until, with the help of the Simpleton, he is finally redeemed from his suffering. *See id.* at 175-96.

43. Scholars have offered varied interpretations of the story and its messages. *See, e.g.,* Kaplan, *Translator's Notes*, *supra* note 16, at 160-96; *see also* Steinsaltz, *supra* note 10, at 206-15.

44. Cohen, *supra* note 8, at 173.

45. *Id.* at 174.

46. *Id.* at 173.

47. *Id.* at 174.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

Thompson's son, in contrast, who lives in the same city, is "of more or less shady reputation."⁵² He is admitted to practice despite being of "little ability and with less character," though he is "crafty."⁵³ He "soon becomes known in your part of the country for what he really is, until he scarce can find a client in the county who will confide in him."⁵⁴ At this point in the story, the parallels to the ethical nature of Rabbi Nachman's Simpleton and Sophisticate begin to evince themselves.

The two sons are presented with offers to have their cards placed in a "directory" and to represent the trade and collection agencies and the trade associations of the large cities in the county. Your son, "because he has been properly bred and trained, turns down the offer."⁵⁵ Thompson's son, however, accepts the offer, thereby becoming the leading bankruptcy lawyer in the town, while your son "has the character and respect of your community but not much else."⁵⁶ Still, "in spite of the unfair competition, your son continues to maintain his practice," loyal, like the Simpleton, to his own values and those he has inherited from his father.⁵⁷ Thus, both the character and the financial positions of the sons continue to echo those of the Sophisticate and the Simpleton.

As the story concludes, like the Sophisticate, whose conduct—in spite of his success as a physician—is held in disrepute by the members of the city, Thompson's son "brings a new reputation to your community," which has become "a place where men are readily petitioned into bankruptcy, where there are 'quick settlements.'"⁵⁸ Most disturbingly, "your friends in the shoe line begin to think of the whole profession (which includes your son, do not forget) . . . : 'The law is a sort of hocus-pocus science, that smiles in yer face while it picks yer pocket'"⁵⁹

Beyond the similarities to Rabbi Nachman's parable, Cohen's story is fascinating on a number of levels, not in the least for its relevance to recent and current controversies in legal ethics relating to advertising by lawyers⁶⁰ and multidisciplinary practice.⁶¹ For the purposes of this

52. *Id.* at 174-75.

53. *Id.* at 175.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. See, e.g., *Symposium on Lawyer Advertising*, 49 Ark. L. Rev. 671 (1997); Allen Chair Symposium 2001, 36 U. Rich. L. Rev. 1 (2002).

61. See, e.g., *Symposium, The Brave New World of Multidisciplinary Practice*, 50 J. Legal Educ. 469 (2000); *Business Law Symposium, Multidisciplinary Practice*, 36 Wake Forest L. Rev. 1 (2001); *Future of the Profession: A Symposium on Multidisciplinary Practice*, 84 Minn. L. Rev. 1083 (2000); *Symposium, Multidisciplinary Practice*, 20 N.Y.L. Sch. J. Int'l & Comp. L. 153 (2000);

essay, however, it may be most notable that, in calling for lawyers to adopt professional conduct and to eschew business conduct, Cohen neither exalts the practice of law as inherently virtuous nor disparages business or other occupations as less capable of providing a means for virtuous conduct.

Significantly, Cohen refuses to measure the level of professionalism in legal practice by the level of financial success or personal acclaim. Indeed, in Cohen's story, the "leading bankruptcy lawyer," who holds—by contemporary standards, at least—one of the most prestigious positions in the legal establishment,⁶² epitomizes, in his conduct, the failure of some attorneys to maintain personal integrity or professional ideals.⁶³ Instead, it is the lawyer of personal character, who has gained the respect of the community "but not much else," who likewise wins Cohen's admiration for exemplifying conduct worthy of the legal profession.⁶⁴

Moreover, consistent with his view of personal virtue as more important and more meaningful than professional status, Cohen does not restrict his call for, or appreciation of, increased ethical performance to the work of lawyers, or even to occupations that may be included in the category of the "professions." In the introduction to his book, Cohen acknowledges the inspiration and leadership of two individuals, Dr. Felix Adler and Mr. Charles Boston.⁶⁵ The relevance of Boston's work to Cohen's project is not surprising; after all, Boston was an attorney who, at the time of the appearance of the book, was Chairman of the Standing Committee on Professional Ethics for the New York County Lawyers' Association.⁶⁶

Cohen's reliance on Adler, however, may be more telling. As the founder of the Society for Ethical Culture, Adler, in Cohen's words, "devoted himself to stimulating ethical thought in *every active field of endeavor*."⁶⁷ Describing what he sees as Adler's chief contribution to the field of ethics, Cohen cites Adler's assertion that because "*duty* is a matter of daily vocational service, preachment without active

Multidisciplinary Practice Symposium, 32 Loyola U. Chi. L.J. 543 (2001); Symposium, *Professional Responsibility and Multi-Disciplinary Practice*, 52 Case W. Res. L. Rev. 861 (2002); Symposium, 20 Pace L. Rev. 43 (1999); ABA Commission on Multidisciplinary Practice, Report to the House of Delegates, Symposium on Multidisciplinary Practice (2001). Indeed, these two subjects are central areas of focus in Part II of Cohen's book, titled "Profession?"

62. Though this observation is admittedly anachronistic and may not reflect the attitude of the legal establishment in Cohen's times, in the context of the story, the bankruptcy lawyer appears to have attained a significant level of professional status as a result of his financial success.

63. Cohen, *supra* note 8, at 175.

64. *Id.*

65. *See id.* at xviii.

66. *See id.* at xvi.

67. *Id.* at 158 (emphasis added).

application is of no avail.”⁶⁸ Cohen emphasizes Adler’s conclusion that “[t]herefore, *each* vocation—business, industry, the professions—must solve its own ethical problems.”⁶⁹ As a result of this broad range of concern, Adler “turned to the lawyers as well as the business men, and spurred them to the formation of groups for the study of applied ethics.”⁷⁰

Echoing Adler, Cohen likewise finds common ethical imperatives and potential among different vocations, describing “the idea of service” as one that is “true to-day of other businesses as it is of railroads and retailers” and one that also “runs through the whole of the ethics of the legal profession.”⁷¹ In fact, Cohen largely bridges the ethical distinctions among different occupations, observing that “[t]he ethics of trade are approximating the ethics of the profession.”⁷²

Cohen’s focus on personal ethics rather than on professional status is perhaps best exemplified in his choice of and attitude toward the shoemaker. In the story of two sons, the shoemaker has instilled in his son the overriding values of personal and professional integrity, protecting his son from the powerful temptations that succeed in capturing Thompson’s son, who is not of the same ethical caliber. Addressing the reader as shoemaker, Cohen neither condescends nor insults, but instead treats a member of the “trade” as an ethical equal to those of the legal profession. Indeed, the shoemaker is ethically superior to Thompson’s son—the financially successful lawyer—and it is the shoemaker’s ethical fortitude to which Cohen appeals in setting forth his aspirations for the ethical conduct of lawyers. Thus, the chapter that opens with the story of two sons closes with a final message to the shoemaker, including a reminder that, as in law, in the decidedly business-like activity of selling shoes, “*service* is set above profit.”⁷³

III. PROFESSIONALISM WITHOUT PAROCHIALISM

Contrary to elitist claims of legal professionalism, Rabbi Nachman and Julius Cohen use the stories of two sons to teach that the true measure of an individual’s value to society is more a function of personal character than of professional status.⁷⁴ In both stories, the ambitious but unscrupulous son initially finds financial success yet ultimately fails to gain the respect earned by the other son, who

68. *Id.*

69. *Id.*

70. *Id.* at 158-59 (emphasis omitted).

71. *Id.* at 42.

72. *Id.* at 43.

73. *Id.* at 198.

74. *Cf.* Cochran, *supra* note 4, *passim*; Shaffer & Shaffer, *supra* note 4, at 49 (finding that professionalism’s “esteem for professional fraternity is an ethic of honor rather than of virtue”).

forgoes personal glory in deference to the more important goal of maintaining ethical integrity.⁷⁵

Recognizing this lesson may prove helpful for lawyers in formulating a more meaningful notion of professionalism, one based in ethical commitments rather than in unfounded and unnecessary assumptions and judgments about the relative importance of different occupations. Perhaps ironically, such professionalism may be grounded in the acknowledgment of common ethical principles that the practice of law shares with other endeavors, including business.

Though such an approach may require proponents of professionalism to accept a new model of legal practice—a new “paradigm” as Russell Pearce calls it⁷⁶—this view of law is not a novel one. Mary Ann Glendon has poignantly cited Abraham Lincoln for the proposition that “law is a business” and “virtue in a lawyer [is] not much different from common decency in any other calling.”⁷⁷ On a similar note, the chapter in which Cohen cites Adler’s views is titled “Applying Ethics to Daily Life in One Profession.”⁷⁸ This is consistent with the approach espoused by Adler and adopted by Cohen, placing the practice of law as one among many occupations which allow for and call for ethical and virtuous behavior.⁷⁹ More recently, Pearce has credited Thomas Shaffer with “find[ing] an ethic of service consistent with all occupations and derid[ing] the

75. Professor Lisa Lerman’s recent study “explor[ing] the relationships among ambition, greed, and integrity in the legal profession” further highlights the relevance of these stories and their lessons to the ethical dilemmas facing today’s lawyers. Lisa G. Lerman, *The Slippery Slope from Ambition to Greed to Dishonesty: Lawyers, Money, and Professional Integrity*, 30 Hofstra L. Rev. 879, 880 (2002). Lerman finds that “[m]any lawyers are preoccupied with gaining power within their law firms and with expanding their own incomes,” while “[f]or some lawyers, income is the clearest measure of their status.” *Id.* In either event, “[p]reoccupation with money tends to have a corrosive effect on integrity.” *Id.* Professor Deborah Rhode has observed, “Addictive ambition” fuels desires not readily satisfied. Attorneys who look hard enough can always find someone getting something more. And the purchases that signal status today may look inadequate tomorrow. Well-paid professionals can always find another category in which to compete: trips, cars, fashion, charity, even children’s parties. The market is inexhaustively obliging.

Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* 33 (2000); *id.* at 23-38 (describing the “dynamics of discontent” in legal practice as rooted in “the priority of profit”).

76. See Pearce, *supra* note 1, *passim*. Notably, however, according to at least one leading ethics scholar, this shift may be more in the nature of nomenclature than substance. See Bruce A. Green, *Public Declarations of Professionalism*, 52 S.C. L. Rev. 729, 737 n.18 (2001) (“It may fairly be argued that most, if not all, of the values conventionally associated with professionalism are simply common values given specific application in the context of legal practice.”).

77. Glendon, *supra* note 5, at 70 (quoting Abraham Lincoln, Notes for a Law Lecture, in *Selected Speeches, Messages, and Letters* 33 (T. Harry Williams ed., 1957)).

78. Cohen, *supra* note 8, at 157-71.

79. See *supra* text accompanying notes 65-73.

Professionalism Paradigm's characterization of lawyers as somehow superior to others in money-making occupations."⁸⁰

At the same time, renouncing claims to the legal profession's intrinsic superiority includes rejecting the assumption that law is inherently ethical and virtuous and that, therefore, those who practice law are deserving of respect and esteem regardless of the ethical quality of their conduct. Instead, lawyers will begin to appreciate the broad range of human endeavors and occupations, each of which carries with it both ethical challenges and the potential opportunity of contributing to a virtuous life. Accepting their position as one among many occupations, lawyers will thus acknowledge, both as a group and on an individual level, that respect must be earned through virtuous conduct, rather than expected by virtue of their choice of work.⁸¹ In short, again in Pearce's words, lawyers will have "no choice but to accept that they [are] accountable for their actions[,] just like everyone else."⁸²

Once lawyers realize more fully that the virtue of their work is dependent on the ethics of their conduct, attempts to improve professionalism and the ethical practice of law will likely involve a more honest and searching effort to incorporate values beyond those leading to the successful and profitable outcome of a case. A less parochial conceptualization of legal professionalism might involve

80. Pearce, *supra* note 1, at 1266 (citing Thomas L. Shaffer, *Lawyer Professionalism as a Moral Argument*, 26 *Gonz. L. Rev.* 393, 403-04 (1990-91)); see also Russell G. Pearce, *Law Day 2050: Post-Professionalism, Moral Leadership, and the Law-as-Business Paradigm*, 27 *Fla. St. U. L. Rev.* 9, 23 (1999) (describing "the understanding that all people, whether in the elite or not, share responsibility for the public good in whatever work they do."). As Pearce emphasizes, "this obligation appl[ies] equally to business and to law practice." Pearce, *supra* note 1, at 1260.

81. Cf. Fred C. Zacharias, *Specificity in Professional Responsibility Codes: Theory, Practice, and the Paradigm of Prosecutorial Ethics*, 69 *Notre Dame L. Rev.* 223, 268 (1993) ("By creating an aura of 'professionalism'—the notion that lawyers are, by intellect, training, and special characteristics, unique—the [ethics] codes enable lawyers to command respect and financial reward exceeding that of blue collar workers and other professionals who perform similar services.").

82. Pearce, *supra* note 80, at 21; cf. Shaffer & Shaffer, *supra* note 4, at 71 (criticizing professionalism's "claim of immunity" that "[p]rofessionals operate outside the boundaries of ordinary morality"); Thomas L. Shaffer, *Faith and the Professions* 71-72 (1987) (asking "[i]s there a separate morality for professional life?" and answering "[i]n terms of experience, convention, and argot, the answer to that question would appear to be: Yes. . . [o]ur forebears have not followed, and we do not follow, the same morals in public and professional life that we follow in personal life").

These changes in perspective may lead lawyers to ask the uncomfortable question: "How dysfunctional are we lawyers if we have to be continually reminded, over the course of decades, to behave in our professional lives in the way people are ordinarily expected to behave in their lives and work?" Green, *supra* note 76, at 737 n.18.

As troubling as the question may be, and as difficult as it may be to answer, it would seem more troubling to permit the question to remain unasked and thereby to preclude even the possibility of addressing it and attempting to answer it.

looking to the actions of members of other occupations, in addition to actions outside of the workplace, for examples of ethical values and conduct that may be incorporated into the practice of law as well.

The adoption of a legal professionalism that looks outside the legal context for ethical guidelines to be incorporated into the practice of law may lead lawyers increasingly to turn to religion and other value systems in an effort to identify and articulate such ethical principles. Moreover, incorporation of a lawyer's religious or other personal values may not only improve the state of legal professionalism, but also may provide a means through which lawyers may attempt to bridge their seemingly separate personal and professional lives.⁸³ Indeed, the importance of living a consistently ethical life, both "at home" and "in town" in Shaffer's words,⁸⁴ is central to the work of both Rabbi Nachman and Julius Cohen.

Of course, it is not surprising that the work of Rabbi Nachman, a Chasidic master, highlights the imperative of engaging in ethical conduct in all areas of life. Starting with the text of the Torah and continuing through the teachings of contemporary scholars, Jewish tradition has emphasized the all-encompassing nature of religious and ethical duties and obligations.⁸⁵

Rabbi Joseph Soloveitchik has eloquently expressed the unity of the ethical lifestyle, writing that "[t]he marketplace, the street, the factory, the house, the meeting place, the banquet hall, all constitute the backdrop for the religious life."⁸⁶ Thus, he explains, in Jewish thought an individual "stands before God not only in the synagogue but also in

83. See, e.g., Samuel J. Levine, *Responding to the Problems of Ethical Schizophrenia*, 38 *Cath. Law.* 145 (1998); Martha Minow, *On Being a Religious Professional: The Religious Turn In Professional Ethics*, 150 *U. Pa. L. Rev.* 661 (2001); Symposium, *Faith and the Law*, 27 *Tex. Tech L. Rev.* 911 (1996); Symposium, *Lawyering and Personal Values*, 38 *Cath. Law.* 145 (1998); Symposium, *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*, 26 *Fordham Urb. L.J.* 821 (1999); Symposium, *The Relevance of Religion to a Lawyer's Work: An Interfaith Conference*, 66 *Fordham L. Rev.* 1075 (1998).

84. See Thomas L. Shaffer, *On Living One Way in Town and Another Way at Home*, 31 *Val. U. L. Rev.* 879 (1997). Shaffer's use of the concepts "town" and "home" are drawn from the statement of Harper Lee's Atticus Finch, who declares that "I can't live one way in town and another way in my home." *Id.* at 879 (quoting Harper Lee, *To Kill a Mockingbird* 267 (Fawcett Popular Library 1962) (1960)).

85. See Aryeh Kaplan, *The Handbook of Jewish Thought* 78 (1979) (stating that the commandments "penetrate every nook and cranny of a person's existence, hallowing even the lowliest acts and elevating them to a service to God" and that "the multitude of laws governing even such mundane acts as eating, drinking, dressing and business, sanctify every facet of life, and constantly remind one of [one's] responsibility toward God"); see also Moshe Silberg, *Law and Morals in Jewish Jurisprudence*, 75 *Harv. L. Rev.* 306, 322 (1961) ("The Jew's mode of dress, his diet, dwelling, behavior, relation with men, his family affairs, and his business affairs were all prefixed and premolded, in a national cloak, in a set of laws that was clear, severe, strict, detailed, that accompanied him day by day, from cradle to grave.").

86. Joseph B. Soloveitchik, *Halakhic Man* 94 (Lawrence Kaplan trans., 1983) (originally published in Hebrew as *Ish ha-halakhah*, in 1 *Talpiot* 3-4 (1944)).

the public domain, in [the] house, while on a journey, while lying down and rising up.”⁸⁷ Indeed, it is striking that in tales such as that of the two sons, Rabbi Nachman does not, on a literal level, invoke religious ritual or even refer expressly to Judaism or to God.⁸⁸ Instead, through the depiction of apparently temporal pursuits such as that of the “simple” shoemaker,⁸⁹ his tales powerfully illustrate a more profound lesson: as Rabbi Soloveitchik dramatically puts it, the synagogue and the study house are merely “minor sanctuaries,” while “[t]he true sanctuary is the sphere of our daily, mundane activities, for it is there that the realization of [religious and ethical obligation] takes place.”⁹⁰

In contrast, Rabbi Soloveitchik describes the person for whom “the world of prayer and the world of reality have nothing to do with each other.”⁹¹ Such an individual “enters [the] sanctuary humble and contrite, in a mood of submission and humility . . . divest[ing] himself of his arrogance, of his rigid, unbending character.”⁹² In the moment of prayer, this person is not the “possessor of riches and chattels, estates and factories, who drives his impoverished workers ruthlessly, and whose hands are often stained with the blood of the outcast and the ill-gotten gain wrung from the hands of the unfortunate.”⁹³ “However,” Rabbi Soloveitchik concludes, “no sooner does [this individual] step outside into the noisy, clamorous street than he reverts back to his original persona, to his previous haughty and conceited self-centeredness.”⁹⁴

Though it may be argued that his Jewish heritage informed his work and values,⁹⁵ there is little evidence in his book suggesting that Cohen

87. *Id.* at 93.

88. *Cf.* Wiesel, *supra* note 11, at 188 (observing that Rabbi Nachman’s tales “speak not of saints or . . . Rebbees but of princes and shepherds, of anonymous beggars and horsemen, of sages and messengers—and not . . . Jewish ones at that”).

89. *See supra* Part I.

90. Soloveitchik, *supra* note 86, at 94-95; *see also* Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 *Tex. Tech L. Rev.* 1199, 1205 (1996) (citing Moses C. Luzzatto, *Mesillat Yesharim* 336-39 (Shraga Silverstein trans., 1966); Maimonides, *Mishne Torah*, *Laws of De’oth* 3:2-3) (concluding that “according to Maimonides, through my professional career I could actually serve G-d, while Ramchal taught that I could utilize my career as a means towards piety”); Samuel J. Levine, *Further Reflections on the Role of Religion in Lawyering and in Life*, 11 *Regent U. L. Rev.* 31 (1998).

91. Soloveitchik, *supra* note 86, at 93.

92. *Id.*

93. *Id.* at 92-93.

94. *Id.* at 93; *cf.* Randy Lee, *Faith Through Lawyering: Finding and Doing What is Mine to Do*, 11 *Regent U. L. Rev.* 71, 87-88 (1998) (“[L]awyers need a way to link what they do on the job with their deepest values and commitments. They need to reconnect what they do on Monday with what they profess and pray on Sunday . . . [and] begin to break down the walls that have separated work from faith . . .”).

95. This suggestion seems implicit in Professor Andrew Kaufman’s observation contrasting the work of Benjamin Cardozo with that of a number of other Jewish lawyers, including Cohen. *See* Andrew L. Kaufman, *Cardozo* 99 (1998) (“Nor did

looked to Jewish thought—or to religion more generally—in support of his ethical ideals.⁹⁶ Indeed, Cohen appears ambivalent at best, and

[Cardozo's] career resemble those of Jewish lawyers like Morris Hillquit or Julius Henry Cohen, who were deeply involved with new immigrant groups, unionism, the use of arbitration in industrial disputes, and public service as counsel to various administrative agencies.”).

96. In contrast to Cohen, at least two of his illustrious predecessors in the field of legal ethics, David Hoffman and George Sharswood, incorporated religion into their lives and, at least to some degree, into their writings. See Susan D. Carle, *Lawyers' Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 *Law and Soc. Inquiry* 1, 10 (1999). As Professor Carle noted,

David Hoffman and George Sharswood, the authors of the two most important early-nineteenth-century American treatises on legal ethics, approached the field of legal ethics from a tradition this article will refer to as “religious jurisprudence.” Their view, based on religious conviction and a belief that a divine intelligence gave human beings moral faculties that would not lead them astray, posited that lawyers could and should exert their sense of justice in individual cases to steer the legal system toward just results.

Id. Significantly, though both of these scholars extolled the work of lawyers, viewing lawyers, using Professor Pearce's term, as America's “governing class,” see generally Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 *U. Chi. L. Sch. Roundtable* 381 (2001), they both insisted that the work of lawyers is not inherently virtuous absent the incorporation of ethical values and conduct.

Hoffman, whom Professor Shaffer considers the “father of . . . legal ethics,” Shaffer, *supra* note 82, at 47, “was not only a careful student of religion . . . but also a law teacher who claimed that the Bible was essential to his craft.” *Id.* at 49. Indeed, as Shaffer notes, “Hoffman began his consideration of *the law*—not ethics, but law—with the Bible . . . [and] recommended it as a primary source for learning law, for learning professional skill, for being introduced to professional culture, and for personal advancement in the profession.” *Id.* at 50.

Hoffman posited that “great[ness] in law [required] great[ness] in every virtue.” Pearce, *supra*, at 389 (quoting David Hoffman, *Course of Legal Study* 26 (J. Neal 2d ed., 1836)) (alterations in original). Thus, Hoffman “asserted that the virtuous lawyer should reject any distinction between personal and professional morality.” *Id.* (citing Maxwell Bloomfield, *David Hoffman and the Shaping of a Republican Legal Culture*, 38 *Md. L. Rev.* 673, 684 (1979)). In short, Hoffman wrote, “[w]hat is morally wrong, cannot be professionally right.” *Id.* (quoting Hoffman, *supra*, at 765).

Sharswood, whose work, according to Pearce, “overshadowed” Hoffman's and whose book, after its publication in 1854, “would dominate the field of legal ethics for the next hundred years,” *id.* at 389-90, was, according to Shaffer, apparently a devout Christian, Shaffer & Shaffer, *supra* note 4, at 196. Like Hoffman, Sharswood begins his discussion, not of ethics but of law, through reference to the Bible. See George Sharswood, *An Essay on Professional Ethics* 10-14 (5th ed. Fred B. Rothman & Co. 1993) (1884).

Again like Hoffman, Sharswood insisted that “no man can ever be a truly great lawyer, who is not in every sense of the word, a good man.” *Id.* at 168, *quoted in* Pearce, *supra*, at 390. In fact, Sharswood appears to have endorsed the lesson of the stories of the two sons by Rabbi Nachman and Julius Cohen, see *infra* Parts I and II, writing that “an invisible hand of reputation ensured that the most virtuous lawyers would be the most financially successful.” Pearce, *supra*, at 390 (citing Sharswood, *supra*, at 75).

It should be noted, though, that in spite of both Hoffman's and Sharswood's apparent personal devotion toward and professional reliance on religion, Shaffer concludes that “there is little indication that the principal influences in the

at times openly hostile toward the role of religion in public ethics, quoting the conclusion that, in mid-nineteenth-century America, “formal religion did not . . . lead in the world of ideals, nor even in the true moral purpose of a people eagerly seeking spiritual growth.”⁹⁷ Moreover, he cites the position that “[a]s late as 1876 . . . [t]he nation was apparently without ideals, save those of industrial progress[, and r]eligion shared in this apathy, spending its energy in seizing what it could of the tide of national prosperity . . . and . . . retreating to the stronghold of religious dogma.”⁹⁸

Instead, Cohen turned for guidance to Dr. Adler’s “Society for Ethical Culture,”⁹⁹ which offered exhortations that, in both tone and substance, echo religious teachings, but which, at the same time, avoided direct reliance on religion. Thus, these ethical imperatives take a secular humanistic form: “We are here—no matter who put us here, or how we came here—to fulfill a task. We cannot afford to go of our own volition until the last item of our duty is discharged.”¹⁰⁰ Though the dedication to ethical conduct may evoke religious fervor, “[t]he moral view of the professions leads their representatives to subordinate the claims of ambition and of material gain” not to the will of God, but “to the enduring interests of science, of justice, and to all the permanent social interests that are confided to their keeping.”¹⁰¹

Nevertheless, despite his general aversion to religion as a source of legal ethics, Cohen does rely on an episode involving religious life to emphasize the importance of living a uniform and consistently ethical life. Illustrating what some Europeans saw as “an irreconcilable contradiction between the keen business instincts of the [American], and his professions of religion,”¹⁰² Cohen offers a brief tale that closely resembles Rabbi Soloveitchik’s teaching of the same principle.¹⁰³ In this tale, which is referred to as “one of the oldest British gibes at America,”¹⁰⁴ a shopkeeper is seen “instructing his clerk, preparing for the business of the morrow, to ‘sand the sugar, flour the ginger, lard the butter, and then come in to prayers.’”¹⁰⁵

development of legal ethics in America were thoughtfully or even consciously rooted in the moral teachings of Moses, or of Jesus, or of the eighteenth-century English clergy.” Shaffer & Shaffer, *supra* note 4, at 196.

97. Cohen, *supra* note 8, at 157 (quoting Ephraim D. Adams, “The Power of Ideals in American History,” Dodge Lectures on the Responsibility of Citizenship (Yale University Press)).

98. *Id.* (quoting Adams, *supra* note 97).

99. *See supra* text accompanying notes 65-69.

100. Cohen, *supra* note 8, at 158 (quoting Felix Adler, *Life and Destiny* 3).

101. *Id.* (quoting Adler, *supra* note 100, at 52).

102. *Id.* at 33 (quoting Adams, *supra* note 97) (emphasis omitted).

103. *See supra* notes 86-94 and accompanying text.

104. Cohen, *supra* note 8, at 33 (quoting Adams, *supra* note 97).

105. *Id.* at 33-34 (quoting Adams, *supra* note 97).

This concise yet powerfully cautionary tale captures some of the key elements of the lessons more fully explored in Cohen's and Rabbi Nachman's stories of two sons. As in Rabbi Nachman's tale, the main character is not a lawyer, but an individual engaged in business whose "sophistication" expresses itself in a refusal to apply to professional life the "simple" virtues that are permitted to find expression, if at all, only in his personal life. As in Cohen's story of two lawyers, this individual places professional ambition and financial success above personal values, thus failing to uphold the ethical ideals that Cohen propounds.

CONCLUSION

Cohen's brief story of the shopkeeper serves as a fitting complement to his story of two lawyers. Together, the stories tell of both lawyers and those involved in business, of individuals whose personal values may be based in religion or in other sources of ethics. Ultimately, the stories illustrate Cohen's vision for a legal professionalism that looks beyond platitudes and presumptions of virtue based in status, a professionalism rooted instead in an honest and searching assessment of ethical conduct in the practice of law, informed by a broader appreciation for the role of ethics in other occupations and other areas of life. It is a vision, articulated nearly one hundred years ago, that today remains as valuable as ever.