

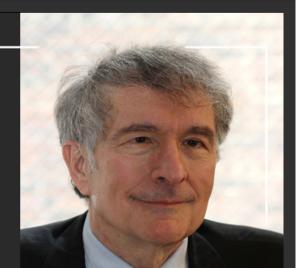
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## THE **PRACTICE**

## THE PROFESSIONAL IDENTITY OF LAWYERS

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# speaker's CORNER



# What Is Good in the Law and in Life

Perspectives from Howard Gardner

Howard Gardner is the John H. and Elisabeth A. Hobbs Professor of Cognition and Education at the Harvard Graduate School of Education and the director of the Good Project. Gardner recently sat down with David B. Wilkins, faculty director of the Center on the Legal Profession, for a one-on-one conversation on professional identity in the professions.

**David B. Wilkins:** Your recent work focuses heavily on conceptions of "the good." So I'd like to begin with the most basic question that you address in your work: Who is the "good worker," and what are the profiles of "the good" that you've been writing about?

**Howard Gardner:** Let's start with the good professional-the good worker. At the Good Project, we've looked at nine different professions, and we've conducted and analyzed\_close to 1,500 interviews. Over a 10-year period we determined that being a good worker had three components-the Three Es: *Excellence, Engagement,* and *Ethics.* We produced a visual of the three intertwined Es and somewhat whimsically dubbed it the "Triple Helix" or "ENA." If you want to be a good worker, you can't just be excellent, you can't just be engaged, and you can't just be ethical. You need to have those intertwined strands of ENA.



The Triple Helix of being a good worker.

Let's take the law as an example. You could be very well informed and an expert (hence, excellent), but you could be bored or alienated (hence, disengaged). Lawyers report more unhappiness-including depression-than almost any other profession, so clearly many lawyers are not fully engaged. As we well know from the press, lots of lawyers skate on thin ethical ice and test how far they can push limits before falling into a chilly pond! On the other hand, you are also going to have people who are highly ethical but aren't up-to-date. So the Triple Helix-the achievement of all three Es-is aspirational.

This is exactly where John Bliss's work (see "The Professional Identity Formation of Lawyers") is so illuminating, because you see these strands competing with one another. Nobody would say that corporate lawyers don't try to achieve excellence, but often engagement is more a role they seek to fill

rather than a genuine intrinsic enthusiasm about the work they perform every day. I would add, however, that I don't think any branch of law has a corner on being ethical or on testing limits.

We would all like the professionals with whom we are involved to be excellent *and* engaged *and* ethical. That's what we'd like of our doctor, our accountant, the architect of our home. And most of us would like to realize that combination in our own work lives. When you look at the tensions experienced by "drifters" (see "The Professional Identity Formation of Lawyers"), they prefer to think of themselves in one way-doing God's work-but feel they're being pulled in ways that don't make them happy. That pull risks making them less engaged. They also worry that when they have to look in the "ethical looking glass" or the "moral mirror," they're not going to be happy with what they see.

But it's complicated. You've got people who do public interest law who are very unethical. You've got people who are doing high-end corporate work and are very ethical. It's not a necessary correlation or lack of correlation, but it's probably not random either.

Wilkins: How does being a good worker relate to being a good citizen?

**Gardner:** We also became interested in what it meant to be a good citizen and a good person. People are citizens of many entities-from their law firm to the city, state, and country where they live. When you think about it, good citizenship also entails the Three Es of the Triple Helix. A good citizen is somebody who knows the law-Excellent. A good citizen cares. She votes, she marches, she adopts the hashtag that captures her civic values-Engaged. And the good citizen isn't just out for himself; he tries to do something for broader society-Ethical. It's not a coincidence but a happy fact that citizenship can be analyzed in terms of the same Three Es as work (even though you could clearly be a good worker and not a very good citizen or vice versa).

Let me introduce another important distinction. If you know and follow the Ten Commandments and you know and follow the Golden Rule, that's pretty much enough to be a good person. I call this "neighborly morality"– and I have nothing to add to the wisdom of the ages.

In contrast, the roles of good citizens and good workers are recent entries on the agenda of humankind. We haven't evolved for thousands of years to know what it means to be a good lawyer or a good scientist or a good journalist. Similarly, while everybody belongs to communities, the concept of citizenship is relatively new-think the American Revolution, think the French Revolution. And so, with reference to professions and to citizenship, I speak of the "ethics of roles."

Neighborly morality is how you act with people you know face to facepeople who live on the same block or, if you have a small partnership, the people you see in the office every day. You play cards with them and go out and have drinks with them, and you share profits and losses equitably.

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The ethics of roles proves far more complex and vexing. Nobody simply knows intuitively how to be a professional lawyer or a professional journalist. And actually nobody knows instinctively how to be a good American citizen or a good global citizen. Those are roles that you have to learn to enact over time-and you never completely master them.

Moreover, the world is constantly changing. What it meant to be an ethical journalist in the Walter Cronkite era isn't the same in the era of 24/7 news coverage, so being an ethical citizen or an ethical worker entails a constant negotiation.

### The Good Project: In Gardner's own words

People often get interested in ethical and moral issues as they get older. In my case, it began when I saw some of my ideas being radically abused or distorted. Perhaps when I was younger, I would have had the attitude: "Well, I produce ideas, but I don't have responsibility for how they're used." But it didn't take a lot of soul-searching for me to realize that if I didn't take responsibility for what I said and for how people interpreted it, I couldn't expect anybody else to be conscientious about that either.

That insight really was transformative for me. It came in the mid-1990s. And for the last 20 years, I've been focusing on what it means to be "good." Initially, I was very interested in the question of what it meant to be a "good professional." As I was thinking about these ideas, along with my collaborators Mihaly Csikszentmihalyi and Bill Damon, we launched an ambitious investigation that we eventually called the Good Work Project.

As part of that project, over a decade, we studied nine different professions, including the law. In fact, we looked at five varieties of legal practice: cyber law; small-town lawyers; judges; corporate lawyers; and M&A lawyers. We also looked at subgroups in other professions.

In the past 10 years, we've done other things that led us to expand it from the Good Work Project to the Good Project, where we looked a lot at citizenship questions. We've looked at what it means to be a "good person." We've looked at social media. We've looked at good collaboration. So the Good Project is an umbrella descriptor.

To learn more about the Good Project, visit www.thegoodproject.org.

Read my blog: The Professional Ethicist.

**Wilkins:** I want to pick up on the last point that you were making, saying that nobody is born being a professional in that same way that we know how to live in social situations of neighbors or family. What do you think about that process of professional identity formulation or socialization in the education process? And how can we think about that in relation to what you have said ought to be the ultimate goals of creating professionals in a Triple Helix?

### Gardner: Law is unique in that the 1L year is such a powerful treatment, as we psychologists like to say. If you haven't been prepared

for your 1L year, it can be a real shock because you are being told, in effect, to assume a stance that seems amoral. You're being pushed to thick about and defend all kinds of Short of basic training in the military, the power of the first year of law school is as powerful a treatment as I can imagine. <sup>99</sup>

to think about and defend all kinds of positions-even ones that are abhorrent to you. It's a very worthwhile kind of training, but it can be traumatic. And when you have traumatic experiences, they can be transformational. They could be transformational in a positive sense, in a negative sense, or, in many cases, in what I would call a disequilibrating sense. Short of basic training in the military, the power of the first year of law school is as powerful a treatment as I can imagine.

That said, people don't show up at law school as blank slates. The morality that you bring with you to law school from having been socialized for 20 or so years in a certain cultural milieu is not something that gets swept instantly under the rug. According to John Bliss's research, people who seem to have the easiest time slipping into their new role are the white males who have been transactional for many years. Schools like Harvard are full of such transactional types. The transition is going to be the smoothest because you don't feel as much of a strain: "I learned to do this at Exeter and I learned to do this as a Harvard undergrad, and now I'm going to learn to do this in law."

A second tremendously powerful treatment is a young person's first real job. Journalism provides a good example. If you go to journalism school and then work for Fox News, that is a totally different experience than if you work for NPR. That is not to say one is better or worse than the other, but the two institutions' foregrounds are different: different kinds of people, different values, different bottom lines, and so on. In law, if you go to work for the Children's Defense Fund (CDF) after law school, it's very different than if you go to work for Skadden Arps. Even if there are villains at CDF and heroes at Skadden Arps, the messages in the hallway and around the water cooler are very different. And because the novice is still a blank slate vocationally, such treatments are very powerful!

So are the role models you see at

school and at work. Different types of people are going to give you very different views of the legal profession. We use terms like *mentoring, antimentoring, tormentoring,* and *fragmentoring.* Everyone knows what mentoring is, but tormentoring and antimentoring came from our research. More

We get exposed to so many people that we often piece role models together based on fragments of different people—a bit of Professor Charles Kingsfield, a bit of Perry Mason, and a bit of Atticus Finch. ??

people told us about individuals whom they despised and didn't want to be like than about people they admired and sought to emulate. Fragmentoring turned out to be very important in the late 20th century, and I think even more important now. We get exposed to so many people that we often piece role models together based on fragments of different people-a bit of Professor Charles Kingsfield, a bit of Perry Mason, and a bit of Atticus Finch.

Wilkins: How does the law relate to other professions that are facing similar market pressures?

**Gardner:** The more a profession becomes like a business, the more dominant are the neoliberal values of the market. If I were writing an equation, I would say the more business-like a profession becomes, the more we are likely to encounter the disequilibrium that characterizes drifting.

As I see it, much of law has become a branch of business. Medicine offers an interesting contrast. More and more people who go into medicine also get an M.B.A. So they're trying to balance market values with traditional values of a profession. On the one hand, most people are not attracted to medicine because they're going to make a lot of money. On the other hand, they begin to see the corporatization of medicine and they say, either because they want to be part of this market trend, this market bonanza, or because they want to contend with it expertly, "I'd better get the business degree as well."

### A second example comes from

genetics. In the early 1950s, you could put all geneticists in the world in one room. But over time, genetics became big business. One geneticist we interviewed told us that graduate students used to sit in the library reading the genetics iournal *Coll*. Now that sit in the library

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journal *Cell*. Now they sit in the library reading the *Wall Street Journal* to see whether they should buy or *sell* because they're all looking to be involved with start-ups or working for Genzyme. That's an example of how in a single profession-in my lifetime-marketization has come to dominate.

Coming back to law, people who go to lower-tier law schools are under much more strain to make a reasonable living, so the luxury of being a good professional seems to be more difficult. When I began to study colleges, I would talk with lawyers working within universities. It proved revealing to see whether their professional identity was more tied toward the legal profession-with the expectation that they could move to Wall Street at any time if they so chose-or toward their collegiate institution, where they identified more with instructors and students. But it shows you the complexity of issues of personal and professional identity in the law.

**Wilkins:** One thing that comes through in how you describe professional identity formation is the importance of the external market. One of the debates in law is whether drift is caused by what people do in law school and by the messages law school sends or if it is a function of the external reward system-that whatever people say in law school and whatever public interest messages they receive, the pull of the market is irresistible.

**Gardner:** The market plays a role, but educational institutions also are important. I'll give you two examples. First, our Harvard colleague Danielle Allen recently asserted that with people having so many "lifetimes of work" and switching to so many different things, we need to start thinking about ethics in college–I would even say in high school. But the point is, the more that careers are jagged and unpredictable, the more we can't depend upon a few set years–such as the three years (or even a mere two years) in law school–to create deep ethical muscle.

Second, as a society, our institutions are populated with individuals who have a lot of agency. It's very important that we have leaders whom we admire and trust and that those leaders go to great lengths to create a community that shares certain values and is not afraid to espouse them.

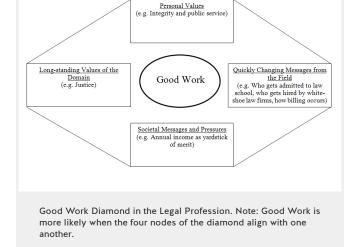
I'm studying colleges and universities now. There's a tremendous difference between institutions in terms of the money they have and how selective they are versus what messages those schools espouse. I'm very secular myself, but I am impressed with

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institutions of higher education that have strong religious credos. I think that a strong set of values makes a real difference even for people who don't belong to that religion. Schools have complexions, and when leadership is good at articulating and embodying those complexions, that can make a difference. And certainly, if you don't try, there's no chance that you can succeed!

**Wilkins:** How can institutions-whether a law school or a law firm-do better at preparing their communities to be good people who are also good professionals and good citizens?

**Gardner:** We developed a concept called the Good Work Diamond, which consists of four points: the *individual* and his or her values, the values of the *domain*, the pressures from the *field*, and the signals from the wider *society*. It's much easier to do good work if those four things are aligned. If I've got personal values of a certain sort, let's say honesty and disinterestedness, and the field, namely the people who select who gets to go into desirable positions, is on the same page, then it is easier to get good work done. That is, the more that the four vertices of the diamond are consistent with one another, the easier it is to do good work. But if you have a set of personal values that clash with the longstanding values of the domain or that counter the current intoxications of the field, then it's hard to do good work.



I think a very important question for every professional, and I ask myself this all the time, is "What won't you do and why not? What are lines you won't cross, even if you could and even if you could get away with it and even if it might provide monetary rewards or self-aggrandizement? And why won't you?" So I'm always asking people what lines wouldn't they cross and why? It's both the explicit and the implicit messages of whom you honor and praise and why, and whom you don't.

The metaphor we use in our book on Good Work is the mirror test. When you look in the mirror, what do you see and how do you feel about it? That mirror test needs to be done by individuals *and* it needs to be done by groups-everyone and everything from the American Bar Association to the Federalist Society. Whom do we hire and fire? Whom do we honor? When somebody who didn't have the highest law school grades or didn't make the law review is retained in a law firm because that person has admirable values, people notice. People also notice when somebody who has immense talent, but cuts every corner, gets dropped. I call these "wake-up calls."

**Wilkins:** I tell the students in my ethics class that before you take any job, you have to decide your "Johnny Paycheck Moment" when the job isn't worth what you're asked to do. What is it going to be? If you don't decide that in advance, you won't see it when it happens.

**Gardner:** We all know that the pressures on people are enormous, and that's why the opportunity to get to know individuals who have withstood those pressures is very important. It's best if you have them in your own life. But some of the people we admire the most didn't have them in their own life, but they did have paragons.

Howard Gardner is the John H. and Elisabeth A. Hobbs Professor of Cognition and Education at the Harvard Graduate School of Education. He is also an adjunct professor of psychology at Harvard University and senior director of Harvard's Project Zero.

David B. Wilkins is the Lester Kissel Professor of Law, vice dean for Global Initiatives on the Legal Profession, and faculty director of the Center on the Legal Profession at Harvard Law School.



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