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BOOK REVIEW: PRACTICAL WISDOM FOR PRACTICING LAWYERS: SEPARATING IDEALS FROM IDEOLOGY IN LEGAL ETHICS.

THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION. By Anthony T. Kronman. n1

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SUMMARY:
... Anthony Kronman begins his deeply pessimistic meditation on the state of the American legal profession with a confession. ... On that occasion, Kronman argued that the legal profession's moral problems stemmed from its commitment to advocacy as a professional ideal. ... This vision of the lawyer's role, which Kronman calls "the ideal of the lawyer-statesman" (p. 3), links professional excellence to the character virtues of prudence and practical wisdom. ... His implicit assertion that these considerations should dominate all others, however, ultimately produces a distorted vision of professional ethics inconsistent with a proper understanding of the lawyer's role in society. ... Nevertheless, by labeling the lawyer who faithfully implements his client's objectives as nothing more than a "deferential servant" (p. 15), Kronman moves too quickly from the realm of personal decisionmaking, in which an individual is always free to practice his deliberative powers by reexamining his own ends, to the sphere of professional assistance, in which the lawyer's moral development must be secondary to serving the client's interests. ... Even if political fraternity is a necessary condition of a normally functioning legal system, it does not necessarily follow that society is best served if every lawyer aims directly at achieving this goal. ...

TEXT:

[*458] Anthony Kronman begins his deeply pessimistic meditation on the state of the American legal profession with a confession. Summarizing his 1981 speech to the editors of the *Yale Law Journal,* Kronman recounts that he once believed that law practice was inherently a morally unworthy calling. On that occasion, Kronman argued that the legal profession's moral problems stemmed from its commitment to advocacy as a professional ideal. Unlike "the truth-seeking enterprise of scholarship," Kronman went on to assert, advocacy is an activity that "corrupts the soul by encouraging a studied indifference to the truth" (p. vii). In response to these remarks, two of Kronman's colleagues asked him how he could in good conscience continue to teach at a law school if he had such a low regard for the work in which most of his students would be engaged. Was it not possible, they challenged, that law practice had room for moral virtues different from, but no less worthy than, a scholarly love of truth (p. vii)?

Kronman dedicates the rest of this important and provocative book to responding to his colleagues' challenge. Contrary to the spirit of his 1981 critique, Kronman concludes that law practice was once a morally worthy calling. He argues, however, that contemporary practitioners have abandoned the set of professional ideals that traditionally gave the lawyers' role its moral content. This vision of the lawyer's role, which Kronman calls "the ideal of the lawyer-statesman" (p. 3), links professional excellence to the character virtues of prudence and practical wisdom. Kronman asserts that past generations of lawyers understood that the lawyer-statesman ideal was central to their professional identity. Unfortunately, in Kronman's view, the current generation, [*459] of academics, practitioners, and judges has so devalued and undermined this professional ideal that its resurrection is now virtually impossible. Thus, Kronman's prognosis for those entering the profession today remains the same as it was in 1981: they cannot expect to find moral fulfillment in their work as lawyers.

In this review, I suggest that Kronman reaches this same conclusion because he continues to believe that the most important criterion for evaluating the profession's moral standing is whether its ideals promote the development of good character traits among practitioners. Advocacy is a morally problematic professional ideal, Kronman argued in 1981, because it "corrupts the soul" (p. vii). He now argues that the ideal of the lawyer-statesman is superior to "the anemic new ideals that have arisen to replace" it, because only the former fosters the character-virtue of practical wisdom (p. 3). By insisting that the legal profession's ideals must promote the moral development of practicing lawyers and that this development is as much a matter of character as of skill, Kronman strikes an important blow against the crude reductionism that pervades a good deal of contemporary legal ethics scholarship. His implicit assertion that these considerations should dominate all others, however, ultimately produces a distorted vision of professional ethics inconsistent with a proper understanding of the lawyer's role in society. It is not surprising that Kronman never sees the possibility that contemporary law practice might have moral virtues -- to paraphrase the question asked by his colleagues in 1981 -- different from, but no less worthy than, those claimed by prior generations of lawyers. To see these virtues, one must move beyond the lawyer-centered perspective that lies at the heart of Kronman's vision. Ironically, by failing to acknowledge these virtues, Kronman encourages a debilitating nostalgia that is likely to reinforce, rather than to counteract, the cynicism and abdication of moral responsibility by contemporary practitioners that this book so eloquently decries.

The next four Parts of this Book Review develop this critique. Part I briefly describes Kronman's argument. Parts II and III explore how Kronman's preoccupation with the intrinsic satisfaction of individual practitioners distorts his understanding of professional morality in two ways: first, by failing sufficiently to tie ideals to practices, and second, by conflating personal deliberation with professional deliberation. Finally, Part IV investigates how this generation of lawyers can utilize Kronman's important insights about the relationship between character and professional excellence to find moral fulfillment in their work.

I. THE RISE AND FALL OF THE LAWYER-STATESMAN

Kronman divides his argument into two parts. In part one, Kronman defines and defends the lawyer-statesman ideal. Evoking [*460] the memory of such hero figures as Abraham Lincoln, Earl Warren, and Robert Jackson (p. 3), Kronman argues that the core of this ideal is the belief that "the outstanding lawyer -- the one who serves as a model for the rest -- is not simply an accomplished technician but a person of prudence or practical wisdom as well" (p. 2). Because "the character-virtue of practical wisdom is a central human excellence that has an intrinsic value of its own," Kronman argues, its incorporation into the ideals of the profession assured lawyers that "their work had intrinsic value too" (pp. 2-3).

In part two, Kronman asserts that these sustaining ideals have been systematically undermined and discarded by the current generation of practitioners. Law schools are now dominated by a variety of "antiprudentialist" schools of thought that seek to submerge legal reasoning into some other rational discipline such as economics or philosophy (ch. 4). The country's leading law firms have embraced a commercial culture that is deeply hostile to the virtues of practical wisdom (ch. 5). Even courts, in their rush to stay ahead of the ever rising number of cases, now substitute bureaucratic management for deliberative judgment (ch. 6). As a result, Kronman concludes that the ideal of the lawyer-statesman in general, and the virtue of practical wisdom in particular, "have lost so much prestige that their current position in the thinking of the profession can only be described as one of suspicion and even contempt" (p. 165). This evolution, in turn, has raised serious "doubt[] about whether the practice of law can continue to be an intrinsically satisfying pursuit that offers deep personal meaning to those in it" (p. 368). With few exceptions, Kronman laments, "it is now unthinkable that one can find even the smallest part of an answer [to the 'ultimate question[s] of life's meaning' (p. 370)] by choosing a legal career" (p. 370).

A full examination of this subtle and complex account is beyond the scope of this brief review. Instead, I want to examine three points that I take to be central to Kronman's argument. First, Kronman portrays the current "crisis in morale" that purportedly threatens the "collective soul" of the American legal profession as primarily the result of a failure of ideals rather than a change in actual practices (p. 2). Thus, Kronman concedes that, even during the golden-age of the lawyer-statesman ideal, "few lawyers ever reached the level[s]" established by hero figures such as Abraham Lincoln, "and most understood as clearly then as they do now that the mundane business of earning a living in the law offers little opportunity for the exercise of statesmanship on a grand scale" (p. 12). Nevertheless, Kronman insists that "many nineteenth-century lawyers continued to look up to [this ideal] as a standard of professional excellence and to invoke the lawyer-statesman as a model when they wanted to express, in concrete terms, their common aspirations" (p. 12). This attitude, Kronman asserts, "is [*461] now dying in the American legal profession" (p. 3). n3 It is this shift

"in the way lawyers understand themselves and their work," he asserts, that "is the key to understanding all the more visible changes in the profession that have taken place in the last twenty years" (p. 354).

Second, Kronman argues that the element of the lawyer-statesman ideal in greatest jeopardy is a lawyer's ability to help clients deliberate about the ends of legal representation "in any but instrumental terms" (p. 286). The ideal of the lawyer-statesman, he asserts, rejects the notion that a lawyer is a "deferential servant" whose only responsibility "is to prepare the way for ends that others have already set" (p. 15). Instead, lawyers "must deliberate, for and with their clients, about the wisdom of their clients' ends" (p. 133). Kronman contends that, to deliberate effectively, lawyers must understand that these "ends" will frequently present a clash among "incommensurable values" -- by which Kronman means values that cannot be placed on a common scale without "abstract[ing] from . . . the special features [about the various ends] that are of greatest significance to the parties themselves" (p. 57). n4 When such a clash occurs, "a rational choice among [competing ends] cannot be made on calculative or other grounds" and the resulting choice will therefore be "groundless" (p. 67). n5 The essence of the lawyer-statesman's practical wisdom, Kronman contends, lies in the ability to reach wise decisions in circumstances of this kind (pp. 60-61).

Kronman grounds his model for deliberating about incommensurable ends in an analogy to personal decisionmaking (pp. 62-87). When faced with an identity-defining choice between incommensurable ends, a person exercising practical wisdom will attempt to experience each alternative from the inside, while at the same time preserving sufficient "distance between his present point of view and those of the alternatives [*462] before him" to be able "to pass judgment on their merits" (p. 71). Although this process cannot produce an objectively "best" outcome (p. 87), it nevertheless fosters a deeper self-knowledge and a sense of internal cohesion -- which Kronman calls "integrity" -- that ultimately "represents the greatest good a soul can hope to have" (p. 86). This same "bifocal" perspective of sympathy and detachment, Kronman asserts, defines practical wisdom in the public sphere as well (pp. 97-98). In this arena, however, the ultimate objective is to preserve and promote the bounds of "political fraternity," through which members of a given community are disposed to entertain the views of their fellow citizens in their "best possible light," even if they ultimately "reject[] these values and the political consequences flowing from them" (p. 94). Thus, for Kronman, political fraternity is analogous to integrity in the sphere of personal decisionmaking: both are essential to preserving the continuing viability of the enterprise (be it the polity or the soul) and both provide an independent criterion for judging the wisdom of what would otherwise be a "groundless" choice among incommensurable ends.

Achieving practical wisdom in both the public and private spheres, Kronman argues, takes more than a simple act of will. Not everyone will be able to recognize choices that will promote personal integrity or political fraternity most effectively. One must develop certain character traits, or habits of mind, that enable one to maintain the delicate balance between sympathy and detachment that constitutes both the essence of practical wisdom and the surest method of discovering those decisions that are in fact wise (p. 100).

Third, Kronman makes a set of claims about the distinctiveness of legal reasoning. In part one, Kronman asserts that traditional legal education, by which he primarily means the case method, is uniquely capable of habituating students to the process of practical reasoning (pp. 109-21). By forcing students to take up the positions of the opposing parties, Socratic dialogue encourages a sympathetic understanding of the competing interests at stake, and thereby strengthens a student's moral imagination (p. 114). This understanding helps students to see that, contrary to their initial instincts, many legal disputes involve a clash over incommensurable values (p. 115). At the same time, Kronman asserts, the case method cultivates a student's ability to reach detached decisions by placing them in the judge's role of determining how a particular controversy should be decided (p. 117). This insistence on the primacy of what Kronman calls "the judicial point of view" eventually leads students to "take[] on a measure of the public-spiritedness that distinguishes the judge's view of legal conflict" (p. 119). In Kronman's view, this unique training in reasoning about cases explains why lawyer-statesmen have "traditionally . . . stood at the head of [the] ranks" of the "practically wise" (p. 162).

[*463] In part two, Kronman argues that legal education no longer performs this beneficial function because of the growing influence of law and economics and critical legal studies (pp. 166-68, 225-66). Notwithstanding the differences between these two schools of thought, Kronman maintains that they share a commitment "to replac[ing] traditional forms of legal understanding with a comprehensive moral theory systematically built up from elementary philosophical ideas" (p. 264). Proponents of these theories are therefore "hostile" to the virtues of prudence and practical wisdom that lie at the core of the lawyer-statesman ideal (p. 167). Instead, they offer an alternative ideal for lawyers, rooted in their desire to bring a "scientific" order to the law. This new ideal replaces the traditional notion that law is an "autonomous" discipline with the modern conception that legal reasoning is merely a subset of some more "rigorous" form of knowledge such as economics or philosophy (pp. 355-56). Unlike the vision of lawyer-statesmen "who built by

indirection and without a conscious plan in view," this alternative ideal "encourage[s] lawyers to view themselves as 'social engineers' engaged in the structural design of institutions" (p. 22).

Kronman offers two reasons why this new ideal of the lawyer as social engineer is not "a worthy successor to the lawyer-statesman ideal" (p. 357). First, this new conception "leaves in doubt whether lawyers possess a distinctive expertise, and thus fails to provide a foundation on which the professional pride of lawyers may be rebuilt" (pp. 357-58). Second, "[t]he ideal set up by the proponents of policy science is . . . narrowly intellectual" (p. 363) and is therefore incapable of "convey[ing] the deeper satisfaction that comes with the attainment of a valuable trait of character like practical wisdom" (p. 364). Kronman asserts that even those lawyers whose sole "policy" goal is to use their legal skills to pursue the public good will not necessarily find their work intrinsically satisfying (pp. 365-66). Although public-spiritedness is a worthy quality, it nevertheless remains, according to Kronman, "external to the work itself" (p. 366). Like money or prestige, therefore, it provides only an instrumental reason for pursuing a legal career (p. 366).

II. THE PRACTICAL CONSEQUENCES OF PROFESSIONAL IDEALS

Kronman's eloquent plea that ideals play a crucial role in shaping the profession's collective identity -- even though most lawyers have always failed to live up to these goals -- is an important counter-weight to both the traditional view that professional ideals are self-actualizing and the critical claim that they are wholly self-serving. n6 [*464] Nevertheless, by completely severing the link between ideals and practices, Kronman fails to pay sufficient attention to the inevitable risk that the "aspirational pull" of the profession's ideals will degenerate into legitimation (p. 5). It is not simply, as Kronman concedes, "that real human beings with their ordinary flaws do not always live up to their ideals" (p. 5). The lofty quality of the ideals themselves might make it easier for professionals to justify self-serving practices -- both to themselves and to the public. One can see the consequences of Kronman's failure to address this latter danger in his quick dismissal of the profession's past injustices and in his ready acceptance of the claimed virtues of traditional legal education.

Kronman celebrates the nineteenth and early twentieth centuries as a time when the lawyer-statesman ideal "played an important role in defining the ideals, and hence the identity, of American lawyers" (p. 12). Yet as many commentators have documented, these lawyers routinely deployed arguments about the importance of maintaining professional ideals as a means of excluding women and minorities, erecting protectionist barriers to competition from laymen, and shielding incompetent colleagues from public sanction. n7 Although Kronman acknowledges these "shameful" elements of the profession's history, he argues that "our sense of rectitude in having overcome them [is] so intense, that we lose sight of what was better in [the profession's] past" (p. 5). This formulation, however, overlooks the extent to which the roots of past injustices can be traced to problems in the ideals themselves as well as to the inevitable frailty of human nature. Two aspects of the ideal Kronman defends are particularly relevant in this regard.

First, by using the label "lawyer-statesman," Kronman links the moral authority of the profession as a whole to the accomplishments of its most distinguished public servants. This link, however, is a double-edged sword. All of the lawyers Kronman singles out as exemplifying the lawyer-statesman ideal are respected primarily for their work as [*465] public officials or judges rather than for what they did while in private practice. n8 Lawyers can therefore venerate these heroes while at the same time discounting their example for their own day-to-day practices on the ground that the public-regarding ideals of lawyer-statesmen have little relevance to what Kronman describes as the "mundane business of earning a living in the law" (p. 12).

Second, Kronman's articulation of the lawyer-statesman ideal expressly relies on traditional claims about professional independence and the autonomy of legal knowledge. n9 Lawyers, he asserts, can only find their work morally satisfying if they "possess a distinctive expertise that specialists in other fields lack" (p. 359). n10 This claim is also double-edged. Lawyers have sometimes used the rhetoric of autonomy and expertise to push forward important social reform programs and to gain a needed measure of independence from their clients. n11 At the same time, these assertions undergird the profession's well-documented tendency to act paternalistically toward clients as well as its refusal to engage society in a meaningful dialogue about the content of ethical norms. n12

My point is not that "statesmanship" and "autonomy" are unworthy professional ideals. Elements of each concept ought to be included in any sensible ethical regime for lawyers. n13 But by isolating these noble ideals from the less than exemplary practices they supported, Kronman allows lawyers to appropriate the moral force of these concepts [*466] without taking responsibility for the predictable consequences of a world in which lawyers cast themselves as autonomous statesmen. Although this state of affairs may make it easier for lawyers to take pride in their work, it does little to facilitate a proper accommodation between lawyers and society. To make progress towards this goal, we must take full account, in the words of Robert Gordon and William Simon, "not only of the failure of professionals to live up

to their ideals, but of the extent to which the ideals themselves have been bound up with the rationalization of hierarchy inside and outside the profession." n14

Kronman's passionate defense of traditional legal education also underscores the danger of discussing ideals without considering how these concepts have been developed in practice. Kronman repeatedly asserts that the case method is uniquely suited to teaching the skills of practical reason (pp. 113-21, 375-96). This empirical claim, however, fails to acknowledge the important limitations inherent in case-based teaching. Appellate opinions, as Kronman concedes, present an abbreviated, abstracted, and highly stylized account of the legal disputes they resolve (pp. 115-16). As many critics have argued, relying on these artifacts tends to limit the presence of the real world in the classroom to those situations that students and professors already understand. This process, in turn, systematically screens out considerations of race, gender, class, and a host of other issues that are -- and certainly were during the period Kronman celebrates -- relatively foreign to the average law professor or student. n15 Moreover, whatever persons or situations are created by professors and students from the skeletal information contained in these opinions are just that -- hypothetical creations. The litigants students imagine are brought into being at blinding speed to illustrate some complexity in the prevailing legal structure and then, just as quickly, dismissed with a shrug (or more often with a crude joke) when their usefulness as pedagogical instruments has expired. All of this seems as likely to produce a God-like indifference to the real complexity of human emotions as it is to engender the kind of sympathetic understanding that Kronman posits. n16

[*467] A similar problem plagues Kronman's claim that a lawyer who wants to excel at her craft will adopt the judge's ideals as her own. According to Kronman, a good lawyer will understand that the best way to predict legal outcomes, which Kronman acknowledges is at the core of the lawyer's role, is to become a "connoisseur" of judicial decisionmaking, one who shares the *ideal* judge's concern for the public good (pp. 139-54). n17 Although this vision of lawyers as connoisseurs of legality is undoubtedly attractive, the empirical premises underlying Kronman's argument are weak at best. n18 As an initial matter, few legal disputes are actually resolved by judges. Moreover, when judges do act, their decisions are inevitably shaped by their own histories and biases. Studies of the actual behavior of lawyers suggest that they believe that taking proper account of these idiosyncracies is an important part of their craft. n19 Even when lawyers concentrate on the public-spirited values of the ideal judge, the surest method of achieving their partisan goals is to frame their arguments *as if* they conform to these values, as opposed to actually adopting the judge's point of view as their own.

Kronman asks us to ignore all of these messy reminders of the manner in which lawyers, judges, and law professors have put the traditional ideals he celebrates into practice. Once we bring these issues back into focus, the aspirational pull of these ideals is substantially reduced. Depicting lawyers as "statesmen," whose education and love of the public good confers unique skills beyond the reach of ordinary citizens, was and is a protean means of building professional pride. Unfortunately, it also reinforces the bar's longstanding tendency to conflate lawyer interest with the public interest -- a tendency exacerbated by the perceived distance between the profession's stated ideals and its everyday practices. By confining his account of the profession's past to the level of ideals, Kronman holds contemporary practitioners to a standard that not only was never intended to guide everyday conduct, but was also thoroughly enmeshed in practices that society should be unwilling to accept today.

Ironically, many of the recent jurisprudential trends Kronman condemns self-consciously attempt to investigate the normative and empirical consequences that flow from the profession's traditional ideals and practices. At their best, law and economics and critical legal studies, as well as other similar "law and" movements, seek to force lawyers [*468] to justify the "legal" answers they propose in terms of a broader set of criteria that speak directly to the general welfare. By disparaging these additions to the standard curriculum, Kronman implicitly privileges the current distribution of power between the profession and society. Certainly, we should not turn law into economics or philosophy -- a position that not even Judge Posner endorses. n20 Nevertheless, lawyers must take the perspectives offered by these other disciplines seriously, even if the consequences of doing so are likely to reduce the distinctiveness of the lawyer's role. n21 Moreover, taking interdisciplinary perspectives seriously need not deny, as Kronman suggests, the link between professional excellence and character. To see why, however, we must move beyond Kronman's personal model of deliberation.

III. PERSONAL DELIBERATION VERSUS PROFESSIONAL ETHICS

Kronman derives each of the central elements of his account of practical reasoning -- incommensurability, sympathy and detachment, and political fraternity -- from a chain of analogies that starts with personal deliberation and ends with political deliberation (pp. 87-93). For all of its elegance and power, n22 this account fails to consider whether lawyers -- in their *professional* capacity -- ought to deliberate differently than either individuals or statesmen.

We begin to see the problem with Kronman's movement from the personal to the professional when we examine his assumptions about the goals of legal representation. From the outset, Kronman makes clear that the lawyer-statesman's principal talent lies in his ability to "help those on whose behalf he is deliberating come to a better understanding of their own ambitions, interests, and ideals and to guide their choice among alternative goals" (p. 15). In so doing, Kronman rightly rejects the popular claim that a lawyer's sole obligation is to [*469] suggest legal means for implementing the client's pre-formed decisions. n23

Nevertheless, by labeling the lawyer who faithfully implements his client's objectives as nothing more than a "deferential servant" (p. 15), Kronman moves too quickly from the realm of personal decisionmaking, in which an individual is always free to practice his deliberative powers by reexamining his own ends, to the sphere of professional assistance, in which the lawyer's moral development must be secondary to serving the client's interests. Surely, a large part of what ought to make law practice rewarding is the opportunity to help a client achieve morally worthy goals even if the lawyer has played only a small role in shaping the content of those ends. One does not have to subscribe to the view that a lawyer must mindlessly follow his client's every wish to acknowledge the moral claim of this kind of service. If lawyers are effectively to play this role, virtues such as honesty, loyalty, trustworthiness, and humility are at least as important in any plausible account of professional ethics as the ability to deliberate wisely about ends. n24

A related problem plagues Kronman's second assertion about the goals of legal representation -- that the lawyer-statesman's primary objective is to strengthen the community through preserving the bonds of political fraternity, just as individuals must seek integrity in the realm of personal decisionmaking (p. 106). As Kronman concedes, this vision is essentially a conservative one that privileges the status quo (pp. 159-61). He justifies this position on the ground that, "when a community is divided by a contest among incommensurable values . . ., it is in the preservation of political fraternity that the public good largely consists" (p. 99).

This analogy to statesmanship, however, is flawed. Even if political fraternity is a necessary condition of a normally functioning legal system, it does not necessarily follow that society is best served if every lawyer aims directly at achieving this goal. History has repeatedly shown that, in order to make their voices heard, subordinated [*470] groups frequently need the services of an advocate who passionately shares their point of view and who is therefore willing to pursue their interests even at the expense of social peace. Thus, Thurgood Marshall, Charles Hamilton Houston, and a host of other legal heroes quite self-consciously viewed themselves as "social engineers" dedicated to pushing their view of justice even at the expense of political fraternity. n25 Certainly a life emulating these great lawyers would be intrinsically satisfying. n26 More importantly, even if this form of law practice is less likely to contribute to the moral development of lawyers than the one that Kronman recommends, it nevertheless fulfills an important societal need by bringing demands for social justice sharply into focus. n27

Kronman might respond to these objections by noting that the lawyer-statesman, through sympathy and detachment, is in the best position to reach wise judgments about how to prevent paternalism or to push for justice at the temporary expense of political fraternity. What is missing from such an account, as Amy Gutmann has pointed out with respect to an earlier article by Kronman, is any express obligation on the part of lawyers "to consider the judgments of clients, their understanding of what is good or just." n28 Kronman assumes that, because of their training and experience, lawyers are in the best position to determine the true interests of individuals and communities. Despite Kronman's valiant efforts, this assumption is likely to be unwarranted in many circumstances. Like other self-interested actors, lawyers frequently overestimate their own abilities and privilege their own interests. n29 In the professional arena, as opposed to the sphere of [*471] personal decisionmaking, lawyers must actively engage clients in a meaningful exchange of information and values in which the *lawyer* remains open to the possibility of being persuaded by the client as well as the other way around.

In addition, Kronman fails to consider whether the lawyer's role as an officer of the court commits the profession to a more limited notion of incommensurability than the one Kronman posits for individuals. As Cass Sunstein aptly notes, "[w]hat can be said about personal valuations cannot be said about legal institutions." n30 The legal system frequently treats various goods as commensurable (for example, a lost arm and a sum of money) in circumstances in which an individual faced with a decision between the same two goods would not and probably should not. n31 Moreover, even when the law does not treat goods as commensurable, in the sense of placing them on a common scale, it is committed to a broad notion of *comparability*, in which disputes involving disparate goods can be resolved in a principled manner. The law does so in part by creating categories that abstract away some of the very aspects of a given dispute that, in Kronman's words, "are of greatest significance to the parties themselves" (p. 57). Thus, what may be "incomparable," and therefore in Kronman's view irresolvable by a "rational choice . . . on calculative or other grounds" (p. 67) to the parties themselves, may nevertheless be, from the perspective of the law, resolved in a principled manner.

In such cases, a lawyer's primary allegiance must be to the legal system's valuation and not to those of the parties -- even if the lawyer believes that the systemic valuation is incorrect. n32 The legal system depends upon lawyers to counsel their clients to conform to the public purposes encoded in the law. This process necessarily envisions [*472] that lawyers will have a special commitment to legal norms over and above what might be expected of an ordinary citizen. n33

To be sure, recognizing the moral claims of the lawyer's dual role as agent and officer of the court is likely to reduce the space for lawyers to engage in the kind of wide-open practical reasoning that Kronman celebrates. But furthering the moral development -- not to mention the professional pride -- of lawyers cannot be the primary goal of professional ideals. As Deborah Rhode notes in a related context, "from a societal perspective, . . . professional codes are desirable only insofar as they serve common goals to a greater extent than [available alternatives]." n34 Given the inequities and inefficiencies associated with the traditional ideals that Kronman articulates, society is well within its rights to trade some of the power and autonomy of lawyers for other goods -- for example, greater client controls, lower costs, and increased public accountability -- that might have a more generally beneficial effect on social welfare. Moreover, although this transformation has been and will continue to be painful, it need not sound the death knell for the intrinsic rewards of a legal career.

IV. WHERE DO WE GO FROM HERE?

So what then is left for young lawyers? As Kronman effectively documents, the profession has changed dramatically during the last quarter century. Nor is it any secret that many lawyers are dissatisfied with their professional lives. n35 But these realities, difficult as they may be, tell us little about the moral possibilities of contemporary law practice. To see these potential rewards, we must move beyond the lawyer-centered assumptions that animate Kronman's understanding of professional virtue.

Some of the dissatisfaction that lawyers feel is the result of the unjustified expectations created by the very ideals that Kronman celebrates. These ideals seductively promise young lawyers a career in which there is no tension between doing good and doing well. This promise, however, has always been illusory. Nineteenth-century lawyers were able to submerge the inevitable tension between public service [*473] and private gain by erecting artificial barriers to competition, monopolizing the debate over the goals and operation of legal institutions, exploiting their knowledge about the intricacies of the legal system, and shielding many of their practices from public view. n36 Each of these obfuscating techniques imposed social costs that were rarely mentioned when lawyers gathered to celebrate their professional accomplishments. Today's lawyers, however, can no longer rely on these tactics to shield themselves from the conflicting demands inherent in their dual role as "advocates" and "officers of the court." They must face a real tradeoff between the comfortable lifestyles they have grown to expect and the public commitments that confer honor and prestige on their chosen occupation. It is no wonder that many practitioners find this conflict disquieting.

Conflict, however, can be an occasion for either moral growth or moral decline. As Kronman persuasively documents, many contemporary practitioners have responded to the emerging competitiveness of the legal marketplace by abandoning any pretense of law as a public profession. Kronman errs, however, in thinking that the moral decline exemplified by this attitude is itself inevitable and immutable. n37 The breakdown of the profession's traditional culture has opened the door for lawyers, clients, and society at large to renegotiate the boundaries and content of professional practices. Lawyers must therefore find ways to convince clients and the public that the skills and dispositions that they bring to their work are valuable and ought to be supported. This process creates many opportunities for moral engagement.

Lawyers can begin this process by reaffirming, albeit in a somewhat muted form, the central tenet of Kronman's analysis: lawyers have a right to find moral satisfaction in their work. With that right, however, comes responsibility. Notwithstanding the many changes that Kronman documents, lawyers still play an important role in shaping their clients' understanding of their own ends. n38 Today, lawyers must share in the consequences as well. This sharing can take several forms, ranging from simply acknowledging the lawyer's role in the decisionmaking process, n39 to formally dividing financial risks and decisionmaking [*474] authority through "value" billing n40 or by ceding control over certain decisions to clients or other professionals, n41 to accepting legal liability for predictable and preventable client misconduct. n42 Not all of these measures will be appropriate in all contexts. The moral principle underlying all of them, however, is generally applicable. Lawyers and clients are engaged in a collaborative enterprise in which both parties' interests (including moral interests) must be taken into consideration. Clients and society in general are more likely to hear this message if they know that the profession is prepared to accept the costs as well as the benefits of moral decisionmaking.

A similar opportunity exists with respect to firm organization and culture. As Kronman correctly notes, law firms can no longer count on the unqualified loyalty of their clients or their attorneys. Instead, firms must now compete for both business and labor. To be sure, some firms will attempt to do so by lowering ethical standards or concentrating solely on raising profits. These strategies, however, are not the only available ones. Parceling out work among a number of firms has costs as well as benefits for corporate clients. These costs create opportunities for lawyers to persuade clients to establish more enduring relationships with them -- provided, of course, that the firm delivers services efficiently. n43 Similarly, there is some evidence that firms that avoid the worst excesses of growth, commercialism, and turnover Kronman describes may in the long run be more stable and successful than firms that succumb to these pressures. n44

Even young lawyers can influence these trends. New entrants to the profession can shape professional practices by voting with their feet when deciding where to work and, even more importantly, when to leave. The power of this choice has been repeatedly demonstrated. In the 1970s, young lawyers dramatically changed law firm pro bono policies by making these programs an important factor in their decision [*475] about where to work. n45 In the 1980s, a threatened student boycott of a leading law firm was a substantial factor in the firm's decision to stop representing South African Airlines. n46 Today, parental leave, part-time work, and sex and racial equity issues have all been pushed to the front of law firm agendas by the actions of law students and associates. n47 Of course, all of these activities carry risks, and no one should assume that the problems in the legal workplace that Kronman documents are likely to disappear in the near future. Nevertheless, by failing to acknowledge that young lawyers can help to create a more just and humane profession, Kronman contributes to the debilitating malaise that conveniently tells lawyers that there is no point in even trying to make a difference because they are powerless to affect the forces arrayed against them. n48 At a time when the consistently high level of dissatisfaction reported by even the most well-paid associates has gone a long way toward revealing the true costs of accepting the status quo, n49 this kind of negative reinforcement is particularly unfortunate.

Moreover, lawyers of all generations can still reap the moral satisfaction associated with providing access to the law to society's poor and oppressed. Millions of people are still without any meaningful access to legal services. Whether on a part-time or a full-time basis, helping society to fulfill its promise of equal justice under law continues to be one of the greatest rewards of a legal career. Those who seek this reward ought to be considered the real hero figures of the bar.

Finally, precisely because the old veneer of harmony between the profession's dual responsibilities has now been torn away, this generation of lawyers has the opportunity to make progress on what has always been the central, if submerged, question of professional morality: how to balance the demands of advocacy with a system that is committed to just outcomes. In his 1981 speech to the editors of the *Yale Law Journal*, Kronman expressly recognized this tension. Unfortunately, [*476] neither the answer he gave then -- that there is no moral basis for advocacy -- nor the argument he tenders here -- that society should depend on the judgment of lawyer-statesmen to balance these competing concerns -- is satisfactory. Instead, lawyers must actually deliberate *with* the lay public about the justifications for and limitations on zealous advocacy. This deliberation must take place both at the policymaking level and in the day-to-day interactions among lawyers, clients, state officials, and other concerned citizens. Although this process is bound to be fraught with difficulties and frustrations, those lawyers who choose to participate will have the satisfaction of knowing that they have helped to shape a new set of professional ideals that are as good for society as they are for lawyers.

FOOTNOTES:

n1 Dean and Edward J. Phelps Professor of Law, Yale Law School.

n2 Professor of Law and Director of the Program on the Legal Profession, Harvard Law School. Charles Fried, Deborah Hellman, Martha Minow, Richard Parker, and Alan Wertheimer all made helpful comments on earlier drafts. Tania Tetlow provided invaluable research assistance.

n3 Kronman supports this conclusion in part two through a "sociological" investigation of the principal legal "institutions and their cultural dynamics" (p. 6). For example, in Chapter 5, Kronman documents a familiar set of changes in the size, structure, operation, and culture of large corporate law firms (pp. 273-83). These

changes, Kronman argues, have collectively undermined the "high value" that these institutions traditionally accorded "the virtues of practical wisdom and public service" underlying the lawyer-statesman ideal (p. 273).

n4 Kronman argues that individuals frequently make choices among activities -- even ones as superficially similar as reading a book and watching a movie -- that produce "deeply different pleasures" (pp. 57-58). The same phenomenon, he asserts, occurs in politics: governments must choose among alternatives (for example, building a dam versus preserving a species of fish) that involve profoundly different visions of what the community should be (p. 59).

n5 Kronman concedes that a rational choice among incommensurable alternatives can sometimes be made on the basis of "timing," when it is undeniably better to do one thing before another, or of "fit," when one option is more compatible with the decisionmaker's existing values (p. 58). He goes on to assert, however, that these decisionmaking tools will frequently fail to produce a uniquely right solution, particularly in those cases in which the choice is seen as "self-defining" for an individual or a political community (p. 60). *See also id.* at 160 (praising the case method for making "the differences among human goods more patent" and therefore "weaken[ing] the belief that conflicts among them can be settled in a principled way").

n6 The traditional view, associated with structuralist/functionalists like Talcott Parsons, assumes "a close correspondence between formal declarations of professional values, as in codes of professional ethics, and the values actually held by individual practitioners." Robert L. Nelson & David M. Trubek, *Introduction: New Problems and New Paradigms in Studies of the Legal Profession, in* LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 1, 15 (Robert L. Nelson, David N. Trubek & Rayman L. Solomon eds., 1992) [hereinafter LAWYERS' IDEALS] (describing, but not endorsing, the structuralist/functionalist vision). The critical view, articulated most effectively by Richard Abel, asserts that professional ideals are little more than a cover for lawyer self-interest. *See, e.g.*, RICHARD L. ABEL, AMERICAN LAWYERS 112-26 (1989); Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?, 59 TEX. L. REV. 639, 653-58 (1981);* David Riley, *The Mystique of Lawyers, in* VERDICTS ON LAWYERS 80, *passim* (Ralph Nader & Mark Green eds., 1976) [hereinafter] VERDICTS ON LAWYERS].

n7 *See* JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 52, 106-10, 292-95 (1976) (examining the systematic exclusion of women and minorities from the legal profession); Deborah L. Rhode, *The Delivery of Legal Services by Non-Lawyers, 4 GEO. J. LEGAL ETHICS 209-10 (1990)* (describing the legal profession's efforts to restrict competition from laypeople).

n8 Kronman states that the following lawyers exemplified the lawyer-statesman ideal: Abraham Lincoln, Earl Warren, Robert Jackson (p. 3), Thomas Jefferson, Alexander Hamilton, Henry Stimson, Dean Acheson, John McCloy, Robert Jackson, Cyrus Vance, Paul Warnke, and Carla Hills (pp. 11-12).

n9 For a general discussion of professional independence, see Rayman L. Solomon, *Five Crises or One: The Concept of Legal Professionalism,* 1925-1960 *in* LAWYER'S IDEALS, *supra* note 6, at 144, 146-48. For a similar account (and critique) of claims about the autonomy of legal knowledge, see Richard A. Posner, *The Decline of Law as an Autonomous Discipline:* 1962-1987, *100 HARV. L. REV. 761, 762-77 (1987).*

n10 Indeed, Kronman warns that if the lawyer is only a "jack-of-all-trades with a dilettante's understanding of many fields but no expertise of his own, . . . his position will be a subordinate one marked by deference toward the real experts in these areas -- not a very elevated or inspiring ideal for lawyers to embrace" (p. 362).

n11 *See* Robert W. Gordon, *The Independence of Lawyers, 68 B.U. L. REV. 1, 44-48 (1988)* (describing the bar's use of technical legalism as a means of insulating its reform agenda from being attacked as political). I have elsewhere argued that "independence arguments" can play an important role in insulating lawyers from client pressures. *See* David B. Wilkins, *Who Should Regulate Lawyers?, 105 HARV. L. REV. 799, 858-63 (1992).*

n12 On lawyer paternalism, see Stephen Ellmann, *Lawyers and Clients, 34 UCLA L. REV. 717, 727-30 (1987).* On the profession's success in restricting public participation in the creation of professional norms, see Deborah L. Rhode, *Why the ABA Bothers: A Functional Perspective on Professional Codes, 59 TEX. L. REV. 689, 690-92 (1981).*

n13 Statesmanship ought to be a part of professional ethics because lawyers, like statesman, are actively involved in creating and interpreting legal norms. And, as Robert Gordon argues, all functioning legal systems rely upon some notion that lawyers should maintain some degree of autonomy from their clients. *See* Gordon, *supra* note 11, at 20-21.

n14 Robert W. Gordon & William H. Simon, *The Redemption of Professionalism?, in* LAWYER'S IDEALS, *supra* note 6, at 230, 235.

n15 *See* Kiberle W. Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education,* 11 NAT'L BLACK L.J. 1, 2-9 (1989); Angela P. Harris & Marjorie M. Schultz, *"A(nother) Critique of Pure Reason": Toward Civic Virtue in Legal Education, 45 STAN. L. REV. 1773, 1779-85 (1993).*

n16 *See* ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND 74-81 (1992 (contending that the case method discourages students from empathetically engaging the humanity of the people portrayed in cases or hypotheticals). Empirical studies of interactions between lawyers and clients unfortunately confirm this tendency in practice. *See, e.g.*, Austin Sarat & William L.F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office, 98 YALE L.J. 1663, 1671-87 (1989)* (describing the studied indifference of divorce lawyers to the real emotions of their clients).

n17 This claim is crucial to Kronman's argument. As he concedes, without the anchor of the judicial point of view, his emphasis on sympathy and incommensurability might well produce a corrosive cynicism about legality (pp. 160-61).

n18 For a compelling normative defense of this account of the lawyers' role, which argues that lawyers should be the social curators of legalism, see Gordon, *supra* note 11, at 23-24.

n19 *See, e.g.*, Sarat & Felstiner, *supra* note 16, at 1679 (noting that divorce lawyers believe that "the inattentiveness, insensitivity, and incompetence of judges must be taken into account in deciding how to process cases").

n20 *See* Posner, *supra* note 9, at 777 (disclaiming any desire to see "the disappearance of traditional legal thought and scholarship").

n21 Kronman argues that it is "pathological" for Roberto Unger to teach law students that the "disintegration of the bar" might help point the way toward a more democratic society (p. 262). But this position is only

pathological if one believes that the legal profession is entitled to survive regardless of its social utility, or, alternatively, that law students should somehow be shielded from the true consequences of their chosen profession. Regardless of whether one agrees with Unger (or, to take a law and economics example, Louis Kaplow and Steven Shavell's assertion that ex post legal advice may be socially harmful, *see* Louis Kaplow & Steven Shavell, *Legal Advice About Information to Present in Litigation: Its Effects and Social Desirability, 102 HARV. L. REV. 565, 599 (1989))*, lawyers must respond to such charges on their merits and not by banning both the messenger and the message.

n22 For example, Kronman's brilliant exposition of the "specter of regret" should be required reading for anyone who has ever wondered about the path not taken (pp. 74-87).

n23 *See, e.g.,* Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities, 1986 AM. B. FOUND. RES. J. 613, 615-19* (advocating the narrow view rejected by Kronman). As Kronman correctly notes, this "narrow view" rests on empirically questionable claims about the determinacy of most clients' objectives and promotes a normatively pernicious vision of professionalism that systematically screens out one important source of constraint on undesirable client conduct (pp. 128-34). *See, e.g.,* Gordon, *supra* note 11, at 26-30 (arguing that lawyers inevitably shape their clients' goals); David Luban, *The Lysistratian Prerogative: A Response to Stephen Pepper, 1986 AM. B. FOUND. RES. J. 637, 7640-41* (arguing that lawyers play an important role in dissuading clients from pursuing pernicious goals).

n24 These qualities ought not to be overlooked, especially in light of the previously noted tendency among many lawyers, particularly those who represent poor or uneducated individuals, to assume that the lawyer knows more than the client about what is "really" in the client's best interest. *See* Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 BUFF. L. REV. 1, 45-48 (1990).*

n25 *See, e.g.,* MICHAEL D. DAVIS & HUNTER R. CLARK, THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH 56-57 (1992) (quoting Charles Hamilton Houston, Dean of Howard Law School and Marshall's great mentor, as stating that "'[t]he Negro lawyer must be trained as a social engineer'"). Of course, neither Marshall nor Houston were revolutionaries in any traditional sense: both were dedicated to working within the system and eschewed the radical tactics espoused by many of their contemporaries. Nevertheless, it is unlikely that either Houston or Marshall believed that preserving a spirit of friendship between blacks and whites was "a preeminent good that . . . exceed[ed] all others in importance" as opposed to a strategic factor to be harnessed in the service of social justice (p. 106). And, it goes without saying that Houston did not topple American apartheid by "buil[ding] by indirection and without a conscious plan in view" (p. 22).

n26 *See* Amy Gutmann, *Can Virtue be Taught to Lawyers?, 45 STAN. L. REV. 1759, 1768 (1993)* ("[L]egal practice in defense of social justice may also be rewarding in itself, because it too enlists the virtue of practical judgment" in helping particular individuals extract their just deserts from an often recalcitrant and unyielding legal order.).

n27 As David Luban makes clear in his eloquent defense of public interest advocacy, one does not have to believe all of the claims made on behalf of the adversary system to conclude that the disenfranchised ought to be entitled to lawyers who passionately share their demands for justice. *See* DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY 317-40 (1988).

n28 Gutmann, *supra* note 26, at 1768 (critiquing Anthony T. Kronman, *Living in the Law, 54 U. CHI. L. REV. 835 (1987)).*

n29 That clients have instigated many of the recent changes that Kronman asserts undermine a lawyer's ability to provide high quality legal services -- for example, moving from long-term relationships to short-term contracting, shifting work to inside counsel, demanding more detailed bills -- suggests that these sophisticated consumers do not share the profession's view about what is in their best interest. *See* Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective, 49 MD. L. REV. 869, 899-903 (1990)* (arguing that as clients reduced information asymmetry and switching costs, they naturally demanded a different relationship with their counsel). In Part IV, I argue that a less lawyer-centered account of professional morality than the one Kronman offers might actually make it easier for lawyers to convince clients that some of these practices are counterproductive.

n30 Cass R. Sunstein, *Incommensurability and Valuation in Law, 92 MICH. L. REV. 779, 820 (1994).*

n31 This phenomenon partly explains why, despite all of the talk about hard cases, most legal disputes can be resolved quickly by the unproblematic application of tolerably clear legal norms. *See* Frederick Schauer, *Easy Cases, 58 S. CAL. L. REV. 399, 412 (1985).*

n32 Sunstein believes, for example, that the law ought to pay greater attention to the diversity of human goods. *See* Sunstein, *supra* note 30, at 824-53. Nevertheless, he concedes that, even when we believe that "under ideal conditions, the best system of valuation is diverse and plural, . . . in light of the weaknesses of human institutions and the constant prospect of bias and arbitrariness, [some] public choices should assume a . . . unitary metric." *Id.* at 855.

n33 The fact that we sometimes want lawyers to view moral questions differently than nonlawyers simply reflects the age old maxim that legitimate role obligations constrain moral decisionmaking. *See generally* ALAN H. GOLDMAN, THE MORAL FOUNDATIONS OF PROFESSIONAL ETHICS 90-155 (1980) (explaining the importance of role morality). Although the extent of this difference has been widely debated, even the harshest critics of professional morality concede that lawyers have a special obligation to uphold the public purposes of the legal framework. *See, e.g.*, LUBAN, *supra* note 27, at 104-28; William H. Simon, *Ethical Discretion in Lawyering, 101 HARV. L. REV. 1083, 1113-19 (1988).*

n34 Rhode, *supra* note 12, at 690.

n35 *See, e.g.*, SOL M. LINOWITZ WITH MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY 192 (1994) (citing individuals who have left the practice of law because of professional dissatisfaction).

n36 *See supra* note 7 and accompanying text.

n37 As Judge Irving R. Kaufman stated in 1990, "I do not find the unhappy findings of the ABA survey as symptoms of terminal depression. On the contrary, the mounting frustration within the legal profession may indicate healthy undercurrents of idealism." Irving R. Kaufman, *Idealism v. Reality,* NAT'L L.J., Oct. 22, 1990, at 13.

n38 *See* Gordon, *supra* note 11, at 30.

n39 Lincoln Caplan reports that when confronted with the apparent evils of the hostile takeover movement his firm helped to pioneer, Joe Flom initially disclaimed any responsibility for his clients' actions. *See* LINCOLN CAPLAN, SKADDEN ARPS: POWER, MONEY, AND THE RISE OF A LEGAL EMPIRE 225 (1993). Flom, however, quickly abandoned this standard position. Skadden had been too involved for too long in shaping its clients' understanding about the wisdom of corporate restructuring to claim that it was only a deferential servant implementing its masters' will. *See id.* at 225-27.

n40 *See* LINOWITZ WITH MAYER, *supra* note 35, at 198-201 (noting the benefits of a shift from hourly fees to other forms of billing, such as contingent and flat fees).

n41 *See, e.g.,* MARC GALANTNER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 49-50 (1991) (discussing the expanding role of in-house counsel).

n42 I have argued elsewhere that in certain circumstances lawyers should be legally responsible for their failure to either force their clients to comply with applicable legal restrictions or withdraw from representation. *See* David B. Wilkins, *Making Context Count: Regulating Lawyers After Kaye, Scholer, 66 S. CAL. L. REV. 1145, 1171-76, 1181-82, 1206 (1993).*

n43 For example, several lawyers reported to me in the last year that they observed a marked decrease in firm-switching by major corporations, probably because the transaction costs outweigh the benefits.

n44 *See* David H. Maister, *The One-Firm Firm: What Makes it Successful,* SLOAN MGMT. REV., Fall 1985, at 3, 7-9.

n45 Charles R. Halpern, *The Public Interest Bar: An Audit, in* VERDICTS ON LAWYERS, *supra* note 6, at 156, 169 (noting that large law firms used pro bono programs to attract young lawyers and that these programs waned when young lawyers exerted less pressure).

n46 *See* Ruth A. Marcus, *Covington & Burling Drops S. African Airline as Law Client,* WASH. POST, Oct. 5, 1985, at C3; Charles M. Morgan Jr., *Bad for Lawyers, Bad for Lawyering,* N.Y. TIMES, Oct. 11, 1985, at 35 (criticizing Covington & Burling for giving in to pressure).

n47 For a discussion of how lawyers (particularly women and minorities) have acted as "change agents" on these issues, see Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering, 44 CASE W. RES. L. REV. 621, 650-63 (1994).*

n48 *Cf.* GRANFIELD, *supra* note 16, at 81-93 (describing how law students become more pragmatic in part as a result of legal education's subtle but thoroughgoing critique of their belief that the existing distribution of legal resources could be changed by their actions and ideas).

n49 *See* Kaufman, *supra* note 37, at 13 (pointing out that young lawyers continue to be unhappy with large firm law practice "regardless of the towering heights their salaries reach").