'Are Law Schools Amoral Boot Camps?': Two Legal Ethicists Beg to Differ with a Controversial Book- Review of Lawyers Gone Bad: Money, Sex and Madness in Canada's Legal Profession by Philip Slayton

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It is the less spectacular but more common ethical lapses that pose the greater threat to the integrity of the legal system.

While loyalty and friendship are no doubt social goods, it seems that many of these lawyers have lost sight of their higher loyalty—which should be to the public.

Despite the book’s valuable insights, the book has some troubling aspects.

First, as Slayton relates the various stories, he often invokes psychological explanations. References to “psychopaths,” “counter-transference,” “rejection formation,” “madness” and even “ADHD” pepper the book. We agree that issues of mental illness among lawyers are serious and need to be addressed by the legal profession. However, when, for example, attention deficit/hyperactivity disorder is offered uncritically as a credible explanation for why someone might steal from trust funds, pop psychology has been allowed to run amok and the chance for the reader to gain some constructive insight into these important issues is lost.

Second, in constructing his stories, Slayton interviewed many of the relevant players, including the disgraced lawyers themselves. Undoubtedly this enriches the book and enables Slayton to tell a more human (and thereby more compelling) story. On more than one occasion, it also leads him to empathize with some of the characters and, of course, empathy is a virtue. However, when Slayton suggests that a lawyer who has been convicted of having sex with underage female prostitutes could be readmitted to practice law on the grounds that “northern Aboriginal people could use his help,” one can only scratch one’s head and wonder whether Slayton got too close to at least some of his subjects to see clearly anymore.

Third, Slayton suggests that the problem with lawyers starts in the law schools because they fail to include ethics education in the curriculum and because professors (either consciously or unconsciously) model, encourage or reinforce unethical norms. While this may have been true 25 years ago when Slayton was a professor and dean of law at the University of Western Ontario, it is not the reality today. Currently, at least eight of 21 Canadian law schools have compulsory courses in legal ethics, several have optional courses and still others have modules on legal ethics. Undoubtedly, much more needs to be done to make legal ethics a pervasive and effective component of university-based legal education (and not just in one or two isolated programs). The current system and advocates for mandatory legal ethics education in all law schools. However, consider the following statements from the book: “two legal ethicists beg to differ with a controversial book.

Jocelyn Downie and Richard Devlin

Lawyers Gone Bad: Money, Sex and Madness in Canada’s Legal Profession
Philip Slayton
Viking
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In this book, Philip Slayton—formerly a Bay Street lawyer and a dean of law—tells the stories of a number of unethical, and often criminal, lawyers. As Slayton notes, “stories of lawyers gone bad—even when the facts are complex, technical, and dry—have a macabre interest.” Many readers will undoubtedly be engaged by Slayton’s readable description of the legal equivalent of a series of spectacular slow motion car wrecks. In satisfying our macabre interest, Slayton has succeeded. He covers the particulars well.

Slayton, however, has ambitions for the book beyond appealing to our collective Schadenfreude. The core message of both the opening and closing chapters is that his stories “give insight into the legal profession and legal practice, into how lawyers band together and govern themselves, and into how the law itself can fail or be perverted. They imply reforms of the legal profession and the law.” Unfortunately Slayton is only partially successful in his pursuit of these broader claims.

Slayton’s stories and his interstitial ruminations do shed light on some of the problems facing the Canadian legal profession today. He does a good job of illustrating how some well-connected lawyers get off lightly in discipline proceedings; he demonstrates how the system of billable hours encourages unethical billing; and he explains how the emergence of a new corporate form, the LLP (limited liability partnership), eliminates the incentive for partners in law firms to take an active interest in the conduct of their colleagues. Particularly powerful are the images of a misplaced sense of loyalty displayed by many lawyers toward other lawyers. Slayton recounts how time and again in disciplinary proceedings many esteemed lawyers wax eloquent about the good character of their miscreant colleagues.

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find Slayton’s prescriptions insufficient. Slayton enthusiastically endorses a recent proposal (essentially to replace self-regulation with independent regulation) from Sir David Clementi to fix the ethical problems of the legal profession in England and Wales. Clementi, however, was not especially interested in the outrageous bad apples but rather in more systemic issues: access to justice, the protection and promotion of consumer interests, and the promotion of competition. Once one shifts the focus from the spectacular to the everyday, one realizes that the solutions will be many, interwoven and complex. For example, we need to continue with the reforms that are already underway in law schools, we need to endorse and develop compulsory continuing legal ethics education for practising lawyers, we need to reorient the priorities and resources of law societies and we need to recalibrate the regulation of the profession. These are all large tasks that can benefit from considering what has been happening not only recently in Britain but also elsewhere in the world. In Australia, for example, significant reforms have been in place for more than a decade. Most of all we need two things: facts about what is really going on with lawyers in Canada and the imagination to design educational and regulatory institutions tailored to the Canadian context. At the moment, we do not appear to have enough of either.

Given the focus here on some weaknesses and concerns, it is worth noting an aspect of this book that gives it the potential to make a vitally important contribution to the reform of the legal profession in Canada. This book has already served to bring considerable public attention to the issue of the regulation of the profession. No other discussion of self-regulation has resulted in a front cover story in Maclean’s (“Lawyers Are Rats: A top legal scholar and ex-Bay Street partner exposes the corruption of his profession”) and the subsequent blizzard of vitriolic press releases, op-eds and blog entries. In the end, then, the book may do a very good thing—that is, serve as a catalyst for reform. But, ultimately, in order for the public interest to be served, the polarized and polarizing caricaturing and ad hominem must stop and the hard work of historical, empirical, conceptual, analytical and comparative research must begin. Of course, this won’t sell books and it won’t make the cover of Maclean’s, but it just might rescue the legal system ... and, more importantly, those it is supposed to serve."

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