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The Decline of Professionalism

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The Decline of Professionalism

REBECCA ROIPHE*

ABSTRACT

Traditionally, professionalism conceived of the professions as central to democratic society. Because professionals gained their status through reputation not wealth, they were in the best position to suppress their own self-interest in order to ascertain and pursue the public good. This Article argues that this traditional understanding of the professions was lost as a market ideology took hold in the 1970s. Professionalism gradually became synonymous with the delivery of services. This Article draws on this intellectual history to argue that aspects of the traditional concept of professionalism can and should be revived today.

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INTRODUCTION

Professionalism was a casualty of the 1970s. It was lost in the shuffle as the culture shifted from one that emphasized the importance of the social and the value of a carefully coordinated national community to one that focused on the power of the individual and smaller more parochial groups. This article explains the fate of professionalism and its decline as a case study in the intellectual and cultural shift that ushered in the final decades of the twentieth century. In doing so, it seeks to accomplish three goals. The first is to expose the myth of the inevitability of a market understanding of the profession. The second is to uncover aspects of the older understanding of professionalism that can and should be relevant and vital today even after the shifts that we all experience as natural and inevitable. The third is to contribute to a growing historical understanding of the embrace of a free market ideology in the last third of the twentieth century.

Professionalism came of age in the Progressive Era. It thrived in a time in which science and expertise occupied an exalted position in the collective imagination. Scientific fields of knowledge seemed to offer the answers to myriad social ills, which were otherwise mysteriously locked in the complex organism of society. The increasingly urban industrial economy offered so much promise to some but left others with relatively little. Class warfare, industrial accidents, and urban unrest seemed all but inevitable. Generations worried about how to coordinate and contain the destructive forces of capitalism, and in this context, the social sciences were catapulted into the spotlight. As the rapidly changing economy altered our physical and social terrain, government and society in general turned to the well-trained expert to help preserve fairness, justice, and progress in an increasingly complex industrial world.

Progressive reformers believed that government could provide part of the solution but politicians were susceptible to corruption and capture. Science, however, was not. Social science associations burst on the scene. Experts took

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4. Id.
5. See generally Wiebe, supra note 2 (arguing that urbanization and industrialization threatened conventional understandings of the individual and society).
6. See generally Haskell, supra note 2 (describing the emergence of the professional social sciences as a case study in the movement toward professionalization); Dorothy Ross, The Origins of American Social Science (1991) (arguing that the social sciences emerged in the late 1890s as a way to promote harmony and direct change in a democratic society).
7. See Wiebe, supra note 5, at 111-33; Haskell, supra note 2, at 199.
their place in the newly minted regulatory state. And professionals did too. Journalists, scholars, policy makers, and others agreed that the country needed groups of individuals trained in the social sciences to navigate the complex urban terrain. The diverse new interests and the vast economic expansion called out for coordination and the project of the first half of the century was to seek to understand, master, and improve the social world. Lawyers thrived in this climate, as did the rhetoric of professionalism.

An older form of professionalism, which I will call social professionalism, conceives of the professions as groups of individuals who have mastered an area of knowledge through special training. Because they gain their power through knowledge—not wealth or political prestige—professionals are uniquely suited to ascertain what is best for the public as a whole and to suppress their own immediate interests in achieving it. This idea of the nature and the power of professionals was both a product of, and an integral part of, a particular kind of liberalism that thrived for the most part of the twentieth century.

Throughout the first sixty to seventy years of the twentieth century, most Americans believed that the nation could only survive the late industrial economy if they found and articulated shared norms. To do so, the country needed an organized and expert response to the increasingly diverse and pluralistic society. Sociologist Émile Durkheim made the point. Capitalism, he argued, will self-destruct unless it is contained within a society defined by mutual interest. It was the task of the professional, the scientist, and the expert to help with the process of articulating and implementing these values.

According to social professionalism, it is precisely because professionals gain their power and status from knowledge not from any direct personal gain that they are able to think beyond their own interest to pursue the social good. Their knowledge and experience help them understand the long-term interests of the public rather than substituting their own immediate gain for the greater good. Professionals would be able to negotiate the interests of the people with that of

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10. See generally Wiebe, supra note 2 (arguing that the consequences of a new industrial economy demanded a new more purposeful articulation of shared norms and communal goals).

11. See Haskell, supra note 2; Ross, supra note 6.


13. Parsons, A Sociologist Looks, supra note 9, at 375.

14. Larson, supra note 9 (defining professionalism by referring to the function professions play in articulating and helping to pursue shared values).

15. Larson, supra note 9.
the state without being subsumed by either the destructive forces of the market or the corrupting nature of state power.  

At the end of the nineteenth century, Durkheim wrote that professionals were intermediaries who could negotiate the interests of individuals with the demands of the law or state. They were perfectly situated to coordinate the vast and varying interests in society to help obtain what was best for all. Neither the market nor the state could ensure that the war of each against all would not end in annihilation. Only discrete professions could do that. The market wreaked destruction, chaos, and inequity, and the government was prone to corruption and too removed from everyday life to ensure the good of all. No matter how carefully and scientifically ordered the laws and government were, the country would always need individual experts and professional groups to exercise judgment and unite diverse groups into a constantly evolving social order. Lawyers were uniquely suited to do just that.

From the inception of social professionalism in the late nineteenth century, lawyers and scholars have been skeptical about whether the profession lives up to this ideal and some doubt that there was ever a point at which it really served this role. But despite the perpetual doubt, the rhetoric dominated in the Progressive Era and for many decades after that. However, the idea of social professionalism has receded recently. Perhaps it still animates some bar discussions and law school graduation speeches, but the vast majority of practitioners and commentators have embraced a market understanding of the lawyer’s role, in which the profession is essentially seen as the delivery of services to clients in need. Social professionalism, like a family heirloom stuck in the back of a closet, is maintained but largely ignored. This article seeks to understand why. In answering that question, it will also expose the sense of inevitability as a myth.

16. Larson, supra note 9.
17. Durkheim, Professional Ethics, supra note 12, at 23–24.
19. See Larson, supra note 9, at x-xiii.
21. See Wiebe, supra note 2, at 111–33; Haskell, supra note 2 at 1–2; Larson, supra note 9, at 138–45; Bledstein, supra note 3, at 80–129.
23. Id.
The contemporary view of the profession is contextual, not necessary and unavoidable. It would be naïve to import the older version unchanged into a very different environment, but the history of why social professionalism has gone out of style will help us begin to understand what can be preserved in a changed climate.

Part I of the article explains how and why the professions were seen as so critical in post-industrial America. Part II explores the relevant cultural, political, economic and intellectual shifts of the last third of the twentieth century that replaced this older vision with one focused on individuals and voluntary action. Part III explains how social professional ideology was lost in this shift by analyzing how lawyers talked about their work and their role in society during the 1970s and 80s. Increasingly, lawyers framed their own position in society in market terms. Finally, the article concludes by suggesting that the bar revive positive aspects of the professional role from the social liberal tradition. By adapting aspects of the older vision to the current view of the professional, the bar will be able to develop a new version of professionalism that can survive, in light of the massive cultural changes of the last few decades.

I. THE HEYDAY OF PROFESSIONALISM

The professions thrived in the years following the Civil War. The war had ushered in an era of rapid industrialization and urbanization. Older understandings of free contract, free labor, and individual self-determination could not survive this shift unchanged.  

Nineteenth-century free labor ideology, like liberalism in general, was built on the assumption that individuals should be free to act as they choose consistent with the rights of others. A passion for freedom of contract characterized this early period. But the realities of industrialization forced scholars, journalists, and judges to recognize that left to its own devices, the nation might not fare so well. The country had to pay attention to the social order and how individuals fit within it. At the dawn of the welfare state, scholars and policymakers were preoccupied with the institutions and systems in which individuals operated. Social responsibility replaced individual grit and self-determination as the theme of the day and politicians and critics increasingly posed collective solutions to the

27. See Stanley, supra note 25, at 1–33.
29. Id.
30. Id.
problems of unbridled capitalism. The reality of interdependence in the modern urbanizing economy forced the architects of the regulatory state to think in terms of institutions and structures. Those responsible for building the nascent state were preoccupied with how to make society work and how to coordinate individual action so the social whole would cohere. As historians and sociologists have observed, the project was never pure. Masked in the comfortable seemingly neutral guise of science, social scientists were motivated by political concerns and their policies were shaped by self-interest and preoccupations with their own status. But regardless of the motivation of the rising class of experts, the reality of the modern industrial world seemed to call for a coordinated response. The Progressives embraced an emerging bureaucracy, combined with a supposedly meritocratic order determined by professional achievement and educational accomplishment. The social sciences were built on a faith that society is separate from the economy. It rested on the assumption that society is defined in non-economic terms and requires a class of individuals who are trained in one of the fields of knowledge to master it. Social relations were considered not only distinct from the market but also necessary to curb the excesses of a capitalist economy.

Just as reformers sought to use social science to control the effects of capitalism, intellectuals too developed a worldview that undermined the premise of a pure market economy. Pragmatism, elaborated through the writings of William James, John Dewey, Charles S. Pierce, and others undermined the classical notion of a disembodied free individual acting in his own rational self-interest. The individual, pragmatists argued, was always formed and bounded by social context. The idea of selfhood was entirely incoherent without a


32.ROSS, supra note 6; HASKELL, supra note 2.

33. See generally RICHARD L. ABEL, AMERICAN LAWYERS (1989) (arguing that the professionalization project was about market control); LARSON, supra note 9, at 104–36 (arguing that the professional project was about securing status through market control); JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976) (focusing on the way in which the profession gained authority by excluding outsiders); MICHAEL J. POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION (1988) (explaining how the profession established itself by creating ethnic and class distinctions).

34. AUERBACH, supra note 33; ABEL, supra note 33.


36. See generally id.; ROSS, supra note 6; HASKELL, supra note 2.

notion of society to provide context and meaning.  

In the early twentieth century, the United States was preoccupied with the question of how to coordinate social interaction, such that the interdependence did not devolve into warfare, destruction, and waste. In economic terms, observers questioned the efficiency of competitive markets and called for coordination and rationalization. People disagreed over how best to solve the problem, but for the most part, they framed the question in the same way. The greatest issues of the day were seen as problems of coordination, efficiency, and cooperation. Individuals left to their own devices might well destroy each other and the community as a whole. Progress and the just society would not necessarily result from free labor. The key was to carefully contain and direct autonomous and self-interested individuals to serve society as a whole. Experts, particularly those with knowledge of social science, were seen as critical to this cause. A rational and scientific approach to the workplace was necessary to control the inefficient and wasteful side effects of unrestrained markets. What might seem like the result of individual choice and action was, in reality, a probabilistic consequence of multiple actions. If the country focused solely on the individual, it might miss the opportunity to regulate and control those probabilities in an efficient manner. It was not that individualism lost hold, but it was now accompanied by, and subordinate to, an urgent need to attend to systems and institutions in which individuals operated. Sociologists looked to work and the professions in particular to hold society together. The rights of property, private initiative, and competition were secondary to the virtue of cooperative action. Understanding and perfecting social order was seen as the ultimate goal. By the 1940s, Talcott Parsons argued that American society had moved beyond capitalism and that the dichotomy between capitalism and socialism was no longer relevant.
While there were significant breaks and changes in thought from the Progressive Era through the 1960s, some themes remained remarkably consistent—what historian Harold Brick refers to as “social liberalism.” Unlike the market liberalism that dominates today, social liberalism mandates that the social structure embody long-term shared values. Its premise was that liberal democracy must attend to the social realm to ensure justice and progress. While the view was not necessarily radical and was consistent with a market economy, a more egalitarian and reformist principle mixed with and tempered the faith in laissez-faire policy. In 1920, R.H. Tawney, a British historian and economist who had a strong influence in America as well, diagnosed the problem of the modern industrial world as an excess of acquisitiveness. He argued that the solution lay in the professionalization of all occupations. According to Tawney, society had grown to worship rights rather than function. Rights ought to be subordinate to what citizens make, create, or achieve. The acquisitive society, “makes the individual the center of his own universe, and dissolves moral principles into a choice of expediencies.” The professions, however, “carry on their work in accordance with rules designed to enforce certain standards both for the better protection of its members and for the better service of the public.” If all occupations were to be professionalized, the measure of worth would be services that they perform rather than the financial reward they yield. Like Talcott Parsons, Tawney believed that individual rights and freedom ought to be in service of a social goal. At the time, Tawney’s view was emblematic of a general attitude. Cultural critics at the time shared the sense of revulsion at the amorality of market individualism and embraced the promise of the technocratic elite. Scientific management, in Frederick Winslow Taylor’s terms, could bring

48. See id.
50. Id. at 29. For an insightful discussion of Tawney and his relationship to the functional sociologists and the later critique of professionalism, see Thomas L. Haskell, Professionalism Versus Capitalism: R.H. Tawney, Émile Durkheim, and C.S. Pierce on the Disinterestedness of Professional Communities, in The Authority of Experts: Studies in History and Theory 180 (Thomas L. Haskell ed. 1984) [hereinafter Haskell, Professionalism Versus Capitalism].
52. Id. at 92.
53. Id. at 94.
54. Id. at 1–7.
55. Haskell, Professionalism Versus Capitalism, supra note 50, at 182.
56. See generally Walter Lippmann, Drift and Mastery: An Attempt to Diagnose the Current Unrest (1914); Frederick Winslow Taylor, The Principles of Scientific Management (1911); Herbert Croly, The Promise of American Life (1909); William James, The Energies of Men (1907); Edward Bellamy, Looking Backward (1888). For a brilliant discussion of the transatlantic community of intellectuals who challenged laissez-faire liberalism, see Edward Pusey, Jr., The Crisis of Democratic Theory: Scientific Naturalism & the Problem of Value (1973) [hereinafter Pusey, The Crisis of Democratic Theory]. See also James T. Kloppenberg, Uncertain Victory: Social Democracy and Progressivism in European and American
efficiency to all areas of life. Renowned social critic, Walter Lippmann, argued that science and knowledge would bring order to a system subject to the moral drift of individualism and self-interest. William James similarly articulated a growing faith in education to serve as a break on popular passions, which tend to lead the country astray. In 1907, he explained that the educated intellectual was responsible for guiding the country, like the “aristocracy in older countries.” He explained that intellectuals “stand for ideal interests solely, for we have no corporate selfishness and wield no powers of corruption.” James argued that we must extend education to all, rather than confine it to the elite, so that the country can approach truth and justice.

Freedom in this context did not mean exactly the same thing as it does today. Work framed all social interaction and the key was to use the workplace to forge a consensus out of increasingly diverse pieces. The more cultures that were thrown together in urban America, the more important it became to find commonality to legitimatize social and political forces. Parsons believed that work provided an arena to develop those common values. The workplace was the site for social conflict and the destination for social control. Freedom to pursue one’s livelihood in the way one chose was the most prevalent way to frame the notion of liberty. Louis Brandeis, like Parsons and Tawney, viewed the professions—especially the legal profession—as key to the process of socialization. According to Brandeis, occupations and professions are fundamental in helping individuals adapt to the social whole and inculcating common values in an ongoing way. Because lawyers, in particular, are charged with understanding and pursuing fundamental values, like justice, they provide an important function in socializing their clients. The professional defines her goals as those of the occupational group and the larger society. By interacting with clients and the law, lawyers

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57. Taylor, supra note 56.
58. Lippmann, supra note 56.
60. Id. at 110.
61. Id.
62. See id. at 106–12. Thorstein Veblen similarly viewed the intellectual as the key to justice and the democratization of education as the only way to ensure equality and fairness. Veblen wrote, “[l]earning has so far become an avowed ‘end in itself’ that ‘the increase and diffusion of knowledge among men’ is now freely rated as the most humane and meritorious work to be taken care of by any enlightened community or any public-spirited friend of civilization.” Thorstein Veblen, The Higher Learning in America 10 (1918).
64. See generally Talcott Parsons, A Sociologist Looks at the Legal Profession, in Essays in Sociological Theory (1964).
65. See generally id.
continuously work to redefine and reinforce those shared values. The fact that many social critics converged on work and society as a way to ensure justice and progress by no means suggests that there was any kind of consensus. The debate raged in the first half of the century, just as it does now with those on the right and those on the left disagreeing about fundamental political principles. But, those critics were united in the way they conceived of both the problem and the solution. The Progressive Era left us with railroad regulation, income tax, labor law, and agricultural subsidies. All of these programs were experiments in social planning, attempts to mitigate the harsh effects of the market by engineering the social world.

Economists in the first half of the century similarly viewed the problem from a collectivist's stance. While of course some advocated free market ideology, even these more conservative economists conceded the importance of social planning. In the 1910s and 20s, economists seemed to agree that the goal was to set standards for social welfare and make sure that the laws of the market conformed to those ideals. Inspired by Thorstein Veblen, institutionalist economists in the early twentieth century argued that economic theory had to take into account values such as a fulfilling work life, an opportunity to help shape one’s work environment, and the ability to develop talent. Anthropology, social psychology, and sociology were necessary to understand communal life. It was impossible to conceive of economic reform without a scientific understanding of social context. The marginalist economists, very much in vogue in the Progressive Era, undermined support for a laissez-faire economy. Ultimately supporting income tax and other welfare programs, the marginalists argued that investment in the poor would result in greater social good than investment in the rich. In 1932, Adolf Berle, Jr. and Gardiner Means published The Modern Corporation and Private Property, which argued that corporations should be compelled to act in the public interest. Like the institutionalists, Gardiner and Means advocated collective control over economic life.

Economic theory blended with anthropology and sociology in the Progressive Era. Taking its cue from Veblen as well as the marginalist economists, the next generation of thinkers grew from a variety of disciplines, and economics fed on

67. See Brick, supra note 47, at 3. Brick labels this entire period from the Progressive Era through the 1960s as “post-capitalist,” a time in which critics argued that the country had moved beyond capitalism to a different more just social order. See Brick, supra note 47, at 4–8.
68. See Brick, supra note 47, at 67–69.
69. See id.
73. Id.
the theories and methodologies of the social sciences. Assimilation and social integration were central to social and economic planning. The new immigrant class, which many feared posed a radical threat in the early part of the century, would gradually shed the ethnic mentality and become a part of the melting pot. Professionalism seemed to embrace meritocracy and offered the promise of training as a way for new immigrants to find their way into the center of society.

Anthropologist Franz Boas and his students criticized modern America as devoid of culture. It left individuals starved for meaning and emotion or spiritual fulfillment. Boas’ critique of competitive individualism drew on the Romantic emphasis on both the intensity of personal experience and the reunion of self and community. Rejecting the social Darwinian assumption that race determined individual characteristics, Boas sought to prove that individuals were a product of their culture and environment. Influenced by Boas, social scientists in the interwar period researched the power of culture to shape individuals and the variety of forms of human organization. Social structure, according to these scholars, was critical to individual development. Implicit in these studies was a critique of economic individualism and an argument for a planned social structure with strong communal elements, which left room for individuals to grow and develop in their own unique (but socially productive) way.

Social anthropology and institutional economics were edging toward a critique of capitalism, a recognition of the fundamental importance of culture and society in shaping individuals. A radical—or at least reformist ideology— informs the social sciences and a fundamental assumption that something more than economic efficiency and self-interest lay at the heart of modern society. Talcott Parsons grew up in this intellectual climate and developed what became known as structural-functionalism sociolo. Built on the premise that society requires more than rational self-interest, Parson’s theory posited a social, communal world of shared values, which shaped and in turn was shaped by its constituents. Parsons rejected the notion that individuals were motivated solely by economic self-interest. In particular, Parsons echoed Émile Durkheim’s argu-
ment that professional societies and occupational groups were critical in sustaining ethical practices and evolving common values.\(^{84}\) Not only was Parsons partial to the way in which professions stood apart from the market, but he also insisted that the model could be extended to other occupations. He argued that the non-market values might extend beyond professionals to other areas of social life.\(^{85}\) Ethics and mores were all immanent but they lacked the necessary institutions to give them the life and power to shape the social order.\(^{86}\)

Critics understood that self-interest proved an obstacle to the pursuit of social welfare. Pragmatists at heart, many critics expressed concern that those with power would seek their own enrichment rather than the good of all. The only hope was ethics and expertise. Professionalism fit in to the political and social rhetoric of the time and fed on both its aspirations and fears.\(^{88}\) As America passed World War I, the faith in absolutes and the necessity of progress wavered.\(^{88}\) Optimism survived but it was tempered with a new kind of realism. In this context, the professions played an even more crucial role. As cultural critic Walter Lippmann suggested, social reformers had to accept reality. In his masterful book on a group of progressive era intellectuals, Louis Menand argues that pragmatism was a distinctly American movement because it focused on facts and reality without an accompanying resignation to accept the world as it was.\(^{89}\) To bring a scientific attitude to the constantly shifting realities, the pragmatists argued, we need experts who are connected to the facts, to the real world. Lawyers, as Oliver Wendell Holmes would remind us, were precisely this type of expert.\(^{90}\) By nature, lawyers encounter the world’s problems and bring expertise to bear on facts.\(^{91}\) But expertise was not simply a technocratic understanding of government and business, but also an empirical understanding of psychological and social welfare.\(^{92}\) Professionalism thrived, in part, because experts were considered critical not only for their understanding of complex facts, but also for

\(^{84}\) See Talcott Parsons, The Profession and Social Structure, 17 SOCIAL FORCES 457, 457–67 (1939); Steven Lukes, Emile Durkheim, His Life and Work 16–24 (1985); Emile Durkheim, Professional Ethics and Civic Morals 23–25 (1957).

\(^{85}\) See generally Talcott Parsons, A Sociologist Looks at the Legal Profession, in ESSAYS IN SOCIOLOGICAL THEORY 370–79 (1964).


\(^{87}\) Id. at 73.

\(^{88}\) World War I is commonly seen as an important divider, a moment in which the largely white, middle-class progressive movement shifted to a more xenophobic and preservationist attitude. The international focus brought with it a fear and hatred of outsiders, which was only a latent part of the earlier reform movement. See generally John Higham, Strangers in the Land: Patterns of American Nativism 1860–1925 (1983).

\(^{89}\) See generally Menand, supra note 38, at ix-xii.

\(^{90}\) See generally Id.

\(^{91}\) See generally Id.; Brick, supra note 47, at 52.

\(^{92}\) Brick, supra note 47, at 69.
their ability to use those facts to envision a new and better community.\textsuperscript{93} New Deal liberalism was in some ways the culmination of the earlier decades’ experiment in social planning.\textsuperscript{94} This new form of liberalism embraced an active state as long as it was in the hands of expert policy elites.\textsuperscript{95} Thus, President Franklin Delano Roosevelt ultimately put a significant amount of John Maynard Keynes’ economic vision into effect.\textsuperscript{96} By President Roosevelt’s second term, the New Deal turned the assumption that large scale economic spending could help cure a sluggish or failing economy into public policy.\textsuperscript{97} When the mobilization of the United States’ economy for World War II began to pull the country out of recession, Keynes’ vision seemed vindicated, and most people at the time took an active government with a robust welfare state for granted. The basic premise persisted through the 1960s and an essential optimism accompanied it despite the injustices and setbacks.\textsuperscript{98}

The rise of totalitarian regimes around the world posed a threat to the dominance of social sciences. Fascism, Nazism, and the Soviet regime’s abuses called out for a moral and absolute condemnation. The relativism of the previous decades proved unsatisfying and too weak to stand up to the real evils confronting the world.\textsuperscript{99} But the faith in rationalism and science persisted despite the challenge.\textsuperscript{100} After World War II, America’s growing confidence as a world political and economic leader did not substantially change the nature of this
debate. While conservative economists revived theories about a purely market-driven economy, most critics continued to develop policies based on the importance of deficit spending and cultural nationalism. The reform-minded pragmatism of the earlier decades evolved to emphasize pluralism and relativism. The authoritarianism of Nazism, European fascism, and even America’s home-grown McCarthyism was linked with absolutism and theories of natural rights, while democracy thrived on relativism and pluralism. Social liberalism, the sciences, and expert elite thrived despite the international and domestic threats of the 1940s and 50s.102

Even those with conservative tendencies, like economist Joseph Schumpeter, observed that capitalism was a weak organizing principle because its social institutions corroded.103 Capitalism, according to Schumpeter, contains the seeds of its own “creative destruction,” and ultimately gives way to some form of corporatism or socialism.104 Intellectuals, in his mind, play a key role in this transition, formulating the critique, which ultimately forces the gradual but revolutionary transition.105 The anti-communist advocacy group, the Congress for Cultural Freedom, attempted to forge a post-war consensus in support of the US foreign policy during the Cold War, but at the same time it proffered a platform in favor of social democracy.106 With a more celebratory tone, those on the left—like economist Karl Polyani—argued that economies are inevitably shaped by culture.107 He celebrated the fact that capitalism had given way to a deliberate and ethical control over economic life.108

Despite the important shifts and changes, from the late nineteenth century through the 1950s and 60s, the call for radical change and reformist agendas shared a commitment to subordinating the economic realm to the social. The growing radical proposals assumed that the economy would be subject to the values of the collective will.109 Increasingly, technology and science played a critical role. With echoes of Veblen and James, thinkers like Daniel Bell argued that intellectuals would become increasingly powerful. The university would play a key role as science and research became central to social planning.110 The faith in the power of the intellectual to bring virtue and truth to democracy grew. Veblen had hoped to democratize education to make intellectual pursuit

101. Of course there are many important breaks in the long period from the Progressive Era to the 1960s, but for the purposes of this Part of the article, I am emphasizing one aspect of intellectual, political, and cultural thought which remained fairly constant.
102. See PURCELL, THE CRISIS IN DEMOCRATIC THEORY, supra note 56, at 233–73.
103. BRICK, supra note 47, at 157–58.
104. See JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 83–86 (1943).
105. See id. at 310.
108. Id. at 151–53.
109. BRICK, supra note 47, at 196.
110. Id.
accessible to all. By the 1950s, the democratic view subsided, and conservatives articulated a new view that the small class of intellectuals ought to govern.\textsuperscript{111}

As the 1960s drew to a close, neoliberals like Milton Friedman had gathered momentum. Neoliberals pushed towards an increasingly strict laissez-faire vision.\textsuperscript{112} Part of the project of the neoliberals had been to link the Progressives and New Deal liberals with communism and socialism. In the 1920s and 30s, the communist ideal was still possible, part of some utopian fantasies, but by the 1950s the link proved devastating. The abuses of the Soviet Union were real and vivid and the Cold War rhetoric fueled the popularity of the neoliberal worldview.\textsuperscript{113}

II. THE FRACTURE OF THE SOCIAL VISION

What happened next is complicated. By the 1970s and 80s, the obsession with the social fractured. A market understanding of voluntary rational actors displaced the emphasis on an independent social realm.\textsuperscript{114} As Margaret Thatcher articulated in 1980, “There is no such thing as society . . . . There are individual men and women and there are families.”\textsuperscript{115} We lost the faith in government in the hands of experts or other scientifically run institutions to solve the ills of society. The solution to the country’s ills was increasingly framed in terms of markets and choice.\textsuperscript{116} The entire concept of freedom shifted to a consumer understanding. The freedom to work and sell one’s labor no longer carried much meaning. Instead freedom was understood as the ability to define who we were through symbols that could be bought and sold.\textsuperscript{117} The idea of society itself receded, subsumed by the economy. This section discusses three selected causes of this shift, which are particularly relevant to the fate of professionalism: the failure of Keynesian economics to explain the unique economic downturn in the 1970s, the turn against experts on both the left and the right, and the declining faith in government, institutions, and hierarchy in general.

A. FROM KEYNES TO FRIEDMAN

Part of the story lies in the failure of Keynesianism to account for the massive economic downturn in the early 1970s. Macroeconomics had tied itself to predictive models that failed to account for the nature of the recession.\textsuperscript{118} None of the economic models imagined that inflation and unemployment could coexist to

\textsuperscript{111} Purcell, The Crisis in Democratic Theory, supra note 56, at 242.
\textsuperscript{112} See generally Jones, supra note 95, at 134–80.
\textsuperscript{113} Jones, supra note 95, at 144.
\textsuperscript{114} Rodgers, Age of Fracture, supra note 1, at 41.
\textsuperscript{115} Id. at 219.
\textsuperscript{116} Jones, supra note 95.
\textsuperscript{117} Bauman, supra note 63, at 44.
\textsuperscript{118} Rodgers, Age of Fracture, supra note 1, at 49.
such a staggering degree, but the combination of economic stagnation and inflation, which came to be known as “stagflation,” belied those theories. Economic thinkers like Friedrich Hayek and Milton Friedman used this political fault line to argue that the error lay in assuming that the government, or any other institution, could solve social ills. They developed a free market ideology based on individual liberty and limited government. Freedom became synonymous with a rational self-interested actor largely uninhibited in the competitive marketplace.

Many seized on the counter-narrative of neoliberalism when the older model lost its explanatory power. Frederick Hayek, Karl Popper, and Ludwig Von Mises had developed a different theory in the years following the war. They argued that New Deal liberalism resembled the collectivism of Nazi Germany and the Soviet Bloc. That is, the same threat to liberty and freedom, which plagued Europe, resided in our own concept of the welfare state. The idea that experts could plot the ideal social structure was fueled by hubris, according to neoliberal thinkers. No one could achieve that level of knowledge about social and economic preferences. No one could account for the constant shifts in both conditions and desires.

Liberals, like John Dewey, responded to this allegation by arguing that relativism itself was the antidote to totalitarianism. The evils of Nazi Germany and fascism lay in their authoritarian nature, their failure to allow different views to flourish. Pluralism became an end in itself, rather than a means to the just, free, and equal society. In other words, freedom of speech and association became the substance of American values. Pluralism and relativism were what made America stand apart from the totalitarian regimes abroad. Pluralism and relativism supported a market view not only of the economy but also of ideas. Society devolved into a sum of its parts.

Partly unique to neoliberalism was the inextricable link it created between economic liberty and democracy. In the 1960s, political scientists developed Public Choice Theory, which extended the utility-maximizing, self-interested man into the realms of politics and government. Rational choice did the same in political theory. Scholars like George Stigler, James Buchanan, and Gordon

119. FRIEDRICH A. HAYEK, THE ROAD TO SERFDOM (1944); MILTON FRIEDMAN, CAPITALISM AND FREEDOM (1962).
120. Id. For a discussion of Hayek and Friedman and the implication for culture and ideology in the late twentieth century, see generally JONES, supra note 95.
121. JONES, supra note 95, at 32–33.
122. JONES, supra note 95.
123. Id. at 109.
125. Id.
126. Id.
127. Id.
128. JONES, supra note 95, at 126–27.
Tullock argued that politics is not separate from the economy, and political decisions are no different from market choices. Public Choice theorists insisted that regulation does not work in the public interest. Law and regulation is instead the product of a competition in which an interest group has managed to capture the government for its own purpose. The entire notion of public interest and public administration were a sham, a cover for regulatory capture.

Neoliberal economics and public choice theory together chipped away at the notion of a robust public sphere or common values. The pluralism of political scientists on the left, like Robert Dahl, similarly rendered the notion of a shared social ground difficult if not impossible to conceive. Social liberalism was built on different premises, and professionalism, with its emphasis on suppressing individual self-interest for the good of all, could not survive this shift unchanged.

In addition to the failure of the Keynesian model of state intervention and a planned social response to the economy, the recession in 1973 helped destroy the general optimism that lay at the heart of the social project. The focus on coordinating the social realm to make a more inclusive and just democratic state rested on the assumption that economic progress was on some level inevitable. The country was getting richer and the remaining goal was to make sure that the community was as equal, fair, and just as possible. Stagflation not only undermined the premise that managing society through careful planning was the best way to ensure economic gain, it also left a country anxious about its position in the world.

B. THE TURN AGAINST EXPERTISE

The reduction of the concept of society into its constituent parts was triggered by configuration of different causes. The language with which the country understood the relationship between individuals and the larger circles in which they operate changed. In the midst of the shift, the professions, which had occupied such an exalted status, lost their ground. Not only was the notion of a coordinated public goal discredited, so too were the role of experts and professionals in helping to obtain that ideal.

Keynesian economics was built around the power of the expert. There was no set of social ills that science and knowledge could not solve. A product of his time, Keynes believed that expertise offered the solution to any political, social, or economic problem. Particularly in the 1950s, the intellectual, scientist, and

129. Jones, supra note 95.
133. Jones, supra note 95, at 182.
expert seemed to be gaining increasing prominence. Universities, think tanks, and private organizations rose to power and prestige. Neoliberal economic theory was built on a strikingly different image of the expert. Corrupt and venal, the bureaucrat wasted resources and interfered with efficiency.

Public Choice Theory was an extension of neoliberal economic theory—but it also involved a critique of the Progressive, New Deal view of government. The idealistic view of experts and professionals was inaccurate. Like any other group, professionals were operating in their own self-interest. They were monopolies or cabals disguised as something else.

The rise of the neoconservative economic and political worldview occurred at the same time as a massive distrust of government on the left. Just as the right criticized experts and professionals as self-interested actors pursuing their own monopolistic agenda at the expense of others, so too did the left. Of course the rhetoric on the left was different—but experts and professionals, who in the first half of the century had been viewed as the answer to the myriad social ills, now seemed complicit in the problems of inequality and injustice.

In 1973, Ivan Illich, one of the most prominent social thinkers on the left to criticize the professions, argued that expertise created a divide between workers and their work. While technology promised a relief from drudgery—and more efficient use of economic resources—it also threatened popular democracy and the ability of ordinary citizens to solve their own problems. Illich argued that the New Deal may have provided a check on corporate power, but it set up its own hierarchy based on knowledge and expertise. In other words, reigning in corporate power came at the price of true equality. Illich argued that expertise destroyed social relationships, the key to just and equal society. Structures like health care and public education shifted decision-making and interaction to anonymous bureaucracies, stripping individuals of important social relations and meaningful connections to others. Modern economic and political structures, in which experts make central planning decisions, foster abundance and social mobility at the expense of creativity and personal meaning.

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134. Id.
135. Id. supra note 95, at 182. As Richard Hofstadter pointed out at the end of the 1950s, this anti-intellectualism had roots in American culture. See generally Richard Hofstadter, ANTI-INTELLECTUALISM IN AMERICAN LIFE (1963) (discussing the ways in which anti-intellectualism run through the history and culture of America).
137. IVAN ILLICH, TOOLS FOR CONVIVIALITY 91 (1973).
138. Id.
139. Id.
140. Id.
141. Id.
142. Id.
law as an antidote to the bureaucracy of modern American life.\textsuperscript{143} He saw the prosaic and gradual resolution of everyday problems as the hope for bypassing the forms of expert bureaucracy. But Illich worried that professional lawyers and judges stood in the way, once again substituting experts for what should be common-sense individual judgment.\textsuperscript{144}

Not everyone agreed with Illich. Some found his prescriptions bordering on the absurd. A return to rugged individualism and a rejection of modern technology would not itself bring about a better world.\textsuperscript{145} But even those who criticized Illich’s rather extreme conclusions did not try to argue that the doctor, lawyer, or social scientist held the key to the modern social world.\textsuperscript{146}

The Marxist-Weberian critique of professionals was oddly consistent with its conservative counterpart. While entirely distinct in both its tone and conclusions, it shared many of the same assumptions. Professionals, sociologists, and other experts were engaged in a pernicious project of social control.\textsuperscript{147} These groups gave the illusion of freedom and meritocracy in a world in which caste was inevitable.\textsuperscript{148} Professions were state supported monopolies. They worked together to keep outsiders from entering the profession and deepen the divide between the elite and immigrants, women, and minority groups.

On a practical level, Ralph Nader issued a number of reports in the 1970s exposing government bureaucracy as a collection of self-interested “experts” who operated not in the public interest but rather out of a selfish concern over their own power and status.\textsuperscript{149} The Federal Trade Commission, for instance, spent public funds on empty public relations gestures, while it protected large business interests.\textsuperscript{150} Nader accused the government of cronyism and exposed bureaucracies as unresponsive to consumer needs.

In 1979, Randall Collins wrote a book entitled, The Credential Society, in which he argued that the professions’ claim to serve the public was merely a guise which enabled lawyers and doctors to justify their self-interested status-hungry

\textsuperscript{143} Id. at 101-02.
\textsuperscript{144} Id.
\textsuperscript{145} Robert Solo, Review, Medical Nemesis by Ivan Illich, 11 J. OF ECONOMIC ISSUES 915, 915-917 (1977).
\textsuperscript{146} Id.
\textsuperscript{147} See e.g., Rodgers, Age of Fracture, supra note 1, at 82; Bernstein, supra note 35, at 9–10; Larson, supra note 9; Jeffrey L. Berlant, Professions and Monopoly (1975); Eliot Freidson, Professional Dominance (1970); Alvin W. Gouldner, The Future of Intellectuals and the Rise of the New Class (1981).
\textsuperscript{148} Auerbach, supra note 33. Sociologists followed Auerbach but focused more on how the profession served its own economic and social interest at the expense of clients and the public. See generally Abbott, supra note 18; Richard L. Abel, American Lawyers 20 (1989).
\textsuperscript{149} Edward F. Cox et al., The “Nader Report” on the Federal Trade Commission (1969). Nader’s students were labeled “Nader’s Raiders” by the media. They helped research and publish the report. Justin Martin, Nader: Crusader, Spoiler, Icon 75-90 (2002).
\textsuperscript{150} Cox, supra note 149.
\textsuperscript{151} Id.
conduct. Collins claimed, “The ‘altruistic professions’ are among the highest paid, and their ‘altruism’ gives a further payoff in the form of status and deference.”

The feminist critique of the late 1960s and 70s similarly faulted the male dominated professions for perpetuating the hierarchy that subordinated women. Doctors were the target of a particular form of 1970s feminism, which celebrated female sexuality and criticized the way in which women’s bodies had been objectified and made to seem dirty or shameful by a male-dominated medical profession. Promoting midwives and self-examination, this new radical feminism rejected the objectivity of science and knowledge. Post-structuralism, which gained increasing popularity on the political left, argued that binaries themselves were responsible for female subordination and the only way to liberate women was to disrupt those categories. Science itself was seen as part of the history of domination. Experts and professions were responsible for deification and perpetuation of these sorts of binaries and categories, which entrenched a patriarchal system.

The assault on the professions on the left was accompanied by a critique of the concept of society. Society was too complex to reduce to one set of shared values. The consensus ideology of the previous decades masked a class and race-based hegemony. The Progressive Era’s fixation on assimilation promoted the values and agenda of the emerging white middle class while masking this self-interest as a meritocratic openness to new immigrants and minorities. Suddenly, the project of the progressives and the reformist generations that followed looked more anti-democratic than liberal. Critics employed the language of individuality, selfhood, and autonomy to expose the goals of the previous generations as naïve, at best, and self-interested and elitist, at worst.

C. LOSS OF FAITH IN GOVERNMENT, INSTITUTIONS, AND HIERARCHY

McCarthyism laid the groundwork for the turn against government and broad theories of social reform. The specter of absolutism led those in favor of empirical approaches to democracy to shy away from broad absolute theories.

153. Id. at 136.
155. Id.
Relativism took a conservative turn. Critics began to fear too much moralizing in political life. Fearful that morality would corrupt public institutions and descend into fascism, they grew suspicious of policies that seemed too radical or ideologically driven.\textsuperscript{159}

The high level critique of social planning and expertise on the left and the right did not fully grab the imagination of the public until the 1970s. Something happened in the 1960s, which leant the theory the proper environment in which to thrive. The 1960s was in many ways the culmination of the earlier pre-war period.\textsuperscript{160} Optimism characterized the public mood even amidst the intense social conflict and disagreement of the era. Lyndon Johnson’s Great Society was a vision in social planning. It was both ambitious and full of optimism about the potential for government, in the hands of experts, to help achieve equality and justice.\textsuperscript{161}

Social movements in the early 1960s were similarly full of utopian visions of a just and fair future for the country. The push for individual self-discovery and self-fulfillment co-existed with ambitious and grand visions of the collective.\textsuperscript{162} The civil rights movement, feminism, and other social movements were inclusive in nature. For the most part, they sought to perfect American society by making its promise accessible for all. By the end of the decade, however, the tenor of social protest had changed.\textsuperscript{163}

In the 1960s, the country still celebrated the abundance of the previous decades. In many ways, America basked in its success, and protest itself was born from the optimism of the decade.\textsuperscript{164} But the gradual recognition that America had deceived its citizens and dragged them through an unjustifiable war permanently transfigured the country and its attitude toward government, structures, institutions, and power in general. Mass war protests, a growingly intense civil rights movement, feminism, a new youth culture, and other increasingly radical social movements replaced the complacency, optimism, and celebratory tone of the previous years. Unsurprisingly, social thought in the late 1960s abandoned its focus on grand unifying theories, faith in scientific principles and the inevitability of progress and success. Social conflict and dissent marked a new national mood. Fear, skepticism, and distrust of institutions of government and other hierarchical

\textsuperscript{159} Purcell, The Crisis of Democratic Theory, supra note 56, at 253–54.

\textsuperscript{160} See generally Brick, supra note 47 (discussing the intellectual shift to a market ideology in the 1970s);

Rodgers, Age of Fracture, supra note 1 (analyzing the changes that occurred in American culture and ideology in the last quarter of the twentieth century).


\textsuperscript{163} See id. at 161.

\textsuperscript{164} See id. at xix.
In the spirit of the 1960s, the ideal of social equality and community coexisted with a new fascination with self-expression and individual self-exploration. In fact, many felt that it was precisely the individual search for authenticity that would lead to a better world for all. The feminist catch phrase, “the personal is political” captured the sense of the urgency of individual self-liberation to the radical cause. The dulled false consciousness of the older generation had led to an insipid conformism. The human capacity to experience and create became critical to the political mission and utopian social vision of many different groups.

The reality of the Vietnam War and Watergate, along with the failed promise of so many hopeful visions and the economic depression of the early 1970s, changed the nature of the debate. Social movements were increasingly radical and splintered. The hope for integration, justice, and equality seemed largely lost as each group pursued its own agenda. The rhetoric of self-liberation of the 1960s survived but largely divorced from the creative social vision, which had accompanied it.

The movement for racial equality staggered as busing and affirmative action demonstrated how stubborn and complicated the problem was. The increasingly radical and separatist teachings of Malcolm X and the Black Panthers replaced Martin Luther King, Jr.’s hopeful rhetoric. The Great Society left the nation with an expanded welfare system but no real solution to the massive inequality in wealth and opportunity. The New Left, which had maintained an uneasy peace with President Johnson, gradually grew more hostile to bureaucracy, centralization, and the state. A feminist movement whose focus had been rights, equality, and inclusion tended to be more radical in its rejection of hierarchical structures and the very notion of family.

165. Even in the early 1960s, the New Left criticized institutions such as government, the military, and corporations. Increasingly, it seemed that these organized and hierarchical structures were destroying individual development, fostering apathy, and preventing democratic participation. Brick, supra note 47, at 204.

166. Edward A. Purcell, Jr., Social Thought, 35 Am. Q. 80, 83 (1983).

167. Carol Hanisch, The Personal is Political, in Notes from the Second Year: Women’s Liberation 76 (Shulamith Firestone & Anne Koedt eds., 1970).

168. Id.

169. The Supreme Court ushered in an era of busing when it ruled that requiring children to go to schools in neighborhoods other than their own was an appropriate remedy to segregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1970). Just four years later, however, the Court ruled that districts were not responsible for integrating schools through districts unless the segregation had been intentional. Milliken v. Bradley, 418 U.S. 717 (1974). This decision effectively exempted suburbs from the desegregation mandate.


171. Brick, supra note 47, at 206.
In his famous piece, Tom Wolfe labeled the 1970s, the “Me Decade.” Of course, Wolfe’s popular rhetoric was exaggerated and reductive, but there was some truth to it as well. Erica Jong’s best-selling novel, *Fear of Flying*—which was an allegory about self-liberation and the transcendent nature of personal exploration—captured a national mood. This new obsession with discovering, re-making, and re-modeling one’s self could be seen as a kind of self-indulgent narcissism. Personality was the central pursuit, a project of infinite choice. Feminists and others on the left criticized the categories of “male” and “female” as themselves a product of patriarchy. The notion of communal life, which had fueled the radical elements of 1960s politics, seemed increasingly problematic as critics identified hierarchies and power dynamics within those groups. The self-interested rational man at the center of neoliberal understanding of both economics and politics began to pervade understanding of culture and identity on the Left as well.

Meanwhile, the Right revolted against the radicalism of the 1960s, preaching a return to traditional religious and ethical absolutes and a rejection of relativism. The New Right reacted to feminism, youth culture, and other radical movements, denouncing the individual unmoored from family, religion, and tradition. Conservatives did not posit a global, national, or political answer. They advocated instead a return to family and neighborhood, church and community, a vision that President Ronald Reagan would ultimately capture with his folksy and local view of American promise.

The Right capitalized on unpopular school busing by characterizing segregation as a product of color-blind meritocratic individualism rather than structural racism. Tapping into the concerns of disaffected middle-class whites and using the language of rational individualism, conservatives successfully resisted integration. The agenda was successful in part because it drew on the market language of meritocracy to lend moral legitimacy to racial privilege, which seemed increasingly in jeopardy.

The Right used the 1950s anti-communist rhetoric to criticize not only radical politics, but also any liberal proposal to use government (or law) to help obtain a more just, equal, or fulfilling society. Welfare and federal regulation of all sorts were considered a dangerous collectivism akin to Soviet communism. Anti-

175. *See RODGERS, AGE OF FRACTURE, supra note 1, at 30–36.*
177. *Id. at 2; see also JOSEPH CRESPO, IN SEARCH OF ANOTHER COUNTRY: MISSISSIPPI AND THE CONSERVATIVE COUNTERREVOLUTION 334 (2007); KEVIN M. KRUSE, WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM 161–69 (2005).*
communism and the reaction to the permissive mores of the 1960s allowed the cultural and economic conservatives to unite despite the obvious tensions and disagreements. The left, having embraced relativism as the antidote to fascism had little substantive response.\textsuperscript{178}

Additionally, the Right used the economic climate to challenge the old vision of shared values and the responsibility of the government in the hands of experts to shape society. Leaders of the New Right like Edward C. Banfield argued that it was the middle and upper-class liberal assumption that the state can and should solve social ills that ironically perpetuated the problem. This well-meaning but erroneous premise supported large government programs, which had crippled individuals in the inner city.\textsuperscript{179} The poor lost initiative and self-reliance, the old traits of capitalist individualism, as the state nurtured a weak dependence on social programs.\textsuperscript{180}

By the early 1980s, identity increasingly seemed a matter of choice, rather than something assigned or collectively given. The answers—to the extent that there were any—lay not in national identity or communal mission but rather in the authenticity of smaller voluntary groups and the purity of personal ambition and transcendence.

\section*{III. PROFESSIONALISM IN THE 1970s AND BEYOND}

In 1973, philosopher and cultural critic Ivan Illich called for deprofessionalization.\textsuperscript{181} In a radical departure from Tawney and Parsons, Illich blamed expertise for society’s ills.\textsuperscript{182} He reassured his audience that the threat of quackery paled in comparison to the damage created by professionals, the iatrogenic problems that accompanied a society, which had grown overly dependent on expertise.\textsuperscript{183}

While the profession itself did not espouse such a radical view, lawyers too echoed the cultural suspicion of government and the sciences and reconceived a more modest role for the professions beginning in the 1970s.\textsuperscript{184} This section argues that lawyers gradually retreated from the prior visions of their role as society’s engineers and instead, equated professionalism with the delivery of legal services and loyalty to clients. The notion of a public good, or collective purpose disappeared from lawyers’ rhetoric, just as it had from the culture in general.

\begin{thebibliography}{9}
\bibitem{178} Purcell, The Crisis of Democratic Theory, supra note 56, at 115–233.
\bibitem{179} See generally Edward C. Banfield, The Unheavenly City: The Nature and Future of Our Urban Crisis (1971) (arguing that even the best government programs cannot cure the ills of the inner city). For a discussion of how Banfield’s career mirrored the retreat from broad conceptions of society to a market ideology, see Brick, supra note 47, at 222–26.
\bibitem{180} Brick, supra note 47, at 225.
\bibitem{181} See generally Illich, supra note 137 (discussing how expertise was the source of cultural malaise).
\bibitem{182} Illich, supra note 137, at 67.
\bibitem{183} Id. at 67.
\bibitem{184} Lawrence E. Walsh, President’s Page, 62 A.B.A. J. 687, 687 (1976).
\end{thebibliography}
A. CLIENT-CENTERED LAWYERING

In the 1970s, scholars of the profession largely rejected what they labeled the paternalistic attitude of a previous generation of lawyers. According to this critique, the professional traditionally substituted his own better judgment and values for that of the client. Instead, theorists advocated “client-centered lawyering.” In this approach, the lawyer’s role was seen as translator and facilitator rather than expert. The lawyer’s perspective was not better than the client’s and his job was to preserve the client’s dignity and autonomy as the lawyer helped the client navigate the legal system. The client-centered approach instructed that clients ought to set priorities and make decisions, not the lawyer. This approach mirrored and reinforced a more humble role for professionals. It reflected and embodied the fear of elitism and the growing sensitivity to power dynamics in social relations in general and in professional relationships in particular. It was a symptom of the decline in the faith in expertise to solve problems and a kind of market understanding of the lawyer’s role as facilitator or translator of individual interest. The lawyer, in essence, gives the individual access to the competitive market for claims, viewpoints, and legal positions.

B. PUBLIC INTEREST LAWYERING

As client-centered theories of lawyering grew in popularity, public interest lawyering found itself increasingly under attack. Lawyers in the 1960s had organized around causes, and they purported to speak for the social interest. Environmental groups, consumer protectionists, and women’s rights activists used law to achieve what they perceived as shared goals. Public interest groups and their lawyers hoped to use law to create a better, more equal, just, and nurturing society. But in the 1970s, critics observed that the “public interest” was in the eye of the beholder. There was no one common interest or set of


186. See ILLICH, supra note 137, at 67.


shared values. Everything was subject to debate and competition. In the language of Public Choice Theory, there was no one public interest, only groups vying for power and privilege. In the absence of an idea of the public interest, Professor Robert Rabin argued, public interest lawyers could still justify their work “by providing representation to groups that have been unable to organize effectively to compete in the marketplace of skilled advocates.” In other words, the entire notion of public interest law was reframed as a correction for market failures.

But even this correction was subject to criticism. Theorists argued that lawyers comprised an interest group just like any other. They substituted their own values and agenda for those of their clients. Thus critics argued that activist lawyers, asserting the right to speak on behalf of underrepresented groups, misrepresented their needs and misdirected their concerns to legal forums where they were ignored, at best.

The American Bar Association (ABA) echoed this new justification for public interest work. Lawyers were not purporting to articulate the “public interest” but they were improving the market for ideas by making sure the underrepresented had a voice.

There is no magic in the term “public interest.” As lawyers, when we rigorously and competently represent our own private clients, we are serving the public interest in the same sense that a member of a “public interest” law firm serves it by representing rigorously and competently his or her clients. In any adversary proceeding the opposing sides may each think that they are representing the public interest, and realistically both may be right. The peculiar obligation we have as professional advocates is not to any specific cause but rather to the provision of representation for that cause, whatever it may be. The public’s true interest from the lawyer’s standpoint is an adversary system whose decisions are based on the full exposition of all relevant positions. This is the true public interest that we who live by the law—that is, we lawyers—must promote.

The relativism, which accompanied the new individualism, left no room for a notion of the public interest. Shared values seemed a myth fraught with power dynamics. Instead, there was a competition of positions, an adversary market of interests.

189. See Rabin, supra note 188 and accompanying text.
190. Id. at 230.
191. See generally Stuart A. Scheingold, The Politics of Rights: Lawyers, Public Policy, and Political Change (1974) (arguing that rights are an ideology that can be used to distract social groups from political action). Later, scholars would label this the “professionalism problem,” the risk that activist lawyers would substitute their own vision of justice for that of the client. Scott Cummings, Movements in Progressive Legal Thought (forthcoming); David Luban, Lawyers and Justice: An Ethical Study (1988).
One lawyer, Robert A. Rauch, wrote that the profession should not subsidize public interest work because the entire concept was too hard to define.\textsuperscript{194} Representing the underserved was noble. It helped correct the deficiencies in a market, which excluded certain individuals and groups. Rauch concluded that lawyers should not justify pursuing policy objectives, which were merely the lawyer's ideological agenda masked as a common goal.\textsuperscript{195} The new understanding of the role of the professional as representative could not support the broad policy objectives, defined by lawyers. The social liberal understanding of public interest lawyering shifted to a market justification.

In the 1970s, scholars similarly criticized the public interest battle for school desegregation, arguing that the lawyers were substituting their own political and ideological agenda for those of the black community for whom they were purportedly fighting.\textsuperscript{196} The lawyers had fought for desegregation but at least some members of the class of African Americans, whom they were supposed to represent, expressed a stronger interest in the quality of their children's education.\textsuperscript{197} Thus, these scholars and critics in the 1970s argued that there was no common interest, no clear choice to obtain justice, only the interests of individuals and discrete groups vying for power.

C. THEORIES OF LAWYERING

While some still invoked the ideal of the lawyer as an officer of the court or arbiter of justice, this notion grew increasingly aspirational—relegated to graduation and bar speeches. In 1984, Chief Justice Warren Burger wrote, "We still pay homage to the idea that lawyers are officers of the court."\textsuperscript{198} He followed with a rhetorical question, "or is that just lip service?"\textsuperscript{199} The Chief Justice went on to compare lawyers to healers, seeking to preserve a noble role without having to invoke what he recognized was already an antiquated ideal.\textsuperscript{200} The analogy to healers preserved some sense of service while omitting the now problematic notion of public ideals or values.

Increasingly, the ABA seemed to elide professionalism with the delivery of legal services. While, from all accounts the bar’s record in this area was, and remains, dismal, the ABA expressed increasing concern about expanding the delivery of legal services to the poor. Throughout the 1970s, the bar saw this as


\textsuperscript{195} See id.

\textsuperscript{196} Derrick A. Bell, Jr., Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation, 85 YALE L.J. 470 (1976).

\textsuperscript{197} See id. at 482–83.


\textsuperscript{199} Id.

\textsuperscript{200} Id. at 66.
the responsibility of the profession rather than the government. A major focus for the bar in the 1970s was promoting pre-paid legal services plans, lawyer referral services, public interest law firms, and pro bono services.\textsuperscript{201} An earlier generation might have seen the goal of the profession as promoting greater economic equality, better housing, or education, but the market understanding of the profession wouldn’t allow for such substantive notions of justice.\textsuperscript{202} Watergate had damaged the reputation of the bar along with the government as a whole. The response was not to reconceive public service or reimagine the common welfare, but rather to expand the reach of the profession to lower income individuals.\textsuperscript{203} Justice Thurgood Marshall explained that the profession had a responsibility to fund public interest law using a purely market understanding of justice.\textsuperscript{204} As long as everyone has equal access to the courts, the adversary system—or the market for legal claims—will ensure that justice is done. He wrote,

Not all viewpoints are represented before most decision makers. For the most part lawyers generally represent clients who are able to pay them. As a result, many persons are unable to receive adequate legal representation. The effect is that the decision-making process itself is skewed, and the premises of the adversary system and of the lawyer’s role in the legal process are questioned.\textsuperscript{205}

In the new rhetoric, the lawyer’s responsibility was to make sure that the market is working properly. To do so, he has an obligation to make sure that lower income individuals have access to justice.

As with access to justice, the bar capitulated in a market understanding of the profession’s role as it ultimately accepted lawyer advertising. The bar originally resisted attempts to allow lawyers to advertise and only changed the ethical rules when the Supreme Court made it clear that any other course would be unlawful.\textsuperscript{206} By the mid-1970s, however, the bar embraced the notion that advertising was desirable because it promoted the dissemination of information


\textsuperscript{203} Meserve, supra note 192.


\textsuperscript{205} Id. at 1487.

\textsuperscript{206} See AUERBACH, supra note 33, at 40–53 (explaining that the advertising rules were designed to secure lawyer status and keep newcomers from entering the profession); Am. Bar Ass’n, Proceedings of 1977 Annual Meeting of House of Delegates, 102 A.B.A. REP. 542–43 (1977) (reacting negatively to the Supreme Court decisions holding bans on lawyer advertising unconstitutional); Deborah L. Rhode, Why the ABA Brothers: A Functional Perspective on Professional Codes, 59 TEX. L. REV. 689, 694 (1981) (discussing how reluctantly state bars adopted rules allowing advertising after the Supreme Court decision declaring bans on lawyer advertising unconstitutional); William Hornsby, Clashes of Class and Cash: Battles From the 150 Years War to Govern Client Development, 37 ARIZ. ST. L.J. 255, 272–92 (2005).
to consumers of legal services.\footnote{207}

In the 1970s and 80s, scholars developed a theory of the lawyer as zealous advocate.\footnote{208} They minimized or omitted the professional obligation to society as a whole. In 1976, Charles Fried wrote a seminal piece entitled “The Lawyer as Friend,” in which he argued that loyalty to the client ought to come before any other obligation to the court, third parties, or the system as a whole.\footnote{209} Stephen Pepper similarly argued that lawyers ought to serve their clients regardless of the morality or legal validity of the client’s goals.\footnote{210} Others argued that the value of the client-centered approach to ethics is the psychological bond between lawyer and client rather than the benefit it yields in truth and justice.\footnote{211} Professionalism, in other words, subtly shifted from the pursuit of common social goals to serving and ministering to a client.\footnote{212}

The debate about the role of lawyers continues and many scholars have provided thoughtful responses to this more modest role for lawyers.\footnote{213} But for the most part, the conception of lawyer as agent, facilitator, and guardian of the client’s personal autonomy has persisted. Rules remain that reinforce a lawyer’s role as officer of the court,\footnote{214} but most rules emphasize the duty of zealous advocacy and requirement to defer to client choice.\footnote{215}

\footnotetext[208]{Charles Fried, The Lawyer as Friend: The Moral Foundations of the Lawyer–Client Relation, 85 YALE L.J. 1060 (1976); see also MONROE H. FREEDMAN, LAWYERS’ ETHICS IN AN ADVERSARY SYSTEM (1975) (arguing that lawyers ought to focus on their clients’ interest and the adversary system will ensure the just outcome); Jack B. Weinstein, On the Teaching of Legal Ethics, 72 COLUM. L. REV. 452, 457 (1972) (arguing that the “central function of the lawyer—a function that he alone is capable of fulfilling in our complex democracy—is to stand beside his client and protect him as an individual.”).}
\footnotetext[209]{Fried, supra note 208.}
\footnotetext[210]{Stephen L. Pepper, The Lawyer’s Amoral Ethical Role: A Defense, A Problem, and Some Possibilities, 11 AM. B. FOUND. RES. J. 613 (1986).}
\footnotetext[211]{Lawrence Crocker, The Ethics of Moving to Disqualify Opposing Counsel for Conflicts of Interest, 1979 DUKE L.J. 1310, 1323 (1979). Commenters in the 1970s grew increasingly concerned with the psychological well-being of the individual client and lawyer. They justified the client-centered approach by arguing that it served the psychological interests of both. See, e.g., JOHN THIBAUT & LAURENS WALKER, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS (1975).}
\footnotetext[212]{Robert S. Redmount, New Dimensions of Professional Responsibility, 3 J. LEGAL PROF. 43, 56 (1978).}
\footnotetext[214]{MODEL RULES OF PROF’L CONDUCT [hereinafter MODEL RULES] R. 2.1 (directing lawyers to use moral as well as legal considerations when counseling a client).}
\footnotetext[215]{See MODEL RULES R. 1.3 (diligence); MODEL RULES R. 1.7 (conflicts); Russell G. Pearce, The Legal Profession as a Blue State: Reflections on Public Philosophy, Jurisprudence, and Legal Ethics, 75 FORDHAM L. REV. 1339, 1361–62 (2006) (discussing how the Model Rules embrace an adversary ethic).}
CONCLUSION

Contemporary scholarship urges its readers to view the profession as a business and regulate it accordingly. Some propose allowing clients to contract around their lawyers’ ethical obligations.216 Others call for deregulation, casting clients as rational actors purchasing a service, like any other.217

Our current market understanding of society and the role of professionals within it are not inevitable or necessary. That said, we cannot (nor would we want to) wish it away or import an older understanding into a world in which it no longer makes sense. The history of the decline of social professionalism does help highlight some aspects of the older vision of the professions, which can still be relevant. It points toward ways to redefine professionalism to regain some of its vibrancy while shedding its naivete about the power dynamics in American society in general and professional relationships in particular.

Toward the end of his career, an aging Parsons explained that solidarity continued to be critical in understanding social order but it did not bind us all together in blissful agreement.218 It was instead, a shifting and evolving way of understanding ourselves in relation to the diverse groups around us. Rather than being an idealistic and unrealistic concept based on a mythical consensus, it was, in fact, suited to the pluralistic reality of modern American life. Parsons suggested a kind of dialectic where shared values were continually defined through conflict.219 Parsons’ own accommodation opens the door for the older understanding of professionalism. Perhaps, there is something beyond competing individual interests even after we acknowledge the importance of tolerance, and the danger of patriarchy and absolutism. When one says that lawyers pursue the public good, it sounds like a platitude. The concept unravels if we seek consensus or shared values without understanding how power operates. Consensus can be a mask for the hegemony of certain powerful groups, their values, and mores. It can be used to exclude outsiders and maintain the distribution of wealth and power in society. But, as Parsons suggested, that does not mean we should abandon the


218. Parsons emphasized shared values and consensus. The process of socialization involved inculcating a set of shared values into individuals. See Talcott Parsons, The Social System 41–44 (1951). But Parsons embraced a complex understanding of society. His notion of shared values was not static and involved a sophisticated negotiation of diverse and constantly shifting interests and ideals. See Talcott Parsons, The Concept of Political Power, in SOCIOLOGICAL THEORY AND MODERN SOCIETY 297, 308–15 (1967) [hereinafter Parsons, Concept of Political Power]. For a discussion of how Parsons’s work was influenced by Freud and bore similarity with Michel Foucault, see Brick, supra note 47, at 141–45.

219. See Parsons, Concept of Political Power, supra note 218, at 301–15.
effort altogether. The idea that lawyers should seek the public good should mean something different now than it did half a century ago but it need not be meaningless.

When Parsons spoke in his earlier work about social control, he seemed uncritical.²²⁰ It was a good thing from his perspective when people voluntarily submitted to authority. The professions, in his mind, provided a perfect example. An individual takes the medicine a doctor prescribes not because the patient is coerced but because she voluntarily submits to a benign source of authority. The following generation of scholars accused Parsons of being a reactionary. In light of post-structuralism, philosophers like Foucault, and the left wing movement in general, this particular vision seems outdated and naive.²²¹ Now, it is hard not to see that the more diffuse power is, the more dangerous and insipid a form of social control.

In a post-Foucauldian world, expertise, science, and the professions can seem like a source of false consciousness, a threat to liberty, and a means by which certain forms and hierarchies perpetuate themselves. It is, however, possible that the professions can also serve to forge a more just and equal society, despite the obvious tension. Belonging to social groups, willingly giving in to their norms and structures can be both liberating and threatening. Professions can help maintain pernicious hierarchies but they can also be a means by which those on the outside have a voice in establishing new norms to govern them. The professions are one way in which individuals (both the professionals and those they serve) are bonded into comprehensive and stable relationships and these groups and communities enable individuals to make sensible choices and understand their role in a broader context.

Groups are not singular or monolithic. There are no authentic selves or true identities. Identities are created in a constant exchange with the social world.²²² The professions can serve as a way to help facilitate this exchange. But, lawyers can only operate in this way if the legal profession is diverse. Several scholars of the profession have argued that its diversity has been a source of professionalism’s decline.²²³ This article offers a counter-narrative. The diversity of the

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²²⁰ For an interpretation of functional sociologists as apologists for the status quo and hierarchy in society, see ABEL, supra note 33, at 34–39.

²²¹ ABEL, supra note 33, at 34–39. Other scholars have criticized functionalists as uncritical of the professions and overly invested in a conventional social order. See, e.g., ABBOTT, supra note 18; ELIOT FRIEDSON, PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE (1986); LAWYERS’ IDEALS/LAWYERS’ PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION (Robert L. Nelson et al. eds., 1992); See generally LARSON, supra note 9.

²²² See generally ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959) (analyzing the importance of social relationships for the development of identity).

profession is not only its strength but also critical to its survival. It is what offers the potential for a more democratic and inclusive understanding of public values.

As diverse as the profession gets, it is important if this profession will continue to serve a more relevant and updated version of Parsons’ vision—that it remain unitary. In some sense the profession is a microcosm of the society in which it operates—at least hopefully, diverse and pluralistic but not entirely balkanized or separated into castes.

Observers like Illich criticized expertise as the guise by which a certain group monopolizes tools that everyone needs to survive. But his vision of a society in which we democratize access to knowledge, eliminate expertise, and live with the limits on industrial progress never came to be. Expertise survived the assault but it did not survive unchanged. The new image of the expert is the problem solver, someone who exercises judgment, embraces teamwork, and demonstrates the ability to accept responsibility.

A robust but relevant view of the professions would have to take this new understanding of expertise as a starting point.

The professional in this new view is not different from the businessperson in her selflessness or special ability to ascertain the public good through some feat of logical thinking. He is not isolated in an ivory tower surrounded by books but rather enmeshed in the problems of the real world. Professionals do have unique education, approaches, and experience, which lend them an ability to seek long-term solutions to complex issues. The notion of the public good is not gone, but it looks different now—it is not a stable or unchanging consensus but rather a constantly negotiated and changing point of momentary convergence. The professional is not extinct but her contribution ought to be understood in different terms. Given the new emphasis on problem solving, it seems futile and counterproductive to try to isolate lawyers in the name of professionalism. The bar has fought outside investment in law firms, litigation finance, and multi-disciplinary practice on the ground that these innovations will allow others outside of the profession to erode lawyers’ independence and undermine their professionalism. This stance misconceives professionalism as it should be understood today. Professionalism, if it means anything, is not isolation but rather dynamic and creative problem solving, which benefits from outside perspective. It is the creative interpretation of norms in light of facts and experience.

224. See Illich, supra note 137, at 10–12.


226. See Morgan, supra note 24, at 19–49.

This new sort of expert need not be reduced to a market actor, seeking her own interest or that of her principal. The public good after the advent of Public Choice Theory cannot be the common denominator, the static values we all share. But it can still mean something. Professor Kate Kruse writes that lawyers are uniquely suited to engage in a dialogue.\(^\text{228}\) Dana Remus argues that the market vision of lawyers threatens the “relational values” of trust, loyalty, and judgment.\(^\text{229}\) The communication between lawyers and clients, who are both enmeshed in facts and experience, about the meaning of the law is what gives law its legitimacy. Part of lending it legitimacy is also giving it content and meaning, so on a very concrete level, lawyers are always engaged in a dialogue about and creating a constantly evolving set of mutual norms in light of diverse experiences which are also always in the midst of change. Thus they serve a function, as Parsons suggested.\(^\text{230}\) But the function is more complex and fraught with danger than he fully explored.

\(^{228}\) Kate Kruse, \textit{Legal Ethics, Jurisprudence, and Legitimacy} (draft on file with author).
\(^{229}\) See Remus, \textit{supra} note 22, at 30–35.