1992

Honoring the Law in Communities of Force: Wildman and Terrell's Teleology of Practice

Linda H. Edwards
University of Nevada, Las Vegas -- William S. Boyd School of Law

Jack L. Simmons

HONORING THE LAW IN COMMUNITIES OF FORCE: TERRELL AND WILDMAN'S TELEOLOGY OF PRACTICE

*Jack L. Sammons, Jr.**
*Linda H. Edwards***

When King & Spalding publicly reflects upon itself, through its Managing Partner and its Director of Professional Development, it has improved our profession. All of us profit when a powerful law firm searches for itself. But reflection alone, as Terrell and Wildman know, does not improve the professionalism or the morality of our practice. In order for reflection to work this way it must be based upon a good teleology.[1] Ter-

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* Professor of Law, Walter F. George School of Law, Mercer University.

** Assistant Professor of Law, Walter F. George School of Law, Mercer University.

The authors wish to thank Ted Blumoff, Dave Oedel and Tom Shaffer for comments and Professor Sammons wishes to thank Tedham Porterhouse for inspiration. Professor Edwards thanks Professor Sammons for the chance to join him in this Essay and for the beautiful table he built.

[1] By teleology we mean, generally, a purposive explanation of the practice — a description of the good or telos towards which the practice aims. For reflection to work well, there must be a good towards which the reflection aims. Here, there must be a good of the practice of law to provide guidance for reflections about it.

Not everyone would agree that reflection requires a teleology to make moral claims for it. One of the primary moral concerns of modernity is the dominance of technique, the inclination in every profession to apply rigidly the narrow policies of the role to every act. The illusion of technique (that is, the illusion there is such a thing) is extremely powerful for us, as is the technique of illusion (that is, by maintaining illusions such as the illusion of technique, we can avoid the complexities and the tragedy of the world). As lawyers, we tend, along with managers and bureaucrats, towards the technician. The solution modernity offers to the dominance of technique is reflection. This reflection is one that prompts inquiry into basic assumptions about tasks (and when we identify ourselves with our tasks, as most Americans do, into basic assumptions about ourselves) and this reflection, because it is about basic assumptions, frees technique (and ourselves) from the limitations technique creates and imposes. Because technique dominates our practices, this reflection also seeks to free us from the authority of our practices, an authority derived from tradition. In essence, then, this reflection seeks to free us from the limitations imposed by our traditions.

The value of this reflection is based on a common sense assumption that "[b]ecause we now know that we are in a situation . . . we are in a better position to resist its pressures." The value of this reflection is based on a common sense assumption that "[b]ecause we now *know* that we are in a situation . . . we are in a better position to resist its pressures." Stanley Fish, *Critical Self-Consciousness or Can We Know What We're Doing, in* DOING WHAT COMES NATURALLY 437 (1989). It is a failure to know our situation that leads to being technicians.

There is a story told by Robert Rodes and Tom Shaffer that responds to this understanding of the value of reflection. One day an immigration agent in San Francisco called his supervisor in Washington to tell her he had a terrible problem. He had papers permitting a certain number of Vietnamese refugees to enter this country, but one of the women refugees had given birth on the trip over. He had no papers for the child, he said, and he wanted to know if he should admit the child despite the lack

rell and Wildman offer a teleology of practice in which lawyers are to become people who honor the law. This is justified, they tell us, because the law alone holds us together in community.[2] But is this a good teleology for their reflection upon the practice? And is it a truthful description of the community in which it finds its justification?

The concept and importance of a teleology of a practice can be made clearer by looking at Terrell and Wildman's description of the teleology of the practice of medicine.[3] They offer a simple teleology of the practice of medicine to contrast the complex teleology of the practice of law. The telos of the practice of medicine, they say, is health. Few medical ethicists, however, agree that this is an adequate description of medicine's telos. Most medical ethicists argue that the term "health" is not well understood; and, to the extent that it is, it is one among many relative goals

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of papers. His supervisor's reply was short, clear, and to the point. "Don't be an ass," she said.

This is a story about professional reflection. Most people hear this as a story about the supervisor telling the agent to step out of his limiting role, a role defined and dominated by technique, and to reflect upon the situation as any real person would. As a real person, so this thinking goes, the immigration agent would see the people involved as people, not as immigrants, and would know the right thing to do. But notice that there is more to this lesson than just reflection. Her lesson was also a call to a shared morality. The agent's future work will be better not just because he will reflect, but because he will reflect about not being an ass. And he will do this because he respects the authority of the supervisor to tell him about being a good agent.

Our claim in the text about reflection is a claim that this story is true for all reflection. Reflection requires a teleology — it always requires the equivalent of knowing what it means to be an ass. When we realize this we have to stop and think about reflection's relationship with tradition.

Talking of "roles" may be confusing here. It is difficult to understand how roles that are the product of social institutions, as the role of the lawyer is, are also located within a practice that seeks to define its own telos apart from that of these social institutions. Tom Shaffer suggests that the idea of "scripts" may work better here and that the problem can then be described as seeking a correct reading of the script of the lawyer within the context of other scripts — such as the script of the North American way of life — that we must also seek to read correctly. For Shaffer, these scripts are *assigned*. Because they are assigned, alternative readings must come from a source outside the assigning community, the one providing the dominant reading. Thus, Shaffer agrees with Brueggemann that right reading of the script is a theological task and an unending one. WALTER BRUEGGEMANN, INTERPRETATION AND OBEDIENCE: FROM FAITHFUL READING TO FAITHFUL LIVING 100-18 (1991). Our thanks to Tom Shaffer for suggesting this and for making us press on in our thinking.

[2] Terrell and Wildman have accepted an Aristotelian understanding of teleology. They describe the function of the practice of law — one by which we know what "flourishing" within the practice means. They then identify what the excellences of the practice are — excellences leading those within it to flourishing. For lawyers, they say, the telos of practice is to become people who honor the law. This is their description of our purpose. It is an answer to the question, why be a lawyer?

[3] *See* Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism,"* 41 EMORY L.J. 403, 406-07 (1992).

their profession seeks. Because "health" is not an adequate telos, they offer different teleologies for the practice of medicine. When they do, each new teleology produces important changes in their understanding of the practice and its excellences. These ethicists, for example, would not describe the doctor's role with a patient as seeking health. The image of the doctor standing on one side of the patient doing battle with the enemy illness on the other fails for them because it ignores the patient. Doctors, these ethicists also tell us, face moral challenges similar to the ones lawyers face. For example, each patient is taking the place of another who may be more in need of the doctor's services. Thus, service to one patient can be a tragic denial of service to another. Finally, medicine, they tell us, is a tragic profession in another way because society suffers in order for doctors to perform certain tasks. For example, resources are drained to sustain those who are beyond the ability to be of service to society.[4]

We do not need to pursue further this different medical teleology because our point is to show the importance of an understanding of the teleology of a practice. This example also tells us that lawyers are not alone in our confusion over teleologies. This is not, however, a vicious confusion; it can be good. Terrell and Wildman's best insight into our teleology comes when they say that "lawyering as a profession exists largely *because of* moral ambiguity, not to resolve it."[5] And this is a very productive insight. It opens conversations about the practice to the possibility of new visions; and, as Terrell and Wildman announce, new visions are desperately needed.

Terrell and Wildman explain why new visions are needed by describing their own motivations for reflection. They are motivated, in part, by a loss of public esteem for our profession, but recognize this as a far too convenient explanation to be taken seriously. Lawyers have regularly issued this complaint since antiquity and it has seldom produced serious reflection. Rather than being motivated by a loss of *public* esteem, Terrell and Wildman are moved by a loss of *self* esteem. As lawyers, they com-

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[4] *See* STANLEY HAUERWAS, *Medicine as a Tragic Profession*, *in* TRUTHFULNESS AND TRAGEDY: FURTHER INVESTIGATIONS IN CHRISTIAN ETHICS 184-202 (1977). It is important that we accept this, according to Professor Hauerwas, because medicine's moral task involves a sense of the tragic. *Id.*

[5] Terrell & Wildman, *supra* note 3, at 407 (emphasis in original).

plain, we no longer hold ourselves in high regard.[6] This complaint must be taken seriously because lawyers do not have a reputation for lacking self esteem. We agree, however, that such is the case today.

By describing their motivation as a loss of self esteem, Terrell and Wildman have shown us a struggling profession's way of saying that we are losing the meaning of our work. We are losing our sense of the value of what we do and of what we become as lawyers. Terrell and Wildman's reflections are motivated by this fear of a loss of meaning, and this fear motivates similar, but less public, reflections by thousands of lawyers like them and hundreds of law firms like King & Spalding. These reflections are plaintive and deserve the serious attention of all who care about our profession.

There are various ways, of course, of trying to find the meaning Terrell and Wildman seek. For example, individuals can use the skills of our profession to accomplish whatever they, as moral people, see as good social purposes. This example, whatever else may be said for it, avoids the problem Terrell and Wildman wish to confront. It says: "Find meaning on your own and then use the profession instrumentally to accomplish it."

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[6] Is this loss of self esteem a bad thing or just a necessary correction for a profession that has often held itself in too high a regard? (Perhaps this is just the latest desperate cry of yet another institution succumbing at long last to the unceasing forces of the Enlightenment.) In some ways a loss of self esteem may not be such a bad thing. Much of professional self esteem has been problematic for our profession as an ethic because professional self esteem often rests upon a reputation among colleagues in the Bar. Thus, this type of professional self esteem is an ethic of honor. This is problematic, according to Aristotle, because honor is not a virtue, by which he meant that it is not a middle way. *See* ARISTOTLE, NICOMACHEAN ETHICS, bks. 1 & 3 (Harvard Press 1968). It does not, without necessary correction, shape us towards the good because it leaves us far too dependent upon the perceptions of others to determine what is good. But Terrell and Wildman do not mean this ethic of honor or mean "professional self esteem" when they talk of self esteem. Their complaint is far more pressing than this because they see a profession that is becoming increasingly incapable of sustaining even an ethic of honor. See THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS 74-75 (1985) for a discussion of honor as a moral notion for the legal profession.

There is an unexplored tension in Terrell and Wildman's concern with a loss of esteem and their belief that we continue to respect our system of law. As Stanley Hauerwas says:

> When the presuppositions necessary to uphold a society's ethic of honor are no longer tenable, cynicism becomes morally indispensable. Through our cynicism — that is, the rigorous and disciplined attempt to investigate the self-interest behind every moral claim — we seek to avoid the loss of the self by denying overriding loyalty to any cause or community.

STANLEY HAUERWAS, A COMMUNITY OF CHARACTER 127 (1981). We think Terrell and Wildman are right about a loss of esteem, but our guess is that it has produced cynicism about the law and not respect for it.

Notice, too, that this way of finding meaning gives us no reason to be lawyers if what we seek to accomplish as social purposes can be better achieved through other means. This is no answer to Terrell and Wildman's question of the meaning in our work.

Another related method of trying to find meaning in our work is demonstrated by ordinary lawyers[7] using as much of their time as they can "afford"[8] for public services such as providing legal voice to those outside our communities,[9] providing legal voice to claims of the common good,[10] and providing pro bono representation in service to the poor. As wonderful and as ennobling as this is, it too avoids the question raised about the meaning of our work. It says nothing about the ordinary practice of law except that it is to be tolerated. The teleology of such a practice, as Terrell and Wildman tell us, ends with all lawyers becoming legal service or public interest lawyers.

There is a corollary to these methods for finding meaning in our work. This corollary says that no morality resides within the ordinary practice of law. The ordinary practice is a necessary evil to be held in check by our personal moralities. We do what we have to do as representatives of our

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[7] By this, we mean lawyers who practice in the ordinary way of representing a paying client.

[8] We have placed this word in quotation marks because our profession sometimes has difficulty with the concept of what we can and cannot afford. We see this in codes of professionalism that ask lawyers to be ethical in various ways so long as being ethical is consistent with making a good living. *See, e.g.*, MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 (1983). In addition to the confusion of its inference about living well, the expression "making a good living" is so subjective that a sufficiently greedy lawyer has no need to be ethical at all. We think that expressions like this become code words for: "We do not really mean this."

[9] This is certainly a very important thing to do, and it has received an enormous amount of attention lately in the literature, but there is, for now, a difference between providing a voice and providing a legal voice. Those who argue about the importance of providing legal voices for the outsiders of our culture and community, while they are quite right about this, often ignore this difference. For a beautiful discussion of what it means to speak for someone, and for great fun, see ORSON S. CARD, SPEAKER FOR THE DEAD (1986).

[10] By claims of common good, we mean providing legal representation for the environment, or for dignity, or for freedom, or for efficiency, or for rationality and so forth. No particular political stance is meant by this because all politics make claims about what is in the common good. But note that claims of the common good are incoherent when they do not recognize that the good under review is something each person enjoys and that no one can enjoy unless all do. This incoherency has moved one of us to argue: "[We] serve our community best when [we] remember that the best interest of [our] clients is a quest for the good. I believe that it is in helping clients be as good as they are that lawyers call forth the common good." Jack L. Sammons, Jr., *Professing: Some Thoughts on Professionalism and Classroom Teaching*, 3 GEO. J. LEGAL ETHICS 609, 620 (1990). Our thanks to Tom Shaffer for pressing us on this point.

ordinary clients until these tasks conflict with our principles. Then we rebel against our roles.

Terrell and Wildman remind us that these ways of seeking meaning, and their corollary, are not enough. Lawyers must understand the meaning they seek as something to be accomplished *within* the ordinary practice of law. And we agree.[11] Lawyers cannot continue to think of the practice as something held in check by personal morality, and cannot continue to think of the goods of the practice as something to be accomplished outside it, if they are to have an adequate moral conception of practice, if the practice is to be a good way to live, and if there is to be meaning in a lawyer's work. Part of what Terrell and Wildman seek in reflecting upon the practice — although they talk of a search for "timeless principles" that should govern our conduct as lawyers[12] — is an understanding of how our practice shapes us as people. One has only to take a short step from their descriptions of an ethic of excellence, and their descriptions of the excellences of integrity, respect for law and for others, accountability, and devotion to justice, to reach an ethic of character. This is a step Terrell and Wildman should take to reach the moral heart of the matter. For any conception of meaning in the practice, thought of in terms of producing good depends, at rock bottom, upon character. Even if we could convince King & Spalding to abandon its current enterprises and offer all its resources in service to the poor and even if such a religiously converted King & Spalding were possible,[13] we would still be dependent for the good on the people doing the service, for there are good and bad ways of serving the poor.

This question — how our practice shapes us — becomes then the central question of professionalism.[14] Talking and thinking about profession-

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[11] *Id.*

[12] Terrell & Wildman, *supra* note 3, at 406. A search for timeless principles that govern our conduct and separate us from others is an enterprise quite different from the one Terrell and Wildman undertake at the end of their essay.

[13] We do not think of service to the poor as a social or political goal as Terrell and Wildman do, but as a religious one.

[14] There is nothing new about the centrality of this question. Listen to the words of Clem Steed given in an address to the Georgia Bar Association in 1902:

> The conscience is susceptible of cultivation. It is largely formed by environment, either mental or social. No man lives to himself; he lives as a member of society, and the society of which he is a member may be large or small. The social unit or world in which a man lives determines largely the character of his conscience. A man who lived in the rude soci-

alism this way, however, will not provide answers to difficult moral dilem-

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> ety of the middle ages could kill his fellow with no rebuke or protest from his conscience. A man who lived two hundred years ago could burn a fellow man for witch-craft or hang him for theft with a clear conscience. The sages of the Sanhedrin who forced the crucifixion doubtless followed the dictates of conscience of the social unit to which they belonged. The conscience of the social unit may change, or the individual by changing from one social unit to another, may hear new voices from his conscience. . . . So it is with the legal profession, and the status of professional ethics amid the changes of contemporary life is a vital question with lawyers.

Clem Steed, *Report of the Committee on Legal Ethics, in* REPORT OF THE PROCEEDINGS OF THE NINETEENTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION 285 (1902) (Steed's ethics were better than his history, but I am told his version was generally accepted in 1902.).

When Clem Steed preached these words for the Committee on Legal Ethics in an address to the Georgia Bar Association, and preach them he did, he preached to the choir. Mr. Steed's audience knew well that their characters were being shaped by the character of their profession, and they participated in its activities because they knew this shaping could be for the better or for the worse. They knew, in other words, that they would be corrupted if their profession became corrupt. They knew their morals were lawyers' morals.

In more modern terms, the Georgia lawyers of Steed's day were morally integrated into their roles as lawyers. They thought of the practice of law as a school for virtue. They often said, as we do, that the common good served by the practice was a search for truth and justice, but they did not entrust truth and justice to the adversarial system. They took personal responsibility for it. They had to. A good lawyer, they believed, had to live truthfully within the practice because it was a shared enterprise concerned with the truth. The adversarial system was necessary, not to determine the true and the just, but because there could be truthful and just claims on both sides of good disputes. For them, a lawyer who premised his representations on something other than honest claims about what was true and just was a fallen lawyer. And woe to the lawyer who ignored the demands of procedural justice in this contest of truthful and just claims that should be heard. We all lost, they would have said, if both sides of a good dispute were not heard. You will read in Bar speeches delivered around the turn-of-the-century what we think are sincere personal regrets at legal victories accomplished without the truth of the other side having been heard in full voice. *See, e.g.*, Logan Bleckley, *Truth at the Bar: An Address Delivered Before the Georgia Bar Association, August 27, 1886, in* REPORTS OF THE FIRST, SECOND, THIRD ANNUAL MEETING OF THE GEORGIA BAR ASSOCIATION 107 (1908).

These lawyers did not sense a strong tension between clients and the common good. They were overtly paternalistic towards their clients — at least they were in their speeches — and yet they still saw themselves as faithful servants of client interests. This was true because they thought a lawyer could reconcile service to the common good and service to individual clients if the community has a shared conception of the good. They believed their community did. When they imposed this good upon their clients, they knew they were doing right by their clients as well. It was, in ethical terms, "soft paternalism" because it imposed upon the other what the other would want for himself if he were thinking correctly — as best these lawyers could determine. This imposition upon their clients was also a form of doing one's duty. In fact, our predecessors spoke often of duty, but this duty was not in restraint of individuality; it was in fulfillment of personality. It was in the performance of duty that individuality and personality could merge when duty was required by a society in which the person and the common good implied each other, when they tended towards each other, when they were "reciprocally subordinated." Theirs was a republican world, a world of an ideal relationship between the individual and the common good. It is the loss of this relationship that Terrell and Wildman bemoan when they complain about plurality and moral diversity. *See infra* Part II at pages

mas. Although Terrell and Wildman seem to hope that it will,[15] it will not tell the lawyers of King & Spalding how they should use their time or what they should say to their powerful clients about the common good. Instead, it will help to make us into the kind of people who will make these difficult decisions well — people of self-perception, people of truthful descriptions, people of practical wisdom, people of patience and imagination, and people of vision. We should judge our practice by how well it shapes us in these ways, for we are dependent upon the people in the practice being good if good is to come from it and if meaning is to follow.[16]

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[15] Terrell & Wildman, *supra* note 3, at 405-08.

[16] We have attempted, therefore, to shift Terrell and Wildman's focus from an ethic of principles towards an ethic of virtue and to ask if the practice of law can operate as a school for virtue. But is an ethic of virtue possible in our society? For Peter Berger, a Kantian ethic of principle is a response to a redefinition of identity arising from the disintegration of the world in which the virtues were located. Peter Berger, *On the Obsolescence of the Concept of Honor*, *in* REVISIONS: CHANGING PERSPECTIVES IN MORAL PHILOSOPHY 172, 180-81 (S. Hauerwas & A. MacIntyre eds., 1983). "[A] world of relatively intact, stable institutions, a world in which individuals can with subjective certainty attach their identities to the institutional roles that society assigns to them." *Id.* at 179. In this disintegration, we understand identity:

> apart from and often against the institutional roles through which the individual expresses himself in society. The reciprocity between individual and society, between subjective identity and objective identification through roles, now comes to be experienced as a sort of struggle. Institutions cease to be the "home" of the self; instead they become oppressive realities that distort and estrange the self. Roles no longer actualize the self, but serve as a "veil of maya" hiding the self not only from others but from the individual's own consciousness.

Id. As Berger also says: "A lot will depend, naturally, on one's basic assumptions about man whether one will bemoan or welcome these transformations." *Id.*

Berger's analysis implies that the Aristotelian conception of an ethic of virtue is going to have a hard time fitting within the modern world. There may be no schools for virtue left to us. There are two reasons for questioning this, both argued by Edmund Pincoff. The first is that it rests on historically false premises. According to Pincoff, Aristotelian ethics of character and virtue flourished during other times of similar social disintegration. The second, and weaker reason, is that it is not clear why the principles and rules of Kantian ethics transcend dramatic social upheavals when the character and virtues of Aristotelian ethics do not. Edmund Pincoff, *Quandary Ethics*, *in* REVISIONS: CHANGING PERSPECTIVES IN MORAL PHILOSOPHY 92, 95 (S. Hauerwas & A. MacIntyre eds., 1983). In any event, Berger concludes his argument by noting that the "contemporary mood of anti-institutionalism is unlikely to last" because man's "fundamental constitution is such that . . . he will once more construct institutions to provide an ordered reality for himself." Berger, *supra*, at 181. If that is true, then the disintegration that creates problems for an ethic of character and virtue does not end discussion of it. We can still ask about schools for virtue even if it is only for the point of trying to recreate them by strengthening what remains.

So far, if we understand their reflection, Terrell and Wildman should not disagree too vehemently with what we have said. More carefully considered, however, the ethic of character we have described produces an understanding of practice and the community, and a teleology for our reflections which is far different from the ones at work in their essay. What follows for our reflections is our effort to state one of the major differences, to describe a different communal approach to understanding the teleology of practice in contrast to Terrell and Wildman's, and to conclude by briefly portraying a truer image of the community in which Terrell and Wildman may find the meaning that they seek in lawyers' work.

I. Towards a Different Communal Approach

A. Clients and Lawyers

If it is true that we are dependent upon lawyers as a source of the good, and if it is true that the way in which the practice shapes us should be our primary concern, then surely it is also true that we must apply this same reasoning to our clients. We must see them as a source of the good, and we must be concerned with how we are shaping them in the representation. Thus, our role as lawyers should be to concern ourselves with whether we have helped shape the clients towards the good, for we live in communities held together by the good that resides within these people. But this is far removed from the images of clients, lawyers, and community Terrell and Wildman paint. They picture clients who seek only self-advantage and lawyers who hold them in check by resorting to the law. These distressing images flow straight from Terrell and Wildman's basic teleological mistake.[17] They offer a teleology that locates the good within the law rather than within the people it serves. This is, as they indicate, a

[17] There is a more subtle connection between their teleology and their image of clients. Theirs is, in part, a search for a universal morality that stands in judgment of our acts. Such a search, however, is in tension with their need to find meaning within the practice, for this universal morality stands in judgment from a position outside the profession. In doing so, it shapes us towards a similar moral posture with our clients. We cease looking for the good within our clients because we understand good in this universal and, ironically, limited way. Our clients' stories are never very important to the moral determination from the perspective of a universal morality for the simple reason that such a morality must ignore these stories in order to remain universal. To put this in the form of an argument against Kant, the first step towards not treating someone as an end is to say: I will treat all people as ends.

teleology that understands our communities as being held together by the force of the law rather than by good people.[18] Is there really any wonder that they sense a loss of meaning when they seek meaning in such a corrupted conception of community?

Trapped in a deception common among lawyers, Terrell and Wildman picture clients as sources of potential evil rather than as sources of potential good. As with the image of the lawyer's role as something held in check by personal morality, so it is with our clients. But this time the holding in check does not rest in the lawyer's personal morality (and certainly not in the client's). The check rests instead in a recourse to the law as a basis for forceful restraint that even evil clients will have to respect. One sees this image of clients and lawyers repeatedly in Terrell and Wildman's laments about the increase in client control and the expansion of "rights consciousness," in their concern with clients who want their lawyers to "get things done," and in their calls to us to say "no" when the law requires it and to explain "why" by reference to the law alone.[19]

Terrell and Wildman make much of this legal nay saying by lawyers, but what type of moral accomplishment is it? They cannot possibly find

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[18] Is this a fair description? It is possible that Terrell and Wildman could mean something quite different from "communities of force" when they speak of force holding our communities together. They could be arguing that the law holds us in a conversation that continues our communications and that the ethics of the law are the ethics of dialogue. Our criticism of Terrell and Wildman's teleology is not as strong if this is what they mean. But this is not what they have said here. While they do speak of citizen respect for law, it is respect for that which "regulate[s] our conduct and redress[es] our grievances." A community of law, they say, is an "ingrained expectation of official non-arbitrariness," and, we would add, the use of force. Terrell & Wildman, *supra* note 3, at 422-23.

We see similar thinking in their description of the Bar as community. *See id.* at 410-11. Terrell and Wildman accurately describe the way in which ethical codes can serve as a substitute for trust among people within a practice community. They describe codes as providing "moral information." But then they say this is of limited value because what is *enforced* are the minimum standards of conduct and not the more lofty aspirations of the codes. Because this is true, they continue, the moral information our codes provide is "really very small." *Id.* at 414. The assumption behind this argument is that the moral information of the ethical codes is only communicated when it is communicated by force. This is clearly wrong. Some violations of conflicts of interest provisions, for example, are never enforced through disciplinary actions and are not violations that would arise in motions to disqualify because they do not involve litigation or the opposing party simply lacks standing to raise them. These violations, nevertheless, are viewed by many attorneys as involving their ethics as attorneys. For another example, there are many potential violations of confidentiality that would never become matters of disciplinary or legal enforcement because they would never be known by the harmed party. Such violations, nevertheless, are considered ethical concerns.

[19] *Id.* at 414-15, 426.

the type of meaning they seek in work by saying "the law forbids this" to evil people. Is there much meaning in the work of telling others: "I will do nothing with you that violates the law?" And if this is how they perceive clients, what possible value do they find in their excellences of service to them?

Terrell and Wildman could respond, as many lawyers do, that this is just an unfortunate truth. The description follows along these lines: The clients our culture produces, like it or not, seek only self advantage and have to be restrained by the force of law because nothing else will do. This community held together by force of law, in other words, offers the best we can do under the strained circumstances of increasing plurality.[20] They could say that claims to the contrary are Panglossian, as is a search for meaning in a better community that does not exist.

This challenge is about the truthful description of clients and communities. But it is also part of an ancient debate about human nature. Terrell and Wildman's assumptions about clients are those that Plato has his brother, Glaucon, speak in *The Republic.* Glaucon says that man by nature pursues self-interest and law alone deflects him.[21] Socrates responds, in essence, as we do, that men and women by nature pursue self-interests but sometimes get confused about what is in their self-interest and what is not. We could all use a little help figuring this out, Plato says. We also might respond that Terrell and Wildman's Glauconism is wrong in another way. In psychological terms:

> [i]t is not in the least implausible that in socialization [our client's] self-advantage has come to consist in some complex set of goods yielded by certain ongoing social and economic relations [they have] with specific others. And thus [they] simply have no socially

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[20] We could ask how lawyers managed to avoid being shaped this way. Are our traditions so strong that they have provided us with a fallout shelter shielding us from the cultural forces shaping us towards seeking self advantage? If not, why do they think lawyers will act any better than clients?

Perhaps the problem is not plurality at all. The single most obvious fact about the evolution of our cultures is that they are all moving towards the homogenous and, at worst, towards the lowest common denominator. The more important problem is how to maintain the traditions of culture in the face of this fact because these traditions are the bearers of our ethics. The question that follows from increasing homogeniety is whether the ethics of these traditions will teach those within them how to relate well to others. Terrell and Wildman see only the problem of the relating, not the question of maintaining the ethical tradition.

[21] PLATO, THE REPUBLIC 2.359-360e (2d ed. 1991).

> unindexed desires, and possibly no deeply countermoral ones either.[22]

In simpler terms, clients are, in essence, social.

But why are so many lawyers deceived about their clients? Why should lawyers not trust their own judgments about what clients want, judgments based upon what they see in their offices every day? Lawyers should not trust their judgments, nor should Terrell and Wildman, because it is very difficult for lawyers to know how clients have been shaped by the way in which they interact with them. Lawyers help create the image of clients they see. Also, lawyers' perceptions of clients are distorted because they attribute client conduct to character traits rather than to situational causes or to perceived performance demands.[23] Lawyers, of course, shape client understanding of the performance demands of adversarial representation, and by then attributing client conduct to character traits, shape the image they see once again. As Owen Flanagan tells us, people tend to attribute "actions of others to standing dispositions in them, even where in our own case [we] attribute such actions to situational variables."[24] Flanagan describes a study of observers' reactions to short conversations between two people:

> When observers are asked why one of the [parties to the conversation] said certain things, displayed a certain demeanor, tone, and so on, they tend to offer explanations in terms of general traits in the person, whereas the agents themselves attribute much more of their own behavior to what their interlocutor did.[25]

This observer status applies to lawyers, although we are parties to our conversations with clients, because of the necessary distance we maintain from the conversations and from our clients.

All of this demands that we not trust our own unmediated perceptions of what our clients want. It explains why the little research that has been done on this question of what clients really want produces results that are

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[22] OWEN FLANAGAN, VARIETIES OF MORAL PERSONALITY 259 (1991).

[23] *Id.* at 305-14. This section reviews the various studies on attribution theory and moral personality.

[24] *Id.* at 307. The simple version of this is that we are likely to say of ourselves, "I cannot believe I acted that way," and of others, "I cannot believe he is like that" when the conduct is exactly the same.

[25] *Id.* at 308.

often at odds with many lawyers' understanding of their clients.[26] A better approach for lawyers, and one more consistent with the meaning Terrell and Wildman seek for professionalism, would be to assume that clients are good, to recognize that particular kinds of temptations and license make specific character traits come undone, and to seek to minimize the effect of these or to assist clients in seeing through them. Surely clients want the same consistency of character, the same integrity, that Terrell and Wildman's lawyers want, but, for anyone, such a consistency of character can only be produced by recognizing situations as related or as belonging to the same type.[27] This is a lawyer's role with clients. We should help our clients see the legal disputes they are in, or seek to avoid, as similar to other disputes, ones in which they already know how to be the best of who they are. Thus, we offer to our clients a form of moral vision central to the consistency of character that they seek. As we evaluate our practice by how it shapes the character of those who are in it, we should also evaluate those who are in it by how they shape the character of their clients. This Terrell and Wildman do not do, for their source of the good is the law, and not the people it serves.

So far, we have challenged Terrell and Wildman's view of an ethic of excellences by showing what we think one conclusion of such an approach should be, and how this differs from their conclusion. But this is a very indirect way of doing what we said we were going to do, that is, to challenge the teleology of practice they offer. It is time for us to be more direct.

B. Practices and Teleologies

All ethics of excellences are grounded in a practice. What the excellences of our practice are, as the earlier example of the practice of medicine demonstrates, depends upon the way in which we understand the teleology of our practice. For example, if one views our current practice as corrupt, then one would question the value of accomplishing its

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[26] But they are not always at odds. For example, when Tom Tyler of Northwestern, the leading sociologist studying clients, spoke at the Annual Meeting of the State Bar of Georgia in 1989, one respected senior lawyer rosé to his feet after the speech to say: "Mr. Tyler, you have said in thirty minutes what it took me thirty years of practice to learn." What Professor Tyler said, in essence, was that clients are as concerned with participation and procedure as they are with outcome.

[27] FLANAGAN, *supra* note 22, at 291.

excellences at all. It is one thing, by analogy, to praise the excellences of Greco-Roman wrestling, but it is quite another to praise the excellences of television wrestling; television wrestling, from the point of view of Greco-Roman wrestling, is a corruption of the practice of the sport. Another way of saying this is that television wrestling does not share the teleology of Greco-Roman wrestling. It is, in fact, a rather low form of the separate practice of acting. We know this because there is a practice of acting with its own understanding of excellences. So when one talks about an ethic of excellences, one must always ask about the teleology of the practice in which the excellences are defined and ask from the perspective of the practice: Is it truthful? How well does it account for things? Is it consistent with the tradition of the practice? This is an ongoing interpretative project that keeps a practice alive and makes it well. It is a constant inquiry into who we are as lawyers, a constant reinterpretation of the story that defines us, a constant pursuit of ourselves. We continue to define ourselves as a practice through this inquiry. But we do so not by moving towards universally shared values, known in advance, as Terrell and Wildman would have us do. Instead, we define ourselves, as a rule does, in the process of applying ourselves. We move towards our meaning as a practice as a rule moves towards its meaning, and we move towards the good of our practice as a rule does towards justice.

When we wrote above that Terrell and Wildman's basic mistake is to search for the good in the law and not in the people it serves, we raised what we think is the basic mistake of their teleology. When Terrell and Wildman search for "those values and aspirations that we must all share" as lawyers, they find, predictably only a liberal tradition of law providing the "last remaining vestige of a sense of 'community.' "[28] This is the same teleological mistake raised from the level of a practice to the level of a society. Terrell and Wildman's teleology of lawyers is for lawyers to become people who uphold the honor of the law. It is, they tell us, in becoming people who uphold the law that we will find the sense of direction we need to understand what the excellences of our practice are — what its virtues and vices are in Aristotelian terms. And now we must ask: Is this truthful? What does this account for? Does it account for who we are as lawyers? Is it consistent with the traditions of our practice? Or is this, as we think it is, one form of the "traditionalism" Pelikan describes and Ter-

[28] Terrell & Wildman, *supra* note 3, at 422.

rell and Wildman deride.[29] Have they practiced a broad form of traditionalism of their own? Is not this liberal faith in the law as a source of meaning, truly, a "dead faith of the living"? They have placed their faith in a story about this country, its people, and this profession that says we are about a legal system and this is the best we can do.[30] But is it?

II. SERVING A DIFFERENT COMMUNITY

Terrell and Wildman are right that the foundation of professionalism is the community and what the community requires us to be.[31] They are right to see that our calling is critically linked to the breakdown of community — to the increasing stratification and separation of our local and national communities.[32] They are also right to see that lawyers are called in a direct and specific way to help maintain community.

But they see our role as handmaids of the rule of law, and the rule of law itself as the force that binds us together in community. This view is inadequate because the rule of law never has, and indeed never could perform this function. Community cannot be enforced by a rule of law. Community is about relationships, and force cannot maintain relationships worth maintaining.[33]

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[29] *Id.* at 405 (citing JAROSLAV PELIKAN, THE VINDICATION OF TRADITION (1984)).

[30] Part of the problem Terrell and Wildman face, and part of what prompts them to look to the law, is the continuing tradition of lawyerly virtues such as trustworthiness, fidelity, courage, and so forth. These traditional lawyerly virtues are problematic for us because we no longer understand them within the overall life of a lawyer that gave them coherence. As late as the 1940s, Georgia appellate courts spoke of the "life of a lawyer" as a justification for ethical conduct, but it is very difficult for us to think this way today. *See, e.g.*, Jack L. Sammons, *Rebellious Ethics and Albert Speer*, *in* AGAINST THE GRAIN: NEW DIRECTIONS IN PROFESSIONAL ETHICS (M. Goldberg ed., forthcoming).

[31] There is a rich literature on the difference between an occupation and a calling. *See, e.g.*, JAMES A. PIKE, BEYOND THE LAW 18-33 (1963).

[32] *See* ROBERT N. BELLAH, HABITS OF THE HEART (1985). In this Essay we do not always use the term "community" in the precise sense that Bellah and his co-authors use it, but rather in a more general sense. We have tried to be careful, however, not to misstate Bellah's points by misusing his term.

[33] Terrell and Wildman admit this implicitly when they point out that ethical regulatory codes cannot define or achieve professionalism. *See* Terrell & Wildman, *supra* note 3, at 413-14. The mistake Terrell and Wildman make about this involves *the* problem of modernity. As Stanley Hauerwas says: "Modernity involves the attempt to make political community possible between strangers. As a result our polities are constantly tempted to fascist excesses because the state must supply the community that is missing." Stanley Hauerwas, *Happiness, The Life of Virtue and Friendship: Theological Reflections on Aristotelian Themes*, 45 ASBURY THEOLOGICAL J. 5, 47 n.5 (1990). It seems to us that there is an unfortunately short and especially dangerous step — and one that would

But Terrell and Wildman are partially correct, because there *is* something about the law and the way it functions that helps to maintain community. And they are right that we must look to our traditions for guidance.[34] When we do, we see that it has not been the code or the courtroom that has maintained our relationship. Instead, the relationships that form community have been maintained by some lawyers acting as ambassadors — lawyers serving as the voice of their clients to the community and the voice of the community to their clients.[35] How could these lawyers do

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be the antithesis of all that Terrell and Wildman represent — to take from Terrell and Wildman's position that the law is all we have left with which to hold on to our community and the idea that law *should* be used to form a community. In our search for community we should remember that there is nothing inherently valuable in being a community; there is, instead, something inherently valuable in being the kind of people who form communities.

Community, then, is a process and not a goal. Primarily, following Aristotle, it is a process of friendship. Confusing the process with the goal leads to the following perspective:

> A legal person in [our] view is not identical with the individual as defined by the French Revolution. He does not have the freedom to do anything that does not harm another person or infringe upon that other person's rights. He has the responsibility to serve others and social values; values of community have priority . . . limiting an individual's autonomy and imposing communal obligations . . . [Fundamental rights] were intended not to grant a status of special privilege to the rights of individuals, but rather to link together the sociological forces existing in the state so as to form a community with a harmonious structure. . . . The purpose of fundamental rights is to constitute the unity of the state, indeed the unity of the Volk.

The last word gives it away. This is from Walter Hamel, the Third Reich's leading authority on police law — one of many law professors dismissed by the Allies after the occupation of Germany. WALTER HAMEL, DIE BEDEUTUNG DER GRUNDRECHTE IM SOZIALZEN RECHTSSTAAT 30, 64 (1957), *cited in* INGO MULLER, HITLER'S JUSTICE — THE COURTS OF THE THIRD REICH 257 (1991).

[34] As Terrell and Wildman explain, there is a critical difference between tradition and traditionalism. Traditionalism is nothing more than the worship of the past, the dead faith of the living. Tradition, however, is alive, dynamic; and it is myth. It is woven of stories originating from both history and literature. Even where the stories have originated from history, they have been embroidered with mythological meaning, outfitted to be larger than history.

When we describe our lawyering traditions, we do not describe history. Instead we describe the understandings of our forebears about what it meant to be a lawyer. Each generation that describes the tradition reinterprets it, and by that very act, creates it anew. It is a serious task, then, to describe and interpret our traditions, for the produce of our descriptions shapes our understanding of what it means to be a lawyer, and becomes the tradition of the lawyers that follow us.

[35] Of course our description of the practice of yesteryear is idealized and oversimplified, as it must be in an essay such as this, and it does not represent the experience of many lawyers. Our concern here is with those lawyers who did perform in the way that Terrell and Wildman want us now to perform, that is, to hold the community together. Our claim is that the lawyers who did this were the ones in smaller communities who understood those communities better than their clients could. These were the lawyers who helped shape the myth that drives our tradition. *See* note 34 *supra*.

this? First, as citizens of smaller communities, they were more aware of the diversity of those communities.[36] They knew the names and life stories of people from diverse parts of their communities. They had a relatively clear picture of the life experiences of those in social and economic circles other than their own.[37]

Second, the nature of their law practice was different. Small firms and solo practice were the norm, which meant that these lawyers tended to represent a variety of clients on a variety of legal matters. These lawyers, then, were in intimate relationship with a microcosm[38] of the community. Probably no one was able to perform the functions of the ambassador better because no one (clergy included) was confessor and counselor to such a cross section of the community.

Finally, our lawyer forebears were much more likely to be engaged actively in the political process and particularly more likely to be office holders.[39] Thus, the gaps of representation that might have existed in the lawyer's practice were partly filled by participation in the electoral and legislative process.

We stated earlier that we must judge a concept of professionalism by how it shapes us and by how it shapes our clients. How did this practice of our past shape its practitioners? Their ties to the breadth of the community encouraged, even required, them constantly to re-evaluate their own perceptions of themselves, of their clients and of their opponents.

Our description of these lawyers does not include a description of the ways in which they failed their own ethic. *See infra* notes 36-37. However, it does capture the flavor of the differences between practice then and practice now.

[36] One of the ways in which the practice of the past failed its own ethic was its failure to include within its ranks members of diverse parts of the community. These lawyers of the past had a better knowledge of the totality of their community than we do today and it is ironic that the legal community itself was far less diverse than it is today.

[37] We say "relatively" because our interest here is the comparison between the practice of the past and the practice of the present. But, of course, there were still many voices that the practice of the past did not hear. It was by excluding these voices that the practice of the past failed to be the school of virtue that our forebears sought; we condemn them for this failure. Thinking about them in this way helps to make sense of Aristotle's odd claim that flourishing can be affected by things that happen after our death. ARISTOTLE, *supra* note 6, at 1100a10-30.

[38] We will resist the temptation to continue footnoting the ways in which the practice of law excluded some members of the community and instead trust that our readers will understand the point of the comparison.

[39] *See* PIKE, *supra* note 31, at 67-76.

Their representation of a client from one part of the community against an opponent from another part of the community would teach them something about those individuals and those parts of the community. Then, another client/lawyer relationship against another sort of opponent would arise to challenge the perceptions established by those past relationships.

This sort of practice, over time, gave its practitioners accurate information about themselves and the world in which they and their clients lived. It offered these lawyers a store of practical wisdom; it challenged them to develop an understanding of human weaknesses and a vision of human potential; thus, it shaped them as people of self-perception, truthful descriptions, practical wisdom, patience, imagination, and vision.[40]

How did this sort of practice shape clients? At its best it enabled the lawyer to offer to each client perceptions often more accurate than the client's own. It enabled the lawyer to offer practical wisdom about the community and the individuals about whom the client was concerned. It enabled the lawyer to offer, in the midst of an adversarial situation that demonstrated human frailty, a better and (we believe) truer vision of the community, individuals, and perhaps most importantly, the client. These gifts helped to shape clients to be better people and to be truer to their best selves.[41]

How did this sort of practice assist its practitioners to help maintain community? Lawyers who experienced the breadth of their community could extend a hand to their clients and invite them back into relationship with the community. And in turn, these lawyers, on behalf of their clients, could speak to the community in its own language. These lawyers truly could be ambassadors — a part of the glue holding their communities together.

Terrell and Wildman correctly state that nostalgia cannot define an ad-

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[40] Such a practice was a nearly ideal school for the cardinal virtue of *prudentia* (the virtue of seeing reality as it is). This virtue in the moral philosophy of Thomas Aquinas, was the essential foundation to the other cardinal virtues, including justicia. One must know the case before one can judge rightly.

[41] Just as our description of the legal practice of the past is an oversimplification, so too is this description of the way it shaped lawyers and clients. But our point here is not whether and to what extent the practice of the past succeeded in making us better people and better communities, but that its effect was to help rather than impede us in that goal.

equate concept of professionalism for today.[42] Our world is significantly different. Most of us live in cities too large for "community" in the old sense. Urban citizens, including today's lawyers, have a much harder time touching diverse aspects of their local communities.[43] Even if they could, much of the former function of local communities has moved to a national level, with the development of national (even international) corporate environments and the increasing impact of modern communications developments. Certainly no individual could be in touch with the diversity of a national community.

Nor can many of us touch a cross section of our community through our clients.[44] Today's lawyers do not represent a microcosm of the community. Fewer of us are sole practitioners. Our law firms are larger.[45] The greater firm size allows, and the increasing complexity of the law requires, individual lawyers to specialize in particular substantive areas. With these changes has come increased competition for the "best" clients. Now, most city firms primarily represent certain kinds of clients, usually distinguishable along economic lines. Some "boutique firms" represent only certain kinds of clients only on certain kinds of matters. In many substantive areas, firms tend to represent only one client group.[46] Thus, our practices increasingly prevent us from establishing client/lawyer relationships with diverse client groups and thus isolate us from the breadth of our communities.

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[42] *See* Terrell & Wildman, *supra* note 3, at 405-06.

[43] We are reminded of the conversation quoted by Robert Bellah, in which the speaker describes the problem of poverty and refers to those who disagree with the speaker's opinions:

> And from their viewpoint they don't see the people that I see, and so, of course, they're going to feel that way. So it is hard to, it's like the blind men examining the elephant, and it's like, "Will somebody *please* get me the overall picture so we can all work with the same information!"

BELLAH, *supra* note 32, at 132.

[44] We do not wish to undervalue the fact that today's practice does include some of those who were excluded from legal services in the past. But even those of us who now hear these formerly unheard voices do not generally achieve client diversity.

[45] *See* BARBARA A. CURRAN, THE LAWYER STATISTICAL REPORT: A STATISTICAL PROFILE OF THE U.S. LEGAL PROFESSION IN THE 1980S 13 (1985) (reporting a decline in the percentage of those in solo practice). The 1991 National Law Journal Annual Survey confirms that 250 law firms in the United States employ more than 129 lawyers, and many maintain national and international branch offices. *The NLJ 250: Annual Survey of the Nation's Largest Law Firms,* NAT'L L.J., Sept. 30, 1991, at S2.

[46] Personal injury plaintiffs or insurance companies are examples of these client groups.

Finally, today's lawyers hesitate to take positions of public leadership, particularly in the electoral process. Bishop Pike observed this change thirty years ago,[47] and the trend has not been reversed. This reluctance is a direct result of lawyers' limitation of their practices to specific client groups. A lawyer's political independence is circumscribed when his firm becomes identified with a particular client group. He cannot take stands contrary to the interest of his firm's client base.

Does this modern law practice serve us as well as the practice of our past? How does it shape us as individual lawyers? Not so well, we fear. Because so many more of us live in cities, we come to our practice already deprived of the breadth of community experience and the accompanying ties to community. Our narrower lives place on our practice a greater demand to supply knowledge of and connections to the community than in the days when the simple business of living kept us all more connected.

It is precisely now, when our narrower lives mean that we most need diversity of clients in our law practice, that we have lost it. Today's practice fails to give us the breadth of perspective, experience, and vision of our former practice; it certainly cannot bear the burden of compensating for the narrowness of our lives as citizens.

The consequences are more serious than simply the loss of the benefits of a broader practice; the limitation of practice to certain client groups brings with it another danger. It multiplies the effect of psychological phenomena — such as projection, identification, and transference — long known to cause misperception.[48] These unconscious psychological processes affect lawyers and non-lawyers alike. They are present to one degree or another in many of our interactions with people and our perceptions of situations. They are powerful primarily because they function in the unconscious, where we are largely unaware of them and thus cannot compensate for them.

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[47] *See* PIKE, *supra* note 31, at 69.

[48] In simple terms, these phenomena work as follows: I perceive aspects of myself which I dislike, and rather than confront these aspects of myself, I will pretend that they are not within me by "projecting" them on someone else where I can do battle with them more safely. Conversely, I will think I see traits I covet in someone else (usually someone with whom I am in relationship) and I will "identify" with that person in order to appropriate that trait. Or, I will suffer some psychological injury, and from then on, when confronted with unrelated people or situations that somehow remind me of the earlier injury, I will "transfer" my earlier experience and reactions to the unrelated people or situations.

These phenomena are problematic enough when they operate individually, stemming from and affecting only one relationship or situation at a time. Certainly they were active in the law practices of the past. They affected individual client/lawyer relationships and the accuracy of the lawyer's perspectives. But an insidious multiplier is at work when our practice becomes more and more limited to a certain client group. These phenomena operate cumulatively when the lawyer is confronted over time with the same kinds of objects for transference, projection, and identification. They affect us cumulatively in at least two ways: 1) they cause us to confuse ourselves with our usual client group and thus deprive us of an objective perspective; 2) they cause us to exaggerate or misperceive the negative traits of our usual opponent group, thus distorting our perspective yet again. In fundamental and unfortunate ways, they change who we are.

The worst aspect of the change is the loss of independence (differentiation) from our clients and their interests. In a real sense, we each lose a part of who we are. The parts we lose and the extent to which we lose them are different for each of us, but the loss is inherently significant. Our clients lose as well. This sort of practice, with impaired perspective and judgment, does not help us to shape our clients.

Nor can we help to maintain community. As I become more an appendage to my client group, I contribute to the unraveling of community. I am drawn into a segment of that community and increasingly identify solely with its interests. Then I cannot be part of the glue that holds the segments together. It is much more difficult to be the voice of my client to a community whose language I do not speak any better than my client does. It is even harder to speak to my client in the voice of a community I can hardly hear. I cannot offer the moral vision required for true excellence in the practice of law. In short, I cannot help others maintain the ties that I myself have lost. My over-identification with the interests of one group has deprived me of the perspective essential for perceiving the common good.

Our task, then, is to help maintain community despite the fragmentation of our own lives and practices. We must take the clues our traditions offer and yet resist the temptation of futile nostalgia.

We cannot reverse the growth of cities. We cannot reverse the growth

of large firms, the increasing complexity of the law, or the accompanying need to specialize. Does this mean that we can no longer be the voice of the community to our clients; or the voice of our clients to the community?

We think not. Indeed, the growth of law firm practice — the shift from practice as an individual enterprise to practice as a shared enterprise — may facilitate molding today's practice after the best of our tradition. What is required is a new and better vision of the law firm's purpose for existing. Its very structure can help to maintain community.[49]

If individual lawyers can no longer touch and bind the community, our law firms can help fill the gap. While no single lawyer's practice can embrace the diversity of the community, practices combined within a firm can. In essence, each lawyer can be both the voice of her client to this "community of lawyers" and the voice of the community to her client, because this "community of lawyers" can be the voice of the community to her.

Of course, this is only a small part of a complete solution and its benefits come at a price. It asks firms to intentionally promote the diversity of both their firm lawyers and their client bases. It asks firms to resist pressures (real or perceived) to limit their advocacy to one segment of the community or one side of a substantive debate. It asks firms to recognize and value goods in addition to efficiency and maximization of profits.

Perhaps most difficult it asks firms to become communities, and to be "friends" in the sense that Aristotle used the term.[50] That kind of rela-

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[49] Thus, like Terrell and Wildman, we too assume that the private practice of law for fee-paying clients is morally legitimate. *See* Terrell & Wildman, *supra* note 3, at 429-30. We would go further, and perhaps they would join us, in asserting that law firm practice in its best form may be the optimal paradigm for us all.

[50] An indispensable component of Aristotle's concept of "friendship" was a common commitment to help each other be good people. Friends, Aristotle would remind us, must recognize and call forth the best in each other. They must encourage each other by word and example in this shared enterprise. ARISTOTLE, *supra* note 6, bk. 9, ch. 4. And what was a "good person" according to Aristotle? Why of course, a good person was one who could live well in community.

Modern large law firms are not associations of friendship for the most part. One of our colleagues, Tom Newlon, has taught us that part of the explanation for what has happened to large law firms — why they are so obssessed with external goods, why market forces now control operations *within* the firm, why relationships are not friendships, and so forth — is to be found in an excessive concern with fairness within the firm. Partners and associates, worried about getting their fair share, moved firms towards more objective criteria for evalution of their work and away from discretionary decision-making. These more objective criteria ignored those aspects of the work and the relationships that

tionship among a group of persons engaged in a shared enterprise is difficult to maintain. It can come only when those persons are committed to becoming people of self-perception, truthful description, practical wisdom, patience, imagination, and vision — and when they see this kind of flourishing as a reason for being a lawyer.

III. Pro Bono

What does this teleology of the practice of law tell us about representation of the poor? Terrell and Wildman correctly observe that we do have an obligation to help the legal system work; that part of this obligation is a special duty to make legal services available to the poor; that this obligation is not met by nonlegal community service[51] like membership on the board of the symphony;[52] and that this obligation to make legal services available to the poor is not the definition of professionalism. If the reason we value pro bono representation — the reason we do it — was based *only* on our duty to make the system work, then perhaps Terrell and Wildman are also right in asserting that the obligation is "enabling" rather than "personal."[53] But the value of pro bono work in our proposed teleology is both broader and deeper.

In the context of our proposed teleology, pro bono work is a fundamental component of the very excellence due to paying clients (indeed, to all

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could not be made objective. Thus these aspects came to be seen as unimportant in defining a job well done. The number of billable hours worked operated as a lowest common denominator of objectivity and it did serious damage to relationships within the firm, according to Professor Newlon. Professor Newlon says that the greed we now see controlling behavior followed this search for fairness, rather than preceding it as many claim.

[51] *See* Terrell & Wildman, *supra* note 3, at 430. While nonlegal community service is not a way to find meaning within the practice of law, it is not without value to the excellences that Terrell and Wildman seek. If the community service brings the individual lawyer into contact with aspects of the community not represented within the lawyer's client group, the nonlegal service has significant value for the lawyer's practice of law. Terrell and Wildman are correct in stating that the symphony board may not have this value for a King & Spalding lawyer, but service in a soup kitchen or a shelter might. Conversely, service on the symphony board might have significant practice-related value for a legal services lawyer.

[52] Though Terrell and Wildman did not say so, we think that perhaps they are rightly suspicious of the motivation behind "community service" which brings the lawyer into contact with potential clients similar to the client base the lawyer's practice serves.

[53] *See* Terrell & Wildman, *supra* note 3, at 430. We understand Terrell and Wildman's proposal to mean that individual lawyers either can engage in pro bono representation themselves or could fund someone else, but that each of us has an obligation to do one or the other.

clients) that Terrell and Wildman rightly seek. If the highest and best meaning of legal representation includes offering clients a moral vision; if inherent in the practice of law is being the voice of our clients to the community and the voice of the community to our clients; if we are to judge our professionalism by the kind of people it makes us, and by the kind of people it helps us make our clients; then excellence in the representation of each fee-paying client requires each lawyer to represent the poor as well. This individual pro bono representation is not merely for the sake of the poor. It is also for the sake of each individual lawyer and each lawyer's clients. It is for the common good.[54]

The same is true for the goal of excellence in the representation of non-fee-paying clients. It is easier for a lawyer who represents fee-paying clients to be the voice of the community to a non-fee-paying client and the voice of that client to the community.[55]

When the complexity of a particular pro bono matter truly precludes a non-specialist from efficient representation,[56] another firm lawyer who has that expertise can handle the case. The relationship of the firm members to one another can then preserve the benefit of a diversified clientele.[57] Thus, the members of the firm can truly be the voice of the larger community to each other and, through each other, to all of their clients — whether fee-paying or not.

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[54] And for those who see service to the poor as a religious duty, this way of thinking about lawyering moves it closer to what religion may require.

[55] Although it is preferable for the pro bono client to be represented by a lawyer who also represents fee-paying clients, diversity of client group is not as important here because the lawyer's life outside of practice is usually based in the broader community. Thus, the lawyer's other practice is not the primary source of the connection to other parts of the community.

[56] *See* Terrell & Wildman, *supra* note 3, at 430. We assume that when Terrell and Wildman refer to pro bono representation that is too complex to be handled efficiently by a particular firm, they mean to apply the same sort of standard as that firm would use in deciding whether a fee-generating matter is too complex to be handled efficiently by that firm.

[57] There will, of course, be some pro bono representation that is so complex that in-house representation will not be feasible, but the law firm vision we describe does not require each lawyer or firm to accept all pro bono requests — only enough in quantity and diversity to maintain a connection with other parts of the community.

CONCLUSION: A TELEOLOGY OF MANNERS

Finally, we guess that this conception of community is the force at work behind the scenes of Terrell and Wildman's reflections rather than the one they describe. Why do they value the community they describe? Why do they value the law or the legal system that holds it together? Is it for security? If so, security for what type of life? Is it for "regularity, consistency, and basic justice over time"?[58] There are good and bad lives to be lived in a society that is regular, consistent, and offers basic justice over time. Is it because the law produces truth and justice? How are we to understand what these words mean for us absent a good community? We are not being inappropriately skeptical because the point here is not to challenge the logic of their foundations. It is, instead, that Terrell and Wildman's teleology of lawyering as becoming people who honor the law likely has personal meaning for them because of a different story than the one they tell here. We wager that the more truthful story at work is one about a community in which people treat each other well because they want to be people who do this. It is a story about those aspects of professionalism that Terrell and Wildman describe as trivial: courtesy, politeness, common decency, tact, true respect for all others, and civility — especially ". . . civility (a charged word whose former strength has largely left us) towards the inward savour of things."[59] This can be a lawyer's story, for deep within the best traditions of our practice is more concern for keeping this characteristic of our society — this courtesy — alive, than within the traditions of any other. The teleology of our practice is not, as Terrell and Wildman tell us, about keeping our communities together by force of law; it is about making our communities ones worth keeping together.[60]

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[58] Terrell & Wildman, *supra* note 3, at 422.

[59] GEORGE STEINER, REAL PRESENCES 148 (1989).

[60] So, Terrell and Wildman have it backwards. Instead of manners being incomplete when argued "in isolation from other important values," it is other values that become less important when argued in isolation from manners. Terrell & Wildman, *supra* note 3, at 420. A reflection upon professionalism starting at that point for its teleology would come closer to the goal of restoring meaning to our work and, with it, our self esteem as lawyers.