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## Barristers and Barricades: Prospects for the Lawyer as a Reformer

Harry W. Arthurs

*Osgoode Hall Law School of York University*, [harthurs@osgoode.yorku.ca](mailto:harthurs@osgoode.yorku.ca)

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# Barristers and Barricades:

## Prospects for the Lawyer as a Reformer

H. W. Arthurs\*

I define myself, in no particular order of precedence, as a lawyer and as a reformer. Most law professors, a goodly proportion of law students, even a modest number of practicing lawyers might define themselves in this way. I want to explore the implications of this self-portrait: how do we validate our credentials as reformers within a profession whose conservatism is legendary?

At the outset, I confess that I am going to beg the questions of who is a reformer and what is reform. Naturally, a reformer thinks of himself as an agent of change; for any individual, reform represents forward movement towards his vision of society. But alas, our individual visions of society are so varied, our ability to evaluate the impact of change so limited, and our calculus of its relative costs and benefits so differential, that I could hardly hope to persuade everyone that any given proposal dear to my own heart is in fact "reform". One man's millenium is another's hell.

Let me try to prove by example the wisdom of not defining reform. First, consider the "reform" of administrative law which has been the focus of much lawyerly attention in recent years.<sup>1</sup> The procedures of administrative tribunals in

\*Dean, Osgoode Hall Law School, York University. An earlier version of this paper was presented as the Catriona Gibson Memorial Lecture at the Faculty of Law, Queen's University, Kingston, Ont., Sept. 27, 1974. D.A. Basskin (Osgoode II) provided research and editorial assistance in its revision for publication.

<sup>1</sup> Ont. 1 *First Report of the Royal Commission Inquiry into Civil Rights*, (Toronto: Queen's Printer, 1968) — McRuer Report; R. Reid, *Administrative Law and Practice* (Toronto: Butterworths, 1971) at 461-68; W. Tarnapolsky, *The Canadian Bill of Rights* (2d ed. Ottawa: McClelland and Stewart, 1975) at 222-89; S. deSmith, *Judicial Review of Administrative Action* (3d ed. London: Stevens and Sons, 1973), J. Willis, *The McRuer Report: Lawyers' Values and Civil Servants' Values* (1968), 18 U.T.L.J. 351; H. Molot, *Administrative Law* (1972), 5 Ottawa L. Rev. 411; I. Christie, "The Nature of the Lawyer's Role in the Administrative Process", in Law Society of Upper Canada, *Special Lectures* (Toronto: R. de Boo, 1971) at 1.

Ontario have now been regularized and judicialized, and their decisions made more accessible to the reviewing jurisdiction of the courts.<sup>2</sup> I dare say that a majority of lawyers and nonlawyers alike would view this as a substantial reform.<sup>3</sup> I do not. To my way of thinking, much that has happened has served merely to inhibit the effectiveness of administrative agencies in their job of curbing excessive private power and promoting orderly social and economic change. I therefore feel that recent changes in administrative law have been the converse of reform. Or consider current proposals to replace automobile accident litigation with some form of insurance and compensation scheme.<sup>4</sup> I think that such a scheme would be a reform, but a number of opponents of these changes (not all of whom are members of the automobile accident bar) think it is just the opposite.<sup>5</sup> They contend that the proposed scheme will be costly and cumbersome, that many individuals will be denied adequate compensation for their injuries, that the right to litigate is a fundamental civil right, and that many of the objectives of the proposed scheme could have been accomplished by more modest measures with none of these allegedly harmful effects.

I mention these examples, I stress again, not to demonstrate the rightness of my position but rather to illustrate the difficulty of talking sensibly about the role of the legal profession in relation to reform because of the difficulty of agreeing upon exactly what reform is.

But if I am unwilling to define reform, I am nonetheless quite prepared to consider how lawyers think about it, what they do about it, and why they think and act as they do.

In particular, I want to examine three factors which influence the beliefs and conduct of lawyers as reformers: first, the formal institutional framework of the legal profes-

<sup>2</sup> The Statutory Powers Procedure Act, S.O. 1971, c.47; The Judicial Review Procedure Act, S.O. 1971, c.48; Federal Court Act, R.S.C. 1970 (2d Supp.), c.10.

<sup>3</sup> See, e.g., D. Mullan, *Reform of Judicial Review of Administrative Action — The Ontario Way* (1974), 12 O.H.L.J. 125; R. Atkey, *The Statutory Powers Procedure Act 1971*, (1972) 10 O.H.L.J. 155; but see Willis, *Canadian Administrative Law in Retrospect* (1974), U.T.L.J. at 225.

<sup>4</sup> B. Dunlop, *No-Fault Automobile Insurance and the Negligence Action: An Expensive Anomaly* (1975), 13 O.H.L.J. 439; O'Connell, *No-Fault Insurance for all Accidents* (1975), 13 O.H.L.J. 461; Ontario Law Reform Commission, *Report on Motor Vehicle Accident Compensation* (Toronto: Queen's Printer, 1973); T. Ison, *Tort Liability and Social Insurance* (1969), 19 U.T.L.J. 614; T. Ison, "Contemporary Developments and Reform in Personal Injury Compensation", in Law Society of Upper Canada, *Special Lectures* (Toronto: R. de Boo, 1973) at 521.

<sup>5</sup> See, e.g., A. Linden, *Tort Law As Ombudsman* (1973), 51 C.B.R. 155; U. Grif-fiths, *Don't Abolish Tort Law in Auto Accident Compensation* (1969), 12 C.B.J. 187 at 190.

sion, the law society; second, its official ideology, the Code of Professional Conduct; and third, the informal beliefs and habits, the culture, of the profession. Of course, I do not for a moment deny the importance of many other factors — individual personality, educational background, economic temptation, investment in professional skill, social pressure. All of these help to shape our views towards reform, and to define the way in which we act, or fail to act, in accordance with those views. But these tend to be rather personal considerations. What I want to explore are the factors which operate more-or-less universally across the legal profession.

# I

I turn first to the law society. Membership in a provincial law society is required of everyone who wishes to practice law in a Canadian province.<sup>6</sup> These law societies enjoy a statutory mandate to govern the legal profession through control over the admission and discipline of their members.<sup>7</sup> They are thus theoretically in a position either to force or forbid lawyers to be reformers, or at least to place the profession as a whole on record as favouring or opposing reform.

But, I suggest, a provincial law society does not, and should not, directly address itself to the issue of reform.

An author of some prominence several years ago tendered to the Law Society of Upper Canada a prospectus for a proposed history of the Society.<sup>8</sup> He had for some time, he said, been trying to account for what he perceived to be a greater devotion in Canada than in the United States to the cause of liberty and progress. In seeking to trace the elusive "spoor" (as he termed it) of this idea, he found that the trail led him to the Law Society of Upper Canada as one of the major sources of progressive concern in this country. By contrast, even the most casual student of current radical demonology will immediately recognize the Law Society of Upper Canada as a sinister influence retarding the liberation of the masses in general and of legal workers in particular.<sup>9</sup>

One might already have inferred that I am loathe to subscribe to either of these caricatures of the Law Society.

<sup>6</sup> See, e.g., The Law Society Act, R.S.O. 1970, c.238, s.50.

<sup>7</sup> *Id.* ss. 10, 55.

<sup>8</sup> Preface, *Special Commemorative Issue (1797-1971)* (1972), 6 Law Society of Upper Canada Gazette at v.

<sup>9</sup> See, e.g., Farquar, *Sault Secretaries Unite* (1974), 1 Law Union News No. 5; Swaigen, *Bencher Election* (1975), 2 Law Union News No. 2; Iler, *Law Union Protests L.S.U.C. Scabbing* (1975), 2 Law Union News No. 4; Glick, *Law Society Meeting Highlighted by L.U. Motions* (1976), 3 Law Union News, No. 2.

This is not to deny that the Law Society could use its considerable influence on the side of either reform or reaction, assuming that one could determine which was which. But it is this very conundrum which leads me to make the case for a Law Society which confines its concerns rather strictly to its statutory obligation of policing the admission of lawyers to practice and their professional conduct.<sup>10</sup>

Of course it would be nice to have the Law Society deploy its battalions behind me as I march forward with a banner of reform, bearing mottoes which I have selected and heraldic devices which feature a law teacher rampant on a field of social engineering. But because I also believe that the Law Society should be internally democratic, and responsive to the wishes of its members, I must face the possibility that I may not be leading the battalions, but confronting them in an adversary posture, and that the Law Society (and everyone who must belong to it) may be put on record as favouring positions which are contrary to my particular vision of reform.

I am prepared, therefore, to view the Law Society as a kind of institutional Switzerland within whose neutral boundaries clashing factions may meet, within whose deep coffers public trust will be safeguarded, and whose towering peaks seem a little remote from daily political controversy.

And yet I am not so naive as to believe that the provincial law societies can, in fact, ever be disregarded in a realistic assessment of the prospects for lawyer-reformers. Admission requirements, for example, help to determine the socio-economic composition of the profession and thus, in part, its general sympathy towards reform. Standards of professional conduct set by the law society could forbid fee-cutting or require participation in legal aid, thus constricting or expanding the strata of society served by most lawyers and the range of experiences which might help to form their attitudes. And lawyers who are benchers of the law society may, for that reason, speak as authority figures and command respect, both within and beyond the profession, for their personal views on issues of reform.

I must therefore consider how the law societies influence the beliefs and behaviour of their members, even when they do not directly proclaim their positions on specific controversial issues of reform.

<sup>10</sup> Cf. Thom, *The Nature and Function of the Law Society of Upper Canada* (1974), 8 *Law Society of Upper Canada Gazette* 173.

So far as admission to practice is concerned, the law societies exact no oath of ideological conformity. With but a single recorded exception, in British Columbia in 1949,<sup>11</sup> the Canadian legal profession has accepted within its ranks anyone meeting standard admission requirements.<sup>12</sup> Even the undefinable requirement of "good character", so far as I am aware, has not been used to keep out radicals, let alone reformers.

A law society has the right to discipline for "professional misconduct" or "conduct unbecoming" a lawyer.<sup>13</sup> These terms are, like "good character", so open-ended that they could conceivably be used to harass individuals who do not hew to some ideological line laid down by the society. But they have not been used in this way. Indeed, their very vagueness has caused professional governing bodies to move cautiously in all discipline matters, except the most obvious one of breach of trust.<sup>14</sup> In an effort to guide lawyers into patterns of acceptable conduct, many law societies issue non-binding rulings, which are quite specific in their content.<sup>15</sup> However, breach of these rulings does not, *per se*, constitute violation of the statutory standard. One of the rulings frequently adopted by the law societies was the Code of Legal Ethics of the Canadian Bar Association.<sup>16</sup> This document was the essence of innuendo: the Bar Association had no power to proclaim or enforce ethical standards, because no one was required to belong to it; the language of the Code was platitudinous, archaic, and sometimes contradictory; since its adoption in 1920, the Code had never been cited in any reported case or disciplinary proceeding, the subject of debate within the Bar Association, or of revision by any competent authority. Yet there it remained, until very recently, as a guide to Canada's lawyers.

Fortunately, it has now been replaced. In September, 1974, the Bar Association adopted a new Code of Professional Conduct which is much more contemporary in tone

<sup>11</sup> *Re Legal Profession Act, Re Martin*, [1949] 1 D.L.R. 106 (Benchers of Law Society of B.C.) *aff'd. on appeal sub. nom. Martin v. Law Society of B.C.*, [1950] 3 D.L.R. 173 (B.C.C.A.).

<sup>12</sup> See, e.g., The Law Society Act, R.S.O. 1970, c.238, s.27.

<sup>13</sup> *Id.* s.34.

<sup>14</sup> H. Arthurs, *Discipline in the Legal Profession in Ontario* (1969), 7 O.H.L.J. 235; Orkin, *Professional Autonomy and the Public Interest: A Study of the Law Society of Upper Canada* (unpubl'd. D. Jur. Thesis, York U., 1972).

<sup>15</sup> See, e.g., Law Society of Upper Canada, *Professional Conduct Handbook* (1975).

<sup>16</sup> *Id.*, Ruling No. 1

and conception.<sup>17</sup> In Ontario, the Law Society's recently-acquired statutory authority<sup>18</sup> to adopt a code of ethics has been exercised in order to adopt in principle the new Canadian Bar Association Code.<sup>19</sup> When formally promulgated across the country, it will be the closest thing to an official ideology that Canadian lawyers have had. What does it say about reform?

## II

The new Code of Professional Conduct was drafted during a period when many of the fundamental assumptions of the legal profession (not to say of our legal system and of society generally) were being brought into question. Its authors realized that the Code would not be applied exclusively (or perhaps even primarily) to lawyers leading conventional careers in conventional law firms in the service of conventional clients. Rather it was a new breed of young lawyers, some of whom were determined to use law to change society, that would have to live with the new rules of professional conduct.

Many of the new rules legitimate the reformer's role within the profession. Lawyers are urged to participate in such activities as "law reform, continuing education, tutorials, legal aid programmes, community legal services," and a variety of professional activities.<sup>20</sup> This encouragement of responsible citizenship is complemented by some very specific directions to use "courtesy and good faith" in relationships with clients and other lawyers in the course of professional business.<sup>21</sup>

The Code announces that "the lawyer should encourage public respect for and try to improve the administration of justice."<sup>22</sup> These contrapuntal, sometimes contradictory, themes of "respect" and reform are juxtaposed throughout the explanatory notes that follow. The lawyer is assumed to have "a basic commitment to the concept of equal justice for all within an open, ordered and impartial system."<sup>23</sup> However, public respect will only be maintained at the price

<sup>17</sup> Canadian Bar Association, *Code of Professional Conduct* (1974) [hereinafter cited as C.B.A., C.P.C.].

<sup>18</sup> The Law Society Act, R.S.O. 1970, c.238, s.55; R.R.O. 1970, Reg. 556, s.23(1).

<sup>19</sup> (1975) 9 Law Society of Upper Canada Gazette 256.

<sup>20</sup> C.B.A., C.P.C., Rule 14, para. 5.

<sup>21</sup> *Id.*, Rule 16.

<sup>22</sup> *Id.*, Rule 12.

<sup>23</sup> *Id.*, Rule 12, para. 1.

of "constant efforts . . . to improve the administration of justice."<sup>24</sup> The lawyer's unique position enables him to identify the shortcomings in our system, "but his criticisms and proposals should be bona fide and reasoned."<sup>25</sup> There is a special obligation on the lawyer, the Code asserts, to avoid unwarranted criticism of tribunals whose members cannot answer back.<sup>26</sup> His very status as a lawyer places a special obligation upon him not to undermine public confidence in the legal system, "but for the same reason he should not hesitate to speak out where he sees an injustice."<sup>27</sup>

There is in all of this an implicit assumption, occasionally made explicit, that the lawyer is both more and less than any other citizen. He is more in that he has affirmative obligations to seek reform; he is less in that he is inhibited in the means he can use in aid of the causes he supports.

It must be remembered that, once the Code has been adopted by the law society, a lawyer is subject to professional discipline for violations.<sup>28</sup> But what can one predict about the likely enforcement of the Code against two individuals, one of whom has vigorously and publicly denounced a tribunal whose decision, he honestly feels, amounts to a grave injustice, while the other has merely failed to assist the Bar Association in importuning the government for legislative reforms? I suspect that it is the lawyer-critic who is more likely to be disciplined, if either is. But I doubt whether either would be.<sup>29</sup>

This prediction is not based on any cynicism about the law society. On the contrary, its premise is that the society has enough good sense to avoid using its disciplinary power in what must ultimately be a political, rather than a purely professional, context.

And yet, is it always possible to divorce the political from the professional?

The Code places special emphasis upon the lawyer's obligation to act with integrity. Taking the position that integrity is indivisible, the Code notes that conduct "whether within or outside the professional sphere" which would im-

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, Rule 12, para. 2.

<sup>26</sup> *Id.*, Rule 12, para. 4.

<sup>27</sup> *Id.*, Rule 12, para. 3.

<sup>28</sup> (1975) 9 Law Society of Upper Canada Gazette 256.

<sup>29</sup> For a recent and notorious example of a lawyer found in contempt for public criticism of a decision, but not (as of the date of writing) professionally disciplined for this criticism, see *Queen v. Atlantic Sugar Refineries, Re Ouellett*, (unreported, 1976, Que. S.C.).



pair a client's confidence in a lawyer, may be grounds for discipline.<sup>30</sup> The Code disclaims any intention to deal with "private or extra-professional activities . . . which do not bring . . . professional integrity or competence into question,"<sup>31</sup> but it is easy to imagine that in a bad case the line might be drawn in such a way as to stigmatize certain kinds of conduct in which a reformer might wish to engage.

A lawyer who participates in an unruly demonstration which results in a conviction for obstructing the police, or a lawyer with radical moral or sexual views which he preaches or practices in some way which attracts public controversy, or a lawyer who subscribes to a political philosophy of the left which gains him notoriety and involves near-brushes with the law — any of these lawyers might conceivably be accused of conduct which (in the words of the Code) is "dishonourable or questionable" and "reflect[s] adversely to a greater or lesser degree upon the integrity of the profession and the administration of law and justice as a whole."<sup>32</sup> And yet I do not mean to overstate the case. I know of no instance where an individual was put out of the profession for behaviour of this sort, although a number of potentially controversial lawyers have courted such discipline.<sup>33</sup>

The position of the lawyer-reformer who has a conscientious aversion to a particular oppressive law is a difficult one indeed. "When acting as a professional advisor," the Code says, "the lawyer must never knowingly assist or encourage any . . . crime or illegal conduct."<sup>34</sup> While a specific exception is made to this rule to permit the lawyer to become involved in bona fide test cases,<sup>35</sup> the bit of the principal rule is potentially severe. The lawyer who organizes a campaign of civil disobedience against a wicked law may have encouraged "illegal conduct" in violation of the Code.<sup>36</sup> On the other hand if he simply counsels obedience to every law, however unconscionable, he betrays his own fundamental values. How do lawyer-reformers resolve the dilemma? We have precedents to guide us. Gandhi was a lawyer; he was

<sup>30</sup> C.B.A., C.P.C., Rule 1, para. 2.

<sup>31</sup> *Id.*, Rule 1, para. 3.

<sup>32</sup> *Id.*, Rule 1, para. 2.

<sup>33</sup> *Cf. Re Nova and Law Society of B.C.* (1972), 31 D.L.R. (3d) 89 (B.C.S.C.) (Barrister acted for unspecified persons in negotiating the return of stolen bonds with police, disbarred for "unprofessional conduct").

<sup>34</sup> C.B.A., C.P.C., Rule 2, para. 6.

<sup>35</sup> *Id.*, Rule 2, para. 7.

<sup>36</sup> Editorial, *Civil Disobedience and the Lawyer* (1967), 1 Law Society of Upper Canada Gazette 5.

the most effective exponent of civil disobedience.<sup>37</sup> The German jurists of the 1930's offer another sort of precedent; they helped to preserve the respectability and regularity of the Nazi regime by counselling compliance with its laws.<sup>38</sup> If we were to reach a situation so desperate that either analogy applied, I suspect the Code of Professional Conduct would provide us with little guidance, and we would make our individual decisions as citizens, not as lawyers.

The new Code does help to guide us, however, so long as it is possible to work within the system. We tend to associate political trials with the current convulsions of American society, but we often forget that important historical precedents exist in the Anglo-Canadian tradition. Relief from the burdens of feudalism, challenges to absolute royal power, protests against the overreaching of the laws of libel and sedition, slow steps towards freedom of conscience: these causes have been advanced in the courtroom as well as in the political forum in both England<sup>39</sup> and Canada.<sup>40</sup> But a political trial is seldom a calm and rational search for truth and justice. It is often intensely emotional and tests to the limit the commitment of both counsel and judge to orderly process as an independent and higher-order value in our legal system.

Thus the advocate in the crucible of a political trial may be fettered by certain strictures of the Code of Professional Conduct. To be sure, there is no necessary reason why, even in such circumstances, he cannot both comply with his obligation to treat the tribunal "with courtesy and respect" and "represent his client resolutely, honourably and within the limits of the law."<sup>41</sup> But the requirement of courtesy and

<sup>37</sup> Editorial, *supra* note 36, at 7; *but see contra*, Correspondence (1967), 1 Law Society of Upper Canada Gazette 44; W. MacGuigan, *The Lawyer and Civil Disobedience* (1971), 5 Law Society of Upper Canada Gazette 252.

<sup>38</sup> D. Ruschmeyer, *Lawyers and Their Society* (Cambridge: Harvard University Press, 1973) 180 *et seq.*

<sup>39</sup> See, e.g., *Wilkes v. Wood* (General Warrants case) (1763), 98 E.R. 489; *Entick v. Carrington* (1965), 95 E.R. 807; *Christie v. Leachinsky*, [1947] 1 All E.R. 567; *Liversidge v. Anderson*, [1942] A.C. 206. See also Heuston, *Liversidge v. Anderson in Retrospect* (1970) 86 L.Q.R. 33 for the unique history of this case. Although Atkin's view was the sole dissenting voice, and "may not have been 'correct' within the context of that decision itself, it has yet had more profound influence on public law than the speeches of any of the majority Law Lords."

<sup>40</sup> K. McNaught, "Political Trials in Canada" in M.L. Friedland ed., *Courts and Trials: A Multi-Disciplinary Approach*, (Toronto: University of Toronto, 1975) at 137; see also *Switzman v. Elbling and A.-G. Quebec*, [1957] S.C.R. 285; *Saumur v. Quebec and A.-G. Quebec*, [1953] 2 S.C.R. 299; *Roncarelli v. Duplessis*, [1959] S.C.R. 121.

<sup>41</sup> C.B.A., C.P.C., Rule 8.

respect pre-supposes even-handed and sympathetic treatment from the bench. There is at least the possibility that a lawyer may be provoked into discourtesy and disrespect by what he perceives, perhaps inaccurately but nonetheless sincerely, to be a display of judicial hostility or unfairness. Two wrongs do not, of course, make a right. But what the Code proscribes as a "consistent pattern of rude, provocative or disruptive conduct"<sup>42</sup> may appear quite differently when set against the background of judicial conduct which is something less than exemplary.<sup>43</sup> For the reformer of passionate temperament, the political trial is a moment of special danger.

Curiously, the rule concerning "impartiality and conflict of interests"<sup>44</sup> may also present difficult problems for the lawyer who seeks to use litigation as a vehicle for reform. A group may wish to impugn the constitutionality of a statute or to obtain a favourable interpretation of a legal rule. If the group itself cannot sue, an individual may be selected to raise the point either by suing in his individual capacity, or by acting as representative of the group. In either case, the lawyer will normally be retained and paid by the group, although proceedings are prosecuted in the name of that one individual. It is he who is, technically, the lawyer's client.

But what happens when the interests of the individual and those of the sponsoring group diverge? To whom, then, does the lawyer owe his loyalty? For example, it may be that a nominal plaintiff is offered a favourable settlement of his claim, because the defendant would rather pay off that one individual than confront a multitude of persons similarly placed. What should the lawyer advise in such a case? If he is genuinely devoted to the interests of his individual client, he may well be prepared to recommend settlement. Indeed, another provision of the Code tells him he must seek a settlement whenever the circumstances permit.<sup>45</sup> On the other hand, the reality of the matter is that the lawyer is being retained by the group, and that its interest is in having a particular point of law ventilated, as well as (or instead of) advancing the position of the particular member who was selected as a nominal plaintiff. If the lawyer is prepared to acknowledge this reality, he will be cool to settlement and

<sup>42</sup> *Id.*, Rule 8, para. 12.

<sup>43</sup> *Cf. R. v. Shumiatcher* (1967), 64 D.L.R. (2d) 24 (Sask, Q.B.); Hazard, *Securing Courtroom Decorum*, (1970) 80 Yale L.J. 433.

<sup>44</sup> C.B.A., C.P.C., Rule 5.

<sup>45</sup> *Id.*, Rule 2, para. 5; Rule 8, para. 6

tend to push the case forward for authoritative adjudication. The point I make is simply that the use of the courts to advance group interests may place the lawyer-reformer in a very awkward position.<sup>46</sup>

Nor should it be thought that the only possible conflict in which the lawyer might find himself is between individuals and their groups. He himself may be involved in an "outside interest" other than the practice of law, such as a career in politics or writing or broadcasting, through which he advances his reformist views. But the lawyer must not allow his involvement in an outside interest to impair the exercise of his independent professional judgment on behalf of his clients. Here the Code prescribes candour: "an overriding social, political, economic or other consideration arising from the outside interests [which] might influence the lawyer's judgment [is required to be disclosed]."<sup>47</sup> The actual application of this rule is, again, problematic. For example, a lawyer who personally is committed to freer abortion laws may be asked to prosecute someone charged under the present law; a lawyer involved in the women's movement and committed to seeking legislative changes to facilitate rape convictions, may be asked to defend an alleged rapist.<sup>48</sup> Disclosure of her outside views would appear to be required, but it is obviously an awkward situation for both lawyer and client.

Turning from litigation to political activity, the Code imposes only a few limits on reformers. Lawyers seeking changes in the law must disclose whether they are acting in their own interest, that of a client, or in the public interest:<sup>49</sup> lobbyists must not masquerade as academic critics. If the reform-minded lawyer should actually win public office, he will be held to standards of conduct as high as those required of practitioners. But the Code does not purport to deal with "the execution of the official responsibilities of a lawyer holding public office" except to the extent that his conduct in office "reflects adversely on his integrity or his professional competence."<sup>50</sup> This proviso is important because it

<sup>46</sup> D. Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation* (1976), 85 Yale L.J. 470.

<sup>47</sup> C.B.A., C.P.C., Rule 6, para. 2.

<sup>48</sup> P. Zylberberg, *Writ Served in Glick Wrongful Dismissal Lawsuit* (1976), 3 Law Union News No. 2 (radical lawyer fired over refusal to defend accused rapist); McCormack, Chernovsky and Omatsu, *How Should a Progressive Practice Be Run?* (1976), 3 Law Union News No. 2; P. Zylberberg, *The Rapist: Your Kind of Client?* 2 Law Union News No. 4.

<sup>49</sup> C.B.A., C.P.C., Rule 9, para. 4.

<sup>50</sup> *Id.*, Rule 9, para. 8.

recognizes that public officials may have to be outspoken in rallying support for their political objectives, and to engage in otherwise impermissible criticism of laws and legal institutions.

And finally, what of reform within the profession itself?

Recently many reformers have focussed upon the need to develop new systems for the delivery of legal services. The Code of Professional Conduct generally appears to endorse efforts to improve delivery systems: "Lawyers" it says, "should make legal services available to the public in an efficient and convenient manner."<sup>51</sup> But this general admonition is hedged about with a number of qualifying commandments which could conceivably detract from its effectiveness. Advertising, fee-cutting, even high public visibility, are all discouraged.<sup>52</sup> However, certain privileges are extended to lawyers acting on behalf of "a community service group" or otherwise seeking "in good faith" to make legal services "available more efficiently, economically and conveniently than they would otherwise have been and . . . not primarily advancing [their] own economic interests."<sup>53</sup>

In one critical respect, the new Code leaves reformers with cold comfort. Lawyers preserve their "general right to decline particular employment" although they are told to "be slow to exercise [it] if the probable result [would] leave the potential client unrepresented."<sup>54</sup> A lawyer for example, should not decline to act because a cause is "unpopular or notorious."<sup>55</sup> But the fact remains that he may do so; no lawyer will be disciplined for declining the retainer of a client of whose cause he disapproves.

The most likely result of the new Code's provisions is that lawyers will continue to gravitate towards clients with whose views they feel comfortable. Reformist clients will most often be represented by reformist lawyers. This likelihood underlines the need for a pluralistic bar. Uniformity of belief, background and demeanor, coupled with the right to decline employment, would undoubtedly leave many potential clients without effective representation. In one respect, the new Code makes an important advance in securing diversity within the bar. Discrimination on the grounds of race, creed,

<sup>51</sup> *Id.*, Rule 13.

<sup>52</sup> *Id.*, Rule 13, para. 4-8, but see *Merchant v. Law Society of Saskatchewan* (1972), 32 D.L.R. (3d) 178 (Sask. C.A.).

<sup>53</sup> *Id.*, Rule 13, para. 10; cf. *op. cit. supra*, note 15, Ruling 3(3).

<sup>54</sup> C.B.A., C.P.C., Rule 13, para. 9.

<sup>55</sup> *Id.*, Rule 13, para. 4.

colour, national origin or sex is specifically outlawed both in the employment of lawyers and articulated students, and in other relationships amongst members of the profession.<sup>56</sup>

I have taken the trouble of examining the Code of Professional Conduct in some detail because it represents one of the few authoritative statements of the ideology of the legal profession. While undoubtedly other provisions of the Code demonstrate a lingering conservatism, and while in a given situation a particular reformist lawyer might be found to have violated a particular norm of professional conduct, on balance there is in the bar's system of formal beliefs much that would legitimate, and little that would inhibit, the activities of a reformist lawyer.

Many of these provisions have emerged as part of the bar's official ideology only with the adoption of the new Code, but the way has been paved for their official acceptance over the years by the statements of many authority figures within the profession to the same effect. Does this mean that all lawyers are now deeply committed to the cause of reform? Probably not.

### III

Like any other organized group, the legal profession does not live exclusively by its formal rules. To be sure, these rules represent a statement of aspiration. They are used to educate members of the group and to impress outsiders with its sincerity. But there are other, informal influences which often overwhelm the formal rules. Collectively, these influences can be described as the culture of the profession, the third main context within which I intend to explore the role of the lawyer as reformer.

Let me explain what I mean by the culture of the profession.<sup>57</sup> The culture of a society defines certain values as fundamental; these values imply that particular norms of behaviour will be followed; and symbols are adopted to remind us that we are to adhere to these values and behave in an acceptable fashion. Sometimes the values, behaviour patterns and symbols are officially promulgated and enforced; often they come to be widely, even universally, ac-

<sup>56</sup> *Id.*, Rule 14, para. 4; *op. cit. supra*, note 15, Ruling 36.

<sup>57</sup> See generally Goode, *Community Within a Community: The Professions* (1957), *Am. Soc. Rev.* 194; Lortie, "Professional Socialization", in Vollmer & Mills eds. *Professionalization*, (Englewood Cliffs, N.J.: Prentice Hall, 1966) at 98; E.C. Hughes, *Men and Their Work* (Glencoe, Illinois: Free Press, 1958).

cepted by a slow evolutionary process; sometimes the same processes produce cultural change. A profession can be seen as a culture within the larger culture, sharing its values, norms and symbols, to be sure, but also developing its own distinctive characteristics. It is this sense of distinctiveness which causes members of the profession to set themselves apart from laymen, and which causes laymen to perceive professionals as a group of whom a typical behaviour can be expected.

At this juncture, I do not mean to indicate whether a distinctive professional culture is, on balance, good or bad. I merely want to make the point that it does exist, and must be reckoned with as an important force in shaping the reformer's role within the legal profession.

What are the fundamental values of the legal culture? One author's attempt to describe in universal terms the values of all professional cultures seems to apply with particular accuracy to the Canadian bar at this moment in time:

Foremost amongst [the profession's] values is the essential worth of the service which the professional group extends to the community. The profession considers that the service is a social good and that community welfare would be immeasurably impaired by its absence. . . . [T]he proposition that in all service-related matters the professional group is infinitely wiser than the laity is regarded as beyond argument. Likewise nonarguable is the proposition that acquisition by the professional group of a service monopoly would inevitably produce social progress. . . .<sup>58</sup>

Set this description beside the Preface to our new Code of Professional Responsibility, and see how nearly congruent the two are:

The legal profession [says the Preface to the Code] has developed over the centuries to meet a public need for legal services. . . . The Code of Professional Responsibility . . . can only be understood and applied in the light of its primary concern for the public interest. This principle is implicit in the legislative grants of self-government [to the provincial law societies]. . . .<sup>59</sup>

Here we encounter some convictions which run deep into the culture of the profession, and which very much affect the role of the reformer.

<sup>58</sup> Greenwood, "The Concept of Professionalization" in Vollmer & Mills, *op. cit. supra*, note 56 at 16.

<sup>59</sup> Preface, C.B.A., *C.P.C.* at vii.

Consider, first, our commitment to the essential worth of lawyers and law in society. We are very fond of the phrase "the rule of law and not of men." Of course everyone deprecates arbitrary, whimsical, bureaucratic action, and favours predictable, constitutional official conduct. But note how we have framed the phrase: we say we support the rule of "law", although it is lawyers who are actually ruling. The implication is that when a particular group of men, called lawyers, are performing their particular service they are no longer mere men, with all the human failings of mere men. They are now servants of an abstraction called law and executors of a social order they interpret but do not construct.

The point is that we lawyers have made a non-controversial cliché into a rallying cry, at least in part because it verifies and legitimates our social role. Reforms which seek to assign traditional lawyer roles to non-lawyers who may have other relevant skills to deploy are transgressions, not against the rule of lawyers, but against the rule of law. And lawyers who advocate such reforms may be seen by their colleagues as striking at the heart of their profession, as blaspheming against its holy writ. A recent debate, which I have already mentioned, saw a meeting of Canadian lawyers solemnly vote to endorse automobile accident litigation as the birthright of free Canadians.<sup>60</sup> Better or worse than the proposed alternative compensation schemes it may be — but a civil liberty? Hardly.

The profession's wisdom in matters related to client service is, as well, increasingly called into question. Much of the public rhetoric of leading bar spokesmen recently has been devoted to preserving the independence of the bar from public control.<sup>61</sup> The profession's fight to preserve its traditional forms of self-government, and to control the delivery of legal services through a profession-administered Legal Aid Plan, can both be interpreted as simple self-serving manoeuvres designed to protect professional privileges and incomes. I do not view the bar's efforts in that way. Rather, I think that the profession is responding passionately to a challenge to values which it has always accepted on faith, a

<sup>60</sup> Canadian Bar National, March 22, 1975, *No-Fault For Ontario Unlikely*, at 3.

<sup>61</sup> S.L. Robins, *Independence of the Legal Profession* (1971), 5 Law Society of Upper Canada Gazette 205; S.L. Robins, *Our Profession and the Winds of Change* (1972), 6 Law Society of Upper Canada Gazette 137; S.L. Robins, *Our Profession on Trial* (1973), 7 Law Society of Upper Canada; *Independent Legal Profession Absolutely Necessary*, Canadian Bar National, Sept. 13, 1974, at 5. For a general treatment of the subject, see Orkin, *op. cit. supra*, note 14.



faith which in times past was apparently shared by the public. Now when that faith is challenged, its defenders are often unable to meet criticism by rational responses, because they are used to regarding their values as so fundamental as not to require a defence.

But if lawyers understand nothing, they do understand the logic of enlightened self-interest. The bar has instinctively grasped the possibility of compromise, of yielding a little form in exchange for keeping much substance, of yielding some substance rather than losing all. The issue of professional self-government nicely illustrates the point. In 1970, a new statute was enacted in Ontario requiring the Law Society to give an annual account of the manner in which the profession was discharging its public responsibilities; this account was to be reviewed by a body which embraced some lay members.<sup>62</sup> This statute was a more-or-less formal compromise agreed to by the Law Society in order to forestall demands for more drastic incursions on its traditional prerogative of self-government. By 1973, this concession of form was shown to be unworkable,<sup>63</sup> and it was replaced by a modest concession of substance, which brought a small number of lay representatives directly onto the profession's governing body, the benchers.<sup>64</sup>

However, I do not mean to suggest that the abandonment of the bar's stonewall defence of its own autonomy was solely the product of tactical concessions. To some extent, there has been a change of heart within the profession. The logic of public accountability and participation obviously did convince some key decision-makers in the profession, and they have been able to secure acceptance of changes which a decade ago would have been considered rank heresy.<sup>65</sup>

"Heresy" is a word which I have chosen deliberately. In societies with deeply-rooted value systems, the fate of the heretic is seldom pleasant. It may be as extreme as execution or exile, or as relatively innocuous as mere social isolation or disapproval. But the heretic will seldom simply be accepted as a good fellow with odd views. The legal profession tends

<sup>62</sup> The Law Society Act, R.S.O. 1970, c.238, s.26(2)(h).

<sup>63</sup> Robins, *The Future of the Law Society Council* (1973), 7 *Law Society of Upper Canada Gazette* 87; Robins, *The Treasurer Reports* (1973), 7 *Law Society of Upper Canada Gazette* 97, at 109-110.

<sup>64</sup> S.O. 1973, c.49, ss.1,2.

<sup>65</sup> *Independence of the Legal Profession*, Federation of Law Societies Bulletin, April 28, 1973, at 3.

to deal leniently with its heretics, but certainly does not clasp them to its bosom.

Anyone who has attended a discussion sponsored by a legal organization on a topic involving the bar's fundamental beliefs will know what I mean. The sympathy of the audience is usually clear; the "heretical" point of view is often represented by someone who is not a member of the organization, or at least of its elite; that person is often young, or an academic, or a known controversialist who is a lawyer-politician or a lawyer-journalist. Lawyers with these heretical views are seldom found in the upper reaches of prestigious law firms, seldom recognized as experts (even in their own speciality), seldom involved in the social circles and professional organizations of more conventional lawyers. I would not suggest that they are regularly denied professional courtesies by colleagues, court officials or judges, but I would guess that from time to time, especially in the heat of the battle, they do not receive the same degree of tolerance and cooperation that they otherwise might.

To be sure, there is a wide gap between the mere advocacy of heretical or "deviant" beliefs, and professional activity implementing those beliefs. It is when belief is translated into action, and particularly into symbolic action, that the reformer may encounter the greatest difficulty.<sup>66</sup>

Amongst the symbols of the profession, several are easily recognized as badges of membership by lawmen and lawyers alike: conservative dress, well-appointed offices, and the use of a legal dialect whose vocabulary embraces characteristic double negatives, circumlocutions and phrases such as "with respect", "in consideration of which", or "*per se*". I do not mean to say that all lawyers dress alike, have identical offices, or talk the same way. But I do suggest that when unconventional belief is coupled with conduct which affronts accepted symbols, there is a substantial likelihood that the individual will be treated as a deviant or heretical member of the profession. It is possible, I am sure, to question the law society's right to control legal aid, and yet remain a member in good standing of the profession's elite. It is possible to wear long hair, and dress and speak quite informally, yet practice in some well-established law firms. But I suspect it is much more difficult to do both of

<sup>66</sup> See Greenwood, *op. cit.*, *supra*, note 57 at 17; L. Edelman, *The Symbolic Uses of Politics* (Urbana: University of Illinois Press 1964); Arnold, *The Symbols of Government* (New York: Harcourt, Brace and World, 1935).

those things at once and still be regarded as "sound" or "professional".<sup>67</sup>

Someone who combines known agnosticism about the profession's values with professional behaviour and symbolic conduct which give offence is likely to feel, justifiably enough, that he is not really part of the profession. And this feeling, in turn, may well produce a defensive reaction on his part which further isolates him.

Consider this hypothetical chain of events. Lawyer X dresses informally and behaves casually, as a matter of personal preference rather than political conviction. Some conservative lawyers have the notion that this demeanour is characteristic of radicals. X is therefore perceived to be a radical, and is accordingly made to feel unwelcome in conventional legal social circles. Seeking a sympathetic milieu, he gravitates towards others whose lifestyle coincides with his own. Many of those who share his tastes do in fact have radical ideas and he is influenced by them. He has now fulfilled the originally erroneous prophecy of his conservative colleagues.

Or consider another example. Lawyer Y's outward appearance is quite conservative. However, he develops a critical view of his firm's reluctance to act in public interest litigation or its commitment to the ideological position of its major clients. In due course, his criticism leads to a break with the firm: senior partners and clients will not work with him; his career prospects are dim; and his struggle to preserve his principles is more easily waged in a more supportive practice situation with like-minded young colleagues. In this new situation, he takes on the personal coloration of his environment to demonstrate both his repudiation of his former firm and his commitment to his new life.

This tendency of a culture to enforce conformity thus produces a counter-culture. Partly because its members are exiled from the mainstream of the profession, partly because they seek mutual support, a small but visible counter-culture is emerging in the legal profession. Like the general social and professional culture, this legal counter-culture has its own values, behaviour norms and symbols. One of its values, to somewhat overstate the case, is that conventional legal institutions have failed society and need to be radically

<sup>67</sup> See, e.g., *Gaudy Garb is Criticized*, Canadian Bar National, June 8, 1974, at 16; Silverman, *How to Select a Good Articling Position* (1971), 19 Chitty's L. Rev. 344.

transformed.<sup>68</sup> Translated into behavioural norms, this value is sometimes expressed by an aggressive manner in the courtroom, outspokenness in the press, and participation in social or political movements of the left.<sup>69</sup> And its symbols are beards, or jeans, or law offices outside the usual professional precincts. Indeed, even the decision to call the counter-culture organization the "Law Union" can be seen as a symbol of militancy, of proletarian style, which is sure to offend the legal establishment.<sup>70</sup>

One of the choices confronting the lawyer-reformer, then, is whether he wishes to live in the legal culture, or in the counter-culture. On the one side, there is the risk that if the individual remains in, though not of, the mainstream, he will slowly and subtly surrender his beliefs and yield to various temptations: the temptation of money, of course, but also of prestige and — most seductive — of the professional challenges offered by a sophisticated and wealthy clientele. On the other side, there is the risk that total immersion in the counter-culture exacts too high a price: the stern discipline sometimes exercised by an embattled minority upon its members; the frustration of fighting too many battles, all the time, and with no real prospect of fundamental change; the dissatisfaction of never having enough time or money to do professional tasks thoroughly.

Two influences, occasionally contradictory, may help to resolve the lawyer-reformer's dilemma.

First, there is the influence of clients. The legal culture and counter-culture are not entirely self-generating and self-sustaining. In their own way each reflects somewhat the culture of the clientele with which it is associated. The dress, speech and office decor of the conventional lawyer is in part, determined by the expectation of his middle class and com-

<sup>68</sup> See *Law Union Constitution* (1974), 1 *Law Union News*, No. 6 (new series); P. Harris, "You Don't Have To Love The Law To Be A Lawyer", in J. Black ed., *Radical Lawyers*, (New York: Hearst Co., 1971) at 93; H. di Suvero, "The Movement and The Legal System", in J. Black ed., *Radical Lawyers*, (New York: Hearst Co., 1971) at 51; N. Dorsen, *The Role of The Lawyer in America's Ghetto Society* (1972), 6 *Law Society of Upper Canada Gazette* at 118.

<sup>69</sup> See, e.g., "Interview with William Kunstler", in J. Black ed., *Radical Lawyers*, (New York: Hearst Co., 1971) at 301; Copeland, *Why a Left Wing Lawyer Needs the Law Union* (1974), 1 *Law Union News*, No. 5 (new series).

<sup>70</sup> *Law Union Constitution: Resolution of Political Purpose* (1974), 1 *Law Union News*, No. 6 (new series); Zylberberg, *B.C. Law Union Adopts Minimum Basis of Unity* (1974), 1 *Law Union News*, No. 6 (new series) (defining itself as "an association of legal workers who share an anti-capitalist and anti-imperialist political analysis . . . committed to struggle against sexism, racism, professionalism and elitism in . . . [its members'] . . . work.").

mercial clients that their lawyer will have a certain appearance and behave in a certain way. So too is that of the counter-culture lawyer. However, it is also true that some middle class clients are intimidated by formal and opulent surroundings, and that some working class clients may not wish to see their lawyer dressed in jeans. Present and emerging patterns of general social roles and relationships, hence of client expectations, may ultimately assist the breakdown of stereotypes, and of other cultural symbols, within the profession. In a more pluralistic social atmosphere, the reformer's prospects for survival are enhanced.

But the influence of clients becomes increasingly important as access to them becomes increasingly difficult. With the rapid expansion of the profession has come increasing concern, especially amongst its new recruits, for job prospects. The limited number of positions with prestigious large firms seems to be forcing more and more young lawyers to open their own offices, and to cater for the modest needs of poor and middle class, as opposed to corporate, clients. Such careers are not new to the legal profession; they are simply returning to view after several decades of relative eclipse.<sup>71</sup> In the present context, however, what is important is the impact of changing patterns of practice upon lawyer-reformers.

Either of two tendencies might prevail. On the one hand, involvement with the realities of general practice might produce acceptance of law as a modest, indeed conservative, career and undermine reformist tendencies. On the other, enforced alienation from the challenges and rewards of the prestigious firms may have a radicalizing influence. But it is certain that in one way or the other, the client culture in which increasing numbers of young lawyers are to be immersed will generate profound changes in the culture of the profession.<sup>72</sup>

Second, there is the influence of certain values deeply rooted in the legal culture. The value of service is one of these, due process is another, and professional competence a third.

So far as service is concerned, once the profession comes to perceive — as it is slowly perceiving — that some aspects

<sup>71</sup> Arthurs, Williams & Taman, *The Toronto Legal Profession: An Exploratory Survey* (1971), 21 U. of T.L.J. 498 at 522, *et seq.*

<sup>72</sup> The interaction of legal and client cultures, and of professional recruitment patterns, is brilliantly explored in J.A. Auerbach, *Unequal Justice — Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976)

of legal culture stand in the way of service, and have ceased to be functional, they will be swept aside. Historic precedents include the refusal of early Canadian lawyers to establish a divided profession or to wear wigs.<sup>73</sup> A contemporary example is the recent relaxation of traditional prohibitions against advertising to permit community legal services to reach out more effectively to their prospective clients.<sup>74</sup>

So far as due process is concerned, the profession is reluctant to mount formal disciplinary proceedings against someone, however offensive or abrasive, without proof of some specific violation of its formal rules.<sup>75</sup> And it has been circumspect in using the open-ended power it is given in almost all provincial statutes to discipline for either "professional misconduct" or "conduct unbecoming" a lawyer.<sup>76</sup> This due process-based restraint tends to give considerable latitude to deviant lawyers, and to avoid what might otherwise be regrettable confrontations between the mainstream and the counter-culture.

Respect for professional competence is a third value which may help to permit the lawyer-reformer to feel at home within the profession. Conceding that he sometimes may not be given his professional due because of perceived heretical tendencies, the reformer may come to win respect by being effective. But this may place him once again in a dilemma. With respect comes the prospect of a lucrative practice; with such a practice, reformist activity may either be a luxury for which there is no longer time, or a hypocritical hobby, soon abandoned because it comes to lack credibility.

Set against these values is a behavioural norm which is widely practiced by lawyers — the norm of deference. But deference is not one of those qualities which comes easily to reformers. Often their motivation in pursuing the cause of reform is a feeling of hostility, even contempt, towards systems and structures which they perceive as unfair, inefficient or insensitive. It is therefore difficult for reformers to act deferentially towards individuals who embody those systems and institutions, although any of them may have redeeming personal or professional virtues: the judge who is reactionary but patient and courteous, the senior partner

<sup>73</sup> B. Laskin, *The British Tradition in Canadian Law* (London: Stevens & Sons, 1969) at 31.

<sup>74</sup> C.B.A., *C.P.C.*, Rule 13, para. 7; Professional Conduct Handbook, *op. cit. supra*, note 15 ruling 3(3).

<sup>75</sup> Orkin, *op. cit. supra*, note 14.

<sup>76</sup> Preface, C.B.A., *C.P.C.* at vii.

who is insensitive but brilliant, the junior who is offensively ambitious, but who undeniably gets the job done quickly and accurately.

This tendency to define people in terms of their perceived roles is not restricted to reformers, of course, but it does complicate their status within the profession. For the reformer often does not merely attack "the system" in the abstract, but as well individuals who are liked and admired and virtues which are prized.

So far as individuals are concerned, it is of course true that some of history's most despicable characters liked dogs, played sonatas or were genuinely devoted to their profession or craft; these admirable personal qualities do not cancel out villainy. But I am not referring to villains within the legal profession. I am describing individuals who merely do their daily work well, in accordance with the prevailing ethic, often without much thought about its ultimate social impact, perhaps with limited ability to change the course of events, but with no malice in their hearts. Many of us are guilty of failing to give these individuals their due: we have made "corporation lawyer" a pejorative term, a synonym for "hired gun"; we have excoriated judges as "tools of the corporate elite". We have often overstated our case, and thus earned the predictable personal animosity of individuals who, by their own lights, have given much to their profession and society. And this personal animosity, in turn, is translated into hostility towards those who abused them, and the causes espoused by their critics.

Perhaps the rhetoric of reform has been counterproductive in this respect. Perhaps some of these individuals might have been won over by evidence or argument, or at least persuaded to be neutral rather than hostile to reform. And yet I do not wish to make too much of the point. The reformer's journey is a lonely one, and it is often fueled by indignation, a highly volatile substance. If reformers cannot become angry from time to time, they may be unable to sustain their momentum. And, to look at the matter the other way 'round, if personal relationships are to take priority over principles, there is a ready-made reason for abandoning all efforts to change the status quo.

I have also mentioned the failure of reformers to be deferential to virtues traditionally prized within the profession: courtesy, hard work and profession skill.

Courtesy is, of course, related to the preservation of personal relationships, but it is something different.<sup>77</sup> It is a way of depersonalizing or objectifying a relationship, of reminding both parties that however they may feel towards each other, they must still transact their business in an orderly fashion. At a minimum, courtesy may thus make for efficiency. At a maximum, however, it may produce a better substantive result. As a French philosopher once remarked, "many a man became a good man by leading a life of hypocrisy." By pretending to be good, by imitating goodness, people may internalize the values of the role and actually become good. For "goodness", in the context of the courts we may substitute "fairness", or in the context of the law office "social awareness". Courtesy may have been sold short by reformers.

So too hard work and professional skill. I do not mean, to be sure, that reformers are either lazy or incompetent. Far from it. Many work an exhausting schedule and with admirable effectiveness. But as abstract virtues, hard work and professional skill are often disparaged.<sup>78</sup> This is because both of them are lifestyle issues. The professional has traditionally been career-oriented. He has been too willing, too often, to sacrifice friends, family, cultural interests and community involvement because of an all-consuming preoccupation with his career. This ordering of personal priorities is seen by reformers as a reflection of the general malaise of society: business is the highest virtue; all else is secondary. Moreover, careers pursued without regard to the world around us, or to inner personal development, are unlikely to produce socially responsive or humane professionals. The decision to make a career is thus interpreted accurately, by both reformer and conventional lawyer, as the decision to accept the status quo.

It need not be so. Hard work and professional skill are important for both reformers and conventional lawyers. The problem is that pursuit of a career may reach the point of diminishing returns, unless it is linked to more humanistic activities. And such activities, in turn, are potentially subversive of the status quo. The lawyer who is close to his family may become involved in issues of women's rights, educa-

<sup>77</sup> *Id.*, Rule 16.

<sup>78</sup> See, e.g., Zylberberg, *Mind Survival for Law Students* (1974), 1 Law Union News, No. 5 (new series); Copeland, *Why a Left Wing Lawyer Needs The Law Union* (1974), 1 Law Union News, No. 5 (new series); Swaigen, *Articling and Bar Ad Course Exposed* (1974), 1 Law Union News, No. 5 (new series).



tional reform or police harrassment of young people. The lawyer who reads widely or patronizes the arts may become motivated to seek reforms in the laws of censorship. The lawyer who belongs to a ratepayers' group may be drawn into community action. These reformist issues may become as professionally significant for the lawyer as the conventional problems of his conventional clients.

#### IV

"To the barricades" has been the revolutionists' traditional rallying cry. It has seldom summoned forth many lawyers; only a modest contingent marches to the drumbeat of reform. I have tried to point out that it is not the formal institutions and ideology of the bar which determine the fate of the lawyer-reformer so much as the culture of the profession. Perhaps I might finally suggest that law schools have the potential, only partly realized, to do much for the cause of reform. They cannot change the law society or amend the Code of Professional Conduct, but they can play a critical role in reshaping the culture of the profession — if they know why, if they wish to, if they dare to.