

December 2019

## Why Law is a Profession

John D. Randall

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

---

### Recommended Citation

John D. Randall, *Why Law is a Profession*, 14 Wyo. L.J. 75 (1960)  
Available at: <https://scholarship.law.uwyo.edu/wlj/vol14/iss2/2>

This Special Section is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

## WHY LAW IS A PROFESSION

JOHN D. RANDALL\*

I should like to consider with you this morning the law as a profession. Why is the law a profession? What distinguishes a profession from other fields of activity? I believe these are fundamental questions which require continuing analysis by the Bar.

Webster's dictionary tells us that profession means "the occupation, if not commercial, mechanical, agricultural, or the like, to which one devotes himself." The word itself comes from the latin word *professio* which means generally to make a declaration or to assert ownership of something. From this comes the idea, of course, that the one in the professions represents himself as capable of doing a specific thing or performing a certain service. He asserts his ownership of a particular ability. (Such is the origin of the term profession.)

Today the term profession means something else, I believe. On the one hand, it means that the person concerned represents himself as being qualified to perform certain functions. But on the other hand, it means that that individual is ready and willing to assume certain obligations of the profession.

This professional obligation is unique, it is limited to a very few callings. There are many worthy and honorable jobs which comport no professional obligations. One talks today of a managerial class, and indeed many of the leaders of business and industry band themselves together and form associations for defense of their particular occupations. Often they adopt codes of ethics. But nowhere do we hear of a professional obligation as such. Why does everyone—and I include even the critics of our calling—talk in terms of our "professional obligations?" I believe that part of the answer lies in the fact that we are the heirs of one of the most ancient and honored callings. Livy, in his history of Rome, tells us of lawyers debating a point of constitutional law four hundred and fifty years before Christ. Cicero and Gaius, as well as Blackstone and Lord Coke, are our predecessors. These men left an immense heritage. Part of it is the good will which has accrued to the word "lawyer" over the years, and part of it is to be found in the laws we live by and in the rights which have been preserved for us all. This collective heritage is the heritage of the Bar.

When we hold ourselves out to be lawyers we in effect pledge that we will be worthy of the best in this tradition. This, then, is the origin of our professional obligation. It is to be worthy heirs, to carry on their work, to walk in their footsteps and by their lights. It is to conduct

---

\*John D. Randall, President of the American Bar Association, received his LL.B. degree from the University of Iowa in 1923. Mr. Randall practices law in Cedar Rapids, Iowa.

ourselves in such a manner so that our heirs, in turn, will find the heritage enriched.

What then, are the professional obligations and how do we meet them? For the sake of convenience—and brevity—I have placed them in three categories: First, our obligations to our clients; second, to our community; and third, to ourselves. I will exclude from this discussion mention of the Canons of Ethics for, of course, they are the starting point, the very minimum and well known to you all. Nor will I dwell on our obligations to our clients. Every attorney is aware of them, and it is the very heart of the role of the lawyer in society. He owes his existence to his clients. He works because they need him and he lives because they pay him. He must give his client his best if he is to survive, and if he does less, he should not be in the profession. The attorney/client obligation is the fundamental one. It is the basis for the other responsibilities.

The second responsibility is to the community. It can take many forms. One of the most apparent, of course, is that of service in government, either in an elected or appointed capacity. Lawyers have not shirked their responsibility in that regard and we note that during the period from 1790 to 1930, sixty-six per cent of the United States Senators and fifty-five per cent of the members of the House of Representatives were attorneys. These are the traditional areas of public service. These are areas worthy of our interest.

In addition, lawyers have been interested in improving the administration of justice in their respective communities. Sometimes this activity has been in the field of governmental reform. Certainly, the long fight carried out by Moorfield Storey for civil service reform should be included in this category. More often, this concern for the public good finds its expression in work for law reform. I am thinking now of such people as David Dudley Field who waged an almost single-handed battle for the codification of the laws beginning in the 1840's until 1887. These men were aware of the responsibility imposed on them by their heritage and training. It cannot be said of them that they fell short.

In the same light, we have an obligation today to work for the betterment of the community. It is our obligation to spark the drives for law reform and improvement in the administration of justice. We are uniquely fitted for these tasks. We are trained in the law; we know its history. Most of all, we are aware of those areas in which reform is needed. And we should remember that if we do not lead the drive for law reform when it is needed, the drive will come from some other quarter, perhaps led by an untrained few whose support is not always disinterested. The need for law reform—like nature—abhors a vacuum. Someone will act. May it always be the lawyers who act first.

The profession, acting through the Bar Associations, is actively en-

gaged in reform work in certain areas. In this regard, recently I had the opportunity of testifying along with other colleagues from the Association, before the Senate Judiciary Subcommittee. We supported bills which would have for their effect the curbing of improper communications and influence in adversary proceedings before Federal agencies. We also supported legislation which would create an independent office of Federal administrative practice. This is part of the ABA's legislative program to bring about needed improvements in the practice and procedure of Federal agencies. The program calls for an increased status and independence of hearing officials, improved legal services within government, proper qualifications and standards of conduct for anyone who represents others before agencies, a comprehensive code of Federal administrative procedure, and the creation of courts of special jurisdiction.

It is this consideration also which has motivated the American Bar Association's Section on Judicial Administration in its activities. To that end, also, the American Bar Foundation currently is studying the question of court congestion. The results of the study appear in the monthly publication *Court Congestion Newsletter*, published by the American Bar Foundation.

Our efforts should not be limited to reform of the law but also to its extension to those areas where the rule of law is not as yet applied. We as the men of the law, have a professional obligation to aid the layman in his desire for peace by showing him the tools with which our forebears constructed a society under law. This is the purpose of the World Peace Through Law program of the American Bar Association. It is a long term project. I urge your wholehearted support of this endeavor. These then are our obligations to the community.

The last responsibility which I would like to mention is that of the duty to oneself. I believe this duty is particularly important to the lawyer in this period when we hear of everything being done by teams, groups and task forces. One of the unchanging aspects of the practice of law is its essentially solitary nature. By this I mean that the lawyer at grips with the problem fights it out alone. He may be a member of a partnership, he may have several law review articles or even decisions close to the point, but the final decision is his, made, of course, with his client. It is often a tremendous responsibility to the profession. It is really a responsibility to one's self, to the best that is in the man. It can be fulfilled only if the lawyer draws on himself and his personal heritage from the great men of the profession, and from his own professional training.

The lawyer owes it to himself to continue his legal education while in practice. This is emphasized by the pace of modern life. This, of course, need not be done privately and many of the Bar Associations,

including your own, sponsor institutes for the purpose of raising the standard of the profession.

You know of course, that continuing legal education is a major interest of the American Bar Association. I am certain that those of you who were able to attend our last Annual Meeting will recall some of the subjects treated in discussions or lectures. Here are some of the titles:

"The problems of multistate taxation of interstate commerce income."

"Current Administrative problems of the internal revenue service."

"The impact of inflation on public utility regulation."

"How can undue and unnecessary delay in administrative proceedings be eliminated?"

Of course, many other topics were discussed, but I believe these serve to indicate the importance with which we consider the matter of continuing legal education.

The interest of the American Bar Association in this field is further indicated by its work in establishing and continuing support of the American Bar Foundation. This organization, which is supported by contributions from the American Bar Association, as well as private donations, is engaged in research designed to aid the practitioner and the public. Current projects include:

A report on the rights of the mentally ill. This publication will deal with the legal rights of those unfortunate members of our society who are mentally incompetent or suffer from a mental disease. Such matters as voluntary and involuntary hospitalization procedures, the rights of hospitalized patients, and mental responsibility and the criminal will be discussed.

In addition, the Foundation is annotating the Model Corporation Act as it has been adopted or commented on in the several states. This project is ninety per cent complete and the research results will be published before the first of July, 1960.

These activities are attempts by the organized Bar to aid the practitioner in continuing his legal education. But in the final analysis, the responsibility is that of the practitioner. It is his alone. This is an obligation to himself. The way in which he responds to it is a good indication of his esteem for the profession.

Even as the profession is essentially an individual thing, the reputation of the profession is based on a series of individual acts. The most powerfully organized Bar, with the most effective public relations program would be unable to raise the reputation of the profession very much if the Bar should be plagued by widespread violations of the Canons. Certainly I do not wish to minimize the value of public relations activities. They are necessary if we are to tell our story. But the reputation of the

Bar still is dependent on the series of professional acts made by each lawyer. And this is why I speak of responsibility to one's self—each one owes it to himself to conduct his practice as if he alone were setting the standards and establishing the reputation of the Bar.

It is for these reasons that the law is considered a profession. It entails certain responsibilities, which I have grouped under the titles of responsibility to the client, responsibility to the community, and responsibility to one's self.

These are the marks of the profession, the signs of the calling. Where they are lacking, the profession is not being maintained, and the heritage is being squandered.

Francis Bacon said, "I hold every man a debtor to his profession." I might add to his observation the thought that the law is a profession only in the measure that we honor that debt.