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THE CHICKEN OR THE EGG? PUBLIC SERVICE ORIENTATION AND LAWYER WELL-BEING

*Melissa H. Weresh**

The 2014 American Association of Law Schools Program for the Section on Balance in Legal Education was titled “The Many Connections Between Well-Being and Professionalism in the Practice of Law.” In its call for papers, the section indicated that the focus of the topic was on “how well-being contributes to, and may indeed be necessary for, the ethical, civil, and responsible practice of law.”¹ Emphasizing that the “topic naturally calls upon presenters to think about the intersection between the growing research in the field of law student and lawyer well-being and traditional law school subjects,”² participants were encouraged to investigate the extent to which well-being and the ethical, civil practice of law are mutually supportive, and perhaps necessary for one another.³

The concepts of service, volunteerism, and altruism—what I collectively refer to here as a public service orientation—have historically been components of professionalism in law practice. In fact, the public service orientation is a distinguishing feature of professions. A public service orientation, however, has declined in law practice.⁴ Moreover, there is evidence that lawyer substance abuse, unhappiness, and dissatisfaction have increased.⁵

There is an established connection between service, or altruism, and well-being. It is therefore likely that an increased emphasis on the professional public service orientation would be beneficial to lawyer well-being. The question then becomes one of the chicken or the egg: Is service as a

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1. Posting of Todd Peterson, law-legealed-bounces@lists.fsu.edu, to law-legealed@lists.fsu.edu (Mar. 22, 2013) (on file with author).

2. *Id.*

3. *Id.*

4. See, e.g., Russell G. Pearce, *Law Day 2050: Post-Professionalism, Moral Leadership, and the Law-As-Business Paradigm*, 27 FLA. ST. U. L. REV. 9, 20 (1999) (“The second half of the twentieth century saw a shift throughout society away from a sense of obligation to the community and toward the individualistic pursuit of self-interested goals.”).

5. See generally *infra* Part I.

component of professionalism essential to well-being, or does well-being contribute to a public service orientation and a fully developed professional identity? Or is the process recursive?

This essay⁶ begins with a brief consideration of the current state of the legal profession. There is alarming evidence that lawyers and law students are increasingly depressed and susceptible to suicide.⁷ The essay identifies some attributes of this crisis, both external and internal, that are unique to the profession. The essay next explores the concept of professionalism, and the importance of a public service orientation. The essay considers sociological explanations for the importance of service to the professions and, more generally, to well-being overall. It then explores the psychological explanations for the relationship between service and well-being for the legal profession, given the challenges unique to the profession. In light of these challenges, this essay suggests that a renewed emphasis on public service is vital in both law school and within the practicing bar to foster and encourage the well-being of the profession.

I. LAWYERS IN A STATE OF CRISIS

In a recent CNN article titled “Why Are Lawyers Killing Themselves?”⁸ Rosa Flores and Rose Marie Arce revealed that “[l]awyers ranked fourth when the proportion of suicides in that profession is compared to suicides in all other occupations in the study population (adjusted for age).”⁹ The authors explored stresses associated with law practice that, while similar in some ways to pressure in other professions or vocations, include aspects that are unique to the legal profession.¹⁰ In addition to practice-related stress, lawyers may share certain internal attributes that predispose members of the profession to depression.

There is ample evidence of the prevalence of depression, substance abuse, and suicide within the legal profession. With regard to depression, Susan Daicoff demonstrates that “[a]bout 19% of attorneys reports clinically

6. This essay is adapted in part from a forthcoming article. See Melissa H. Weresh, *Service: A Prescription for the Lost Lawyer*, 2014 J. PROF. LAW. 43 (2014).

7. Rosa Flores & Rose Marie Arce, *Why Are Lawyers Killing Themselves?*, CNN U.S. (Jan. 20, 2014, 2:42 PM), <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>.

8. Flores & Arce, *supra* note 7.

9. *Id.*

10. *Id.* The article quotes one lawyer’s depiction of law practice stress:

“A lawyer has conflict. He’s got his clients, he’s got other lawyers, he’s got the opposition lawyers, he’s got insurance companies, judges, jurors, and he’s got the bar association,” said [one lawyer], who has faced disciplinary charges himself. “They will take the most minor little thing. And they will turn it into a problem for a lawyer.”

Id.

significant levels of depression. About three to 9% of adults in Western civilized countries typically reports depression of this severity. Thus the incidence of depression among attorneys is roughly twice what one would find in the general adult population.”¹¹ She also emphasizes the degree of the problem, noting that “[t]his is not simply the blues or transient sadness, but is a level of depression warranting psychological or psychiatric intervention.”¹² Daicoff also substantiates higher levels of alcoholism¹³ and general psychological distress among lawyers.¹⁴

Some studies point to external, environmental burdens associated with law practice,¹⁵ such as the workload, financial strain, and adversarial atmosphere of law practice. Others emphasize internal traits or characteristics unique to the legal profession,¹⁶ such as their propensity to be perfectionistic, competitive, and extrinsically motivated. These categories are explored below.

A. External Pressure of Law Practice

Law practice is uniquely stressful. As one author observed, “although lawyers didn’t invent stress, they improved upon it.”¹⁷ In addressing why lawyers suffer disproportionately from depression, Patrick Schiltz considered a study that concluded, “researchers did not know whether lawyers were depressed because ‘persons at high risk for major depressive disorder’ are attracted to the legal profession or because practicing law ‘causes or precipitates depression.’ They just knew that, whatever the reason, lawyers were depressed.”¹⁸ Schiltz evaluated the external pressures associated with

11. Susan Daicoff, *Lawyer, Be Thyself: An Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decisionmaking Preference, and Lawyer Wellbeing*, 16 VA. J. SOC. POL’Y & L. 87, 93–94 (2008) (citations omitted).

12. *Id.*

13. *Id.* at 96–98 (“There are at least four published studies of alcoholism among lawyers.”).

14. *Id.* at 98–101.

15. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52 VAND. L. REV. 871, 895–906 (1999).

16. See, e.g., Susan Daicoff, *Articles Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1390 (1997) [hereinafter Daicoff, *Know Thyself*].

17. Brent Hale, *Why Are So Many Lawyers Depressed?*, UTAH B.J., Feb. 2008, at 16.

18. Schiltz, *supra* note 15, at 874. Schiltz reveals the results of one study:

In 1990, researchers affiliated with Johns Hopkins University studied the prevalence of major depressive disorder (“MDD”) across 104 occupations. They discovered that, although only about 3% to 5% of the general population suffers from MDD, the prevalence of MDD exceeds 10% in five occupations: data-entry keyers, computer equipment operators, typists, pre-kindergarten and special education teachers, and lawyers. When the results were adjusted for age, gender, ed-

law practice and pointed to three forces: the hours, the money, and the “game.”¹⁹ These aspects can be more broadly considered as the workload associated with law practice, financial pressure, the competitive and adversarial nature of law practice, and the perception of some lawyers that they have limited control over decisions.

1. *Workload*

Working long hours is stressful and isolating, increasing the likelihood that lawyers will become depressed. In terms of the substantial workload associated with law practice, Schiltz explained,

[i]n every study of the career satisfaction of lawyers of which I am aware, in every book or article about the woes of the legal profession that I have read, and in every conversation about life as a practicing lawyer that I have heard, lawyers complain about the long hours they have to work.²⁰

The workload results in isolation. Schiltz explains, “the single biggest complaint among attorneys is increasingly long workdays with decreasing time for personal and family life[,]’ . . . [and] about being ‘asked not to dedicate, but to sacrifice their lives to the firm.’”²¹ Others have reached a similar conclusion: “The sheer number of hours many lawyers are forced to work makes it extremely difficult for them to find balance in their personal and professional lives.”²²

Working long hours is also necessitated by other aspects of law practice, including increased reliance on technology and the complexity and depth of legal work.²³ “[N]ew technology creates an unrelenting and faster work pace. Also, the law is overwhelmingly complex today. Changing legal

ucation, and race/ethnic background to determine to what extent those in each occupation were more depressed than others who shared their most important sociodemographic traits, only three occupations were discovered to have statistically significant elevations of MDD: lawyers, pre-kindergarten and special education teachers, and secretaries. Lawyers topped the list, suffering from MDD at a rate 3.6 times higher than non-lawyers who shared their key sociodemographic traits.

Id. (citations omitted).

19. *Id.* at 888–906.

20. *Id.* at 889 (citations omitted).

21. *Id.* at 889–90 (citations omitted).

22. Hale, *supra* note 17, at 16 (“The ABA has reported that the desire for more time to meet personal and family needs is one of the major reasons lawyers experience burnout and consider leaving the legal profession.”).

23. Joan E. Mounteer, *Depression Among Lawyers*, COLO. LAW., Jan. 2004 at 35, 36 (indicating that attorneys work long hours due to technological changes and complex legal questions).

standards make it difficult to know how to advise clients, and courts render so many decisions that it is not easy to understand what the law actually is.”²⁴

The excessive workload associated with law practice can also be isolating. As one author observes, “the increase in the number of lawyers likely has led to increased competition *and diminishing personal relationships with other lawyers*.”²⁵ Thus, the stress and pressure associated with long hours, together with the isolating features of law practice, have a harmful effect on lawyer well-being.

2. *Financial Strain*

The financial strain of law practice also takes a toll on lawyer well-being. For recent graduates, the burden of law school debt has been widely criticized. In *Law School Debt and the Practice of Law*, the Committee on Legal Education and Admission to the Bar of the New York State Bar Association observed that “financial pressures have been identified as contributing to transgressions of ethical proscriptions and as contributing to the disturbing erosion of professionalism in the practice of law.”²⁶ One federal judge reflected, “[t]he personal, financial and professional pressures new lawyers now face are unprecedented in my experience. I graduated law school debt free. In contrast, many of our new bar members are burdened with crushing debt. This economic burden forces many to make choices driven largely by economic circumstances.”²⁷

Schiltz posits that one reason lawyers may work too much is because of the money.²⁸ It can (or used to be) lucrative, albeit stressful, to bill considerable hours.²⁹ In today’s economic climate, working long hours may not be the result of greed, but a consequence of survival. As some authors have

24. *Id.* (citations omitted).

25. *Id.* (emphasis added).

26. New York State Bar Association Committee on Legal Education and Admission to the Bar, *Law School Debt and the Practice of Law*, at 2 (citing Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 SETON HALL L. REV. 1405, 1419 (1999); Melvin Hirshman, *BEWARE! Examples of Conduct Which Will Invite the Attorney Grievance Commission to Inquire and/or Seek Further Investigation*, MD. B.J., Mar./Apr. 2001, at 59 (listing “Financial problems that affect one’s practice”)), available at <http://www.nycbar.org/pdf/report/lawSchoolDebt.pdf>.

27. William F. Downes, *The Indispensable Profession*, WYO. LAW., Apr. 2012, at 24, 26 (“This new generation of lawyers is as talented as any which preceded it, but they are in trouble. We may not be able to help pay off their loans, but perhaps we can offer advice about managing personal finances.”).

28. Schiltz, *supra* note 15, at 896 (stating that money is the reason lawyers work so much).

29. *Id.* at 895–903 (“In one sense, the answer to the question of why so many lawyers work so much is easy: It’s the money, stupid.”).

observed, the financial strain of keeping a law practice afloat can contribute to stress and depression.³⁰ “Trying to market a practice in a faltering economy while supporting individual needs, and possibly the needs of a family, can cause attorneys to take on more responsibility than they can handle. This can then become a breeding ground for depression.”³¹

Moreover, Schiltz identifies a relationship between the external forces of time and money, one that he characterizes as the “game.”³² Given the current economic climate of the profession, these observations may apply more specifically to lawyers in large, private practice firms. Nonetheless, Schiltz questions, “Why do you suppose sixty year old lawyers with millions of dollars in the bank still bill 2200 hours per year?,” concluding that “[i]t is not because these lawyers need the money.”³³ Schiltz asserts that “[t]hese lawyers have spent their entire lives competing against others and measuring their worth by how well they do in the competitions. And now that they are working in a law firm, money is the way they keep score.”³⁴

3. *Adversarial Atmosphere*

Law practice is uniquely challenging in its adversarial and competitive nature, which places additional pressure on lawyers. “Even a cursory glance at the real world problems of lawyering highlights just how stressful the fast-paced, demanding life of a lawyer can be. The legal profession is often characterized as aggressive, adversarial, and competitive. Lawyers and judges are notorious for working excessive hours throughout their professional lives.”³⁵

Flores and Arce focused on the adversarial nature of law practice as contributing to depression and stress.³⁶ They observe, however, that while “[t]here are a lot of high stress professions,”³⁷ law practice is somewhat unique. Physicians, for example, have stress, but they do not perform in an adversarial environment. “[W]hen the surgeon goes into the surgical suite to perform his surgery, they don’t send another physician in to try to kill the

30. Richard J. Kay & Nathan M. Comerford, *Help Me, I’m Depressed: A Look at the Definition of Depression and Resistance to Treatment among Lawyers and Judges*, MICH. B.J., Sept. 2009, at 54.

31. *Id.* at 55.

32. Schiltz, *supra* note 15, at 903–906.

33. *Id.* at 906.

34. *Id.* (“Money is what tells them if they’re more successful than the lawyer in the next office—or in the next office building—or in the next town. If a lawyer’s life is dominated by the game—and if his success in the game is measured by money—then his life is dominated by money. For many, many lawyers, it’s that simple.”).

35. Hale, *supra* note 17, at 16.

36. Flores & Arce, *supra* note 7.

37. *Id.*

patient. You know, they're all on the same team trying to do one job. In the legal profession, adversity is the nature of our game."³⁸

The adversarial system also represents a zero-sum game. "A zero-sum game is a familiar occurrence. It is an endeavor in which the net result is zero. For every gain by one side, there is a counterbalancing loss by the other."³⁹ This is another source of lawyer stress and dissatisfaction.

"Lawyers are trained to be aggressive and competitive precisely because they must win the litigation game. This training, because it is fueled by negative emotions, can be a source of lawyer demoralization"⁴⁰ The zero-sum-game aspect, with its clear-cut winners and losers, places additional burdens on attorneys. "When the practice of law is tied up with a large number of zero-sum games, it will produce predictable emotional consequences for the practitioner, who will be anxious, angry and sad much of his professional life."⁴¹

In another article addressing lawyer suicides, author Andrew Wolfson described lawyers as "[b]roken-hearted idealists."⁴² The competitive, adversarial atmosphere does not always pay off. Wolfson notes that lawyers "learn that justice is not always done. Innocent people are abused and some go to prison. People guilty of terrible wrongs go free They worry that all the lost hours and missed holidays with family and friends . . . do not matter."⁴³

4. *Perception of Low Decision Latitude*

The psychological perception of low decision latitude, coupled with the high-pressure environment of law practice, may also contribute to lawyer stress and dissatisfaction. "Decision latitude refers to the number of choices one has or, as it turns out, one believes one has. Workers in occupations that involve little or no control are at risk for depression and for poor physical

38. *Id.*

39. Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 *CARDOZO L. REV.* 33, 46 (2001).

40. *Id.* at 47 (questioning whether "the single-minded drive toward winning the competition . . . will make these young lawyers not only less useful citizens . . . but also less good as lawyers, less sympathetic to other people's troubles, and less valuable to their clients").

41. *Id.*

42. Andrew Wolfson, *Rash of Kentucky Lawyer Suicides Concerns Colleagues: Varied Reasons Cited for Deaths in Recent Years; Bar President Urges Lawyers to Watch out for Each Other*, *THE COURIER-JOURNAL* (June 3, 2013), available at <http://www.courier-journal.com/article/20130602/NEWS01/306020065/Rash-of-Kentucky-lawyer-suicides-concerns-colleagues>.

43. Wolfson, *supra* note 42 ("[Lawyers] become like a weak-kneed boxer in the 15th round. They keep flailing away. But they lose purpose. They lose hope.").

health.”⁴⁴ Studying the relationship between decision latitude and high pressure environments, researchers found that individuals with “high job demand combined with low decision latitude . . . had a much higher incidence of coronary disease and depression.”⁴⁵ The study revealed that junior associates fall into this situation and, coupled with the isolation of practice, they may be more prone to depression and dissatisfaction.⁴⁶

Thus, the crushing workload, the financial strain, and the competitive, adversarial environment that enhances the perception of low decision latitude together may constitute external pressures associated with law practice that contribute to lawyer dissatisfaction and depression.

B. Internal Traits of Lawyers

In addition to the external pressures of law practice, internal attributes that are distinctive to the legal population may impact lawyer dissatisfaction and depression. Many lawyers can be characterized as perfectionistic, competitive, and extrinsically motivated. These traits may distinguish many lawyers and may make them more prone to depression and suicide.

1. Perfectionistic

There are certain stereotypical characteristics that distinguish lawyers. Susan Daicoff asserts, “[t]he lawyer stereotype is to some degree consistent with the empirical research on lawyer attributes. Lawyers are likely to be more achievement-oriented, more aggressive, and more competitive than other professionals and people in general.”⁴⁷ Noting that judges and lawyers tend to “hold themselves to a higher standard,” one author explained, “[s]imilar to health care professionals, many judges and lawyers go into

44. Seligman et al., *supra* note 39, at 41–42 (citations omitted).

45. *Id.* at 42.

46. *Id.* (citations omitted). The authors observe that:

Associates often have little voice or control over their work, only limited contact with their superiors, and virtually no client contact. Instead, for at least the first few years of practice, many remain cloistered and isolated in a library (or behind a computer screen), researching and drafting memos.

In these high-pressure, low decision latitude positions, the associates are likely candidates for negative health effects, such as higher rates of heart disease; and for higher divorce rates. These same associates are, not surprisingly, candidates for early departure from law firms; they are therefore often the object of “retention bonuses.” Not surprisingly, many young lawyers who do leave firms early choose alternative legal careers, such as legal aid or assistant district attorney, where the pay is considerably lower but the decision latitude is considerably greater.

Id. (citations omitted).

47. Daicoff, *Know Thyself*, *supra* note 16, at 1390.

their respective fields in an attempt to help others and to make a difference in society.”⁴⁸ But the lawyer’s responsibility to counsel clients can be overwhelming: “Sometimes, the pressure to provide the right answers or to be the pinnacle of morality can cause emotional strife. This may turn into depression for lawyers and judges”⁴⁹

2. *Competitive*

Similarly, addressing the high rate of suicide and depression among lawyers, the director of the Washington-based American Association of Suicidology noted that “the competitiveness and perfectionism that make good lawyers—and the lack of fulfillment many lawyers feel in practicing law—put them at high risk of alcoholism, drug use, depression and suicide.”⁵⁰ Daicoff further reveals that “lawyers’ needs for achievement and their competitiveness can cause workaholism and perfectionism.”⁵¹ Daicoff observes that “[i]n law practice, these traits may easily become maladaptive.”⁵² While “workaholism and perfectionism . . . are at first rewarded by professional and financial success, thus satisfying lawyers’ drives for achievement, dominance, money, and prestige[,] [t]hese behaviors can, when used in the extreme, however, result[] in stress, interpersonal difficulties, and substance abuse.”⁵³

3. *Extrinsically Motivated*

The motivation orientation of lawyers may also impact well-being. Numerous studies indicate,

that pursuit of the “extrinsic” goals which are common in Western culture, and which are embedded particularly deep in the culture of most law schools and law firms, does not produce a good life and in fact can very well undermine it. These studies consistently demonstrate that, to the extent such goals are primary in a person’s life, she will experience decreased life satisfaction compared to people with other primary goals.⁵⁴

48. Kay & Comerford, *supra* note 30, at 55.

49. *Id.*

50. Wolfson, *supra* note 42.

51. Daicoff, *Know Thyself*, *supra* note 16, at 1418.

52. *Id.*

53. *Id.* (citations omitted).

54. Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 121 (2002) [hereinafter Krieger, *Institutional Denial*] (“Subjects who identified money, image, or influence as important for life satisfaction consistently experienced the *lowest* well-

Ken Sheldon and Lawrence Krieger have studied the degree to which lawyers tend to be extrinsically motivated.⁵⁵ This may not be an attribute characteristic of lawyers, but one that develops as a result of the law school or practice environment. Sheldon and Krieger measured the values and motivation of students as they entered law school, and then again later during their legal education.⁵⁶ They noted, “arriving students showed healthy well-being, values, and motives—stronger, in fact, than a large undergraduate sample. Within six months, however, the law students experienced marked decreases in well-being and life satisfaction and marked increases in depression, negative affect, and physical symptoms.”⁵⁷ More importantly, “their overall motivation and valuing patterns shifted in undesirable (external/extrinsic) directions, with particular increases in the valuing of image and appearance and decreases in altruism and community orientation.”⁵⁸ Those changes were directly and negatively related to diminished well-being: “These changes predict continuing decreases in life satisfaction and happiness, and they are fully consistent with the reports of distress, dissatisfaction, and loss of ethics and values among practicing lawyers.”⁵⁹

Sheldon and Krieger concluded that “the problems arising in law students are largely attributable to the process of legal education, [a conclusion that] has also been reached by psychologists studying another law school.”⁶⁰ Thus, this attribute might be characterized as an external pressure beginning in law school that impacts lawyer satisfaction. Nonetheless, to the extent a lawyer’s motivation orientation is not a characteristic of the practice setting, albeit perhaps influenced by it, it is treated here as an internal characteristic related to dissatisfaction to the extent it characterizes the motivational mindset of many lawyers who are in practice.

In sum, lawyers may be more susceptible to depression and suicide because of external forces unique to the practice of law, including a crushing workload, financial strain, and an overly adversarial atmosphere. As a group, law students and lawyers may be predisposed to depression based on certain attributes within the cohort, including perfectionism, competitive nature, and extrinsic motivation. Having a backdrop on the state of lawyer well-being and some of the causes of unhappiness, the discussion now turns

being in the study. By contrast, persons whose primary goal content was ‘intrinsic’—toward personal growth, intimacy, and community integration—experienced significantly greater well-being.”).

55. See generally Lawrence S. Krieger, *The Most Ethical of People, The Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation*, 8 U. ST. THOMAS L.J. 168 (2011) [hereinafter Krieger, *Most Ethical*].

56. Krieger, *Institutional Denial*, *supra* note 54, at 122.

57. *Id.*

58. *Id.* at 123.

59. *Id.*

60. *Id.*

to the role of professionalism and the potential relationship between the public service orientation of professionalism and the depression crisis in the legal academy.

II. WHY IS A PUBLIC SERVICE ORIENTATION ESSENTIAL TO PROFESSIONALISM?

This call for papers related broadly to the relationship between professionalism and well-being. It is therefore helpful to first propose a definition of professionalism, and then explore the relationship between professionalism and well-being. The focus of this essay is on one particular component of professionalism—a public service orientation—and its relationship to well-being.

A. What Is Professionalism?

The concept of “professionalism” has been broadly explored, but many scholars have acknowledged that the term is difficult to define.⁶¹ Some authors reject the possibility of an adequate definition, concluding that lawyer professionalism is “like pornography, hard to define, but easy to recognize.”⁶² Others assert, “legal professionalism is . . . a moving target.”⁶³ While it may be difficult to articulate an absolute definition for professionalism, I maintain that a public service orientation, used here to encompass the altruistic aspect of the lawyer’s obligation to elevate the public good over

61. Timothy P. Terrell & James H. Wildman, Essay, *Rethinking “Professionalism,”* 41 EMORY L.J. 403, 419 (1992). The authors outline the problem as follows:

Recent attempts to define the demands of legal professionalism have often been unsatisfactory because they reflect one of two extremes. One reduces professionalism to the level of professional etiquette—pleasantness, returning telephone calls, and the like—so that it appears to lack any real moral content at all. The other vehemently gives professionalism moral content, but reduces it to a single, politically biased value—helping the poor. Although both these approaches contain a kernel of truth, they are far too limited to be the basis for a sustained analysis of our professional heritage.

Id.

62. Peter A. Joy, *What We Talk About When We Talk About Professionalism: A Review of Lawyers’ Ideals/Lawyers’ Practices: Transformations in the American Legal Profession*, 7 GEO. J. LEGAL ETHICS 987, 997 (1994) (book review) (quoting Peter M. Brown, *Professional Responsibility: Has the Rise of Megafirms Endangered Professionalism?* 75 A.B.A. J. 38, 38 (1989) (editorial comment)).

63. Terrell & Wildman, *supra* note 61, at 408. Notwithstanding the challenge of defining professionalism, the authors emphasize that “the lawyer’s special pledge is that he or she will help the legal system remain the centerpiece of our fragile sense of community, help it continue to function within our culture as the crucial mechanism for social cohesion and stability.” *Id.* at 423.

her own self-interest, as well as a commitment to contribute to the public good through some form of volunteerism, is common to most articulations.

In *Professionalism Clearly Defined*, Neil Hamilton addressed the ambiguity in defining professionalism.⁶⁴ Hamilton stressed that a clear definition of professionalism is essential in order for the profession to properly educate, socialize, and assess its members.⁶⁵ Synthesizing modern scholarship on professionalism, he offered five principles of professionalism, arguing that professionalism means that each lawyer must:

1. Continue[] to grow in personal conscience over his or her career;
2. Agree[] to comply with the ethics of duty—the minimum standards for the lawyer’s professional skills and ethical conduct set by the Rules;

64. See Neil Hamilton, *Professionalism Clearly Defined*, 18 NO. 4 PROF. LAW. 4, 5 (2008) [hereinafter Hamilton, *Clearly Defined*].

65. See *id.* at 6. Hamilton outlined the following reasons why a clear definition of professionalism is important:

1. Without the guidance of clear principles of professionalism, the profession’s current socialization of law students and practicing lawyers excessively emphasizes just the law of lawyering defined as the professional rules and the law of malpractice.
2. If the floor of the law of lawyering is the dominant focus of the socialization of the profession, then members of the profession will tend to understand ethical professional identity as simply compliance with the rules and avoidance of malpractice. For the vast spectrum of lawyer decisions with ethical dimensions beyond simple rule compliance or malpractice avoidance, extrinsic values relating to ranking systems of grades, income, or prestige will tend to dominate lawyer decision making rather than intrinsic values relating to the principles of professionalism.
3. Confusion about the meaning of professionalism undermines the public’s trust that the profession and each individual lawyer are serious about meeting their obligations under the social contract. A clear and succinct definition helps the public understand what goals the profession is trying to achieve with the socialization of its members.
4. Confusion about the meaning of professionalism much reduces the possibility that the concept will actually influence law student or lawyer conduct. Students and practicing lawyers will give more attention and energy to clear expectations that are clearly stated and rigorously evaluated.
5. With a clear definition of professionalism, legal education and the bar could move toward assessment of which pedagogies are most effective to help students and practicing lawyers to internalize and live the elements of the definition.
6. Assessment of professionalism in general, whether directed at effectiveness of instruction or whether individual members of the profession are internalizing and living the elements of the definition, will give the profession more credibility with the public.

Id. (citation omitted).

3. Strive[] to realize, over a career, the ethics of aspiration—the core values and ideals of the profession including internalizing the highest standards for the lawyer’s professional skills and ethical conduct;
4. Agree[] both to hold other lawyers accountable for meeting the minimum standards set forth in the Rules and to encourage them to realize core values and ideals of the profession; and
5. Agree[] to act as a fiduciary where his or her self-interest is overbalanced by devotion to serving the client and the public good in the profession’s area of responsibility: justice.
 - a. Devote[] professional time to serve the public good, particularly by representing pro bono clients; and
 - b. Undertake[] a continuing reflective engagement, over a career, on the relative importance of income and wealth in light of the other principles of professionalism.⁶⁶

The altruism and commitment to public service noted in the fifth principle is a common component of most offered definitions of professionalism. Hamilton is not alone in culling the public service ideology as essential to professionalism. “Although commentators have offered varied descriptions of professionalism, these definitions possess three common elements: inaccessible expertise, altruistic commitment to the public good, and autonomy.”⁶⁷ Service, therefore, is a commonly understood component of professionalism. But why is that the case? The sociology of the professions provides one possible explanation.

B. Service as a Distinguishing Feature of Sociology of the Professions

The public service orientation that distinguishes professions from other occupational groups can be defended by sociological theories. Because sociologists study social behavior and social institutions, an examination of how sociologists have explained the public service orientation of the professions may be useful to demonstrate why public service ideology is a distinguishing feature of professions as opposed to other occupational groups. While sociological schools of thought differ in their explanation of the significance of a public service orientation to the profession, they agree that it is an essential feature.

Sociologists recognize that “professions are occupations with special power and prestige. Society grants these rewards because professions have

66. *Id.* at 8 (citations omitted).

67. Eli Wald & Russell G. Pearce, *Making Good Lawyers*, 9 U. ST. THOMAS L.J. 403, 408 (2011) (citations omitted).

special competence in esoteric bodies of knowledge linked to central needs and values of the social system, and because professions are devoted to the service of the public, above and beyond material incentives.”⁶⁸ Adherents to three sociological paradigms—structural functionalism, power approach interactionist, and the power paradigm⁶⁹—agree that the public service orientation is a defining feature of the professions.⁷⁰

Structural functional sociologists attempt to define and classify occupations by employing “a ‘traits’ approach—‘listing the characteristics of an ideal-typical profession against which actual examples of occupational groups could then be assessed as more or less professional.’”⁷¹ Structural functionalists identify a commitment to public service as one trait defining the professions.

Sociologist Émile Durkheim, a structural functionalist, indicated that “[e]thics must be the concern of sufficiently cohesive self-regulating occupations, which teach their members to look away from their own self-interest, and rather, toward the whole community, and thus develop the general disinterestedness on which moral activity is based.”⁷² Similarly, structural functionalist Talcott Parsons “characterized professions as ‘collectivity-oriented’ and as having norms that are not based on the market,” in contrast with other occupational groups motivated by self-interest.⁷³ Finally, William J. Goode, another structural functionalist, “identified two ‘core characteristics’ of professions from which other characteristics are derived;

68. Magali Sarfetti Larson, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS*, at x (1977).

69. See Debra Lyn Bassett, *Redefining the “Public” Profession*, 36 RUTGERS L.J. 721, 730 (2005) (“Among the prominent approaches to the study of professions are the functionalist approach, the power approach, and the professional project approach, which have common and overlapping elements.”).

70. “Sociologists studying a range of professions have identified an element of ‘public service’ as a central professional feature. Professions themselves generally claim self-regulatory authority in exchange for performing a social role as guardian of the public good.” Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 HARV. L. & POL’Y REV. 83, 86–87 (2013) (citations omitted).

71. Bassett, *supra* note 69, at 730 (citations omitted).

72. Christine Parker & Tanina Rostain, *Law Firms, Global Capital, and the Sociological Imagination*, 80 FORDHAM L. REV. 2347, 2356 (2012) (citing Émile Durkheim, *PROFESSIONAL ETHICS AND CIVIC MORALS* 23–24 (Cornelia Brookfield trans., 1957)).

73. William T. Gallagher, *Ideologies of Professionalism and the Politics of Self-Regulation in the California State Bar*, 22 PEPP. L. REV. 485, 495 (1995) (citing Talcott Parsons, *A Sociologist Looks at the Legal Profession*, in *ESSAYS IN SOCIOLOGICAL THEORY* 370, 375 n.2 (1964)).

these core characteristics are ‘a prolonged specialized training in a body of abstract knowledge, and a collectivity or service orientation.’”⁷⁴

Interactionists rejected the approach of structural functionalists, questioning instead whether the focus should be not on traits that distinguish professions, but rather “‘on the self-regulated nature of the professions, which reflected professional autonomy and power.’”⁷⁵ Interactionists identified the importance of the public service ideology in terms of the social contract professions have with the public, and the professions’ authority to self-regulate. Power approach interactionist Andrew Abbott explained, “professions and society enter into an implicit quid pro quo, under which professions obtain insulation from market or regulatory pressures in exchange for an agreement to practice their craft in the public interest.”⁷⁶

Magali Sarfatti Larson is credited with the professionalism project paradigm, which arose out of and is related to the power and interactionist paradigms.⁷⁷ Larson asserted that “the rise of professions depended . . . largely on the establishment of social credit, [so the professions] had to appeal to general ideological structures.”⁷⁸ “[T]he fact that professionals earned their living from this work, and operated in markets, constantly threatened to undermine their claim to integrity via the taint of commercial self-interest.”⁷⁹ In Larson’s view, “[a]nti-market and anti-capitalist principles were incorporated in the professions’ task of organizing for a market because they were elements which supported social credit and the public’s belief in professional ethicality.”⁸⁰ Thus, the sociology of the professions across different socio-

74. Bassett, *supra* note 69, at 736 (quoting William J. Goode, *Encroachment, Charlatanism, and the Emerging Profession: Psychology, Medicine, and Sociology*, 25 AM. SOC. REV. 902, 903 (1960)).

75. *Id.* at 730–31 (citations omitted). See also MACDONALD, THE SOCIOLOGY OF THE PROFESSION 4 (1995) (“[T]he so-called power approach included quite a range of emphases from different authors and came close to being a mere label to refer to all those who had abandoned the earlier [structuralist] orthodoxy.”).

76. W. Bradley Wendel, *Should Law Schools Teach Professional Duties, Professional Virtues, or Something Else? A Critique of the Carnegie Report on Educating Lawyers*, 9 U. ST. THOMAS L.J. 497, 531 (2011).

77. See Bassett, *supra* note 69, at 727–29. Debra Bassett explains:

The shift from the functionalist to the power approach arguably substituted a single trait analysis for the previous multiple trait analysis. And if self-regulation is a method for gaining power, then perhaps, as Rothman suggested, “phenomena that once were used to define professions have come to be recognized as resources employed in the struggle to extend prerogatives and rewards in the labor market.”

Bassett, *supra* note 69, at 732–33 (citing Robert A. Rothman, *Deprofessionalization: The Case of Law in America*, 11 WORK & OCCUPATIONS 183, 184 (1984)).

78. Larson, *supra* note 68, at 56.

79. Nicola Lacey, *The Way We Lived Then: The Legal Profession and the 19th-Century Novel*, 33 SYDNEY L. REV. 599, 614 (2011).

80. Larson, *supra* note 68, at 63.

logical paradigms demonstrates a public service ideology as a distinguishing feature of the professions.

III. WHY (NOT) SERVICE?

As explored above, lawyer depression has been attributed to a number of external and internal pressures.⁸¹ An increased emphasis on public service ideology may be beneficial in responding to these pressures. First, as noted above, the reliance on technology and sheer workload of practice can be isolating, enhancing depression.⁸² A public service orientation, in contrast, sends the lawyer literally and figuratively outside herself, connecting with other people. Second, law practice tends to be incredibly competitive and lawyers have been described as adversarial.⁸³ The adversarial nature of law practice also represents a zero-sum game.⁸⁴ Public service, in contrast, is often collaborative and cooperative. Finally, law practice can appear to limit the decision-making dimension, and lawyers are often motivated by extrinsic forces.⁸⁵ In contrast, the benefits of public service are intrinsic, and the opportunities to engage in public service are varied, providing lawyers with control over how to expend their energies.

A. Positive Relationship Between Service and Well-Being

“Happiness research is unambiguous in showing that students who volunteer to help people in need are generally made happier by the experience.”⁸⁶ There are many medical and psychological studies that demonstrate a positive relationship between well-being and giving behavior, defined in ways ranging from a giving perspective, to service, to volunteerism, to altruism. Medical research has established a positive relationship between volunteering and well-being.⁸⁷ Moreover, psychologists have identified “the need

81. *See supra* Part I.

82. *See supra* Part I.A.1.

83. *See supra* Part I.A.1.

84. *See supra* Part I.A.1.

85. *See supra* Parts I.A.3, I.B.3.

86. Nancy Levit & Douglas O. Linder, *Happy Law Students, Happy Lawyers*©, 58 SYRACUSE L. REV. 351, 369 (2008).

87. *See* Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 55 (2001) (“[F]requent volunteering has significant health benefits, ranging from decreasing depression to alleviating headaches and back pain to increasing longevity.”) (citing Allan Luks & Peggy Payne, *THE HEALING POWER OF DOING GOOD: THE HEALTH AND SPIRITUAL BENEFITS OF HELPING OTHERS* (Fawcett Columbine, 1991)). *See generally* Stephen G. Post, *Altruism, Happiness, and Health: It's Good to Be Good*, 12 INT'L J. BEHAV. MED. 66 (2005).

for nurturing social relationships or civic participation” as attributes of a happy life.⁸⁸

Service or altruism may also specifically have an established, positive impact on mental health.⁸⁹ One study explains that “[w]ell-being consists of feeling hopeful, happy, and good about oneself, as well as energetic and connected to others.”⁹⁰ The study demonstrated a positive relationship between the well-being of retirees who engaged in volunteer work.⁹¹ “Volunteers scored significantly higher in life satisfaction and will to live and had fewer symptoms of depression, anxiety, and somatization. Because there were no differences in demographic and other background variables between the groups, the researchers concluded that volunteer activity helped explain these mental health benefits.”⁹² In another study, researchers confirmed “that volunteering is highly associated with greater health and happiness, while other forms of altruistic behavior, such as donations of money or donations of blood, are not.”⁹³

There does appear to be a positive relationship between altruism, or giving behavior, and well-being. In terms of some of the stresses related to law practice,

[a]ltruism results in deeper and more positive social integration, distraction from personal problems and the anxiety of self-preoccupation, enhanced meaning and purpose as related to well-being, a more active lifestyle that counters cultural pressures toward isolated passivity, and the presence of positive emotions such as kindness that displace harmful negative emotional states.⁹⁴

88. Richard Delgado & Jean Stefancic, *Can Lawyers Find Happiness*, 58 SYRACUSE L. REV. 241, 249–50 (2008) (citing Robert N. Bellah et al., *HABITS OF THE HEART* 167-213 (1985) and Peter H. Huang & Jeremy A. Blumenthal, *Positive Law and Policy*, in *ENCYCLOPEDIA OF POSITIVE PSYCHOLOGY* 730 (Shane J. Lopez ed., 2009)).

89. John Wilson & Marc Musick, *The Effects of Volunteering on the Volunteer*, 62 L. & CONTEMP. PROBS. 141, 150 (1999) (“[V]arious studies of the effect of volunteering on mortality . . . all point in the same direction—that volunteer work does help people live longer.”).

90. Post, *supra* note 87, at 68.

91. *Id.*

92. *Id.*

93. Francesca Borgonovi, *Doing Well by Doing Good. The Relationship Between Formal Volunteering and Self-reported Health and Happiness*, 66 SOC. SCI. & MED. 2321, 2331 (June 2008). Exploring whether there was a causal relationship, the authors conclude that

[T]he positive association that exists between volunteering and health is not causal and is most likely to be driven by reverse causality, self-selection and omitted variable bias. On the other hand, we suggest that at least in the case of religious volunteering the relationship between volunteering and happiness is the result of a positive causal effect of volunteering.

Id.

94. Post, *supra* note 87, at 70 (concluding that “[i]t is entirely plausible, then, to assert that altruism enhances mental and physical health”).

The foregoing establishes a positive connection between giving behavior (altruism and service) and well-being. There may be also be aspects of altruistic behavior or a public service orientation that are particularly beneficial in responding to the external and internal stresses that make lawyers more prone to depression.

B. Public Service Ideology as a Uniquely Well-Suited Response to Lawyer Depression

As noted above, lawyer depression has been attributed above to a number of external and internal pressures.⁹⁵ An increased emphasis on public service ideology may be beneficial in responding to the isolating features of law practice; the competitive atmosphere and zero-sum game qualities of law practice; and the perceived low decision latitude and extrinsic motivation focus of lawyers.

1. *Isolation*

The isolating nature of law practice can contribute to lawyer depression. Law practice can be isolating because of the workload and adversarial nature, and because technology has made interaction among peers increasingly sparse.⁹⁶ As noted in the Wall Street Journal law blog,

attorneys have become more isolated from their peers. If you are a solo or small firm practitioner, practicing law can be a very lonely existence. The informal support network for attorneys no longer exists. Gone are the social bar associations and the daily luncheons where you would see your colleagues. Gone are most court appearances, along with the trips to the once vibrant courthouse libraries to research the law and mingle with your peers.⁹⁷

The fundamental need of relatedness associated with long hours has been directly linked to depression: “Depression and social alienation and isolation may also be heavy prices lawyers pay working long hours and thus not having time to spend with family and friends.”⁹⁸

95. *See supra* Parts I.A, I.B.

96. *See supra* Parts I.A.1, I.A.3.

97. Ashby Jones, *On the Isolation of Legal Practice and Suicide*, WALL ST. J. L. BLOG (Jan. 22, 2010, 4:18 PM), <http://blogs.wsj.com/law/2010/01/22/on-the-isolation-of-legal-practice-and-suicide/>.

98. Connie J.A. Beck et. al, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 48 (1995–96) (“[A] significant percentage of practicing lawyers are experiencing a variety of significant psychological distress symptoms well beyond that expected of the general population. These symptoms are directly traceable to law study and practice.”).

In contrast, as demonstrated by one study, “positive emotions may protect or distract from negative ones.”⁹⁹ With respect to the internal and external stresses of law practice noted above, the study suggests,

positive emotions (kindness, other-regarding love, compassion, etc.) enhance health by virtue of pushing aside negative ones. The generous affect that gives rise to love of humanity is usually associated with a certain delight in the affirmation of others; it seems to cast out the fear and anxiety that emerge from preoccupation with self.¹⁰⁰

Using Self Determination Theory (SDT) to demonstrate that “professionalism, well-being, and emotional health share inescapable common foundations in personal maturity, and hence, ethical and professional propensities can be gauged by measuring the core traits of psychological health,”¹⁰¹ Lawrence Krieger identified “relatedness to others as [one of] the psychological needs required for satisfying human life.”¹⁰² Moreover, the values of “helping others, and being in/building community,”¹⁰³ measured with “questions about desire to help those in need (without expectation of return), to improve the lives of others generally, and to improve society and the world,”¹⁰⁴ are values that “promote well-being and life satisfaction.”¹⁰⁵

Because depression and anxiety are predicated by lack of social support, and high levels of perceived stress,¹⁰⁶ it stands to reason that service as

99. Post, *supra* note 87, at 72.

100. *Id.*

101. Krieger, *Most Ethical*, *supra* note 55, at 170.

102. *Id.* at 171.

103. *Id.* at 172.

104. *Id.*

105. *Id.*

106. Beck et. al., *supra* note 98, at 54. With regard to depressions, the authors explain that:

Depression is predicted by high levels of anger, unsatisfactory relationship(s) (if one has a relationship) and a lack of social support. As noted above, while anger may be useful in a legal career, chances are that if it is not left at the office it will be destructive interpersonally. If anger is causing difficulties interpersonally, the lawyers may find it hard to maintain positive relationships with family and friends. This resultant lack of social support could then increase levels of depression.

. . . .

Law is a competitive and stressful profession, with constant challenges to one’s competence and feelings of self-worth. This can cause lawyers to experience paranoid ideation, which can be further validated by the fact that there are more lawyers than available legal jobs. In addition, often lawyers are expected to work many hours with little concern for their private lives. Working long hours may not leave enough time for building or maintaining relationships with family and friends and, thus, leave a person feeling a lack of social support and vulnerable to

a mechanism for social support might be beneficial. Sociological explanations for the relationship between service and well-being also focus on the aspect of social support. “The social networking hypothesis concentrates on the fact that volunteering might favor social relationships, and social networks are powerful predictors of happiness, depression, health status and mortality.”¹⁰⁷

Public service, therefore, contributes to well-being in part because it provides a mechanism for social support. Public service is likely to contribute to positive mental health because “volunteering is a form of social activity or social participation. It is well-established that social integration—‘the quantity of social ties or relationships’ a person has—yields positive mental health effects.”¹⁰⁸ Noting that a potential mitigating factor to lawyer depression is social support, one study emphasizes that a “comprehensive review of the literature found several studies that indicate a positive relation between social support and mental health,” and that “[a]lthough there is great disagreement in the literature as to the nature, function, and mechanism through which social support leads to an increased sense of well-being, there is widespread agreement that social support contributes positively to well-being.”¹⁰⁹

2. *Cooperation*

The competitive, adversarial nature of law practice, and its zero sum game predisposition, also contribute to lawyer depression. Service, in contrast, places the lawyer in a selfless, helping role. Service may therefore contribute to lawyer well-being because “volunteer work is a form of helping behavior. Providing help, even to a generalized other, as in formal volunteering, is a self-validating experience.”¹¹⁰ The sociological “social role hypothesis explains the link between volunteering and health and happiness by the fact that volunteering is an activity that is valued by society and, therefore, people engaging in volunteer labor feel useful and as a consequence report higher happiness and better health status.”¹¹¹

paranoid ideation about others. Finally, feelings of high anger can make a person suspicious of other’s motives, which can rise to paranoid ideation.

Id. (citations omitted).

107. Borgonovi, *supra* note 93, at 2331 (citation omitted) (“Traditional sociological explanations for the observed positive relationship between volunteering and health and happiness rest on either the social networking or the social role hypotheses.”).

108. Wilson & Musick, *supra* note 89, at 153.

109. Beck et. al, *supra* note 98, at 6–7 (citations omitted).

110. Wilson & Musick, *supra* note 89, at 154.

111. Borgonovi, *supra* note 93, at 2331.

Krieger addresses the impact of a service orientation, as opposed to an adversarial posture, on well-being and professionalism, in SDT's emphasis on fundamental values:

The intimacy value, like the relatedness need, results in constructive, respectful, and trusting relations with others, whether in the personal or professional sphere of life. Aspirations to help others in need and to be in community also clearly represent professional characteristics. In particular, these qualities generate a service, rather than selfish orientation. . . . Helpful community-mindedness further requires consideration of the needs of others, and tends to moderate a lawyer's adversarial behavior—contributing to a harmonious and effective professional community.¹¹²

Focusing on the adversarial process's classic example of a zero-sum game, some authors note that “[l]awyers are trained to be aggressive and competitive precisely because they must win the litigation game [but] . . . [t]his training, because it is fueled by negative emotions, can be a source of lawyer demoralization, even if it fulfills a social function.”¹¹³ They therefore posit a cooperative lawyer approach, noting “a health effect through cooperation because of its non-zero characteristics The notion of cooperation in a litigation context reinforces our views on positive health effects.”¹¹⁴ To the extent that service is not adversarial, nor does it result in a zero sum game, it may be beneficial in addressing the well-being of lawyers.

3. *Control and Motivation*

A perception of low decision latitude/lack of control, and an emphasis on extrinsic motivation, may contribute to lawyer depression. Research has demonstrated:

[T]hat extrinsic *motivations*—acting for reasons outside of oneself, such as to relieve guilt or anxiety, please others, or gain rewards—predict decreased well-being, sense of meaning, and personal integration. By contrast, intrinsic motivations—working and behaving in ways that are either inherently satisfying or that reflect strongly one's deepest convictions and beliefs—are correlated with enhanced well-being, increased meaning, and increased personal and social integration.¹¹⁵

Evaluating factors that influence attorney satisfaction, one author questions whether “those who are extrinsically motivated are inclined towards dissatisfaction because they define happiness in relation to things they don't

112. Krieger, *Most Ethical*, *supra* note 55, at 176.

113. Seligman, et. al., *supra* note 39, at 47.

114. *Id.* at 50.

115. Krieger, *Institutional Denial*, *supra* note 54, at 121 (citations omitted).

have, whereas those who are intrinsically motivated are inclined towards satisfaction because they tend to reflect gratitude for what they have.”¹¹⁶

Volunteerism and a public service ideology, in contrast, promote intrinsic motivation and give rise to the perception that the service work matters. “[V]olunteering might increase subjective well-being . . . [because it] fosters a belief in the individual that he or she can make a difference and thus enhances personal efficacy.”¹¹⁷ As one researcher notes, “volunteering might affect happiness . . . through different mechanisms related to the nature of volunteering: unpaid work that has intrinsic and non-monetary motives as its main reward. . . . [, and] volunteer work might stimulate the development of empathic emotions.”¹¹⁸ Also, because “[o]ne of the major causes of depression originates from the view that the gap is too great between where individuals are in life and where they think they should be,”¹¹⁹ the “process of volunteering itself . . . might reinforce satisfaction for what one has rather than dissatisfaction for what she lacks. . . . and in turn lead to greater happiness.”¹²⁰

I assert here that service should be encouraged generally, without mandating that it be in a particular form, such as the provision of legal services. Service and volunteerism can take place within the legal community, or within other communities that are meaningful to the lawyer. This represents a range of options and therefore wide, as opposed to low, decision latitude.

IV. CONCLUSION: THE CHICKEN OR THE EGG?

It has been established that lawyers are more prone to depression than the general population, and lawyer suicide has become an increasing concern. External stresses of law practice include a crushing workload, financial strain, and an adversarial environment. Moreover, the pressure lawyers face to be perfect, and to win in a no-sum-game adversarial environment, coupled with their extrinsic motivation and perception of low latitude control over decisions, may be characteristics of lawyers that predispose them to depression.

A public service orientation has been identified as integral to the sociology of the professions, largely because of the social contract professions

116. Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225, 271 (2011).

117. Wilson & Musick, *supra* note 89, at 154. However, the authors caution that, “[a]s is the case with physical health, it is unlikely that the effect of volunteering on mental health is uniform across all populations and at all levels and on all kinds of volunteering.” *Id.*

118. Borgonovi, *supra* note 93, at 2331.

119. Kay & Comerford, *supra* note 30, at 55.

120. Borgonovi, *supra* note 93, at 2331.

enjoy with the public. An obligation to put the public's interest over that of the individual lawyer, together with the obligation to give back in some way to the public, legitimizes the lawyer's authority to self-regulate. In addition, there is an established positive relationship between service/altruism/volunteerism and well-being. That relationship can be further explored to relate uniquely well to the external and internal pressures of law practice. As a result, while seemingly paradoxical, a renewed emphasis on the public service orientation of the profession might be one way to combat the declining well-being of lawyers.

I suggest that volunteerism by lawyers not be mandated, but rather encouraged.¹²¹ I also suggest that the form of volunteerism not be proscribed, and not be limited to legal services. Rather, there should be a more general emphasis on, and encouragement for, public service and volunteerism in law school and in law practice. Indeed, one social science study on the causal relationship between volunteerism and well-being elevates religious volunteerism as particularly beneficial to well-being.¹²² The study indicated that

the positive association that exists between volunteering and health is not causal and is most likely to be driven by reverse causality, self-selection and omitted variable bias [*but*] . . . in the case of religious volunteering the relationship between volunteering and happiness is the result of a positive causal effect of volunteering.¹²³

Notwithstanding, it would be irresponsible to fail to include some important caveats. I am not a psychologist and am in no position to prescribe a cure for depression. Even the studies linking positive mental and physical health benefits of altruism, service, and volunteerism are not dispositive.¹²⁴ Moreover, for lawyers who are already experiencing depression or other mental health problems, the additional pressure of public service could be counterproductive. One study cautions, “there are health benefits linked to helping behavior *when it is not experienced as over-whelming*.”¹²⁵

121. In this essay I do not intend to enter the mandatory vs. voluntary pro bono debate. See generally Deborah L. Rhode, *Pro Bono in Principle and Practice*, 53 J. LEGAL EDUC. 413, 423–24 (2003) (discussing advantages and disadvantages of mandatory pro bono).

122. Borgonovi, *supra* note 93, at 2331.

123. *Id.* (emphasis added).

124. See Wilson & Musick, *supra* note 89, at 152 (noting that while “various studies of the effect of volunteering on mortality . . . all point in the same direction—that volunteer work does help people live longer . . . these are aggregate patterns and cannot be taken as a prescription for longer life”).

125. Post, *supra* note 87, at 66 (emphasis added). Post concludes:

[A] strong correlation exists between the well-being, happiness, health, and longevity of people who are emotionally kind and compassionate in their charitable helping activities—as long as they are not overwhelmed, and here world view may come into play. Of course, this is a population generalization that provides

In addition to the perils of advocating volunteerism for individuals who are overwhelmed, Adam Grant, author of *Give and Take*,¹²⁶ cautions that there is a balance required to successfully help others with no motive for reciprocation. In his research, Grant identifies three professional styles of interaction: givers, takers, and matchers.¹²⁷ With these categories in mind, Grant studied the success of individuals in three fields: engineering, medicine, and sales.¹²⁸ He found that both the best and worst performers were givers.¹²⁹ Addressing what indicates “whether givers sink to the bottom or rise to the top,” Grant points to the need to strike a *balance* with regard to altruism: “failed givers are too altruistic: they sacrifice themselves to the point of burning out and allowing takers to use them. Successful givers put other people first most of the time, but they focus on helping in ways that are not at odds with their own interests.”¹³⁰

A remaining question exists with respect to causality in connection with this call for papers. Does a public service orientation—an aspect of professionalism characterized by altruism, civic-mindedness, and volunteerism—cause well-being? Some of the cited studies seem to point in this direction. Finding that “[a]ltruistic (other-regarding) emotions and behaviors are associated with greater well-being, health, and longevity,”¹³¹ Stephen Post suggests that giving behaviors should “be taught as an aspect of physical and mental health in schools and in the workplace . . . [and] even be prescribed by healthcare professionals.”¹³²

no guarantees for the individual. . . . It can be said that a generous life is a happier and healthier one. The freedom from a solipsistic life in which one relates to others only in so far as they contribute to one’s own agendas, as well as a general freedom from the narrow concerns of the self, bring us closer to our true and healthier nature, as all significant spiritual and moral traditions prescribe.

Id. at 73.

126. Adam Grant, *GIVE AND TAKE: WHY HELPING OTHERS DRIVES OUR SUCCESS* (Penguin Books 2014).

127. *About the Book*, *GIVE AND TAKE*, <http://www.giveandtake.com/Home/Book> (last visited Aug. 10, 2014). Grant explains that in professional interactions, it turns out that “most people operate as either takers, matchers, or givers. Whereas takers strive to get as much as possible from others and matchers aim to trade evenly, givers are the rare breed of people who contribute to others without expecting anything in return.” *Id.*

128. Adam Grant, *Givers and Takers - Who Are the Best Performers in the Workplace?*, *THE INDEPENDENT* (May 22, 2013), <http://www.independent.co.uk/news/business/comment/adam-grant-givers-and-takers-who-are-the-best-performers-in-the-workplace-8626318.html>.

129. *Id.*

130. *Id.*

131. Post, *supra* note 87, at 66.

132. *Id.* at 72. Post asserts that “The idea of prescribing altruism as a matter of public health is not unprecedented. The notion that there is a connection between a kindly, generous life, well-being, happiness, and health has been understood by every mother who has instructed a sullen youngster to ‘Go out and do something for someone.’” *Id.* at 72–73.

Or, is the relationship the reverse? Is well-being essential for professionalism and a developed professional identity that exemplifies the public service ideology? Some studies in professional identity formation might support this directional relationship. Lawrence Krieger attempted to “show that promoting the sources of thriving in lawyers is likely to generate increased professionalism and ethical behavior in the practicing bar, because the values, needs, and motivations that promote positive, thriving experiences correlate closely with core professional and ethical qualities.”¹³³ He explains that values are predictors of professionalism.¹³⁴

The intimacy value, like the relatedness need, results in constructive, respectful, and trusting relations with others, whether in the personal or professional sphere of life. Aspirations to help others in need and to be in community also clearly represent professional characteristics. In particular, these qualities generate a service, rather than selfish orientation.¹³⁵

“[V]alues, on their face, appear to encompass core qualities of professionalism.”¹³⁶ However, values “*must be actualized* to produce professional behavior.”¹³⁷

Krieger concludes that “[p]sychologists employing SDT have discovered and established reliable measures of an emotionally healthy, mature person, including universal needs for autonomy, relatedness, and competence; intrinsic valuing of self-improvement, intimacy, community, and altruism; and internal motivations for interest, enjoyment, and meaning.”¹³⁸ Because these sources “bear[] close, apparently *causal* relationships to ethical and professional behavior of lawyers, . . . SDT [may be] particularly well-suited to [a] continuing investigation and understanding of ethics and professionalism”¹³⁹ both by practicing lawyers and by educators seeking to have “a clearer understanding of how to best educate law students and lawyers to function as ethical professionals.”¹⁴⁰

It is beyond both the scope of this brief essay and my expertise to establish the direction of the relationship between a public service ideology and well-being. I suspect that it is not directional, but recursive. Notwithstanding some exceptions, there is substantial support for the notion that a public service orientation positively impacts well-being, and well-being reinforces a public service orientation. Thus, to the extent that a relationship

133. Krieger, *Most Ethical*, *supra* note 55, at 188.

134. *Id.* at 175–76.

135. *Id.* at 176.

136. *Id.*

137. *Id.* (emphasis added).

138. *Id.* at 193.

139. Krieger, *Most Ethical*, *supra* note 55, at 193 (emphasis added).

140. *Id.*

clearly exists, a renewed emphasis on public service and its relationship to the profession is warranted in both law school and within the practicing bar.