

(in some relevant way) different from other social areas of ethical investigation. In his article, John-Christian Smith argues that the professions are different. Beginning with a characterization of the professions similar to the one offered by Bayles, Smith claims that some aspects of professional conduct are exempted from the universal moral norms. In other words, the ethical rules appropriate for the professions are in some ways separate from the ethical rules appropriate to other contexts. Smith discusses the reasons for his position as well as different types of "separatism."

In contrast, Don Welch argues that professional ethics is "ordinary" in that it is just like all other areas of applied ethics. He describes some reasons some people provide for thinking otherwise and then challenges each. Most notably, professional ethics is often thought to be distinct due to the intuition that professionals should be held to higher standards than other members of society. Welch suggests that upon examination this intuition is probably false, but even if it is true, it is a function of individuals choosing to occupy certain roles; the "ordinariness" of professional ethics is clear even in this latter case, since all of us—in all aspects of our lives—choose certain roles that carry with them ethical obligations we would not otherwise have. Another way of stating the point is that professional obligations, like all other sorts of ethical obligations, ultimately derive from universal moral considerations. Welch's conclusion thus stands in contrast to the separatism argued for by Smith in the previous article.

The position one takes on separatism or ordinariness may have some implications for the subject of professional excuses. In 1999, for example, there were 98,000 deaths that resulted from apparent physician error. When this occurs the physician is initially held accountable for the death, and if accountability is to be eliminated or transferred to another party, the physician must provide some sort of excuse. Banks McDowell describes different types of excuses that physicians and indeed all professionals sometimes furnish, and he argues that there are fundamental problems that are masked by such excuses. Until these problems are addressed, McDowell writes, "The uses of excuses to evade personal responsibility contributes to the marginalization of the professional ethics."

## What Is a Profession?

MICHAEL D. BAYLES

NO GENERALLY ACCEPTED DEFINITION of the term *profession* exists, yet a working concept is needed for our study of professional ethics. Because our purpose is to consider common ethical problems raised by and within professions, a good definition

will delineate characteristics of occupations with similar ethical problems. (These characteristics may prove to be related to some of those problems in important ways.) One need not characterize professions by a set of necessary and sufficient fea-

*Michael D. Bayles was Professor of Philosophy, Florida State University. Professional Ethics, 2nd edition (Belmont, CA: Wadsworth, 1989), pp. 7-13. Reprinted with kind permission of Thomson Global Rights Group.*

tures possessed by all professions and only by professions.<sup>1</sup> The variety of professions is simply too great for that approach. Rather, some features can be taken as central or necessary for an occupation to be a profession, and others as simply common to many professions and as raising similar ethical concerns.

Three central features have been singled out by almost all authors who have characterized professions. First, a rather extensive training is required to practice a profession. Lawyers now generally attend law school for three years, and in the past they underwent years of clerkship with an established lawyer. Many, if not most, professionals have advanced academic degrees, and one author has plausibly contended that at least a college baccalaureate is necessary to be a professional.<sup>2</sup>

Second, the training involves a significant intellectual component.<sup>3</sup> The training of bricklayers, barbers, and craftspeople primarily involves physical skills. Accountants, teachers, engineers, lawyers, physicians, and nurses are trained in intellectual tasks and skills. Although physical skill may be involved in, for example, surgery or dentistry, the intellectual aspect is still predominant. The intellectual component is characteristic of those professionals who primarily advise others about matters the average person does not know about or understand. Thus, providing advice or service rather than things is a characteristic feature of the professions.

Third, the trained ability provides an important service in society. Physicians, lawyers, teachers, accountants, engineers, and architects provide ser-

vices vital to the organized functioning of society—which chess experts do not. The rapid increase in the numbers of professions and professionals in the twentieth century is due to this feature. To function, technologically complex modern societies require a greater application of specialized knowledge than did the simpler societies of the past. The production and distribution of energy requires activity by many engineers. The operation of financial markets requires accountants, lawyers, and business and investment consultants. In short, professions provide important services that require extensive intellectual training.

Another common and perhaps central feature is credentialing. A process of certification or licensing often exists. Lawyers are admitted to the bar, and physicians receive a license to practice medicine. However, licensing is not sufficient to make an occupation a profession. One must be licensed to drive a car, but a driver's license does not make one a professional driver. Many professionals need not be officially licensed. College teachers are not licensed or certified, and many accountants are not certified public accountants. However, in many of these occupations, credentials are needed to be employed. Thus, almost all college teachers have advanced degrees in their fields, and accountants are distinguished from bookkeepers by their college education. Credentialing refers back to the extensive training; such training is needed to obtain a position in the field.<sup>4</sup>

A common feature to professions is an organization of members.<sup>5</sup> All major professions have organizations that claim to represent them. These organizations are not always open to all members of a profession, and competing organizations sometimes exist. Some bar associations, at least in the past, did not admit all lawyers. The organizations work to advance the goals of the profession—health, justice, efficient and safe buildings, and so on—and to promote the economic well-

<sup>1</sup>Wilbert E. Moore recognizes this point and offers a scale of professionalism; see *The Professions: Roles and Rules* (New York: Russell Sage Foundation, 1970), pp. 4–5. The definition technique used here could be modified to a scale system by assigning points to the possession of those characteristics that are often found in professions. Both the scale system and that used here agree that an occupation may be a profession yet lack some features found in most professions.

<sup>2</sup>Ibid., p. 11.

<sup>3</sup>Professionals “profess to know better than others the nature of certain matters, and to know better than their clients what ails them or their affairs. This is the essence of the professional idea and the professional claim.” (Everett C. Hughes, “Professions,” in *The Professions in America*, ed. Kenneth S. Lynn (Boston: Beacon Press, 1965), p. 2.)

<sup>4</sup>See Freidson, *Professional Powers: A Study of the Institutionalization of Formal Knowledge* (New York: Harper & Row, 1970), pp. 59–60, requiring that to be a profession working depend on credentials based on higher education.

<sup>5</sup>See Moore, *The Professions*, pp. 9–10; Roscoe Pound, “What Is a Profession? The Rise of the Legal Profession in Antiquity,” *Notre Dame Lawyer* 19 (1944), p. 204.



being of their members. Indeed, one author has stated that "the ethical problem of the profession, then, is . . . to fulfill as completely as possible the primary service for which it stands while securing the legitimate economic interest of its members."<sup>6</sup> If this claim is even approximately correct, one must expect professional organizations to be deeply involved in securing the economic interests of their members. Nevertheless, such organizations do generally differ from trade unions, which are almost exclusively devoted to members' economic interests. One does not expect to find carpenters' or automobile workers' unions striking for well-designed and constructed buildings or automobiles, yet public school teachers do strike for smaller classes and other benefits for students, and physicians and nurses for improved conditions for patients.

Another common feature of the professional is **autonomy in his or her work**. Given the present concern with reconciling professions and social values, how far such autonomy should extend is an open question. The minimum lies perhaps in the tasks of the work itself.<sup>7</sup> For example, surgeons are free to use their judgment about the details of operating procedure and lawyers to use their judgment about how to draft a contract, provided they remain within the bounds of acceptable professional practice. If professionals did not exercise their judgment in these aspects, people would have little reason to hire them. However, many professionals now work in large bureaucratic organizations in which their autonomy is limited by superiors who direct their activity and overrule their judgments. Nurses are often thought to have an equivocal status as professionals simply because physicians can overrule their judgments about specific aspects of their work. In these cases, however, an element of autonomy remains because the professionals are expected to exercise a considerable degree of discretionary judgment within the work context. Thus, an element of autonomy is a com-

mon and partially defining feature of a profession, though it might not be a necessary feature and the extent of such autonomy is debatable.

One may bias an investigation of professional ethics by using normative features (those saying how matters should be) to define or characterize professions. One common bias is to characterize professionals as primarily devoted to **providing service and only secondarily to making money**.<sup>8</sup> Such claims may be legitimate contentions about what should govern professions and motivate professionals, but they do not define the professions. If lawyers are, in the words of one of the earliest American writers on legal ethics, George Sharswood, "a hord of pettifogging, barratrous, custom-seeking, money-making" persons, they nonetheless constitute a profession.<sup>9</sup> An extreme example of the use of normative features to define professions is the following "consideration" presented by Maynard Pirsig: "The responsibility for effectuating the rendition of these services to all that need them and in such a manner that the public interest will best be served is left to the profession itself."<sup>10</sup> In this one condition, Pirsig manages to assume three different normative principles. First, services should be provided to all who need them. Second, the services should be provided so as best to promote the public interest. Third, the profession itself should be the sole judge of the method of achieving the first two principles. Even if these normative principles are correct, they should not be erected into the defining features of a profession.

Use of these criteria exclude some occupations that claim professional status. For example, realtors must be licensed, perhaps they perform an important service, but they do not meet the criterion of extensive training. Similarly, most administrators do not qualify. An extensive training in

<sup>6</sup>R. M. MacIver, "The Social Significance of Professional Ethics," in *Cases and Materials on Professional Responsibility*, ed. Maynard E. Pirsig (St. Paul, MN: West, 1965), p. 48.

<sup>7</sup>See Freidson, *Profession of Medicine: A Study of the Sociology of Applied Knowledge* (New York: Harper & Row, 1970), pp. xvii, 42, 70, 82.

<sup>8</sup>Wade, "Public Responsibilities of the Learned Professions," in *Cases and Materials on Professional Responsibility*, p. 38; MacIver, "Social Significance," p. 48. Moore's use of this feature as one item on a scale is less objectionable because the service orientation is not a necessary feature; see *The Professions*, pp. 13-16.

<sup>9</sup>George Sharswood, *An Essay on Professional Ethics* (Philadelphia: George T. Bird, 1844; reprint 1930), pp. 147-48.

<sup>10</sup>Pirsig, p. 43.



business administration is not a required credential for a position. Indeed, many administrators come from other professions such as law, engineering, and accounting. Two exceptions here are public school and perhaps hospital administration.

Similarly, other occupations have an equivocal status as professions. Some fields such as journalism are still quite open to people with training in other areas. For example, the syndicated columnist George Will has a Ph.D. in political science. Moreover, although college and university teachers must have advanced degrees, their training is not in teaching. One graduate dean turned down a request from a history department to grant graduate students credit for a course on teaching history! He did not think such a course appropriate, even though most history Ph.D.s go into teaching.

It is useful to distinguish between an occupation being a profession and it undergoing professionalization. The latter involves developing standards of performance and some training in them. For example, the professionalization of law enforcement officers means training personnel in techniques and methods and evaluating their performance against standards. This contrasts with the previous system, still common in sheriffs and some of their deputies, of being well liked and elected. The professionalization of law enforcement need not imply that it constitutes a profession. College level training is not yet required, although it is becoming increasingly common.

Two cross-cutting distinctions that are important for some ethical issues can be made among professionals. The first is between those who are self-employed and those who are employees. Many, if not most, physicians and lawyers are self-employed. Teachers and most engineers, journalists, and social workers are employees in large organizations. Self-employed professionals confront many ethical problems related to acquiring clients that employed professionals do not usually face. However, employee professionals confront ethical issues in their relations to their employers that self-employed ones do not.

The second distinction is between professionals who have individual human beings as clients and those who have large groups of persons as clients. Most health care professions have individual clients-patients. Lawyers also have individual clients, but they need not be human beings. Often

their clients are corporations, and obligations to corporate clients might be different from those to specific human beings. Other professionals serve groups of people as clients. For example, the clients of journalists—the persons they serve—are their audience. The clients of some industry engineers are the end users of products they design. Academic and industry researchers, especially those in basic research, do not have anyone who might plausibly be considered a client. Teachers and group therapists fall somewhere in between the two categories. Their primary focus is on the class or group, but they also have ethical obligations to individual members.

Significant differences exist between members of the same profession. They can differ with respect to employment status and clients. Some physicians are self-employed with individual clients, and others are salaried researchers with no clients. Professionals also differ in many other respects. The differences in income, status, and type of practice between a partner in a Wall Street law firm and a small-town solo practitioner are tremendous. The large law firm usually has retainers from corporate clients, whereas the solo practitioner handles one matter for one client. Large accounting firms also can be virtually certain of continuing to work for corporate clients, but small accountants have little such security. The disparity is so great in the legal and accounting professions that different ethical or enforcement procedures have been suggested for large and small firms.<sup>11</sup> The conditions they face, it has been claimed, require such different applications of the same general ethical principles as to make a single system inappropriate. The medical profession is not as stratified as the legal and accounting professions, but a great difference still exists between a well-known specialist in a large urban center and a general practitioner in a rural community. The status of specialties has been evident in the career choices of medical students during the past

<sup>11</sup>Philip Shuchman, "Ethics and Legal Ethics: The Proprietary of the Canons as a Group Moral Code," in *1977 National Conference on Teaching Professional Responsibility*, ed. Stuart C. Goldberg (Detroit: University of Detroit School of Law, 1977), p. 271; see also Abraham J. Briloff, "Quis Custodit Ipsos Custodes? Accountants and the Public Good," *National Forum* 58 (Summer 1978), p. 29.

decades. Medical research and surgery have been the most prestigious, and general or family practice the least. Although family practice is becoming more respected and the choice of more students (as a specialty!), this difference has not disappeared.

Three salient features of the role of professions in the United States at the end of the twentieth century lie at the heart of the problem of their position in society. First, they all provide an important service. Engineers and architects design the structures and facilities essential to modern life—buildings, power stations, transportation systems, and so on. Most of us depend on the medical and dental professions to protect our health and well-being. The legal profession provides services essential for legal justice and equality before the law. Accountants, as auditors, testify to the financial integrity of institutions and keep track of the wealth in society. Teachers and journalists provide the knowledge and information so important in an information age. The services of professionals are important for individuals to realize values they seek in their personal lives—health, wealth, legal justice, comfort, safety, and knowledge.

Second, the professions have a significant or monopolistic control over the provision of services and entry into them. In some professions, especially health care, one must be legally licensed to practice. Laws make it a criminal offense to practice medicine or law without a license. Physicians and lawyers determine who will be licensed. Attempting to do without these professionals or to be one's own professional can realistically have only minimal success. If one decides to be one's own physician, one cannot obtain access to the most useful medicines and technology; most drugs can be obtained legally only with a prescription from a licensed physician and from another professional, a pharmacist. The United States limits the access to medications more strictly than other countries such as Mexico and even Canada. Although one may legally represent oneself, the legal profession has waged continuous war against allowing people access to help in handling their own legal problems, such as divorce and probate of wills.

Although the law does not prohibit practice by nonprofessionals in many professions, the professions still often retain significant control over who can practice. In some, one must be certified to use

a particular name, say, architect or certified social worker. Employed engineers do not even have to be certified. But realistically, to obtain a job, one must have graduated from an accredited engineering school. Such accreditation is often determined by private professional organizations.

The monopolistic aspect of professional practices has frequently brought professions into conflict with each other and with other occupational groups over the provisions of services. Architects and engineers have long debated their respective spheres of practice, as have lawyers and accountants. The legal profession has also been anxious to define the respective spheres of practice of realtors and insurance and title companies. The medical profession now confronts questions concerning the services provided by nurse practitioners and physician's assistants.

The legal monopoly of professional services, when it exists, has an important implication for professional ethics. Professionals do not have a right to practice; it is a privilege conferred by the state. One must carefully distinguish between a right and a privilege in this context. A right is a sound claim that one be permitted (or assisted) to act in some manner without interference. A privilege is a permission to perform certain acts provided specified conditions are fulfilled. With a privilege, the burden is on the person obtaining it to demonstrate that he or she has the necessary qualifications. For example, one must pass tests for the privilege of driving a car. In the case of a right, the burden is on anyone who fails to respect it, for example, by prohibiting the publication of one's opinions. Individual professionals have only a privilege to practice; in addition, the profession as a whole is privileged activity created by the state to further social values.

A third feature of the professional's role is that although some professions have secured legally protected monopolies, few of them have been subject to much public control. Monopolies such as public utilities that provide essential services have usually been subject to strict public control as to the conditions and types of services provided. In contrast, the professions have claimed and been accorded a large degree of self-regulation. They have claimed that because of the intellectual training and judgment required for their practice, nonprofessionals are unable to evaluate their conduct



properly. Thus, in addition to control over membership and the disciplining of members, the professions also often control the conditions of practice (including, until recently, setting fees and regulating advertising).

The combined effects of these three features—serving basic social values, monopoly, and self-regulation—are central to the issue of the role of professions in a modern society. Monopoly and self-regulation, if exercised improperly, can be detrimental to society and the quality of human life. As the number of professions and professionals increases and their decisions become more essential for the operation of a technologically complex society, the conduct and ethical principles of the professions as well as the enforcement of standards become a matter of increasing importance to everyone. If the principles of professional conduct are designed to favor professionals more than their clients and others, then social values are threatened. Monopolies are created for the benefit of society, and if they do not serve society well, then they are not justified.

Some problems with professional principles may arise from a failure of professions to revise accepted ethical principles adequately to reflect the changing condition of society and professional roles. Two sociologists suggest that the professions are beginning to adopt characteristics of modern industry, specifically a more bureaucratic structure of practice.<sup>12</sup> They specify six differences between traditional professional practice and the modified form they see evolving.

1. Practice as an isolated individual is changing to team practice.
2. The use of knowledge from a single discipline is being replaced by use of knowledge from diverse disciplines.
3. Compensation is changing from fee-for-service to salary.
4. The limits on altruism involved in solo professionals' entrepreneurial private practices (the concern with attracting clients and making a living) are decreasing.

5. The opportunity for colleague evaluation is increasing.
6. The privacy of the professional-client relationship is decreasing.

Examination of these six changes indicates that the last three depend on the first three. Colleague evaluation and privacy in the professional-client relationship depend largely on whether a professional practices as an individual or as part of a team. The entrepreneurial limit on altruism depends on the fee-for-service system. With a fixed salary, a professional can literally afford to be altruistic.

The factors of team approach, use of knowledge from diverse fields, and compensation by salary partially result from the increasing knowledge required for professional practice. The growth of engineering knowledge and the complexity of many structures now being built require the efforts of many different types of engineers. Electrical, structural, and other engineers must be involved in the design and construction of skyscrapers, large bridges, and so on. The growth of medical knowledge has forced specialization because physicians cannot keep fully informed about all aspects of medicine. No one specialist can provide total patient care, so the team approach involving various physicians, therapists, social workers, and nurses is now often used for hospitalized patients. Although compensation by salary is not as widespread among physicians as among accountants and lawyers, as group practice develops, more physicians will become salaried. Similar developments have occurred in the legal profession. Although the profession is just beginning to officially recognize specialization, it has existed in practice for a number of years. The development of large corporate law firms during the late nineteenth and early twentieth centuries encouraged specialization and salaried employment. In addition, the enormous proliferation of laws, especially with the advent of governmental regulatory activity in the 1930s, has made it difficult for any one lawyer to keep abreast of the entire legal field.

These claims about the changing nature of professional practice are not that clear. They seem most applicable to the health professions. The percentage of lawyers in solo practice has also declined, in 1980 constituting about 33 percent of

<sup>12</sup>Gloria V. Engel and Richard H. Hall, "The Growing Industrialization of the Professions," in *Professions and Their Prospects*, ed. Freidson (Beverly Hills: Sage Publications, 1973), p. 85.

all lawyers.<sup>13</sup> Yet during the 1970s, the percentage of self-employed professionals increased.<sup>14</sup> Some of the traditional employed professions, such as social work, have experienced tremendous growth as well as a significant increase in self-employed practitioners.<sup>15</sup> Nevertheless, most professionals,

such as teachers, nurses, and engineers, have always been employees.

<sup>13</sup>Barbara H. Curran, *The Lawyer Statistical Report* (Chicago: American Bar Foundation, 1985), p. 13.

<sup>14</sup>Freidson, *Professional Powers*, p. 121.

<sup>15</sup>From 1975 to 1985, the number of clinical social workers increased about 140 percent; Frederica G. Reamer, "Social Work: Calling or Career?" in Special Supplement, *Hastings Center Report* 17 (February 1987). A 1975 survey found

that only 2.4 percent of social workers indicated private practice as their primary employment, but a 1981 survey found 21.5 percent; Patricia Kelley and Paul Alexander, "Part-Time Private Practice: Practical and Ethical Considerations," *Social Work* 30 (1985), p. 254. Even allowing for significant bias in the second survey, this is a remarkable change.

### *Discussion Questions*

1. What are the central features of a profession and what are the common features of a profession?
2. Why is it important to make clear what a profession is?
3. Name an occupation that satisfies the first three criteria of a profession and name an occupation that does not satisfy the first three criteria.
4. Toward the end of the article, Bayles describes three salient features of professions in the United States. What are these, and why does he include this discussion?

## Professional Responsibility: Just Following the Rules?

MICHAEL DAVIS

MY SUBJECT IS A CRITICISM of conduct something like this: "That's not acting responsibly, that's just following the rules." The criticism appears as an attack on "legalism" in both business and professional ethics. While my focus here will be on professional ethics, everything I say should, with minor changes, apply equally well to following corporate or other business codes of ethics.

Legalism (it is said) reduces professional responsibility to doing as the profession's code of ethics requires; professional responsibility, like

moral responsibility generally, is more open-ended, including (among other things) certain virtues. My subject thus overlaps the larger debate in moral theory between "principle ethics" and "virtue ethics." I shall draw some conclusions relevant to that debate.

My thesis is that following "the rules," while not all there is to professional ethics, is generally enough for responsible conduct (or, at least, is so when the profession's code of ethics is reasonably well written, as most are). Rules set the standard of

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