PAYING ATTENTION TO THE SIGNS

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I

INTRODUCTION

After all our efforts and all Keck's money, where are we? Some good has been accomplished. By committing its resources to the study of legal ethics, the W.M. Keck Foundation has encouraged law schools to pay attention to a subject all too often ignored. That itself is good. The money has made things happen. Schools have held conferences devoted to legal ethics that otherwise would not have been held;[1] schools have experimented with teaching programs in legal ethics that otherwise might have been left untried;[2] members of the practicing bar have had conversations and debates with academics about the responsibilities of lawyers that otherwise might not have occurred; and a few scholars have written papers examining the responsibilities of lawyers that otherwise might not have been written.[3] All that is good.

But the picture is not all rosy. Legal ethics remains the step-child of legal education. Serious scholarship in legal ethics is still considered somewhat of an oxymoron.[4] Most faculties remain unconvinced that the subject can be taught or even that there is a subject here worth teaching.[5] And at most schools the "pervasive method," in which legal ethics is integrated into the standard coursework, is still little more than tokenism designed to satisfy the American

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1. *E.g.*, Mass Tortes: Serving Up Just Desserts (Victims-Lawyers-Class Actions-Mass Torts), Cornell Law School (Oct. 23-24, 1994); Colloquium On the Future Of the Legal Profession, Harvard Law School (Mar. 22, 1995); this conference, Symposium On Teaching Ethics and the Legal Profession, Duke University School of Law (Nov. 2-3, 1995); and the W.M. Keck Foundation Forum On the Teaching of Legal Ethics, William and Mary School of Law (Mar. 22-23, 1996).

2. *E.g.*, The University of Michigan Law School has enriched its Ethics Bridge Week program in ethics, while Cornell Law School and Boston University Law School use the pervasive materials we have developed.

3. *E.g.*, Symposium, *Mass Tortes: Serving Up Just Desserts*, 80 Cornell L. Rev. 811 (1995); Symposium, *Forum On the Teaching of Legal Ethics*, 38 Wm. & Mary L. Rev. (forthcoming 1996).

4. Many first-tier law schools have no faculty member or no senior faculty member whose research centers on questions of legal ethics. In our conversations with members of those faculties, a persistent refrain is that most of the scholarship in this subject is seen by faculty members as below the school's standards.

5. A number of schools have abandoned their basic ethics course because student reaction to those courses is so negative, and faculty members doubt that the subject is worth teaching. Others profess to believe the subject is worth teaching but insist that only the rarest of individuals can make the course work.

Bar Association ("ABA") accreditation requirement.[6] To some extent, the symposium at which this essay was presented masks those problems. There we assembled a rare group: scholars that have managed to be taken seriously while taking legal ethics seriously.

An impressive collection of law school deans was also present, but there are reasons to believe that law school deans see legal ethics differently than the average faculty member. First, deans have much more contact with the practicing bar than most faculty members, and, in our experience, practicing lawyers are much more likely to preach the importance of professional responsibility than academics. Second, deans have direct responsibility for getting their schools through the accreditation process, which means getting as clean an ABA report as possible. This makes deans more active advocates for some plausible coverage of legal ethics than other faculty members. Third, deans must take direct responsibility for fixing courses that students may complain about, such as legal ethics. Fourth, deans are responsible for raising money. If a donor or potential donor treats legal ethics seriously, as the Keck Foundation has done, it is likely that most law school deans will treat it seriously as well, particularly when they hear similar concerns from practicing lawyers, the ABA, and students.

We believe the lowly status of legal ethics within the larger law school community is the biggest challenge facing both those who teach basic or advanced courses in this subject and those who seek to "mainstream" matters of professional responsibility. At the time we applied for a Keck grant, we had already published a book for the basic ethics course.[7] The course embodied in that book represented our best effort to reform attitudes about the subject. We believe the course we designed is both pedagogically challenging and that it works, but we also believe that reaching students in one class is not enough. We thus applied for a grant dedicated to improving the materials used to teach ethics through the pervasive method.

The pervasive method exists as an actuality at all schools. Legal ethics cannot be segregated from the rest of the law school curriculum. Whenever a professor asks a student what the lawyer in a case should have done differently, what strategy might have worked better than the one employed, what advice a lawyer should give a client in light of certain legal principles, students are being asked what a lawyer might do and what a lawyer should do. Ethics, in other words, is being taught throughout the law school curriculum, whether or not faculty members are aware of it. Indeed, we believe that students garner their

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6. Many faculty members resent having to teach ethics, a subject with which they have little familiarity, and do so only to placate the administration. Others refuse to comply with administration pleas to include an ethics component, insisting that this requirement only takes away precious time that should be devoted to "coverage" of their subject matter.

7. GEOFFREY C. HAZARD, JR. & SUSAN P. KONIAK, THE LAW AND ETHICS OF LAWYERING (1990). A second edition of this book, with the co-authorship of Professor Roger C. Cramton has since been published. THE LAW AND ETHICS OF LAWYERING (2d ed. 1994).

basic understanding of a lawyer's proper role not in ethics courses, but in other law school courses, which are teaching implicitly, if not explicitly, what a lawyer does and should do. The number of hours spent learning explicit lessons of professional responsibility in any school's basic ethics course is dwarfed by the sheer number of hours spent learning lawyering-lessons in those other courses. Thus, all schools in fact use the pervasive method of teaching legal ethics.

Unfortunately, much of what is taught is done so without reflection. Slip-shod, ill-informed teaching is generally condemned in law school. Yet that fact only demonstrates how little respect the subject of legal ethics commands, for when it comes to discussing what a lawyer should do, shoddy "anything-goes" instruction is commonplace and accepted. Many professors fail to recognize matters of professional responsibility when they come up, and thus end up communicating an answer to an ethics question without knowing they have done so.

For example, in most contracts courses and many courses in commercial law, professors cover unconscionability and contracts of adhesion. In covering these topics, cases such as *Carnival Cruise Lines v. Shute*,[8] are discussed. In *Carnival* the Supreme Court held that a forum-selection clause printed on the back of a cruise ticket in small print was enforceable, although a long line of precedent disfavored the enforcement of provisions that limit where an individual could bring suit. The case makes no mention of lawyer ethics. It is almost always taught without any mention of the ethics of the lawyers who drafted the provision and who should have known, assuming they were competent, that the provision was of very doubtful validity at the time it was drafted. By teaching cases like *Carnival* without mention of ethics, a lesson is being conveyed that the cruise line lawyers won their gamble because the court upheld the provision. The implicit lesson is that it is good lawyering on behalf of a corporate client to push the envelope on clauses in consumer contracts. After all, most consumers are likely to assume that legal language is valid (whether it is or not). And, even if a consumer challenges the language, a court may write new law and accept that a previously disfavored or invalid clause is now acceptable.

The problem with these implicit lessons is that they leave out many important considerations. For example, in *Carnival* the Court held the clause valid on the assumption that the consumers had appropriate notice of the clause. But, as later litigation in the state courts showed, the company sold its tickets on a non-refundable basis, and the consumers were often asked to pay for the tickets without any notice that these tickets would limit where they could file suit.[9] That selling practice would make the clause unenforceable once again, the Supreme Court opinion notwithstanding.[10] Did the lawyers know how the tickets were sold? Should they have known? Inasmuch as notice is essential to

8. 499 U.S. 585 (1991).
9. Carnival Cruise Lines v. Superior Court of Los Angeles County, 286 Cal. Rptr. 323 (1991).
10. *Id.*

the enforceability of questionable contract terms, does a lawyer have an obligation to advise the client that appropriate notice of the terms must be given? By teaching unconscionability doctrine as if the lawyers who draft contract terms are not part of the transaction, one communicates implicit messages about a lawyer's role. It suggests, for example, that concerns about enforcement are matters between the company and the consumer, not matters that implicate the company's lawyer.[11]

Of course, some teachers employ a more deliberate approach to teaching legal ethics "pervasively." But, in our opinion, those efforts are often as flawed as the unconscious method of proceeding. For example, many teachers consciously include some discussion of ethics in their substantive courses only because they are coerced by their institutions to do so. They thus include ethics material, but manage at the same time to communicate their disdain for the subject in some manner, often by joking about the concept of an ethical lawyer. Those who take the enterprise more seriously nonetheless often manage to communicate the unimportance of the subject by honestly professing how little they know about what they are supposed to be teaching. In even the best-intentioned professor's hands, the pervasive approach generally ends up producing the following effect on students: at some point in the study of contracts, torts, criminal law, or property, serious study is perceived by students as having been temporarily suspended; analysis of text ceases; books close; pens are placed on desktops; and aimless discussion begins. Students may pay little attention to what is explicit in the discussion, but a strong implicit message is conveyed: Professional responsibility is nonsense, unworthy of serious reflection or study, a matter of personal taste, a seat-of-the-pants enterprise.

With this bleak picture of how the pervasive method actually works in most schools, we set out to improve the situation by producing materials that would help convince professors there was something worth teaching—something they could teach without feeling that the enterprise was a joke, or irrelevant, or that they were incompetent to teach it. We set out to produce materials that would help law students learn something about their responsibilities as lawyers and that would encourage a serious approach toward those responsibilities and the complexity of being an ethical person in an unredeemed and often unforgiving world.

Our aim was not to displace the basic ethics course with the pervasive method. We do not believe that legal ethics should be taught solely through the pervasive method. The subject is complex enough to merit the prolonged and concentrated attention that can be provided only through a course devoted to the topic. Moreover, the pervasive method deals poorly with topics in legal ethics that require expertise and sustained treatment in their own right, such as

11. In the pervasive materials we have developed for contracts courses, we have included *Carnival* along with extensive teaching notes on the ethical issues raised by this case and similar cases on unconscionability doctrine and consumer contracts.

conflicts of interest and confidentiality. Finally, we believe that the pervasive method, if employed alone, too often leaves students with a scatter-shot, shallow, and unintegrated understanding of the subject and their responsibilities. However, we also believe that the pervasive method cannot be avoided, that teachers have a responsibility to consider what lessons about lawyering they are conveying, and that it is no easy task to teach something that the community does not take seriously. Thus, we thought it worthwhile to concentrate on improving the materials available to teach legal ethics through the pervasive method.

II

OUR APPROACH TO AND MATERIALS FOR THE PERVASIVE METHOD

We designed ethics materials and wrote extensive teaching notes to assist professors in using those materials effectively for courses in contracts, torts, property, civil procedure, and criminal law. We also have materials available for courses in corporate law and intellectual property, but we do not have written teaching notes available for those subjects.[12] We encourage readers of this essay who teach in any of those areas to contact us for copies of these materials.

The process we used to develop the materials was essentially the same for each course. We started by identifying "good cases," not hypotheticals, not problems or law review articles or non-legal materials, but cases. We will come back in a moment to what makes something a "good" case, but first a word about our choice to use cases as opposed to other sources. Cases are familiar to both students and teachers. Teachers in all subject areas know how to teach cases, and students know how to read them. More important, in the law school culture, cases signal that something important is going on. When cases are the focus, students know that law is being taught, that they should pay attention. It is a mistake to think the same attention and air of seriousness attends the use of less traditional teaching materials.[13]

Like all robust institutions, law schools have their own culture. And like all cultures, the law school culture provides signs with which those within the culture communicate with one another—signs that are used to infuse events with meaning and inspire people toward culturally approved goals.[14] In law school culture, despite reform efforts, the study of case law, the use of the Socratic (or modified Socratic) method, the essay exam, and rigorous analytic thought are

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12. However, we would be happy to help any professors in those areas who are interested in using our materials, and perhaps through that cooperative effort we could produce some notes to accompany those materials.

13. *See* Ronald Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 Am. B. Found. Res. J. 247.

14. Cultural signs, precisely because they are powerful tools of communication, are subject to reinterpretation by minority groups within the system. Thus, the important signs within any culture bear more than one meaning and often stand for contradictory propositions.

still important means of signifying that an area of study is serious.[15] On the other hand, the showing of videotapes, open-ended class discussion, the reading of non-legal sources, particularly if those sources are fictional works, are often signs that a subject is not serious.[16] Regrettable as this state of affairs may be, as we survey American legal education at the end of the twentieth century, we believe the dominant culture remains Socratic/analytic/case-centered. This is not to say that we believe cases are the best or only way of learning law, but it is to say that the case method is still dominant in law schools and is still associated with the more rigorous and serious areas of law.

We would not, however, have chosen to use cases for their aura alone. We also believe that they are a good way of investigating questions of professional responsibility because cases are a suitable vehicle for teaching law, and we believe the ethical problems confronting lawyers cannot be extricated from the law. First, the problems arise in the practice of some specific area of law (for example, securities law or divorce litigation). The specific "background" law, the substantive area in which the problem is embedded, itself often creates the dilemma, and it may also provide a way out of it. Second, the background law or the law governing lawyers (agency law, criminal law, civil procedure, evidence law, and the ethics rules) may prescribe paths upon which lawyers are supposed to travel when facing such dilemmas and may proscribe other paths. In sum, law may allow, require, or prohibit a particular course of conduct. The law not only seeks to limit and empower the client, it seeks to limit and empower the lawyer.

Neither of us would suggest that blind obedience to law is the equivalent of ethical conduct or is a moral stance worthy of adoption. We believe that lawyers, in particular because their role demands respect for law, should choose a course of conduct only after considering what the law has to say about lawyers choosing that course. In some situations, the right thing to do may be to disobey the law. That route is, however, always risky for the lawyer and usually for the client. More important, the law's prohibition might reflect concerns that the lawyer has overlooked in assessing what is right to do. We believe that lawyers should consider in the most serious way what the law commands and the reasons for those commands before deciding on an extra-legal or illegal course of conduct. But that means lawyers must know the law, which means there is a point to teaching it as part of ethics.

Cases are, however, not simply adequate vehicles for teaching law; they are "war stories," recounting difficult situations that lawyers have actually confronted. They thus can bring an immediacy to questions of professional responsibility that may not be as easy to convey through hypotheticals, "problems," law review articles, or philosophical theories. Although some videotape material and some books and articles can convey more immediacy

15. *See* Pipkin, *supra* note 13.
16. *Id.*

than even the most detailed appellate case, those materials have significant "negatives" attached to them. We avoid recommending reliance on them, particularly in courses dedicated to some area of study that does not regularly make use of such materials.

The biggest negative is one we have already mentioned: Students do not associate these non-case materials with serious study. Are non-traditional materials thus forever to be banned from the law school class? No. But, if law school education is to broaden its methods of teaching by using non-traditional materials, that agenda must begin with courses that are at the center of legal education, whose weightiness is beyond dispute within the law school culture—Corporate Law, Constitutional Law, Civil Procedure, to name just a few. The reputation of legal ethics is too weak to be a suitable vehicle to lead any credible reform movement. The likely result of such an effort will be to discredit ethics and non-traditional materials at the same time. There is another important negative as well: The use of non-traditional materials to teach legal ethics serves to perpetuate the disconnect between "law" and legal ethics. Legal ethics cannot be separated from law. The ethics rules that govern lawyers are law in every state. To continue to suggest otherwise—to continue to suggest that legal ethics is somehow a matter of personal taste or honor—is to deny a critical premise of the legal system that regulates the practice of law. Denying this premise leads budding lawyers astray. It also suggests that, at least for lawyers, conforming one's conduct to the requirements of law is a simple proposition unworthy of sustained study or a goal so devoid of dignity that it is unworthy of sustained discussion. We reject both those propositions and will return to them later.

In choosing cases to include in our materials, we insisted on two qualities. The case had to raise important questions of professional responsibility, while raising some question in the host-subject of law that professors in that area normally cover, or at least, would consider worth covering. We were trying to find cases that would allow a contracts professor, for example, to integrate the teaching of contracts with the teaching of professional responsibility. Ideally, we were hoping that the teacher would come to see how considering the ethical questions raised by the case would add to the discussion of the host-area of law. For example, most, if not all, tort classes cover cases in which courts have relaxed the doctrine of privity, thereby allowing those not in privity of contract to sue the manufacturer of a product. Our tort materials include a case in which Judge Posner analyzes why the doctrine of privity protected lawyers from suit by third-parties long after manufacturers of goods lost that protection.[17] That case provides an excellent vehicle for studying the tort doctrine, the application of economic analysis to tort law, *and* the responsibilities of lawyers to third parties harmed by efforts made by lawyers on behalf of their clients. It raises in its own way the classic problem of how far a lawyer should go in

17. Greycas v. Proud, 826 F.2d 1560 (7th Cir. 1987).

zealously advocating her client's cause, but it is also a case that fits naturally into the torts course.

Our criminal law materials include a case in which a lawyer was prosecuted and convicted of obstruction of justice.[18] It includes a careful discussion of how otherwise lawful acts may constitute the actus reus of a crime when combined with a culpable mental state. Here the lawful acts that constituted the actus reus were typical lawyering activities, such as advising the client to take the fifth amendment, which the lawyer allegedly did with the corrupt intent of helping third parties to avoid apprehension by the police. Should certain acts, like advising clients of their rights, be excluded from the purview of criminal prohibition no matter the intent of the actor? The court examines that question, providing the criminal law professor with a rich opportunity to discuss the actus reus/mens rea requirements of criminal law and the lawyer's special role in our constitutional system.

Our contracts cases include one in which the issue is essentially whether a contract, or only an agreement to try to make a contract, has been made.[19] The alleged contract is, however, a contract to settle a case. The facts suggest that the client communicated its intent to be bound by the settlement to its lawyer, who passed that intention on to the court and the opposing party; however, before the deal was finally signed, the client changed its mind (and its management). The lawyer resigned. This case raises important contract questions, and many important questions about lawyer-client communication, lawyer-court communication, and the significance lawyers should ascribe to the words of an opposing lawyer. The intellectual property cases include a challenge to the ethics rule prohibiting criminal defense lawyers from contracting with the defendant for the literary or movie rights to the client's story.[20] We were able to find cases in each area of law we tackled that provided similar opportunities for integrating ethics issues and issues in the host-subject.

To overcome the host-professor's unfamiliarity with the ethical questions, we committed ourselves to writing detailed teaching notes on those questions. We did not, however, sit down to write those notes until we had a chance to discuss our case selections with professors in the host area and practitioners as well. We wanted our teaching notes to reflect the perspective of those teaching in the host field. We also wanted our notes to reflect the perspective of practitioners of law and, whenever possible, the client's perspective on the problem at hand. To gain insight into those perspectives, after selecting cases in a particular area

18. United States v. Cintolo, 818 F.2d 980 (1st Cir. 1987).

19. International Telemeter Corp. v. Teleprompter Corp., 592 F.2d 49 (2d Cir. 1979).

20. Maxwell v. Superior Court of Los Angeles, 30 Cal. 3d 606 (1982) (holding that the defendant's constitutional right to counsel gave him the right to transfer the rights to his story to a lawyer in exchange for legal representation as long as the transfer is knowing, voluntary, and made after full disclosure by counsel of the risks and benefits of such a deal); *see also* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.8 (d) (1994) (prohibiting such contracts); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-104(B) (1983) (same).

of law, we invited participation of professors in that area, practitioners, business people, school administrators, and others who might reflect the client's perspective. We brought these people together to discuss the selected cases. We recorded those sessions and used the transcripts to write teaching notes that included the host-professor's perspective, the practitioner and client's perspective, along with information provided by us on the ethics rules and the law governing lawyers that would help the teacher feel comfortable discussing those matters. We included a guest ethics professor or two at most of our sessions, so that the teaching notes on ethics reflected more than just our particular take on the subject.

We believe we have produced some rich teaching notes through this process to accompany cases that allow the integrated teaching of ethics and substantive law. Moreover, we have had some luck getting others to use these materials. Most of these materials are in use at Boston University; some have been tried at Michigan, others at the University of Virginia. We have shared our materials with Professor Deborah Rhode at Stanford, who has authored a book on the pervasive method, and with Professor Roger Cramton at Cornell, who is working with his colleagues there on improving the pervasive method of teaching ethics. Professor Randy Barnett has included our contract cases, related ethics rules, and questions raising the ethical issues in these cases in his new contracts textbook.[21] To assist the contracts professor with this material, he has also included our teaching notes in his teacher's manual.

However, all in all, we remain somewhat disappointed. Professors are not rushing to adopt these materials. We believe that part of that is due to sheer laziness or inertia; getting professors to do something new in class is no mean feat. For that reason, we believe that persuading other textbook authors to do what Professor Barnett has done would be the best way of persuading professors to try the material. Teaching what is already in the book requires less energy than adding new material.

While we hope that the textbook-inclusion strategy will work, we also believe that something more systemic stands in the way of all of us who take ethics seriously: The rest of legal academia does not. That brings us back to the question with which we began. What has the money and our efforts accomplished, and what remains to be done?

III

THE FUTURE

Law and economics, as a discipline, has flourished in recent years, and the John M. Olin Foundation's money has played an important role in that success story. Of course, economics has some natural advantages that ethics does not have: In modern academia, economics enjoys a prominence and an aura of rigor

21. RANDY BARNETT, CONTRACTS CASES AND DOCTRINE (1995).

that ethics does not share. But the money helped. The Olin Foundation funded research, not teaching. The scholarship multiplied, and some of it was quite good. Law and economics prospered as a discipline. More courses were offered. Professors in other subjects started doing "it." Again, we do not mean to suggest that the money caused all this, but it did play a part. Professors are more prone to teach things that connect with their scholarly interests. And respect in academia is associated not with successful teaching but with acclaimed scholarship. Indeed, one way to risk loss of academic standing is to devote too much time to exploring new teaching methods. Ironically, to the extent that law school deans, law school donors, and others within and without the law school community continue to encourage the relatively few ethics scholars to devote their energies to non-scholarly pursuits—like the development of innovative teaching materials—they contribute to perpetuating the low status of the subject that they intend to honor.

We believe in good teaching. We are committed to striving to improve our own teaching and to helping improve the quality of ethics teaching generally. We spent five years writing a textbook to improve the basic ethics course, and nearly as much time developing the pervasive ethics materials that we have just discussed. We are proud of the work we did with the help and encouragement of the Keck Foundation. But, in our opinion, too little grant money and too little law school attention has been given to supporting scholarship in ethics: to creating and funding chairs, to creating and supporting journals, to providing research grants. One ignores a community's culture at the risk of being ineffectual. To elevate legal ethics to the status it deserves, one needs to embrace the signs of seriousness and rigor that are recognized in the law school culture, at least to the extent that those signs are consistent with the mission itself. We have practiced what we preach: Our textbook appropriates the signs of rigor and our pervasive materials do as well. And, if we may be forgiven for an immodesty that is born of dedication and concern, we encourage others to follow suit. To focus on the production and promotion of quality scholarship is consistent with the goal of improving teaching in ethics and the goal of demanding respect and attention for the subject in the larger law school community. Scholarship is the coin in this realm.

We believe that an investment in such research can have returns that reach far beyond legal ethics as a discipline or its parent subject, ethics. Quality scholarship in legal ethics has the potential to exert a positive influence on legal scholarship as a whole because, at its best, scholarship in legal ethics offers two attributes sorely lacking in contemporary legal scholarship: attention to context and a focus on obligation.

The subject of "practical ethics" is above all contextual. By contextual, we mean that practical ethics addresses specific persons situated in specific settings having to make decisions in real time (of which there is always a shortage) with imperfect information, with real and often irreversible consequences. Law as a larger human institution is similarly contextual—that is, specific in historical

time and in place of application—for essentially similar reasons. Despite these characteristics of law and the practice of law (including the judicial function), the ethos of legal scholarship over the last two decades has been to celebrate the abstract, expressing contempt for the contextual characteristics that make law law as opposed to philosophy or utopian vision. The quest has been for escape from the specific into the general, the universal, and the eternal. Theory in law and economics, for example, is of this character, as is the "equality" theorizing of scholars who generally have different political commitments from their law and economic counterparts. Writing about law—a contextual enterprise—at the levels of abstraction cherished by much of legal academia, in our opinion sheds precious little light on the subject that is supposedly the object of legal scholarship—the law. In contrast, some illuminating work in law and economics and other "law and —" disciplines is based in factual foundations, whether statistical or case studies. But that work is too often marginalized. Legal ethics is similarly based, and similarly marginalized. Major support for research in legal ethics may help counteract that trend.

Legal ethics, however, offers something more than a concentration on context. It focuses on a body of "obligations" rather than "rights." For at least the last four decades, legal analysis has been preoccupied with rights, particularly individual rights. We share the view that rights are important. But so are obligations, which are generally correlative of rights. Lawyers are specially burdened with obligations precisely because they enjoy special rights and powers, notably the right to bring and defend lawsuits and the right to give advice and assistance under the cloak of confidentiality. The study of legal ethics is, to a large extent, the study of obligations designed to constrain the exercise of those special legal rights and powers. It is therefore a model for parallel study of obligation in other legal subject matter, for example, that of parties to contractual relationships, of corporate officials and public officials, and of fiduciaries generally.

To say, as we have, that obligations are generally correlative of rights is not to say that emphasizing one yields the same result as emphasizing the other. Which concept is emphasized is of critical importance. Modern jurisprudential thought begins with rights as its central and most celebrated legal category: It is rights that dignify and ennoble. Privilege and status is defined in terms of rights: He who has the most rights is seen as the most privileged member of the community. Rights are to be pursued, revered, preserved. In this jurisprudential vision, legal obligations are burdens, the antithesis of rights, things to be avoided when possible and minimized at all other times. Ethics presents a counterpoint to this vision. Ethics begins with obligation as the central category. In ethics, it is obligation that carries the power to dignify and ennoble. Obligations are opportunities, not burdens; they are opportunities to fulfill responsibilities and thus show oneself worthy to be considered an honored member of some community. Our law does manage to dole out responsibilities—taxes, tort law, and the like—but only in legal and judicial ethics does it