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Historic Professions: Stabilizing the Reified Image of the Law and Other Historic Professions

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Abstract

Social institutions are commonly said to evolve. Yet there may be good reason why some institutions and some concepts are reified advantageously limiting any free-wheeling evolution over time. This is certainly true concepts like currency which stabilizes social ontology as much as concepts like rock stabilize natural kinds ontology. Important institutions such as the four historic professions moor civilization by being continually reified over generations aligning with sustainable public expectation. When a profession such as law is weaned from reified expectations of the public the effect is likely to be de-stabilizing of both the profession's membership and the public the membership is meant to serve. The reified image of the bar, those entitled to the honor "esquire" following their name, assures society that a social ontology designates this group of professionals as leaders in forwarding society's civilizing expectations. De-stabilizing this reification is not only self-destructive to the historic professions but to the societies they were intended to lead as well.

Keywords: reification, evolution, social ontology, professional, guilds, unions, shared moral vision, professional ethics

1. Social Ontology and the Historic Professions

Professional ethics is about doing right by those the profession serves and by others in the same profession (Johnson & Ridley, 2008). In spirit, professional ethics shares much with the spirit of morality generally if not in every detail (Wagner, 1981; Wagner, 1983; pp.85-96). Great moralists like Gandhi and Martin Luther King Jr. set out to make things better for individuals in a wide range of circumstances. Professional ethics should and often has been seen in the past as sharing in that spirit (Longan, Floyd & Floyd, 2020). Specifically, professional ethics assigns detail to the spirit of service and collegiality increasing both the well – being of the professionals and the communities they serve (Wagner, 2020).

Service to others may sound a bit Pollyannaish to those that see the world as a loose connection of potential predators reigned in solely by rules, sanctions and punishments. Rules, sanctions and punishments are certainly important. There importance lies in the fact that they buoy up the greatest of all human inventions, namely, the moral event of promising. Promising is the key moral invention of humans generally and those engaged in cooperatively creating professions specifically. Coercive reinforcements are often important to secure and sustain many promises (Wagner & Wood, 1977). But in point of fact, most promises are protected by little more than individual or cultural commitments reflecting virtues such as trust, trust-worthiness, loyalty, honor, duty and perhaps the anxiety of shame when failure in promise – keeping becomes public Wagner & Siegel, 1988). Implicit and explicit promising underlies nearly all sustained efforts of human cooperation, far more than contract law alone could ever address. Indeed, the very idea of contract law itself is only possible in the sort of highly interdependent, social networks to which promising has given birth.

Consider the concept of money. "Money" is neither paper, coin nor, a sequence of electronic signals. A five, dollar bill is merely a sign for an implicitly agreed value used for the exchange of goods and services by those participating in a promising network. The value of money rests on nothing other than the receiver's readiness to part with some thing or perform some service in order to acquire a promise "standing for" some relatively agreed upon token of exchange. Practices of transfer are natural. Before promising emerged among humans, practices of transfer must have been like they are for other primates prompted by either coercive or altruistic instincts. The medium of exchange now is mediated by currencies and exchange rates, Currencies and exchange rates however are mere heuristical devices, promises, for both stabilizing and expediting transactions. The illusion that dollars stand for anything exists only because folks naively, reify

practices of exchange. Shared illusions can serve important social purposes.

"Reifying practices" evolve when people become so habituated to a social convenience that they assign ontological reality to a conceptual artifact (Gould,1996; Ch. 3). A reified concept is an unusual psychological phenomenon. Humans do not reify most imaginings shared or otherwise. But there are select reified abstractions (Searle, 1995) that do structure much of communal life. These include such things as governmental arrangements, property rights, corporations, marriages, currencies, teams and so on (Gould, 1996; ch.6) Reified concepts facilitate cooperative engagements extending across historic epochs and geographic borders. The utility of these reifications become most vivid when people abort one or another of them such as refusing to accept a given currency for services or trade. In what follows, the concern will be about the importance of sustaining the reification of the four historic professions and most particularly that of the law.

2. The Reification of Professions

Institutional and professional reifications evolve as do other reifications through networks of promises and dependent heuristics and other derived reifications. Consider the four traditional professions: doctoring, teaching, preaching and lawyering. Each is reified in the social ontology of most countries' today. The history of each profession extends back more than two millennia and is similarly manifest in diverse cultures.

Each of the four specializes in skilled, personal assistance to others. The rendered aide is qualitatively different from action rendered from mere altruistic instinct. For example, a good Samaritan renders aide to an injured party. She is not under any special obligation to do so beyond what people might call basic human decency. Still her sense of empathy may cause her to feel duty-bound to render aide. Professional obligation is a bit more robust and lapses in professional obligation are less likely to be forgiven easily. For example, a professional physician in many cultures, *must* assist an injured party in immediate medical need. This obligation is especially evident if the physician's practice is bound by a professional promise such as that of the Hippocratic oath (Roberts & Reicherter, 2014). Analogously, a prison inmate may become well-versed in criminal law, yet when advising others, he is not duty-bound by client/attorney privilege. A member of the bar even if less expert than the aforesaid inmate, is duty bound by the professional commitment of attorney/client privilege in most cases.

A benchmark of the four traditional professions, at least in most Western cultures, is that members of the four historic professions are duty – bound by promising constructs specifying when, how and why they might or might not perform expert, services in behalf of others.

In contrast, job-holders, with or without considerable technical skill, are not bound by promises, implicit and explicit, defining professional obligation reifying public expectation of the profession. Think of an itinerant handy-man or, an expert computer programmer. Each may wander the globe doing odd jobs as he goes. Yet there is no set of reified public moral, expectation defining in part the meaning of handy-man or programmer beyond the ability to complete a specified job. Of course, handy-men should not steal from clients nor should a programmer create backdoors to invade a user's computer system at a later date. Stealing, swindling, unwarranted surveillance are all addressed by public law and are not specific to the institutionalization of handy-man or computer programmer. So, how does one distinguish a reified profession from other organizations of workers such as those in a guild, or a union or monopolist association?

The four historic professions are special both in their historicity as well as in their specialized moral commitments (Wagner, 2012; pp. 21-37). Both historicity and specialized moral commitments separates members of the historic professions from mere occupational specialties, guild and union workers and monopolistic associations. Consider in turn guilds, unions and monopolistic associations.

In the late Middle Ages in Europe, tanners, silversmiths and others created guilds. These guilds were created to support reasonable prices for standardized quality of work performance. Guild members payed money into the organization and supported public events that unified the members and brought public attention to their existence. Their network of reifying, promises to one another and the public served was minimal and was largely centered on economic self-interest.

The influence of guild-like organization is not altogether absent today. Plumbers, cosmetologists and electricians specify exact training and apprenticeships from aspiring members to insure minimum standards of quality. They sometimes also recommend rates reflective of the mastery involved in creating guild-acceptable work product. Today however, many of these standards are beyond association authority. Instead, they are directed by state law. Still, these occupations are independent technicians that share some common economic interest from time to time and are often subjected to state regulation including licensure for the sake of anticipated customer service. In contrast, once upon a time, the four professions were left alone to guide society rather than be guided by it. This is a critically important distinction.

Unions have explicitly evolved to protect the financial and social welfare of its members and not the interests of those who employ them (Wagner, 1996). It is true that the larger unions may engage in beneficent acts of public charity. They may also engage in local and national politics. But these tangential activities are always to forward the well-being of members.

Some, such as educator John Martin Rich, charge that teachers have largely unionized (Wagner, 1999; pp.276 -280). Their professional ethics such as they are, are largely imposed by politicians and state education boards. And surely in the wake of recent elections and especially Covid-19 closings some now charge that clergy preachers are drifting away from ministry and towards inspirational speaking and life coaching. In the first case this would reduce the profession of teaching to that of unionizing and in the second the speaker's practiced trade would be much like that of the handy man or independent computer programmer (Kay & King, 2020; pp. 161-163).

Focused purpose on member self-interest is something unions share with monopolistic associations such as a farmers' cooperative. Neither unions nor monopolistic associations have ever been identified public service guiding the way to community betterment for all. The arguments for guilds, unions and monopolistic associations must always be indirect claiming that the repercussions of their members doing better has tangential benefits for others. and doing right by fellow members. In contrast, each of the four traditional professions acquired their reified role in society in part because they were seen as providing such leadership.

3. From Leadership to Decreasing Autonomy

As the autonomy of the traditional professions decreases largely by law and state administration of regulations the reified image of the four professions seems to blur. Ironically, there also seems to be a zeal among some new occupational groups to identify as professionals (Fiske, 1991; Thaler, 2015). These trends prompt serious consideration of what is a profession. What might *professionalize* an occupational grouping?

It is common for sociologists to define "professions" as formal organizations which: (a) control admission to their ranks, and continued licensing, (b) require specialized training for admission, (c) engage in the performance of a unique service, and (d) have largely autonomous rule of internal offices. These taxonomies are so fine toothed that they risk drawing attention away from the enduring features of the remining historic professions (Wasserstrom, 1975).

For example, teachers were once thought to be duty bound to bring students into the Great Conversation of Humankind (Wagner, 2020: Wagner & Simpson, 2009) preachers were thought to be duty bound to serve as intermediaries between worshippers and the worshipped (Wheeler, 2017), physicians were thought to be duty bound to serve the sick and ailing (Roberts & Reicherter, 2014) and, finally, lawyers were thought to be duty-bound to provide counsel and articulate the claims of others less able in contexts of impending judicial consequence (Zitrin, Cole & Casey, 2019). In short, prominent and publicly – recognized, duty-bound expectations were reified through tradition, written codes, precedents and protocols. Together these elements served the professions to exercise a stabilizing influence over much of their respective communities (Wagner, 2010). Indeed, the duty-boundedness of the historic professions reified their public role as guiding lights of their respective communities.

4. The Importance of Strong Entrenchment for the Historic Professions

Counseling psychologists, accountants, journalists, and many other occupational groups, in the last fifty years now ascribe to professional status. They emphasize their specialized training and licensing procedures are similar to those of the historic professions. These newcomers certainly exhibit specialized knowledge and skills. But this alone makes them no different from guilds. To be a profession in the historic sense they must acknowledge being duty-bound to a shared moral vision with one another unique to their respective professions and to the communities they serve (Searle, 1995). Without a shared moral vision, a job, any job can be nothing more than a job.

Typically, a formalized code of ethics is the most important benchmark of genuine professionalism. Generations in forming and publicizing, their duty-bounded traditions entrench shared moral vision in successive generations of professionals. This transparent history of moral commitment reflects the enduring moral leadership qualities of the historic professions (Wagner, 2011; pp. 389-406).

5. Does Tradition still separate and distinguish the Historic Professions?

It has been somewhat fashionable among social scientists to describe all human phenomena in terms of on-going evolutionary dynamics (Wagner, 2013). That is a generally reasonable approach for understanding human behavior but in the case of understanding reification it can be very misleading. Reification of concepts is stabilizing in social ontology. In contrast, evolution of social concepts is destructive. This distinction may be the most important of all.

Reification occurs as a consequence of an ever-deepening entrenchment of a concept in communal thinking. For example, few people ever reflect on what money really is. They think of "money" without question as they might think of a natural kind term such as "rock". So too in the case of the four historic professions. People think they know what a cleric, a teacher, a doctor and an attorney is with as much confidence as if asked what a rock is. They will not show the same confidence if asked what a software engineer is or even a handy man (When hiring a handy-man a customer may well ask: do you do plumbing too?).

Reification increases stability of conceptual grounding over time and with repeated use. In contrast, when terms *evolve*, old meanings are destroyed as they give way to newly evolving meanings. Think of the term "nurse". At the time of Florence Nightingale, nurses were minimally trained and learned most of their skill through on the job experience. Most prominently, the most obvious identifying traits of a nurse were *her* commitment towards those to whom she tendered care. Today there are a variety of nurse designations evolving. There are licensed practical nurses, registered nurses, nurse practitioners, physician assistants and even some Ph.D. nurses licensed as internists in some states. This variety of recently evolved nursing designations are all so new to the public most people are uncertain about what distinguishes one designation from another. And, the previous conventional expectation of gender role was destroyed through this evolution of designations as well.

Physicians are generally held in high esteem. Yet things have changed dramatically for the medical profession in the last fifty years. Pushed and pulled by, HMOs, PPO's and a host of public health policies, physicians work more and more for insurance companies, government and the courts more than for individual patients as in times past. While the range of physician knowledge and prognostic skills has increased dramatically focus on a common mission has become somewhat defused. Nurses and specialized techs recover diagnostic data often which is subsequently shared with a doctor who remotely diagnosis and offers protocols for favorable prognosis after the fact. Marcus Welby, Ben Casey and Dr. Kildare are charters of the past yet people still expect or, at least want to believe the physicians caring for them are cut from the same mold as these television proto-types.

Communities still hold doctors accountable for treating injuries and illnesses but they also want to depend on the paternalistic image most have of the doctors who treat them. When doctors seem to fail as guiding lights to a better way of being (with or without a patient cure), past reification of the profession is at risk. For an extreme example consider the case of German and Japanese military physicians during WW II. They were on occasion commanded to use prisoners of war for radical medical experimentation. Some of these doctors were subsequently prosecuted as war criminals. The grounds of their evil were said to be established by acting in violations of the Geneva Convention, but also, they were accused of ignoring professional obligations, which presumably many believed, should supersede military obligations.

Similarly, the traditional role of clergy has de-stabilized somewhat over the same period. For example, some religions downplay the intermediary role of clergy between worshippers and the worshipped. And there has been a sharp decrease in practicing believers in such religions. In contrast, where clergy have preserved the traditional role of intermediary, churches have flourished. Note the resurgence of religion in former Eastern Bloc countries or the advance of fundamentalist Christian religions in the Caribbean and Central America nations substantiating this claim. Still, the differential roles evolving among clergy of different sects is destabilizing reified, expectations of what clerics are all about.

Admittedly, further elaboration is merited to establish fully these passing points. Still the traditional mooring of these historic professions seems to be withering. So, are there still any grounds for honoring the traditions of the historic professions, as distinctly important, stable and novel human institutions deserving of unparalleled honor within the communities they are intended to serve?

6. Current Notions of "Profession"

There is a sense of the word "profession" that means simply one is paid for services. For example, the great, native American Olympian, Jim Thorpe, was ultimately deprived of his Olympic medals because he was declared a "professional" athlete. This meant simply that he had been paid for participating in a sporting event. His collected a share of the proceeds fans contributed to watch him and other locals play sandlot baseball! That use of the term "professional" is not at all related to the concept of professional when the paradigms of the four historic professions are brought to mind (Wasserstrom, 1975; p.1).

Perhaps the most stabilizing reification of the four historic professions continues to be commitment to service (Brincat & Wike, 2000; ch.3) From the beginning, the service each profession offered was no ordinary service nor, offered in an ordinary and dispassionate way. The handy man can fix your porch well enough regardless of how you each feel about one another. In contrast, the reified concept of the historic profession entails the person being served has a sense that it is her Iman, her doctor, her lawyer or her teacher who is caring for her. Are things in the historic professions drifting away from their aspired reified image?

In the past, professional service was heavily focused on service to individuals. Is professional service now tilting more towards mere classes of treatment for others? For example, do personal injury attorneys favor the most potentially rewarding cases and turn away others in need but involved in cases of minimal likelihood of substantial recovery for the attorney? Do more criminal attorneys extract fees from clients merely to plea bargain away their cases in nearly bulk fashion? Are billable hours more important than resolving a divorce or child custody situation?

7. The Legal Profession Still a Profession or Something Else?

Some lawyers seem to fancy themselves as "hired guns." Their discussion of litigation is often peppered with battlefield and fist fighting analogies and metaphors. Even corporate attorneys who do not litigate "strategize" to assure victory should litigation ever occur. Setting aside the starched-shirt, bravado, where do things truly stand in and outside Bar associations?

Hired guns of the Old West, were feared and seldom respected. This is very different from the respect a person enjoyed who could sign "esquire" after his or her name. A person who signed esquire presents oneself as knowledgeable, articulate, loyal, honest and possessing several other admirable qualities and virtues suitable for caring for the well-being of another. Current evidence suggests lawyers, still want such well-merited, respect (Murphy & Coleman, 1990; pp.51-55). Lawyers who boast of their ferociousness infect the profession's credibility (Wellman, 1996; p. 553) Lawyers serve neither the profession nor civil society by becoming social bullies or hired guns for anyone.

The evolving hired gun image threatens to de-stabilize the reified social ontology of the bar. The historically entrenched concept of counsel is so strongly entrenched in communal social ontology that even rogue lawyers are not in a position to destroy its millennia-making, reification. For example, several early incidents in the development of the American legal community expose reifying constraints imposed by tradition and the strongly – entrenched perceptions of the public.

8. Origins of the American Bar

American common law is an extension of English common law. In Britain's Courts of the Inn members enjoyed the honorific "esquire" as a signifier for one who practices law. In England, esquire referred to a gentleman not of noble birth, yet one said to be well-bred. To be well-bred, a country gentleman, must give the appearance of personal bearing, financial sufficiency, well-educated, articulate, and in all other respects, well-mannered. English country gentlemen were expected to exhibit something akin to the noblesse oblige expected from others of truly, noble birth. Eventually, the term "Esquire" became an honorific signifier of any one admitted to the bar (Dictionary.com, 2010). Should anyone doubt this claim, there is over a hundred years of romantic and Victorian literature underscoring the point (legal-dictionary. The free dictionary.com, 2004).

The concept of "country gentlemen" withered in the colonies. The term "esquire" was used in the colonies but more generally was self-assigned by one who simply wanted to practice law. But the concept of esquire was too entrenched in its European origins for the public to simply accept anyone as counsel simply because they offered themselves in that role. For example, Thomas P. Morgan and Ronald D. Rotunda, write that public indignation led to the Colonies first disbarment. The disbarment charged an attorney with jury tampering in 1637 (Morgan & Rotunda, 1984; p.4) Four years later, the people of the Massachusetts colony became so distraught with what they saw that they passed a law prohibiting attorneys from exacting fees from their clients since the amount of fee for service too often led to suspicious inequities (Article XXVI of the Massachusetts Body of Liberties (1641).

By the early eighteenth century, the Maryland Act of 1707 limited attorney's fees for reasons similar to public dissatisfaction in the Massachusetts Bay Colony. (The Maryland act remained in force until 1729. [Morgan & Rotunda, 1984; p.5). Colonists recognized the utility of a strongly, entrenched idea of attorney-at-law. That reification was threatened by attorneys committed to winning at all costs, such as had occurred in the Massachusetts' jury-tampering case mentioned above. The colonists took action to preserve the proper reification of attorney-at-law. This even is important because it signaled that the concept of attorney at-law was so strongly entrenched in the publics mind that even if the attorneys themselves were not going to drive destabilizing influences out of the local bar, the people themselves did. The people believed they knew what lawyering should be all about and jury – tampering was not part of that even if it scored a win for some client.

Bar associations were formed in New York in 1710 and in Massachusetts in 1759. Throughout the pre-revolutionary period, practicing lawyers went to increasing efforts to limit the practice of law to those who were qualified in the eyes of public expectation (Morgan & Rotunda,, 1984; p. 6-7). For example, the Essex County Bar prescribed three years of clerking with a qualified lawyer before one could appear as counsel before even the lowest trial courts. In New York, in 1756, lawyers raised the standards for admission to practice as a "gentleman of the law" by requiring that in fourteen (14) years hence, clerks seeking admission to the bar must also have a college degree. They further stipulated that a lawyer could oversee only one clerk at a time. This was meant to deter lawyers from making a profit by taking on too many clerks and to guarantee that the mentoring lawyer was in a position to genuinely monitor the clerk's development towards

In 1908 the American Bar Association created the Canon of Professional Ethics. The Canon declared that "above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen. (Canon 32, 1908). To a large extent, the profession achieved the embodiment of the image it sought to achieve (O'Connor, 2003; ch.5). This formalized, professionalism rested on high expectations of virtue

and character as much as on rhetorical skills and knowledge of the law all consistent with the reified notion of counsel dating back to Cicero, St. Thomas Aquinas and even as far back as the Greeks of antiquity.

Nearly everyone reading the words above, remembers when lawyers were commonly regarded as trustworthy, morally upright champions of civilization. The law and, as importantly, lawyers themselves were seen as forces for greater decency in a civilizing society. Lawyers were not "hired guns". As Richard Wasserstrom declared "One's role as doctor, psychiatrist or lawyer, alters ones moral universe …. a client or patient . . . looked after by the professional. (Wasserstrom, 1975; p.5)." The lawyer is expected to be especially trustworthy and caring towards the client since the role "of counsel" creates a paternalistic relationship between client and counsel – a protective relationship that clients expect attorneys to honor with intelligence and dignity. In addition, as officers of the court, lawyers owe respect to courtroom adversaries and to the community served by the court. This community includes not just witnesses, bailiffs, court reporters and others associated with the functioning of courts, but the entire social network depending on the civilizing influence of courts generally.

As Justice Sandra Day O'Connor admonished, "…it is a matter of great lament if and when members of the bar try to angle for lowered public expectations of professional lifestyle less focused on sustaining the traditions that mark the bar as an unimpeachable pillar of what humans can do well in social management (O'Connor, 2003. Ch. 5).

9. The Legal Profession Today

Lawyers have substantial influence over the collective image the public has of lawyers (Luban, 1988). The "hired gun" notion of lawyering is a rogue lawyer's assault on his own profession. Lawyers as hired guns are a de-civilizing influence on society. The model is also an assault on the reified notion that has been reified over centuries.

In the hired gun model, lawyers are expected to seek out loopholes and strategies to frustrate the intent of the law in favor of their client. Lawyer as hired gun foments hostility, not civility and it creates suspicion de-stabilizing public perceptions about this particular historic profession. Under the hired gun model, lawyers are seen by clients and adversaries both as predatory taking advantage of folks when they are most vulnerable. In John Grisham's King of Torts, highlights the newly predatory image of the hired gun model as especially characteristic of mass tort attorneys acting in disregard for the best interests of many of their own clients. And it is not just fictionalized mass tort attorneys who are de-stabilizing the notion of esquire. There are family law attorneys who make too little effort to seek a civilizing resolution between contesting parties. Is this because they are paid by the hour?

Criminal attorneys are rightly expected to be aggressive. As are prosecutors who are expected to protect the public from threat. But, what if the public suspects prosecutors of plea – bargaining largely to build their conviction rates for political purposes and avoid risk of defeat in court? And, what if the public suspects criminal defense attorneys are bundling cases for mass plea-bargaining rather than defend each client's life and reputation? What if the public suspects greed is replacing honor and virtue as foundational to those who are members of the bar? What if the public has heard from legal positivists and critical theorists that the practice of law is nothing more to them than a socially relative game? What might the public conclude if they believed within local and national bars the idea of moral truth is mocked, discouraged and disparaged?

The point here is not to address the most provocative questions of foundational jurisprudence. The point is to remind members of the bar that as members of a historic profession they and the public they serve both have much to lose if the image of their professionalism evolves in ways destabilizing of the bar's role in public affairs. Cries for tort reform may be just one step towards returning lawyering to what the public thought it should be all about. And, there is more. For the public's sake, they need the guiding light this and the other historic professions have previously provided the communities they serve.

The Professional Responsibility Section of the Association of American Law Schools (AALS) has been sensitive to the loss of public confidence in legal practice for decades. If only the American Bar Association and its local affiliates were equally concerned with the public's eroding sense of their professionalism. David Luban, a former chair of the professional responsibility section of the AASL skillfully mustered a set of moral arguments for reforming legal practice in an awe-inspiring range of issues (Luban, 1988). We will focus briefly on just one such argument, illustrative of the reified public expectation of lawyer professionalism.

Luban declares that "the lawyer's job is to present the case that the client would if she were able. (Luban, 1988; p.160) Certainly this is exemplary of the reified notion of lawyering extending back centuries even to Ancient Greece. Luban adds that "the lawyer should not be put in thrall to the client when they disagree over the morality or justice of certain tactics (Luban, 1988; p. 159). Herein, the reification of lawyer as deserving of esquire is captured in Laban's reflection on lawyerly restraint. More specifically in addressing lawyers directly, Luban argues that lawyers should always take the high road and people should expect that of them. Again, Laban's position illuminates our socio-linguistic case that the

reification of the profession is vital to preserving the legitimacy of the bar and its value to the public.

Luban acknowledges his arguments are at variance with how the Code and the Model Rules of the profession "*evolved"* in recent decades. Note the use of the word "evolved" here. Leaving behind the long-reified notion of lawyering is a mistake for the profession and a loss to the public of the profession's potential for moral leadership. Luban insists, that both the Code and the Model Rules of the Profession must be redrafted demanding lawyers forego immoral tactics or the pursuit of unjust ends take seriously other means of moral case management (Luban, 1988; p. 174).

Luban explains "no one is opposing the principle of partisanship except when it is proffered as an excuse for predation. Professional ethics can tell a lawyer not to cut corners…nor to cut throats. When moral obligation conflicts with professional obligation, the lawyer must become a civil disobedient (Luban, 1988; p.156).

Luban recommends abandoning approaching legal ethics as if any way a person can crawl under a barbed wire fence without getting cut is morally unobjectionable. Luban concludes that this "catch me if you can" approach to professional ethics is destructive to legal ethics in any meaningful sense (Luban, 1988; p. 159). We think Luban is right but our claim is slightly different. Our claim is that the strongly-entrenched traditions of legal practice need to be honored if lawyering is to survive as paradigmatic of professionalism in general. Having a code of ethics is not all there is to being a professional in the historic sense. Living a professional life illuminating commitment to the commitment of a shared code of ethics is what is reified in public understanding. Lawyering roots extend deep into human intellectual and cultural fabric. The public has had millennia to get familiar with what counts as lawyering. The concept of lawyer should not be an evolving concept.

Professional rules must be both educative and morally idealistic if the profession is to continue flourishing without public assault. In Germany this principle seems at least intuitively to be understood. In the German Ethical Code (Grundsatze des Anwaltlichen Standesrechts, Vorspruch, sect. 3) there for years had been a key operative Rule Three stating that "the other rules are to be observed in their spirit, not just their letter."

Rules of professional conduct must extend beyond behavioral control over members of the profession. Rules of professional conduct must also perform an *educative function* for the profession. If only strict policing can keep lawyers in line then they will lose credibility in the public's eyes. In the absence of a common moral vision much of what it means to be a professional becomes irrelevant.

Both the law and lawyers themselves are meant to be civilizing assets in the societies in which they serve. Lawyering is meant to be civilizing and to make society better as a result (O'Connor, 2005; ch.5).

Everyone knows the difference between playing close to the line and manifest corruption. As Luban warns, current trends in American legal practice are bringing lawyers ever closer to the line. In the movie, Broadcast News, William Hurt played an over-ambitious news anchor. His friend and producer, played by actress Holly Hunter, caught him editing a story to create a wholly false image of himself for the public. In one of Hollywood's most memorable exchanges, Hunter's character challenges, "You really stepped over the line this time!" Hurt's character responds whining, "But, they keep moving that line." The moral of the story, is that if you don't want to step over the line you don't play close to it in the first place. American legal practice has edged ever closer to the image of the overly-ambitious anchor. Eventually it may well be that the American public, will demand an accounting from the profession detailing what it seems to be doing to itself.

To sum up a road back to the respectable and reified image of lawyering, we urge attention to Luban's prescriptive conclusion for stabilizing the more traditional and noble image of the profession "tactics cannot be justified when they violate some common moral obligations." In practice this amounts to four restrictions:

1. Modes of practice must not inflict unjustifiable damage on other people, especially innocent people.
2. Deceit, *i.e.*, actions that obscure truths or that lure people into doing business under misapprehensions, even if these are legally permissible, must be avoided.
3. Manipulations of morally defensible law to achieve outcomes that negate its generality or violate its spirit; and; in general, must be abandoned.
4. Lawyers must not conspire to pursue substantially unjust results (Luban, 1988; p. 157).

10. Conclusion

President Obama once opined, "You can put lipstick on a pig but in the end it is still a pig." And so, it is in the case here to re-establish the reified image of lawyering and the other three historic professions as well. Ordinary people know what lawyers are they in common with one another think lawyers are and what they should be. Ordinary people can understand and distinguish lawyers from scam artists, and mere hired thugs. If lawyers no longer make such distinctions for themselves, they may find that there are corrective forces readily and powerfully at hand within the public at large. Unfortunately, perhaps, such forces of reform, minimally informed as they are about the subtleties of legal practice, may

force change that cripples the rebuilding of the legal profession.

In short, being a lawyer means to be committed to a client's well-being, a society's well-being and finally, and much more grandly, assisting at large a species whose continued flourishing depends on a growing respect for the law. Members of the Bar are best served themselves when the public sees them as they historically expected to see them as *deserving* of the honorific accolade, "Esquire." The paradigm case here should stand as well for advising all three historic professions to stand behind what gave each such historic credibility. There is no advantage to evolving the reified image that gave each of the four professions acceptance as guiding lights for the communities they each serve.

In the end, if the four historic professions continue in their paths of self-destruction, this destruction could be the harbinger of self-destruction for the societies that depend on their gentile leadership.

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