



## ETHICS AND THE LEARNED PROFESSIONS

A White Paper (with a Touch of Green) from the Institute for Global Ethics

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Human beings are born, live, and die. When they live in groups, they have relationships and disputes. They wonder about meaning and fate. Individually and collectively, they seek security from and understanding of hostile elements.

In any human society, it is likely that one can find some individuals who deal with the sick and suffering, others who deal with interrelationships and disputes, others with the mysteries and meanings of life and death, and still others with the physical security of the group. Whether curandero or allopathic physician, the healer in a society must share the beliefs of the substrate society if the services are to be accepted, believed, and effective. Those dealing with relationships and disputes, whether attorney or tribal chieftain, must work within the values and mores of the group. Priests and shamans must deal with the questions and mysteries of meaning arising from their own culture and setting. Even security forces using violence for the protection of a society must use methods acceptable to the society.

All this is by way of saying that human groupings will generate, out of their very being and nature, situations that in turn foster occupations to minister to the physical, social, spiritual, and security needs of the society.<sup>1</sup> This paper will discuss four of these generated occupations under the rubric of “learned professions” and under the labels of medicine, law, ministry, and military.

Medicine, law, ministry, and the military are occupations that have been seen as somehow different from other occupations such as cobbler, farmer, salesman, and so on.<sup>2</sup> Healing is a polar opposite from fighting, yet they are both defined as professions. Legal argument and the confessional are quite different venues, but they are still on the “professional” end of the spectrum. The differences between the four occupations discussed are often obvious, sometimes not.

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<sup>1</sup> People also require shelter, food, and clothing, which in turn lead to occupations to provide those needs. Much of what is said in this paper applies to these occupations. However, I believe that a discussion of the “professions” can clarify some differences between “occupations” on one end of a fictional spectrum and “professions” on the other that are useful, although the differences blur over a wide range in the center.

<sup>2</sup> The tragic events of September 11, 2001 provided a poignant example of the difference between occupations and the professions. As people were fleeing the World Trade Center buildings, firefighters and police officers were fighting their way *into* the buildings as part of their jobs.



## Differences among Professions

The most obvious differences among the four professions discussed herein (and from now on just called “the professions”) are in their clientele and in their tools. As noted above, the professions will arise in some form wherever there are people.<sup>3</sup> Sick people need comfort and cure. Threats beg for security, and controversy demands resolution. Disaster begs explanation. The existence of beauty and joy, death and injustice require organizing stories. The professions are alike in that they arise out of the condition of being human. They differ in the segment of societal difficulty they serve. The chieftain will see to the interpersonal disputes in the society but will defer to the witch doctor when a baby is ill. The problems managed will help define a particular profession.

The other obvious difference among the professions is in their “tools.”<sup>4</sup> One would never confuse the tools of a healer with those of a warrior, although both may use knives. These tools are generally of great interest and mystery to both the performer and the laity. On first thought they may even seem to define a particular profession more accurately than other means. A soldier carries a rifle. A lawyer argues in court. A priest presides at an altar. Minimal reflection, however, reveals that the tools of a profession are its most ephemeral elements. In a given culture the tools change with time, reflecting fashion and understanding. The tools of Western medicine have changed (and maybe progressed) rapidly from venesection and humors to antibiotics and anesthesia. In the military, in about the same time frame, the tools have changed from muskets to smart missiles, from cavalry to jets. It is because the tools are the most changeable part to the professions that they get the most attention from practitioner and the “client.”<sup>5</sup> One has to keep up. Change in the form of the professions is inevitable, but the change in tools, while requiring constant upgrading of information and skills, cannot be allowed to obscure the bedrock nature of what the professions are and what they provide to a society.<sup>6</sup>

The professions, then, may be identified by the segment of the human condition they serve and by the tools they employ. A third distinction concerns their “rules of evidence.” No one can take in, or manage, all of the information generated in a single moment or a single situation. One must select the information that will aid understanding and decisions about future behavior. The

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<sup>3</sup> For “people” I could substitute “a clientele,” but that implies a commercial incentive for the professions. I argue that professions in some form will exist in any society regardless of market concerns.

<sup>4</sup> By “tools,” I refer not only to physical tools such as scalpels, gavel, or guns, but to services, stories, mannerisms by which the various providers do their work.

<sup>5</sup> “Client” is an uncomfortable word for some practitioners who might prefer “patient” or “parishioner,” or other term. Here I am making no statement about the commercial relationship. By “client,” I simply refer to the person or persons being served by the practitioner or the profession.

<sup>6</sup> One difference that has been thought to be important to the definition of professions in the past has been the *form* of employment, i.e. whether the practitioner is self-employed or an employee. The question is thoroughly discussed in *Professional Ethics*, 2d edition, Michael D. Bayles, editor, 1989, Wadsworth Publishing. Priests and soldiers are usually employed by an organization that provides professional services through its employees. Lawyers and physicians have been largely self-employed in the past. However, managed care in medicine and employment of attorneys as in-house counsel (as well as free-lancing ministers) will negate that argument.



professions differ not only in the roles they play in a society, but also in the approaches they take to reality, the information that is relevant to their tasks, the stories that define their realities.

For example, below is a green spot.



A healer in any society is likely to approach this problematic smudge by identifying this as a green spot, having learned the descriptive words “green” and “spot” from a teacher. This is diagnosis. The healer will then decide that the best means of removing this particular sort of spot from this surface is with acetone (cure) or with Wite-Out (symptomatic treatment).

An attorney, or the equivalent in another society, will want to know what the spot is doing in this setting, who is responsible for putting it there, and who is responsible for the costs of removing it.

A priest or poet may consider the meaning of green versus blue, what the meaning of the spot might be, what we might learn from this spot in this setting.

The military might see its role in keeping someone from putting such spots all over our territory.

This is a superficial demonstration, but useful in indicating that the same situation, the green spot, is taken differently, and characteristically, by the practitioners of different professions. Further, the practitioners of a particular profession are more likely to share their approach to this spot with similar professionals in a different society than they are to share understanding with different professionals within their own culture. That is to say that people involved in the resolution of interpersonal disputes are more likely to understand, and be interested in, the methods of the mediation of disputes in a different culture than they are to understand and employ the methods of a different profession within their own culture. An allopathic internist in Chicago will better understand the role of a curandero in Mexico, despite totally different tools, than she will understand the role of a warrior or chieftain in her own culture. Priests, whatever the culture and beliefs, are likely to find similar approaches across faiths, whereas they may find less to talk about with other professionals within their own society. Another way of saying it: One can distinguish among the healers, the priests, the lawmakers, the warriors without being familiar with the tools themselves, if one only considers either the problems served or the rules of evidence employed. The professions live in the same world with the same problems, but they take distinctive roles in distinctive ways to solve distinctive sorts of problems.

### **Similarities among Professions**

Having shown that the professions are different in clear ways, I want to show how they are alike, and how they differ from other occupations. First, of course, they are alike in that while they



exist in some form in any society, they tend to be feared and distrusted. They are also the butts of jokes. “A priest, a lawyer, and a doctor were walking down the street...” Doctor, lawyer, and clergy jokes reflect both the necessity of the roles and the inherent discomfort a society has regarding the roles. G. B. Shaw opined that all professions existed as conspiracies against the public. An old saying is that a man who has a son who is a boor should make him a surgeon, one with a thief should make him a lawyer, and one with a fool should make him a priest. The collective wisdom understands both the need for the professions and the inherent danger they present.

Second, the professions have an institutional quality to them. They are collective creatures with an identity, a history, and a culture. An individual wanting to work in an arena generally covered by one of the professions will find it necessary to take on trappings that suggest membership in that profession. One may feel the need to start preaching or healing, in a particular society, but, even in the absence of legal requirements, that person will find it necessary to appear to look like a church or medical professional, in whatever form that may take in the particular society.<sup>7</sup> Professions are *collective* creatures to which an individual must go if desiring to provide legitimate services to a society. There can be no such thing as an individual, or private practice, of a profession.<sup>8</sup>

Third, professions use dangerous means in their efforts to help society. A society will realize in its collective intelligence that the tools used to control illness, controversy, values, or physical threats can be very dangerous, and it will need to control the use of such modalities. Would any society arm a subset of its population with weapons, drugs, or immunity from prosecution for the withholding of vital information without first attempting to protect its people from abuses in the use of such methods? The tools of the professions are usually prohibited behaviors in a given society, whether the society is primitive or developed. The proscription in a developed state may be statutory, while in a primitive society the proscription may be social, but the effect is the same. The discomforts regarding professions in any society are based in logical fear, seeing that the needs for the services are real and that the tools are dangerous to a dependent populace.

### **The Profession as a Pledge**

For the purpose of argument, I am going to speak of a postulant profession and a negotiating society as if they were bargaining individuals, understanding that such conversations never

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<sup>7</sup> Many definitions of “professions” exist. Bayles (footnote 6 above, p 8-9) covers most of the elements by listing important services that require extensive intellectual training, credentialing, licensing, and organization of practitioners. I disagree somewhat with such definitions, but they do support the idea that professions are collective, not individual, creatures.

<sup>8</sup> Katharine Whitehorn in her paper *Ethics and the Media* states that “professions are only trades with more prestigious and established controlling bodies.” I am not certain of the “more prestigious” part. I do take exception regarding the “controlling bodies.” The AMA, the Pentagon, the church or the ABA might desire to control what their practitioners do, but I believe, and will argue, that ultimately the public dictates the form of its servant professions. Just another market?



actually occurred but believing that they have occurred, in effect, through history. Suppose a group of potential healers or warriors were to approach a state and ask to become a provider, or the sole provider, of prohibited services to the population of a state. Before arming that group with a franchise limiting their competition and granting them an exception to the general prohibition against such modalities, what would the state require? I submit that the state, in defense of its populace, would want two things: assurances that the services would be of a certain quality (i.e., to provide competent technicians of the particular sort), and assurances in the form of a pledge, or a *profession*, that the freedom, the license, to use prohibited and dangerous modalities would not be used for the personal benefit of the trade against the best interests of the served.

The very word “profession” is a problem. It does not simply mean being paid for services, as opposed to the amateur who does something out of love. Nor does it merely convey an attitude, as in “Act like a professional.”<sup>9</sup> Having used the word to denote a class of occupations, I will now begin to use it to mean a pledge or assurance. That pledge from a postulant entity to a society promises that dangerous methods will be used only for the benefit of the served society in return for the right to use them. It is, in other words, the *license*. Professions, then, are occupations whose members receive their licenses in return for their pledge, their *profession*, to put the interests of the served society above their own self interests while acting in the licensed role.

Viewing the ethics of professions from this perspective has the effect of making the ethics of a profession a matter dictated by the wishes of the served society, rather than a statement of preferences by a trade organization. Codes of ethics, of course, tend to have both elements. But the operative ethical requirements that emerge over time will be those that reflect the interests of the substrate society. At this point the argument can be advanced, rightly, that all practices of groups—whether business, social, or professional—intending to serve the public over the long run must reflect the wishes of the supporting society.

All learned professions, then, hold in common the concept of a pledge. They all have, in effect, made a pledge, a promise, a *profession*, to put the interests of the served public ahead of their own and their practitioners, while acting under the terms of their contract for the provision of otherwise prohibited services.<sup>10</sup> This is the core argument of this paper. *The learned professions are occupations whose core product and service is their pledge to put the interests of others ahead of their own while providing their specific services.* The core of what they are is their

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<sup>9</sup> Nor is a profession simply a “guild” organized for self-protection, or even for assurance of a quality product. Elliott Krause, *Death of the Guilds*, Yale University Press, presents the professions as the last holdouts among the guilds as they attempt to maintain control over their destiny against encroaching interests of the capitalistic state.

<sup>10</sup> “Codes of Ethics” exist in many groups, including the American Medical Association, American Bar Association, International Programmers Guild and so on, but these codes are generated from within the subject organization. The “codes” must ultimately rest on public acceptance.



trustworthiness. “We don’t care that you know,” as the adage goes, “until we know that you care.” The professions have in common that profession of caring.

What are the implications of this argument? Rather than identifying professions by looking at differences based on tools or on the portion of humankind’s problems served, we would do well to look *first* at the issue of trust.<sup>11</sup> This may seem obvious now, but that outlook is not reflected in professional education, credentialing, or even in the minds of the public served. Education and evaluation generally reflect an overriding interest in the tools of the occupations rather than in their trustworthiness. That is understandable, because it is almost impossible to apply the term “professional” to an individual or collective acting out of self-interest. The crooked police officer or the sexually manipulative priest seem so warped that it is difficult to think of them as professionals at all. We tend to see the core requirement of trustworthiness only when breached. The implications for professional education and evaluation are obvious. In a pluralistic society, where professional services are being privatized, where the technologies involved are leveraging the effects of ethical and unethical behavior, it is mandatory that both public and practitioner have a definition of professional services that demands that the ethical requirements be met before further negotiations continue.

### **Dilemmas in the Professions**

Defining ethical behavior in the learned professions in this way will not dispose of problems. On the contrary, it will bring more to light. One may be a technically competent internist and a technically competent medical researcher, but can one be so with the same patient? A business can as easily sell medical technology as a company can market military hardware, but how does a business require self-sacrifice of its providers? What happens when the personal values of the provider contrast with the values of the served patient or society? Should a nurse who personally abhors abortion refuse to advise a patient in a public charity hospital? Should a physician who is pro-choice refrain from advising a woman in need just because he works in a Catholic hospital? Should a police officer who hates violence refuse to disable a Charles Whitman or a Hitler? Should a physician with children at home care for a patient with a highly communicable disease?<sup>12</sup>

These are all questions that focus on the public trust of the professional—since no one but the professional can make the judgments needed in each situation. Providing methodologies for addressing these questions can have great short-term and long-term importance.

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<sup>11</sup> That the pledge is more important than the tools of a profession becomes clear when the use of the tools is considered outside the protection of the pledge. Police officers and criminals use the same tools..

<sup>12</sup> Confidence men and priests use the same persuasive techniques. It is the *intent* and not the *event* that defines ethical activity. The most important information one can have when facing an armed man at night is whether that person is a police officer pledged to your welfare. It is the pledge that makes the tools useful, rather than dangerous, to a society.





In the short term, efforts can be made to educate both the public and the providers of the rightful place of ethics and trustworthy behavior in professional activity. Providers, purchasers, and recipients of such services need to understand that the tools of the professions do not define the product. Education, evaluation, and pricing need to reflect the true nature of the services. Strangely, the place of ethical behavior in professional services seems to be less apparent to the laity than to the professional, probably because the need to trust is so basic as to be transparent and seen only in the breach. In the short term, then, schemes for the commercial delivery of professional services—such as for-profit prisons or HMOs—need to be evaluated for their ethical structure before they can be logically evaluated financially.

In the long term, a study of professions can lead to a redefinition of the forms such services take. For instance, health care could be defined as the delivery of current diagnostic and therapeutic protocols, in a timely and economical manner, in a form that insures that the wishes and values of the served are respected. Nowhere does such a definition need to require particular educational credentials, so long as the requirements of the public are met. It will require, however, that whatever the format of the delivery system, it be respectful of the requirement to put the needs of the served above the good of the provider. That is a real cost, which must always be considered.

The ethics of a profession, collectively, are based on the desires of the state that licensed that profession.<sup>13</sup> A foundation of that required behavior must be that the populace is protected from the selfish use of the dangerous modalities licensed to the professions. There will be other requirements that are statutory or customary that reflect the best interests of the society and that become behavioral requirements of the profession. A particular society may deplore abortion or narcotics, may endorse torture or the death penalty, or may embrace religions that use snakes in their ritual or ban such exercise. These political requirements laid down by the state become ethical requirements of the professions as a whole. Individual practitioners, in caring for individual patients, may find that those overriding requirements conflict with the best interests of the patients. For instance, a physician may feel that antibiotic coverage might be a benefit for the individual patient, but the society may have determined that antibiotics must only be given for particular diseases in order to minimize the chances of drug resistance. Immunization of a school population is a clear good for a society but poses a danger for the individual child. Those situations are largely political to the society and mandated to the individual practitioner.

### **Professional Conflicts**

The overriding rule of professional ethics is that professions have their position in return for a pledge or profession that the interests of the served public always trump those of the providers. Common conflicts arise when surgeons, soldiers, evangelists, and plaintiff attorneys go into the marketplace. Though they do so under the guise of a profession (consciously or unconsciously),

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<sup>13</sup> While an organized state might license a profession through statutory action, whereas an unorganized society might “license” a profession through social consent, the effect is the same.



the consumer loses the expected protection against manipulation that would have existed under professional ethics. A cosmetic or refractive surgeon, a soldier for hire, a plaintiff attorney advertising services to build a practice is in sales, not in a profession. They are cloaking themselves in the mantle of a profession in order to gain legitimacy and the license to practice. Because the rules of the marketplace and not professional ethics are at work in such situations, patients must be on guard. Unfortunately, both public and practitioner seem to believe that any service sold through a professional office is a professional service. A surgeon attempting to sell you surgery in order to build his practice has put his professional ethics aside for market behaviors.

Perhaps the most dangerous ethical situation for professions occurs when an individual is unclear about which professional role she is playing. Subtle conflicts occur when an individual has a choice among professional obligations and is confused, or allows the served client to be confused, about which role is the controlling one—these are the types of conflicts that occur in medical research or when teaching professional students in a clinical setting. In Solzhenitsyn's novel, *Cancer Ward*, the physician is also engaged in medical research, and the patient feels the conflict. An ethical researcher must adhere to a research protocol in order that data generated can be trusted. A physician is obligated to do whatever is morally possible for the good of the individual patient. The roles are often in generic conflict, since each has rules of conduct. It is up to the individual to understand which role dominates. It is very hard, from the outside, to discern the true situation, so the practitioner must be the one to adhere to the unenforceable rule. Clarification of the nature of professional ethics at least would clarify, to patient and practitioner alike, the conflict between roles.

More common and more troubling are those conflicts that arise when the personal values or obligations of the individual professional are in conflict with what seem to be clear collective professional obligations. An individual physician may believe that helping an individual patient into a gentle and caring death is the correct behavior, despite the fact that euthanasia is illegal and therefore collectively unethical. Should a psychiatrist or lawyer reveal information to the state that would prevent a future crime, even though it would require violation of a duty to keep information confidential? The professional, then, may be faced with decisions which would be unethical as a lay individual but which may be required of the individual acting in a professional role. A society may require of a collective profession actions it could not hire a layperson to perform, such as entering a burning building or ordering a soldier into death-threatening situations. Is a lieutenant unethical for ordering specific men into dangerous positions to accomplish a larger goal for society? Men were ordered to risk death for the goal of destroying the Nazi regime. How and when may a collective being ask or require sacrifice by the individuals who must perform acts in the public interest, and how can those individual actors know that their acts are just? My Lai and the bombing of Dresden come to mind.

The thesis of this paper—that ethics in the learned professions is based exactly on a “profession” that privileges granted the collective profession will not be used to the disadvantage of the served





populace—does not solve all ethical problems. It does, however, provide a starting point for the study of ethics in the public-and-profession relationship, in which there must be a cadre of responsible people who have a duty to act beyond their own, or the market's, interests. This approach can be used to educate the public, purchasers, and providers of professional services of the requirement that ethical behavior be basic in all decision making regarding the learned and licensed professions, whether in funding, education, restructuring, or evaluating.

The information base of the professions has always been fluid. Now the very format of the services is being challenged as the societies served become less homogeneous. Information floods server and served alike, as the management of information is changed by computer technology, and as efforts are made to bring business practices into heretofore professional arenas. Will a public accept professional services without accountable individuals pledged to self-sacrifice when needed? Can a corporate being require such sacrificial action by mere employees? If I am correct about the core nature of professional services, these questions will require study as society attempts to obtain better care for its problems of body, mind, and spirit in a modern world.

Finally, I do not believe these concerns are unique to the four professions discussed herein. They are only examples. Wherever the society requires selfless duty in using somewhat dangerous modalities for the good of those served (such as teaching or parenting), or where a corporate being depends on public trust for its continued existence (such as banks or government), this analysis may be of benefit.

Ethical behavior will always depend on analysis and action by an individual who must choose between good and bad or between alternative goods. At the highest levels, only the individual can know the motivations for the choice, and we can hope to educate our most responsible members to adhere to the unenforceable ideals that make us a society rather than a crowd. The learned professions are a good place to start.<sup>14</sup>

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<sup>14</sup> The terrorist attacks of September 11, 2001 demonstrate how technology leverages ethics. Our highly complex society made such attacks feasible. The attacks also demonstrated the power of religious ideas, and the responsibility of those who would promulgate such ideas. Religious leaders, whatever their stripe, must have an overriding ethical duty to put peace and truth ahead of personal concerns.