

Fordham Urban Law Journal

Volume 40

Number 1 *The Law: Business of Profession? The Continuing Relevance of Julius Henry Cohen for the Practice of Law in the Twenty-First Century*

Article 1

March 2016

Resisting Commercialism

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Recommended Citation

Rakesh K. Anand, *Resisting Commercialism*, 40 Fordham Urb. L.J. 369 (2012).

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RESISTING COMMERCIALISM

*Rakesh K. Anand**

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INTRODUCTION

Julius Henry Cohen was a man concerned with the social good. He understood law to have a place in our thinking about that subject. He also understood the professional practice associated with it to be an activity different in kind from the practice of commerce. Given these dispositions, Cohen was quite naturally concerned about the growing influence of commercialism on the practice of law in his time, namely early twentieth century industrial America. Accordingly, Cohen expressed his reservations in his 1916 publication *The Law: Business or Profession?*,¹ the purpose of which was to challenge the commercialization of the practice of law and, correspondingly, to defend a vision of lawyering as a profession.²

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1. JULIUS HENRY COHEN, *THE LAW: BUSINESS OR PROFESSION?* (1916)

2. For a discussion of Cohen’s vision, see Samuel J. Levine, *Rediscovering Julius Henry Cohen and the Origins of the Business/Profession Dichotomy: A Study in the Discourse of Early Twentieth Century Legal Professionalism*, 47 AM. J. LEGAL HIST. 1 (2005).

For me, Cohen's work remains relevant principally because I share his starting points in my thinking about law and its professional practice today. I, too, am concerned with the social good. Additionally, I understand law to speak to that subject and consider the practice of law to be a pursuit that is qualitatively distinct from the practice of commerce. And, in this light, the present increasing sway of commercialism over the practice of law likewise disturbs me. Unlike Cohen, however, my apprehension about the rising impact of commercialism on lawyering does not lead me to address the business/profession dichotomy—at least not directly. Rather, my worry about commercialism's mounting influence on the practice of law points me in a different direction. Specifically, it leads me to attend to a broad social issue: commercialism's growing impact on society as a whole and how we might think about law and the role for lawyers in light of this state of affairs. For me, this matter is the context within which to explore the proper relationship between commercialism and the practice of law because it is, in my opinion, a more pressing social concern than the subject of the practice of law's character as a profession and its beneficial role, as such, in a democracy. Accordingly, in this Essay, I depart from Cohen's principal focus and take up this broad social issue.

Importantly, in doing so, I proceed from a distinct perspective on the essential character of commercialism and law. Specifically, I understand each to be a cultural practice of a set of ideas and, as such, to be a way of knowing, or being in, the world, at least in the United States. To speak in a slightly more technical vocabulary, I understand each to be, for Americans, a "cultural form" of enterprise—a cultural activity that affords an entry point into that which surrounds the individual, a means in and through which he or she organizes and comprehends experience—and to be aptly categorized alongside other cultural forms that Americans engage, for example religion, science, and art.³ Necessarily, this disposition toward the essential

3. For a discussion of religious practice as a cultural enterprise, see generally PETER BERGER, *THE SACRED CANOPY: ELEMENTS OF A SOCIOLOGICAL THEORY OF RELIGION* (1967). For a discussion of art as a cultural enterprise, see ERNST CASSIRER, *AN ESSAY ON MAN: AN INTRODUCTION TO A PHILOSOPHY OF HUMAN CULTURE* 137–70 (1944). The intellectual history of physics suggests its nature as a cultural enterprise. For a treatment of this history, see generally ALBERT EINSTEIN & LEOPOLD INFELD, *THE EVOLUTION OF PHYSICS* (1938). Today, string theory (perhaps more specifically M-theory) offers a new alternative to both relativity theory and standard quantum theory. For an introduction to string theory, see BRIAN GREENE, *THE ELEGANT UNIVERSE: SUPERSTRINGS, HIDDEN DIMENSIONS, AND THE QUEST FOR THE ULTIMATE THEORY* (1999). It is perhaps necessary to state that characterizing

character of commercialism and law informs my approach to the question presented. For me, the subject to be addressed is the growing influence of the *cultural form* of commercialism on society as a whole—or, more precisely, the growing influence of the cultural form of economics,⁴ commercialism being the practice of a set of economic ideas⁵—and how we might think about the *cultural form* of law and the role for its most representative figures in light of this state of affairs. The discourse that follows reflects this orientation toward the subject matter (which is, to be precise, a philosophical-anthropological one).⁶

science as a cultural practice is not a denial of scientific observation. It is only a statement that a difference exists between scientific observation and the meaning that we ascribe to such observation.

4. The references to economics throughout this Essay pertain to neo-classical economics. Both capitalist and non-capitalist alternatives to neo-classical economic theory exist. Capitalist approaches to the economic order that are not neo-classical in form include traditional institutionalist economics. For an introduction to institutional economic theory, see, e.g., GEOFFREY M. HODGSON, *What Is the Essence of Institutional Economics*, in THE PHILOSOPHY OF ECONOMICS: AN ANTHOLOGY 399 (David M. Hausman ed., 3d ed. 2008) and Walter H. Hamilton, *The Institutional Approach to Economic Theory*, 9 AM. ECON. REV. (SUPPLEMENT) 309–18 (1919). See also JOHN R. COMMONS, INSTITUTIONAL ECONOMICS: ITS PLACE IN POLITICAL ECONOMY (1934); THORSTEIN VEBLEN, THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY OF INSTITUTIONS (1899). Non-capitalist approaches to economic production include those grounded in a Marxist ideology, as well as those rooted in the ideology of Gross National Happiness. For an introduction to the former, see THE MARX-ENGELS READER (Robert C. Tucker ed., 2d ed. 1978). For an introduction to the latter, see Mark Mancall, *Gross National Happiness and Development: An Essay*, in GROSS NATIONAL HAPPINESS AND DEVELOPMENT: PROCEEDINGS OF THE FIRST INTERNATIONAL CONFERENCE ON OPERATIONALIZATION OF GROSS NATIONAL HAPPINESS 1 (Karma Ura & Karma Galay eds., 2004).

5. Cf. THORSTEIN VEBLEN, THE THEORY OF BUSINESS ENTERPRISE 7–8 (Cosimo Classics 2005) (1904) (describing the business enterprise as the “directing force” that animates the modern industrial system and the modern industrial system as the “material framework of modern civilization”).

6. Economists themselves acknowledge that economics is a way of approaching the individual and the larger reality within which he or she operates. See, e.g., GARY S. BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR 3 (1976). For an interesting discussion that acknowledges economics as “a way of looking at the world,” but resists defining it as a form of knowledge, see RONALD H. COASE, *Economics and Contiguous Disciplines*, in ESSAYS ON ECONOMICS AND ECONOMISTS 34 (1994). At the same time, however, economists do not necessarily acknowledge that economics is an ordering of things that individuals internalize, at least in the United States. In fact, neo-classical economic theorists claim a focus on predictability, as opposed to descriptive accuracy. They also disclaim a normative dimension to their analysis. For the most well-known statement, and defense, of neo-classical economics’ predictive orientation, see MILTON FRIEDMAN, *The Methodology of Positive Economics*, in ESSAYS IN POSITIVE ECONOMICS 3 (1953).

In summary form, the discourse makes three points. It explains that (a) illustrative of the social concern that motivates this Essay, the cultural form of economics occupies a significant place in the American political order, one that has a pronounced, negative effect on society;⁷ (b) the cultural form of law offers the hope of an alternative mode of being in and through which to engage political life, one that provides for a more healthy social condition and, correspondingly, a space in and through which to resist the cultural form of economics and its negative social effects; and (c) the role for the lawyer in America today is to help realize the promise of the cultural form of law and, correspondingly, push against the manifestation of the cultural form of economics and its detrimental social consequences. As this summary description indicates, the broad message of the discourse is that cause for concern exists—the American embrace of the cultural form of economics has put the political order in a bad place and, thus, the social situation is a troubled one—and the cultural form of law and the legal profession represent a locus within which to assist society in moving in the direction of change.

Quite naturally, this broad message speaks to my purpose in presenting the discourse. In a small way, I hope to help increase awareness in American society of the problems resident in its politics and to identify one space within which Americans can begin to address them. Ernst Cassirer argued that philosophy must ultimately relate itself to the world and, correspondingly, that it had an ethical task—loosely speaking, to guide humanity and make man aware of the social problems of his time.⁸ Karl Marx offered a variation on this thesis when he famously stated that the point of philosophy is to

For an important response, see Ronald H. Coase, *How Should Economists Choose?*, in COASE, *supra*, at 15.

On law in America as a cultural practice, see PAUL W. KAHN, *THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP* (1999) and Paul W. Kahn, *Freedom, Autonomy, and the Cultural Study of Law*, 13 YALE J.L. & HUMAN. 141 (2001).

7. For a recent discussion of economic psychology and contemporary American society, one with points of contact with this essay, see MICHAEL J. SANDEL, *WHAT MONEY CAN'T BUY: THE MORAL LIMITS OF MARKETS* (2012).

8. ERNST CASSIRER, *The Concept of Philosophy as a Philosophical Problem*, in SYMBOL, MYTH, AND CULTURE: ESSAYS AND LECTURES OF ERNST CASSIRER 1935–1945, at 49–63 (Donald Phillip Verene ed., 1979); see also, Donald Phillip Verene, *Introduction* to THORA ILIN BAYER, CASSIRER'S METAPHYSICS OF SYMBOLIC FORMS 28–37 (2001) (describing the normative dimension of Cassirer's *Philosophy of Symbolic Forms*).

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change the world.⁹ I present my observations in the spirit of these thoughts.

Before proceeding with the discussion, a few brief comments are necessary to ensure the clarity of my remarks—to make plain what I am and am not saying. First, my concern with, and reflection on, the rise of the cultural form of economics in American society is an apprehension over, and consideration of, the increased dominance of a market psychology in the extant political order of America. That is, the impetus for the discourse, and the object of inquiry, is a growing social disposition and associated pattern of behavior in the United States. It is not instrumental institutions, namely markets, per se. Markets themselves, and specifically the questions of whether they have a place in the political order and, if so, the extent to which they do, are not subjects that I take up. Nothing in this Essay is intended to suggest otherwise.

Second, my focus on the growing influence of the cultural form of economics in America today ultimately reflects the identification of one important factor contributing to a negative social condition. Arguably, it is the most significant factor, particularly at the broad level at which I direct my attention. It is not, however, the only one. Other elements of social life negatively impact contemporary America's politics. For example, while advancements in technology have greatly improved social life in many respects, they also have their deleterious effects. Nothing that follows should be read as a denial of the existence of such other forces.

Third, the discussion that follows reflects a consideration of the present social circumstance and the opportunity associated with the cultural practice of law. It does not speak to how we might think about the other cultural practices that Americans take up—whether those that speak to the political sphere of experience or otherwise—and the role for their most representative figures with respect to this same phenomenon. In this way, the discourse is narrowly drawn and engages one slice—the slice about which it makes sense for me to speak—of an ultimately broad question. Necessarily, that broad question is left aside.¹⁰

9. Karl Marx, *Theses on Feuerbach*, in *THE MARX-ENGELS READER* 145 (Robert C. Tucker ed., 2d ed. 1978).

10. A final comment about my remarks speaks to its historical character. As is commonly recognized, today we live in an age where the modern form of politics, namely that of the nation-state, confronts a post-modern form of politics, namely that of globalization. And, as others have also noted, the United States remains tied to the former and, in a significant manner, resists the embrace of the latter.

I. THE CULTURAL FORM OF ECONOMICS AND AMERICAN SOCIETY TODAY

The starting point of the discourse is the influence that the cultural form of economics has on contemporary American society—the place that the cultural form of economics occupies in American political space. And that discussion begins with an explication of the cultural form itself. The first step in comprehending the present relationship of the economic way of life to the American political order is understanding what the economic manner of living looks like and, in light of the motivating concerns of this Essay, what the central pathologies associated with the form of being are. Only if we have a picture of what it means to experience the world “economically,” one that reveals the way of life’s main unhealthy features, can we grasp the hold that the cultural form of economics has on America today. At its core, the cultural form of economics is organized around four ideas. Taken together, these ideas provide the requisite insights.

The first idea reflects the metaphysical orientation of the cultural form of economics and is, accordingly, the true starting point of the economic way of life. That idea is the sovereignty of the market. For the economic way of being, the market reigns. It possesses a transcendental character and, correspondingly, stands as a sort of lord over the world.¹¹ The market has existential primacy and is that

Understanding law in the United States as a cultural form and denoting the hope it can afford America today is consistent with the present state of America’s politics. It is an account of law in a political community that is still committed to the nation-state model of individual and collective governance. To the extent that this circumstance changes—that is, to the extent that the American political community fundamentally embraces a more global model of politics—the discourse on law presented here will decrease in relevance.

To be clear, in the event that such a turn in American politics occurs, the concern with the cultural form of economics will remain. Projecting the cultural form of economics across populations is central to the neo-liberal project. Similarly, the question of how to think about law in light of the cultural form’s influence on society will presumably maintain its currency. If history is any indication, law will have a strong hold on the Western political imagination in the years to come. The conception of law that will inform our discourse, however, will not be that of a cultural form (at least as presently constituted). Necessarily, it will be something else. What that alternate conception of law will—or at least should—be is unclear. Indeed, in consideration of such a possible political future, we might begin to ask “What should the law become?” For an introduction to historical conceptions of law, see CARL JOACHIM FRIEDRICH, *THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE* (2d ed. 1963).

11. For a reference to the transcendental character of the market, see Mancall, *supra* note 4, at 19. Cf. Karl Marx, *The Communist Manifesto in THE MARX-ENGELS READER* 485 (Robert C. Tucker ed., 2d ed. 1978) (“In bourgeois society, capital is

which ultimately orders things. In the economic way of life, the “invisible hand” of the market governs, providing direction and stability to human behavior.

In exercising its sovereignty, the market rules in a particular manner. Specifically, the market is a “pricing mechanism” that establishes a value—a “market value”—for the objects of individual interest. Market governance occurs in and through this pricing mechanism, coordinating the satisfaction of interests.¹² The sovereign character of the market, coupled with this specific character of its governance, points to the second idea that lies at the heart of the cultural form of economics, one that stands as a corollary to the market’s existential preeminence. For the economic mode of being, the sovereign market’s orientation toward the satisfaction of interests means that interests have ontological integrity. They exist in and of themselves and have their own essence. For the economic way of life, they are “things-in-themselves.”¹³

In a world in which the market reigns and interests are correspondingly reified, we should expect an understanding of self and other to be constructed in a manner that aligns with these initial dispositions. In the cultural form of economics, they are. The concepts of self and other resident in the economic way of life reflect its market and interest-centered orientation. Not surprisingly, these concepts are also basic to the cultural form of economics. They represent the third and fourth foundational ideas.

With respect to the understanding of the self, for the economic mode of living, the individual is the space within which interests manifest themselves. That is, the individual is a matrix of interests. More precisely, he or she is a locus of calculation for the satisfaction of interests. For the economic form of being, the individual is a computational mechanism that operates to fulfill desires as much as possible. In the technical vocabulary of the cultural form, he or she is a “decision unit”¹⁴ that “maximizes” the realization of wants (a

independent and has individuality, while the living person is dependent and has no individuality.”).

12. Technically, there is a limiting circumstance of market rule, which is market failure. In this situation, the government or the firm takes the place of the market as the mechanism for coordinating behavior. On the firm as an alternative to the market, see RONALD H. COASE, *The Nature of the Firm*, in *THE FIRM, THE MARKET AND THE LAW* 33 (1988).

13. My intention is not to suggest a direct connection with the Kantian use of the term “thing-in-itself.” For the relevant text of Kant, see IMMANUEL KANT, *CRITIQUE OF PURE REASON* (F. Max Müller trans., Anchor Books 1966) (1781).

14. Becker, *supra* note 6, at 7.

process that occurs “rationally” through the assessment of “opportunity costs,” the engagement of “cost-benefit analyses,” and the taking up of “efficient” action, among other things).

Reciprocally, if the individual is a locus of calculation for the satisfaction of interests, then he or she will apprehend the other in terms of its desirability. This fact suggests the understanding of the other to which the cultural form of economics adheres. For the economic way of life, everything that the individual encounters in the world is an object of interest. All are “goods”¹⁵—items for consumption.

The understanding of the cultural form of economics that emerges from the description of its organizing ideas is that of a market-governed and interest-based mode of being in which self and other are conceptualized in terms of its overarching interest basis. And, with this portrait of the cultural form of economics in hand, we can reflect on its essential character and ask what it is that we see. Almost immediately, a problem with the cultural form presents itself, a problem that points to a true disturbance of being: the way of life subscribes to an understanding of self and other that lies outside the bounds of any legitimate interpretation. That is, it sees self and other in a manner that does not comport with human reason. As indicated, the economic mode of living approaches the self in computational terms oriented around personal desire and the other in the vocabulary of self-utilization. Yet, neither of these conceptualizations is sensible. At his or her core, the individual is not a locus of calculation for the satisfaction of interests. Equally, most things are not primarily objects of interest, at least not typically. Self and other may look differently to different people, both within and across time. Self and other appear, and have appeared, in a variety of ways. But it is a mistake in thought to comprehend each in the market- and interest-oriented manner that the cultural form of economics adopts.¹⁶

15. The term often used in economic circles is “resource,” with academic concern focused on “scarce resources.” For a simple discussion of scarce resources, see DANIEL H. COLE & PETER Z. GROSSMAN, *PRINCIPLES OF LAW AND ECONOMICS* 1–2 (2005).

16. On this point, one can consider the words of former Brazilian Secretary of the Environment Jose Lutzenberger in reply to former World Bank Chief Economist Larry Summers’s famous statement that “the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable.” In a letter to Summers, Lutzenberger wrote, in pertinent part: “Your reasoning is perfectly logical but totally insane Your thoughts [provide] a concrete example of the unbelievable alienation, reductionist thinking, social ruthlessness and the arrogant ignorance of many conventional ‘economists’ concerning the nature of the world we live in.” For

Two genuine pathologies of the soul follow from this mistake in thought. Preliminarily, the mistake in thought leads to a basic misunderstanding of the world as well as of how to think about it and, accordingly, gives rise to an uneducated life. In understanding self and other as, respectively, a locus of calculation for the satisfaction of interest and an item for consumption, the cultural form of economics builds a relationship to reality that is, at its heart, distorted. It constructs a false sense of the world, one that in turn inhibits the individual's ability to engage in productive reflection on that which surrounds him or her. He or she lacks an elementary comprehension of things, as well as the tools by which to usefully meditate on them. And this state of affairs effects an ignorant existence—a life that is unschooled.¹⁷

More deeply, the mistake in thought denies any substantive character to the individual self and the other and, thus, precludes the possibility of a life with meaningful relations. In understanding self and other as, again, a locus of calculation for the satisfaction of interest and an item for consumption, the cultural form of economics makes sense of each in wholly secondary terms. It does not recognize either as having its own integrity, at least not substantively. It sees each strictly as an epiphenomenon—an expression of something else, namely interests and its concerns. This approach to self and other, a denial of self and other *qua* self and other, means that in the world of economics there is no self and no other. And this state of affairs in turn precludes the realization of a life with meaningful relations, as the possibility of such a life presupposes both self and other—meaningful relations in life always manifesting themselves in a movement beyond the former to the latter.¹⁸

The first step in understanding the influence that the cultural form of economics has on contemporary American society is the explication of the cultural form itself. The next step is an account of its actual manifestation. It is the expression of the cultural form of

Summers's famous statement, see *Let Them Eat Pollution*, *ECONOMIST*, Feb. 8–14, 1992, at 66 (reprinting memo of then-World Bank Chief Economist Larry Summers). For Lutzenberger's response, see FRANK ACKERMAN, *POISONED FOR PENNIES: THE ECONOMICS OF TOXICS AND PRECAUTION* 21 (2008).

17. In using the terms “uneducated” and “unschooled,” my intention is not to patronize. My hope is that the reader can move past this connotation and take up the vocabulary on its own terms. Additionally, I understand the term “educated” to reflect at least two characteristics: that one has learned how to understand and think about the world, and that one has a certain moral education.

18. There is a limit on the types of others with whom or which we can connect (but they are not limited to human or even sentient beings).

economics in political space that is the measure of the place it occupies in American society and thus, that which ultimately allows us to comprehend its hold on America today. To what extent, then, do Americans take up the cultural form of economics? Correspondingly, to what degree do its central pathologies realize themselves?

In America today, the degree of engagement with the economic mode of being is significant. That is, Americans embrace the cultural form of economics in a wide variety of areas of political life. In turn, the principal unhealthy features of the cultural form of economics are appreciably manifest. A brief description of some of the areas of political life in which Americans embrace the cultural form of economics provides a general sense of the depth of engagement. In parallel, a short account of the associated pathological expression provides a basic appreciation of the extent to which the main unhealthy features of the cultural form of economics present themselves.

To begin, an initial space in which Americans bring to bear the economic mode of being is their relationship to nature. To a rather significant extent, Americans understand a market—in which they appropriate objects for consumption—to be in place in, and to govern, this area of political life. Indeed, Americans' ordering of this dimension of political living is often organized in conjunction with just this disposition. An understanding of the environment as a resource and a commitment to market coordination of its utilization strongly influences consideration of environmental policy.¹⁹ A similar situation obtains with respect to the American orientation toward non-human sentient beings (one that, accordingly, does not recognize a dignity about such beings).²⁰

Moving on from their relationship to nature, Americans embrace the economic way of life in their approach to one another. In a fairly robust way, Americans again recognize a market—in which they acquire their object of interest—to order this dimension of political living. Their conceptualization of the relations makes this fact clear. At a general level, Americans engage in “relationships” with one

19. See, e.g., FRANK ACKERMAN & LISA HEINZERLING, PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING (2004); see also David M. Dreisen, *Sustainable Development and Market Liberalism's Shotgun Wedding: Emissions Trading Under the Kyoto Protocol*, 83 IND. L.J. 21 (2008) (describing the significance of “market liberalism” to environmental policy, nationally and globally).

20. See, e.g., PETER SINGER, ANIMAL LIBERATION: THE DEFINITIVE CLASSIC OF THE ANIMAL MOVEMENT 95–157 (Harper Collins Publishers 2009) (1975).

another. Meanwhile, in the more specific context of their romantic pursuits, Americans participate in a “dating market” and enter into marriages that are modeled on a contract for services.²¹

In line with this approach to one another, Americans also take up, or at least are beginning to take up, the economic mode of being in their thinking about the constituent elements of the body. In a noticeable manner, Americans reflect on the propriety of a market ordering of this aspect of political life, as relatively recent actions demonstrate. In 2003, Congress held hearings on a market-based approach to the exchange of bodily organs.²² Consistent with this legislative activity, academic scholarship is now exploring this subject.²³

Turning in a different direction, Americans further take up the economic manner of living in their interactions with social institutions. Increasingly, Americans yet again understand a market—in which they obtain their items of interest—to govern this aspect of political life. And, importantly, the relevant range of social institutions is not small. More and more, Americans approach the press, the medical establishment, universities, even the military to an extent, in market terms, considering each to be a provider of a consumer good—and, in turn, each understands itself, and operates, as a commercial enterprise.²⁴ For example, the press is organized around “what sells” to the consumer²⁵ and news bureaus are approached as profit-centers.²⁶

Finally, looking along a slightly more broad axis, Americans engage the economic way of life in their approach to the community

21. See, e.g., *The Dating Market*, *ECONOMIST* (Mar. 2, 2007), http://www.economist.com/blogs/freeexchange/2007/03/the_dating_market; Katherine Bindley, *Banker Seeks Beauty: Must Be Upbeat Like the Economy*, *N.Y. TIMES*, Aug. 7, 2009.

22. *Assessing Initiatives to Increase Organ Donation: Hearing Before the H. Subcom. on Oversight and Investigations of the Comm. on Energy and Commerce*, 108th Cong. 51–57, 64–67 (2003) (statements of Rich DeVos, Dr. Robert Sade, and Dr. Francis Delmonico).

23. For a reading that explores, in part, a market-based approach to kidney exchange, see *WHEN ALTRUISM ISN'T ENOUGH: THE CASE FOR COMPENSATING KIDNEY DONORS* (Sally Satel ed., 2008).

24. See, e.g., TOM FENTON, *BAD NEWS: THE DECLINE OF REPORTING, THE BUSINESS OF NEWS, AND THE DANGER TO US ALL* (2005); DEREK BOK, *UNIVERSITIES IN THE MARKETPLACE: THE COMMERCIALIZATION OF HIGHER EDUCATION* (2004); James Glanz, *Contractors Outnumber U.S. Troops in Afghanistan*, *N.Y. TIMES*, Sept. 2, 2009, at A10.

25. See, e.g., FENTON, *supra* note 24, at 4.

26. See, e.g., *id.* at 54–57.

generally. In an increasingly pronounced manner, Americans project market rule—the pursuit of self-interest—on such affairs. Their behavior in regard to the wars in Iraq and Afghanistan is perhaps most illustrative of this circumstance. With respect to each war, many did not live, or are not living, the conflict.²⁷

Corresponding to the embrace of the cultural form of economics in each of these areas of political life is the coincident manifestation of the mode of being's central pathologies of the soul. With respect to the initial pathology—the problematic disposition toward that which surrounds the individual and the ignorant existence it effects—in each instance of engagement, the accompanying adoption of the economic understanding of self and other—in context, the self *qua* choice-making appropriator of nature, other persons, the constituent elements of the body, social institutions and the community generally, and the associated other as commodity—translates into a basic misunderstanding about the world as well as of how to think about it and, accordingly, to an uneducated existence. As the earlier analysis would lead one to expect, fairly considered, none of these conceptualizations is compelling. Self and other are not any of these things, at least for the most part. To see them in these ways is to embrace a mistake in thought, one that expresses a fundamental confusion about the nature of things, a lack of an ability to productively reflect on the world, and, ultimately, the maintenance of an unschooled life.

With respect to the deeper pathology—the lack of acknowledgement of the substantive character of self and other and, consequently, the prevention of the opportunity for an existence with meaningful relations—the adoption of the economic mode of being's understanding of self and other—again, in context, the self *qua* choice-making appropriator of nature, other persons, the constituent elements of the body, social institutions and the community generally, and the associated other as commodity—does deny self and other *qua* self and other and, thus, does preclude the possibility of such a life, at least in these dimensions of living. Stated directly, to see self and other in these fashions—to embrace this mistake in thought—is to reject the integrity of each and, accordingly, to foreclose the opportunity to move beyond the self and connect with the other, as

27. See, e.g., John Nagl, Op-Ed, *Does Military Service Still Matter for the Presidency?*, WASH. POST, May 25, 2012, http://www.washingtonpost.com/opinions/does-military-service-still-matter-for-the-presidency/2012/05/25/gJQAAAMupU_story.html.

the various courses of conduct that Americans pursue in these contexts suggest.²⁸

Importantly, in manifesting themselves, each of these pathologies has distinct social consequences. That is, incident to their realization are discrete effects on the daily life of society. Practicing an uneducated life and practicing one insulated from relations with meaning inevitably impacts the basic functioning of the political order, an impact worth noting to fully capture the social condition to which the American engagement of the cultural form of economics gives rise and, thus, the hold that the economic mode of being has on America today. Among other things, the above referenced American ignorance about the world engenders, or at least strongly helps to engender, environmental destruction,²⁹ inhumane treatment of animals,³⁰ a lack of interpersonal commitment, social institutions of declining quality,³¹ and a decreased sense of community.³² Meanwhile, the related inability to lead a life with meaningful relations results in, or at least significantly contributes to, a lack of a practice of love and correspondingly, a disenchanting and unhappy citizenry.³³

The combined analysis of the cultural form of economics and its extant social expression affords an understanding of the place that the cultural form of economics occupies in contemporary America. With this understanding—that the cultural form of economics has a significant presence in, and a pronounced, negative effect on, society—a conclusion about the present social situation follows. It is not a healthy one and is far from being progressive in the Enlightenment sense of the term. Indeed, it looks more like social decay. Against the backdrop of this reality, we can turn to the latter

28. The notion of connecting with the other in the above-specified dimensions of living requires the qualification of “where possible.” As noted in an earlier footnote, there is a limit on the types of others with whom or which we can connect (but they are not limited to human or even sentient beings). *See supra* note 8.

29. The fact of climate change is one example. For some readings on this subject, readings that more specifically explore the intersection of economic thought and U.S. climate change policy, see *ECONOMIC THOUGHT AND U.S. CLIMATE CHANGE POLICY* (David M. Driesen ed., 2010).

30. *See* SINGER, *supra* note 20.

31. *See* FENTON, *supra* note 24.

32. *See* Nagl, *supra* note 27.

33. The recent proliferation of a discourse on happiness is suggestive. For an initial suggestion of the extent of such work in one area of academic thought, the social sciences, see Peter Henry Huang, *Happiness Studies and Legal Policy*, 6 *ANNU. REV. LAW SOC. SCI.* 405, 406–07 (2010).

subjects for discussion: the hope that the cultural form of law affords Americans in light of where society is today and, correspondingly, the role that lawyers can play in light of that promise. The remaining two Parts of this Essay address these matters.

II. THE HOPE OF THE CULTURAL FORM OF LAW FOR AMERICA TODAY

In parallel with Part I, the discussion of this subject begins with an explication of the cultural form of law. The first step in comprehending what promise law can afford Americans is similarly understanding what the way of life looks like and, in light of the purposes of this Part, what principal features of well-being it possesses that oppose the central pathologies of the economic way of life. Only if we have a picture of what it means to experience the world “legally,” one that reveals the way of life’s main attributes of psychological welfare, can we grasp the potential it holds for contemporary American society. Not surprisingly, the explication focuses on four ideas and follows the form of that taken up with respect to the cultural form of economics, exploring law’s basic metaphysical and existential orientation, its conception of self and other, and the central elements of wellbeing that follow therefrom.

Turning to the explication, the cultural form of law begins with the idea of the sovereignty of the People. For the legal way of life, the People reign. The People possess a transcendental character and stand as a sort of supreme authority over the world.³⁴ The universe begins with the People, who ultimately order things. For the legal mode of being, the People govern, and in doing so, provide stability and guidance to the human interaction.

In exercising its sovereignty, the People “ordain and establish” a Constitution that puts in place “rules of law,” which include a mechanism for generating additional rules of law. The People’s governance occurs in and through this Constitution, applying the rules of law. The sovereign character of the People, coupled with this specific character of its governance, points to the second idea that lies at the heart of the cultural form of law, one that stands as a corollary to the People’s existential preeminence. For the legal mode of being, the sovereign People’s orientation toward the application of rules of

34. Cf. PAUL W. KAHN, *THE REIGN OF LAW: MARBURY V. MADISON AND THE CONSTRUCTION OF AMERICA* 27 (1997) (“Individuals exist; communities may exist. But ‘the people’ occupy a time and space of sovereignty that is not a place into which any individual can enter.”).

law means that rules of law have ontological integrity. They exist in and of themselves and have their own essence. For the legal way of life, they are “things-in-themselves.”³⁵

In a world in which the People reign and rules of law are correspondingly reified, we should expect an understanding of self and other to be constructed in a manner that aligns with these initial dispositions. In the cultural form of law, they are. The concepts of self and other resident in the legal way of life reflect its People and rules of law-centered orientation. Not surprisingly, these concepts are also basic to the cultural form of law. They represent the third and fourth foundational ideas.

With respect to the understanding of the self, for the legal mode of living, the individual is an object of rules of law. That is, the individual is a person to whom rules of law apply. More precisely, he or she is a person to whom rules of law definitively apply. For the legal way of life, there is no possibility that rules of law do not attach to the individual—that he or she is “above” rules of law. Without question, he or she is subject to their jurisdiction.³⁶

Reciprocally, if the individual is a person to whom rules of law apply, then he or she will apprehend the other in terms of his or her legally regulated behavior. This fact suggests the understanding of the other to which the legal mode of living adheres. For the legal way of life, the other is a person, non-human sentient being, or thing with whom or with which one interacts in accordance with rules of law. All are persons, non-human sentient beings, or things with whom or with which one relates legally.

The understanding of the cultural form of law that emerges from the description of its organizing ideas is that of a way of life oriented around a popular sovereign and its rules of law and in which self and other are conceptualized in terms of an overarching rules-of-law basis. With this picture of the cultural form of law in hand, we can reflect on its essential character and ask what it is that we see. And against the backdrop of the analysis of the cultural form of economics, a critical feature of the cultural form of law reveals itself, one that suggests the presence of a certain harmony of being. The legal mode of being maintains an understanding of self and other that has currency. It sees self and other in a manner that is legitimate as a matter of reason. As indicated, the legal manner of living approaches

35. Relatedly, they are not rules of men. For a discussion of this characteristic of rules of law, see KAHN, *supra* note 6, at 21–23.

36. *Id.*

the self in norm-bound terms and the other in the vocabulary of norm-bound interaction. Each of these conceptualizations is sensible. At his or her core, the self can be understood as a person subject to rules of law. Equally, the other can be seen as that to whom or to which one relates in terms of such norms. Self and other can appear in a variety of ways. And, in the range of possible forms, each represents a viable alternative. Accordingly, the legal way of life's conception of self and other cannot be said to denote a mistake in thought.

Two features of psychological well-being—attributes that stand opposed to the central pathologies of the economic way of life—follow from this state of affairs. Preliminarily, the adherence to the conception of self and other does not give rise to a fundamentally distorted understanding of the world as well as how to think about it and, correspondingly, allows for the possibility of an educated life. In approaching self and other as, respectively, the object of the rules of law's application and that to whom or to which one relates in terms of that regulated behavior, the cultural form of law builds a relationship to reality that is, at its heart, reasonable. It constructs a sense of the world that has lucidity, one that in turn does not inhibit the individual's ability to engage in productive reflection on that which surrounds him or her. He or she does not lack an elementary comprehension of things or the tools by which to usefully meditate on them. And this condition allows for a life that at least may be schooled.

More deeply, the adherence to the understanding of self and other acknowledges the substantive character of each and, correspondingly, allows for a life with meaningful relations. In approaching self and other as, again, the object of the rules of law's application and that to whom or to which one relates in terms of that regulated behavior, the cultural form of law comprehends each in primary terms—that is, in terms that acknowledge the substantive integrity of each. Self and other exist *as* self and other. Because self and other are affirmed in this manner, the legal mode of being allows for a life with meaningful relations. With the cultural form of law, the individual has an essence, one that he or she can move beyond in connection with the other.³⁷

To be clear, the various relationships of connection that the individual might establish—for example, with particular individuals or

37. *See supra* note 18.

non-human sentient beings—are not constructed entirely on their own terms. The individual does not build the relationship of connection in a purely “free space.” Rather, consistent with the legal understanding of the self, the rules of law to which he or she is subject define a background context against which he or she takes it up. They frame the manner in which he or she engages the other. This state of affairs has consequences for the substantive character of the relationship constructed. Specifically, in setting the border within which the individual interacts with the other, the rules of law place limits on the set of behavioral possibilities for the individual and, correspondingly, the range of meanings he or she can experience. They constrain the types of action in which the individual can engage and, thereby, the kinds of connections he or she can make. Because rules of law operate in this restrictive manner, the conclusion that the legal mode of being allows for an existence with meaningful relations requires qualification. The legal mode of being does so, but within the limits of its own terms. The relevance, or practical effect, of such limits depends on the particular individual involved and the quality of the connection he or she desires.³⁸

The first step in comprehending what promise the cultural form of law can afford Americans is its explication.³⁹ Once again in parallel to Part I, the next step is an account of its actual, which in this context is to say its historical, manifestation. It is the historical expression of the cultural form of law in political space that affords a first hand picture of its practice and thus that which ultimately allows us to see its promise. To what extent, then, have Americans taken up the

38. The manifestation of such limits is the manifestation of law’s violence. The classic discussion of law’s violence is Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

39. The above explication of the cultural form of law, and particularly its features of well-being, is incomplete. In addition to the two features identified, a third feature of well-being is resident in the cultural form of law. That attribute inheres in the taking up of the legal way of life itself. Specifically, the practice of the legal way of life is the practice of living as a member of a community under the sovereign governance of the People and its normative dictates—living “under the rule of law.” It is of participating in a specific type of social governance, one that is defined by popular governance. In turn, it is of taking part in a collective project, one that extends across time and across generations and, correspondingly, provides a history and an identity to the self. In sum, it is the practice of political community, with all of the richness that other practices of political community provide, at least in their modern form. See, e.g., KAHN, *supra* note 34. Because this Essay focuses on the more immediate social consequences associated with taking up the legal way of life, it necessarily places this attribute to the side of its discourse. In doing so, the intention is not to minimize the importance of this feature of well-being.

cultural form of law in the past? Correspondingly, to what degree have its principal features of well-being realized themselves?

Historically, Americans have extensively embraced the cultural form of law. Indeed, Americans have placed it at the center of their political lives. The legal mode of being has been the principal, albeit not the only, form of American engagement of the political order.⁴⁰ In turn, its main attributes of psychological welfare have traditionally manifested themselves throughout that order. A brief description of the historical landscape of American political life provides a general sense of the comprehensiveness of the past engagement. In parallel, a short account of the associated expression of well-being provides a basic appreciation of the complete extent to which the cultural form's principal healthy features have presented themselves.

To begin, as indicated, Americans have traditionally brought the legal mode of being to bear on their political life. That is, as a general historical matter, Americans have understood the People—to whose rules of law they conform their behavior in relation to the world that surrounds them—to govern the political order. The Constitution, along with follow-on legislation, regulations, and judicial decisions, have determined the standards for behavior in the earlier referenced areas of political life—the approach to nature,⁴¹ other individuals,⁴² the constituent elements of the body,⁴³ social institutions,⁴⁴ and the community generally.⁴⁵ Similarly, they have established the criteria of behavior in the various other aspects of Americans' politics—for example, the approach to religious affairs,⁴⁶ foreign affairs,⁴⁷ covert

40. *See generally*, KAHN, *supra* note 34.

41. *See, e.g.*, 42 U.S.C. §§ 7401–7449 (2006) (codifying the Clean Air Act of 1970 and amendments).

42. For an introduction to the American constitutional doctrine of privacy, see KATHLEEN M. SULLIVAN & GERALD GUNTHER, *CONSTITUTIONAL LAW* 555–91, 600–14 (15th ed. 2004). Parenthetically, it is a mistake to think that privacy is not an inherently political concept. Indeed, the construction of privacy is “a contestable political move.” KAHN, *supra* note 34, at 83.

43. *E.g.*, 42 U.S.C. §§ 273–274g (2006). For an introduction to the American constitutional jurisprudence of the related subject “the right to die,” see SULLIVAN & GUNTHER, *supra* note 42, at 614–29.

44. *See, e.g.*, SULLIVAN & GUNTHER, *supra* note 42, at 1461–1502 (describing the American constitutional jurisprudence of freedom of the press).

45. *E.g.*, 50 U.S.C. app. §§ 451–473 (2006).

46. For an introduction to the jurisprudence of the Constitution's religion clauses, see SULLIVAN & GUNTHER, *supra* note 42, at 1504–1606.

47. For an introduction to the American constitutional jurisprudence concerning foreign affairs, see SULLIVAN & GUNTHER, *supra* note 42, at 354–60.

affairs,⁴⁸ the family,⁴⁹ the uses of the body,⁵⁰ and business relations.⁵¹ Regardless of the political space at which one might look, this same situation obtains. The People's rules of law have dictated requirements of conduct in that area of political life. Popular rule has reigned in that political space.

Corresponding to the historical American embrace of the cultural form of law throughout their political life has been the coincident manifestation of its central features of well-being. With respect to the initial feature of well-being—a lucid disposition toward that which surrounds the individual and the possibility for an educated existence it effects—with the comprehensive engagement, the accompanying adoption of the legal understanding of self and other has translated, throughout the political order, to a reasonable understanding about the world as well as of how to think about it and accordingly to an existence pointing in the direction of an educated life (which is not to say that such a life has been realized). As the earlier analysis would lead one to expect, fairly considered, the various particular conceptualizations that arise—for example, the self *qua* object of rules of law's regulation with respect to nature, other individuals, the constituent elements of the body, etc. and the associated other as the object of interaction—are compelling. Self and other can be understood as each of these things. To see them in these ways has been to embrace a legitimate thought, one that expresses a sensible understanding about the nature of things, does not inhibit the ability to productively reflect about the world and maintains the path of a learned life.

With respect to the deeper feature of well-being—the acknowledgement of the substantive character of self and other and, consequently, the allowance for a life with meaningful relations—the adoption of the legal mode of being's understanding of self and other—again, for example, the self *qua* object of rules of law's

48. *E.g.*, 50 U.S.C. §§ 401–442a (2006). For related executive orders, see, e.g., Exec. Order No. 12,333, 3 C.F.R. 200 (1982), *reprinted as amended in* 50 U.S.C. § 401 (2006).

49. For an introduction to the American constitutional jurisprudence concerning family relationships, see SULLIVAN & GUNTHER, *supra* note 42, at 591–600. Additionally, a dramatic example of law's reach into the family is the criminal law's traditional unwillingness to acknowledge a husband's rape of his wife. See, e.g., MODEL PENAL CODE § 213.1 (1962) (establishing the precondition for rape as “[a] male who has sexual intercourse with a female not his wife”).

50. See *supra* note 42.

51. The range of laws structuring business relations is wide. For an introductory discussion, see ROBERT CHARLES CLARK, CORPORATE LAW 30–32 (1986).

regulation with respect to nature, other individuals, the constituent elements of the body, etc. and the associated other as the object of interaction—has been to recognize self and other *qua* self and other and, thus, to make possible a life with meaningful relations throughout political space.⁵² Stated directly, to see self and other in these fashions—to have embraced this legitimate thought—has been to affirm the integrity of each and, accordingly, to allow one to move beyond the self and connect with the other.

Importantly, in manifesting themselves, these central features of well-being have had concrete social effects. As with the main pathologies of the soul of the economic way of life, incident to their realization have been discrete effects on the daily life of society. Practicing in the direction of an educated life and practicing one that allows for meaningful relations with the other has inevitably impacted the basic functioning of the political order, an impact worth noting to fully capture the social condition to which the American engagement of the cultural form of law has given rise and, thus, the hope that the legal mode of being affords Americans. Among other things, American understanding about the world has given rise to at least some degree of basic health within the political order. For example, it has led to environmental protection,⁵³ compassionate treatment of animals,⁵⁴ interpersonal commitment,⁵⁵ high-quality social institutions,⁵⁶ and a strong sense of community,⁵⁷ at least at times. Equally, it has led to a more sympathetic structuring of business relations, at least during some periods in American history. Meanwhile, the ability to lead a life in connection with the other has resulted at times in a practice of love and, correspondingly, a more fulfilled citizenry.⁵⁸

Of course, basic political life in America has not been without its problems and imperfections. Indeed, it is doubtful that it could

52. The notion of connecting with the other throughout political space requires the qualification of “where possible.” As noted *supra*, there is a limit on the types of others with whom or which we can connect (but they are not limited to human or even sentient beings). See *supra* note 18.

53. *E.g.*, 42 U.S.C. §§ 7401–7449 (2006) (codifying the Clean Air Act of 1970 and amendments).

54. Among other examples, the American Society for the Prevention of Cruelty to Animals (ASPCA) was founded in 1866. Information on the ASPCA is available at <http://www.aspca.org/>.

55. See, *e.g.*, TOM BROKAW, THE GREATEST GENERATION 231–68 (1998).

56. See, *e.g.*, FENTON, *supra* note 24, at 52–53, 54–55, 58.

57. See BROKAW, *supra* note 55.

58. See *id.*

survive a moral critique.⁵⁹ The historical treatment of blacks and women, among other groups, immediately suggests just some of the reasons for questioning this possibility. Nonetheless, the realization of these central features of well-being has produced an overall positive concrete condition, at least at times. The history in this regard is not one of a consistently negative circumstance.

The two steps taken provide an understanding of the hope that the cultural form of law affords Americans. With this understanding—that the cultural form of law offers the hope of an alternative to the economic mode of being, one that effects a more positive social circumstance—a conclusion about the quality of this promise follows. It is not an unhealthy one, and is at least a step on the path of a sound social existence.

III. THE ROLE FOR THE LAWYER IN AMERICA TODAY

In light of the promise that the cultural form of law affords Americans, the understanding of the role of the lawyer in America today is straightforward. His or her function is to help realize the hope of the cultural form of law, and to push against the manifestation of the cultural form of economics and its negative consequences for society. That is, he or she is to act to express the cultural form of law and the social situation to which it gives rise, and to resist the expression of the economic universe of understanding and the social order it effects. As the representative figure of the cultural form of law, his or her professional responsibility naturally takes this form.⁶⁰

This role of the lawyer has a variety of general and specific obligations associated with it and, unsurprisingly, their account lies beyond the bounds of this Essay. It has also been taken up elsewhere, at least to some significant extent.⁶¹ One question about the obligations of the lawyer, however, features prominently in

59. On the relationship of political life to moral life, see Rakesh K. Anand, *Legal Ethics, Jurisprudence, and the Cultural Study of the Lawyer*, 81 TEMP. L. REV. 737, 767–72 (2008) [hereinafter Anand, *Legal Ethics*] and Rakesh K. Anand, *Advancing the Cultural Study of the Lawyer: Developing Three Philosophical Claims and Introducing a New Comparative Normative Inquiry*, 3 WASH. U. JUR. REV. 107, 131–35 (2010) [hereinafter Anand, *Advancing*].

60. For an account of the relationship between law, lawyer identity, and lawyer professional responsibility, see Anand, *Legal Ethics*, *supra* note 59.

61. See Anand, *Advancing*, *supra* note 59, at 131–35; Anand, *Legal Ethics*, *supra* note 59, at 767–72; Rakesh K. Anand, *The Role of the Lawyer in the American Democracy*, 77 FORDHAM L. REV. 1611 (2009).

discussions about the practice of law today, a question that also directly intersects with this Essay's discussion about the growing influence of the economic way of life and how we should think about law and lawyers as a result of this circumstance. Accordingly, a brief commentary on the associated subject matter is appropriate. The question concerns the organization of the profession and, more specifically, the rearrangement of the profession in light of the present state of the national economy. How is the profession to structure itself given the extant environment and the realities associated with it?

Obviously, the subject matter is complex and there is much to say about it. Against the backdrop of this understanding of the role of the lawyer, however, one point requires highlighting. The inherent nature of the role of the lawyer speaks directly to this query. That is, it answers the question presented, at least in the first instance. Specifically, the responsibility to help realize the promise of the cultural form of law signifies that a boundary exists within which any course of action is to be pursued. In confronting the challenges of the prevailing economic conditions in the United States, the legal profession must maintain a commitment to the legal way of life and the manner in which it organizes and understands experience. It must remain "legally" oriented and address the economic circumstances of the country from within this perspective.

Importantly, this boundary to conduct permits a wide array of action. To the extent that various parts of the profession need to restructure themselves, a broad range of possibilities is available to legal professionals. Certainly, many of the commonly discussed paths fit within the requisite parameter of conduct, at least on their own terms. For example, private law firms are free to provide more technologically sophisticated services, as well as to expand the array of legal services they provide and the set of individuals to whom they provide those services. Equally, law schools may adopt curricular and classroom changes that focus on foundational skills instruction (for example, how to read a case, how to read a statute, how to think conceptually, how to write quality legal prose, and understanding the importance of listening) or on more "practice-ready" skills.⁶²

62. In my opinion, a focus on "practice-ready" skills is problematic. It is an error to believe that law schools could create a competent practitioner in three years. Except for the most rudimentary matters, the practice of law is far too complex to master in such a short period of time. The knowledge, technical ability, judgment, and cultural competence required to practice successfully, simply at a basic level, takes several years post-graduation to acquire.

While the boundary to conduct is not constraining in any overly burdensome sense, it does place a significant limitation on the behavior of the profession. Specifically, any reorganization of any part of the profession must not arise from a commitment to the pursuit of profit per se. It must not be rooted in a dedication to profit-maximization. The framework within which the profession is to behave precludes this type of action because it contradicts the demand on the lawyer to remain committed to the legal way of life. To orient oneself around profit-maximization is to organize oneself “economically.” It is to direct oneself toward the sovereignty of the market and to take up an interest-based mode of being. It is, then, to serve the wrong master and embrace the incorrect manner of living. It is to fail to orient oneself toward the sovereign People and engage its rules of law-based mode of being.

Precisely because the boundary to conduct places this limitation on profit-maximizing behavior, certain proposals for the reform of the legal profession to which some are now giving voice appear to be problematic. At present, there is a call from some to understand and organize the legal profession in a manner that is more aligned with its economic aspects. For example, individuals promote the approach to private law firms as commercial entities and, correspondingly, the opening up of such firms to outside investment.⁶³ Equally, individuals argue for law schools to understand themselves in more business-oriented terms⁶⁴ and in turn to adopt curriculums that will produce graduates that are more market-ready.⁶⁵ By all appearances, in making these proposals, these individuals root themselves in a psychology that accepts profit-maximization as the first principle of organizational behavior. That is, the authors of these propositions seemingly begin from an embrace of the pursuit of profits as the axis of orientation around which to think about the structure of the legal profession. In doing so, these voices for reform necessarily reject the

63. See Larry E. Ribstein, *Want to Own a Law Firm?*, AMERICAN (May 30, 2007), <http://www.american.com/archive/2007/may-0507/want-to-own-a-law-firm>; see also Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749 (2010).

64. See, e.g., William Henderson, *The Hard Business Problems Facing U.S. Law Faculty*, NAT'L L.J.'S L. SCH. REV. (Oct. 31, 2011), <http://legaltimes.typepad.com/lawschoolreview/2011/10/the-hard-business-problems-facing-us-law-faculty.html>.

65. See, e.g., Andrew P. Morriss & William D. Henderson, *The New Math of Legal Education*, ABA YOUNG LAWS. DIVISION (July 2008), http://www.americanbar.org/publications/young_lawyer_home/young_lawyer_archive/yld_ty1_july08_morriss.html; Karen Sloan, *What Is Law School For, Anyway?*, NAT'L L.J., Jan. 16, 2012, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202538352545>.

boundary to conduct within which the legal profession can legitimately respond to the extant economic situation. Accordingly, their proposals are not viable paths of change for the legal profession.

Instinctively, at least some of these individuals may question the “practicality” of this preclusion on profit-maximizing behavior, presumably asserting that such a prohibition on lawyer behavior is not realizable in today’s economic times. It is hardly clear that such an argument is tenable, both in the direction of intelligibility and functionality. On the one hand, the history of the legal profession is not one of fundamental commercialization. The non-private firm elements of the profession have not historically been run as businesses. Nor have private firms always understood themselves in this manner, at least not wholly.⁶⁶ On the other hand, to the extent that the legal profession has increasingly aligned itself along commercial lines, a concrete path for reversing this trend appears available. A not insignificant number of economists today predict that in the medium to long term, inflation will arise in the United States. To the extent that this situation occurs, the profession can affirmatively “not inflate”—or at least inflate at a rate that is appreciably less than that which becomes resident in society as a whole.

Like most in the United States, the legal profession is subject to the economic realities of today. In reacting to them, the legal profession must remain grounded, and stay tied to the role it is to play in American political life. The cultural form of law offers the hope of a different mode of being than the economic, one that affords a more positive social condition. The role of the lawyer is to help realize that prospect.

CONCLUSION

Today, the social order in America is neither in a healthy state nor heading in a positive direction. Law represents a medium in and through which to help reverse this state of affairs. Correspondingly, lawyers have a role to play in realizing that change of circumstance. Understanding the situation in which one finds oneself is a useful, and arguably necessary, condition for responsible action. From this perspective, awareness of each of the above facts is the starting point

66. See, e.g., SOL M. LINOWITZ WITH MARTIN MAYER, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994).

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for improving the American social condition. Next, action is required.