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# Critical Perspectives on the Legal Profession in England and Wales (Book Review)

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# BOOK REVIEW

## Professional Legal Ethics: Critical Interrogations Book Review

DONALD NICOLSON & JULIAN WEBB, PROFESSIONAL LEGAL ETHICS: CRITICAL INTERROGATIONS, Oxford University Press, 1999. Pp. 292.

REVIEWED BY SUSAN D. CARLE\*

This interesting book, written by two English law professors, surveys the major legal ethics issues facing barristers and solicitors in England and Wales today. The authors argue that a serious crisis of morale afflicts these legal professions. They blame this crisis not only on obvious economic and institutional pressures, but also on certain philosophical ideas that underlie common law legal ethics traditions. The book is particularly interesting in presenting material for comparative analysis. The U.S. reader's patience in sticking with this book until its final, most revelatory chapter will be rewarded with insights into the subtle ways in which debates about progressive legal ethics reform can take diverse directions even in countries with shared common law traditions.

The authors' basic thesis is not new to legal ethics debates in the United States: Nicolson and Webb blame two related sets of philosophical concepts, which they term *formalism* and *liberalism*, for the development of legal ethics norms responsible for deep problems of professional morale among practitioners today.<sup>1</sup> While this thesis is not new, the authors' approach reflects both similarities and differences in the historical, social, and cultural contexts of England and Wales as compared to the United States. In some respects the current problems of these respective legal professions are similar, a fact that is far from surprising in light of similar economic and demographic trends on both sides of the Atlantic as well as the pervasive effects of globalization. In other respects, however, particularly in the authors' emphases in discussing the philosophical grounding underlying contemporary legal ethics debates, the book offers some interesting twists on the conventional U.S. understandings.

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1. DONALD NICOLSON & JULIAN WEBB, PROFESSIONAL LEGAL ETHICS: CRITICAL INTERROGATIONS 1-2 *passim* (1999).

Most interesting from such a comparative perspective is the authors' constructive project. Nicolson and Webb seek to provide an alternative philosophical grounding for legal ethics by drawing from a wide variety of contemporary critical theories—including feminism, communitarianism, and postmodernism<sup>2</sup>—sometimes with a noticeably English spin. They offer as their positive reform platform what they term a *contextual approach*, which they argue should span legal ethics regulation, deliberation in practice settings, and law school teaching. Such calls for more contextual approaches to legal ethics are, of course, far from new, having been made by many leading scholars for years.<sup>3</sup> But Nicolson's and Webb's perspective from across the Atlantic offers some slightly different angles that may be interesting and refreshing to those engaged in the intense, somewhat ethnocentric debates internal to the U.S. scholarly community.

*Professional Legal Ethics: Critical Interrogations* is structured into several main parts. The first, comprising Chapter Two, lays out the authors' views on the major philosophical traditions underlying common law legal ethics principles. The second, comprising Chapters Three and Four, surveys the social and regulatory backdrop against which debates about legal ethics in England and Wales take place. A third section, comprising Chapters Five to Nine, examines several applied legal ethics issues, or, to use the authors' term, issues of "micro-ethics."<sup>4</sup> Here, Nicolson and Webb explain, they draw heavily from literature from jurisdictions other than England and Wales, especially from the United States, because of an absence of "home grown" analysis.<sup>5</sup> Perhaps for this reason, a reader steeped in the large U.S. literature on applied legal ethics may find little in these chapters that appears particularly novel or fresh. But a final section, comprising Chapter 10, presents the authors' reconstructive project in general overview. U.S. readers may find this section the most rewarding because of the comparative insights it offers.

Nicolson and Webb are centrally concerned with a question over which many leading progressive legal ethics scholars have long pondered: How can the practice of law be both noble and a benefit to society?<sup>6</sup> The authors begin to tackle this question by linking certain historically received legal ethics principles to a variety of contrasting philosophical approaches. The approaches on which they focus are: Kantian deontology; consequentialism in various forms; virtue

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2. *Id.* at 8.

3. See, e.g., David Wilkins, *Everyday Practice Is the Troubling Case: Confronting Context in Legal Ethics*, in *EVERYDAY PRACTICES AND TROUBLE CASES* 68-69 (A. Sarat et al. eds., 1998) (emphasizing the importance of recognizing relative power of corporate clients in defining professional obligations); Roger Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 *CASE W. RES. L. REV.* 531, 540 (1994) ("Differences in the context of practice suggest that different regulatory approaches and sanctions are required in different areas of legal practice.").

4. NICOLSON & WEBB, *supra* note 1, at 7.

5. *Id.*

6. *Id.* at 9.

ethics, both in classical Aristotelian form and as updated by various more modern virtue ethicists; and, finally and most helpfully to the reconstructive project for which they later argue, a combination of feminism, postmodernism, and what they call an *ethics of alterity*.

The authors' discussions of each of the more traditional philosophical approaches rehearse the standard critiques of each approach. Kant's deontology establishes the primacy and value of the individual but cannot explain why general ethical principles may sometimes have to give way in light of the greater good.<sup>7</sup> Consequentialism in its various forms, including act and rule utilitarianism, has the opposite problems of failing to provide sufficient respect for principles such as equality and liberty or adequate tests for comparisons of utility.<sup>8</sup> Virtue ethics and its modern relatives such as communitarianism are helpful in providing important critiques of liberalism, but run into problems of vagueness—as, for example, in being unable to explain which values to follow or which communities to join.<sup>9</sup> In the end, Nicolson and Webb most strongly object to deontological and consequentialist approaches to legal ethics thinking.<sup>10</sup> They argue that these approaches are responsible for conventional legal ethics principles such as the duty of zealous loyalty to clients and the narrow exceptions to client confidentiality rules.

Within the realm of traditional theories, Nicolson and Webb call for an increased focus on virtue ethics, especially in a greater emphasis on developing moral character and situated practical judgment, or *phronesis*, in place of a detached technical education about a set of prescriptive rules.<sup>11</sup> The authors further call for infusing such a renewed focus on virtue ethics with various new sources of ethical theory, especially feminism, postmodernism, and an ethics of alterity. It is here that differences in emphasis from mainstream U.S. legal ethics scholarship become most apparent. In discussing feminist ethics, for example, Nicolson and Webb give more favorable treatment to Carol Gilligan's work in *In A Different Voice*<sup>12</sup> than would most United States scholars writing in the wake of the attacks leveled against "difference voice" feminism on charges of essentialism and other faults.<sup>13</sup> While Nicolson and Webb acknowledge these

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7. *Id.* at 21.

8. *Id.* at 26-27.

9. *Id.* at 33.

10. *Id.* at 50 ("[P]rofessional legal ethics ignores the large variety of competing ethical theories in favor of an approach influenced by liberalism and formalism, and which largely derives from deontological ethics, but also owes something to utilitarianism.").

11. *Id.*

12. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (rev. ed., 1993). Nicolson and Webb describe this work as "groundbreaking and highly inspiring." NICOLSON & WEBB, *supra* note 1, at 34.

13. See, e.g., Joan Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797 (1989) (arguing against the embrace of stereotypes about how women's personalities differ from men's); Angela P. Harris, *Race and*

critiques,<sup>14</sup> they nevertheless espouse Gilligan's suggestion that women lawyers, and other traditional outsiders, may tend to have somewhat different lawyering styles and values.<sup>15</sup>

Along with their less cynical view of different voice theories than most mainstream U.S. legal academics hold today, the authors give central significance to a version of postmodern ethics they term an ethics of alterity.<sup>16</sup> This ethics of alterity, according to Nicolson and Webb, draws from "the late modernist tradition of dialogical ethics represented by Buber, Bakhtin, and most influentially, Levinas,"<sup>17</sup> to argue that "individuals only come into selfhood through alterity."<sup>18</sup> We "acquire self-consciousness through our engagement with 'the Other.'"<sup>19</sup> When we return to the self, it is not to "Kant's atomistic self" but one "whose awareness of alterity is rendered ethically meaningful by respect, compassion and love for the Other."<sup>20</sup> Under such an ethics, the "mere presence of the Other—the gaze of her face in Levinas' terminology—acts as an epiphany summoning an immediate and spontaneous response from us."<sup>21</sup> Moreover,

given that the Other's needs are unpredictable and infinite, it is clear that the ethics of alterity cannot be reduced to moral rules, principles and codes, particularly those which seek to impose symmetry and universality. Nor can such codes limit our responsibility to the Other. . . . The Other's demand is not expressed aloud nor is its content specified. Because I have to interpret what she requires, I can always misinterpret her needs. Accordingly, I can never know whether I have done the right things . . . nor whether I have done enough. To think one has done enough for the Other is to stop caring for her and thus to abnegate one's responsibility.<sup>22</sup>

The authors further characterize this version of postmodern ethics as seeking

to re-awaken the individual's moral conscience which has been anaesthetised by the replacement of individual responsibility with moral and legal codes, by cynicism in the face of seemingly unstoppable wars, genocide and environmental destruction, [and] by bureaucratic organisations in which moral responsibil-

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*Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (accusing different voice feminists of essentializing middle class white women's socially constructed values).

14. NICOLSON & WEBB, *supra* note 1, at 37.

15. *See, e.g., id.* at 34-37, 148.

16. I owe special thanks to my colleague, Penny Pether, who received her legal and graduate education in Australia, for first pointing out to me the much greater salience Levinas and similar ethics theorists have in the particular versions of postmodernism popular within the United Kingdom.

17. NICOLSON & WEBB, *supra* note 1, at 46 (footnotes and citations omitted).

18. *Id.*

19. *Id.*

20. *Id.* (citation omitted).

21. *Id.* at 47.

22. *Id.*

ity appears to “float” within the organisation without attaching to anyone in particular or at all . . . .<sup>22a</sup>

Such a version of postmodernism, which, seeks to “re-enchant morality”<sup>23</sup> sounds little like the postmodernism of leading U.S. proponents, such as Pierre Schlag, who asks:

If the liberal subject disappears from the scene, a number of very troublesome questions immediately surface: who (or what) is controlling the levers running the social machinery? And if there’s no one operating the levers, then what has been the effect of all that good, admirable, serious, normative legal thought?

As legal thinkers, we like to think we are doing good, normative legal work—advancing noble causes and the like—but if the liberal subject is no longer operating the levers, our work product can take on a different character. We may simply be rehearsing and reproducing the instrumentalist logic of bureaucratic practices . . . .

Viewed in this light, we can understand normative legal thought not as a noble attempt to criticize and reform the structures and practices of bureaucratic domination, but rather as a kind of discourse that has already been unconsciously captivated by those very same structures and practices. The pathways, the issues, the problems of normative legal thought are already constituted by bureaucratic domination . . . . Rather than contributing to our understanding or to the realization of the good or the right, all this normative argument simply perpetuates a false aesthetic of social life—one that prevents “us” from even recognizing the sort of bureaucratic practices that constitute and channel our thought and action.<sup>24</sup>

Schlag thus understands the postmodern turn as pointing to the futility of normative talk and efforts at reform, whereas Nicolson and Webb draw from other aspects of the huge body of theory Anglos have come to label postmodernism to argue for a revitalization of normative awareness. For Nicolson and Webb, every act is normatively significant in the face of the profound and shifting demands of responsibility to the Other.

The authors’ treatment of the major philosophical underpinnings of contemporary English legal ethics is illuminating not only for what it includes, but also for what it leaves out. Notably absent, from the perspective of the U.S. reader, is any discussion of philosophical pragmatism,<sup>25</sup> the early twentieth-century philosophical movement that has been of such interest to many U.S. legal academics for the past several decades. Some aspects of the ethics of alterity described by Nicolson

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22a. *Id.*

23. *Id.* (citation omitted).

24. Pierre J. Schlag, *The Problem of the Subject*, 69 TEX. L. REV. 1627, 1739-40 (1991) (footnotes omitted).

25. See NICOLSON & WEBB, *supra* note 1, at 32 n.100 (1999) (noting that contemporary communitarianism traces its roots in part to John Dewey’s philosophical pragmatism).

and Webb, especially the focus on the self as constituted through recognition by *the Other*, sound reminiscent of the theory of the self of classical philosophical pragmatists, especially George Herbert Mead,<sup>26</sup> whose theory of the self heavily influenced John Dewey,<sup>27</sup> and in the more recent pragmatist renaissance, of Margaret Jane Radin.<sup>28</sup> Contemporary pragmatists such as Radin have sometimes been criticized for their *perspectivism*<sup>29</sup>—which is, at bottom, a softer version of the “different voices” argument—but some very interesting legal ethics scholars, including Theresa Glennon,<sup>30</sup> Carrie Menkel-Meadow,<sup>31</sup> and Stephen Ellman,<sup>32</sup> have taken up “ethics of care” ideas based in feminist philosopher Joan Tronto’s work. Nicolson and Webb categorize Tronto as a refinement on Gilligan rather than a strand in the ethics of alterity tradition.<sup>33</sup> These various new skeins of ethics theory offer future promise for applied legal ethics scholarship, as these contrasting, though not completely dissimilar, developments on either side of the Atlantic show.

Nicolson and Webb see a great number of legal ethics applications for their postmodern ethics of alterity. For example, Nicolson and Webb call for greater institutional responsiveness by the applicable regulatory bodies through what they term “reflexivity”:

A reflexive regulatory system is one that encourages participants to engage in reflection and dialogue. It is thus particularly apt for the pursuit of a postmodern approach to ethics which calls for a plurality of voices and dialogue in relation to ethical issues . . . Most important as regards the former is the need for sites of dialogue between regulator, regulated and legal service consumers. Dialogue may be located at various points in the regulatory relationship—at rule formation, implementation and/or enforcement stages—and indeed should arguably be located at all stages.<sup>34</sup>

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26. See, e.g., GEORGE H. MEAD, *MIND, SELF, AND SOCIETY* 174 (Charles W. Morris ed., 1967) (“The ‘I’ reacts to the self which arises through the taking of the attitudes of others. Through taking those attitudes we have introduced the ‘me’ and we react to it as an ‘I.’ ”).

27. See THOMAS M. ALEXANDER, *JOHN DEWEY’S THEORY OF ART, EXPERIENCE & NATURE: THE HORIZONS OF FEELING* 123 (1987) (the leading recent work on Dewey describing mutual reciprocal influence of Mead and Dewey on their respective theories of the self).

28. See, e.g., Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1720 (1990) (describing philosophical pragmatists’ commitment to perspectivism, which sees the standpoint of persons who have been dominated or oppressed as sometimes illuminating problems of bad coherence in dominant ideologies).

29. See, e.g., Scott Brewer, *Pragmatism, Oppression, and the Flight to Substance*, 63 S. CAL. L. REV. 1753 (1990) (questioning privileging of any voice without consideration of substance of the perspective).

30. See, e.g., Theresa Glennon, *Lawyers and Caring*, 43 HASTINGS L.J. 1175 (1992).

31. See Carrie Menkel-Meadow, *What’s Gender Got to Do with It?: The Politics and Morality of an Ethic of Care*, 22 N.Y.U. REV. L. & SOC. CHANGE 265 (1996) (reviewing JOAN C. TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* (1993)).

32. See, e.g., Stephen Ellmann, *The Ethic of Care as an Ethic for Lawyers*, 81 GEO. L.J. 2665 (1993).

33. See NICOLSON & WEBB, *supra* note 1, at 37-38.

34. *Id.* at 93 (footnotes and citations omitted).

At other times, Nicolson and Webb slide into unhelpful hyperbole in the name of postmodernism. In one of the more striking lines in a book prone to occasional oversimplification, we read that “for most postmodernists and many others, following ethical codes is *the very essence of immorality*.”<sup>35</sup> Now, to be sure, the project of codifying legal ethics principles provides much grist for the mill of critical legal ethics scholarship (and, indeed, has presented a target for my own scholarship.<sup>36</sup>) But to describe legal ethics codification projects as the very *essence* of immorality seems a significant overstatement. And, indeed, later in *Professional Legal Ethics: Critical Interrogations* the authors largely abandon their overly strong rhetoric when they, too, propose the promulgation of written statements of core legal ethics principles, as I discuss further below.

But Nicolson and Webb first engage in a lengthy examination of several major applied legal ethics issues—namely, lawyers’ duties to the client and related matters concerning autonomy and control in the lawyer-client relationship; the lawyers’ amoral role; and justifications for neutral partisanship. Here much of the discussion may appear quite familiar to the U.S. reader, since, as Nicolson and Webb freely acknowledge, they often draw on the more voluminous literature available in the United States. They are especially indebted to legal ethics philosopher David Luban, and a reader familiar with Luban’s outstanding work may find herself feeling, as she makes her way through these chapters, that she is sitting through a mediocre remake of a classic movie.<sup>37</sup>

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35. *Id.* at 112. The authors go on to claim that “one can argue that reducing ethics to formalised systems of rules, especially those of a detailed nature, increases the chances of lawyers being implicated in unjust and immoral conduct by undermining ethical evaluation” and that rule-based ethics “are likely to cocoon lawyers from constantly looking to their conscience and sense of right, from questioning the notions of justice and morality contained within law and the legal system.” *Id.*

36. See, e.g., Susan D. Carle, *Race, Class, and Legal Ethics in the Early NAACP (1910-1920)*, 20 *LAW & HIST. REV.* 97 (2002) (comparing prominent lawyers’ involvement in legal ethics projects with their arguably inconsistent public service involvements); Susan D. Carle, *Lawyers’ Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 *LAW & SOC. INQUIRY* 1 (1999) (examining ABA’s first national legal ethics codification project).

37. Even here, however, the diligent reader may find herself rewarded with the occasional interesting comparative tidbit. One learns, for example, of the problem of lawyers’ excessive zeal in the context of a discussion of the “McLibel” case, in which lawyers for the McDonald’s corporation “went to great lengths in attempting to prevent the unrepresented and indigent defendants from presenting, both publicly and before the court, their allegations of aggressive marketing of non-nutritious food, low wages and involvement in animal cruelty and environmental destruction by the plaintiff corporation.” NICOLSON & WEBB, *supra* note 1, at 172. We learn that this case cost McDonald’s an estimated £10m and that McDonald’s libel action against London Greenpeace resulted in an original verdict of £60,000, reduced by £20,000 on appeal. *Id.* at n.113. On the similar phenomenon of so-called “SLAPP” suits filed against citizens’ groups in the United States and critique of the ethics of the well established corporate lawyers who file such harassing lawsuits, see GEORGE W. PRING & PENELOPE CANAN, *SLAPPS: GETTING SUED FOR SPEAKING OUT* (1996) (presenting their study highlighting the proliferation of SLAPP suits and their chilling effects on public participation in the political process); RALPH NADER & WESLEY J. SMITH, *NO CONTEST: CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA 158-192* (1996) (criticizing the professional ethics of corporate attorneys who implement SLAPP suits as an offensive tactic to deter community activists); Robert R. Kuehn, *Shooting the Messenger: The Ethics of Attacks on Environmental Representation*, 29 *HARV. ENVTL. L. REV.* 417 (2002) (analyzing ethical concerns raised by corporate attorneys’ utilization of SLAPP suits to silence environmental plaintiffs).



It is not until the concluding chapter of Nicolson's and Webb's book that the full shape of their positive, reformative project becomes clear. Nicolson and Webb embrace four guiding principles for barristers' and solicitors' legal ethics: loyalty, integrity, candor, and informed consent.<sup>38</sup> Here, the starkest contrast with current ethics precepts, at least from the U.S. perspective, is in the emphasis the authors give to the principle of *integrity*. As they explain:

Notwithstanding the principle of loyalty, lawyers must recognize that they are implicated in and hence morally responsible for all actions taken on behalf of clients. They cannot pass on moral responsibility either to clients, who[m] they have freely chosen to represent, or to the profession, which they have freely chosen to enter. Thus in deciding whether to undertake or to continue representation, or to engage in particular forms of representation, lawyers are obliged to consider the impact on their personal moral integrity, the integrity of the profession as a whole, and the interests of affected third parties, the general public, and the environment.<sup>39</sup>

The emphasis on lawyers' moral responsibility in actions undertaken in representing clients is again not new, being instead strongly reminiscent of the work of such legal ethics scholars as Robert Gordon, David Luban, Russell Pearce, William H. Simon, as well as others. What is interesting is Nicolson's and Webb's tying of this argument to their favored version of postmodernism, focused on an ethics of alterity as described above. Whether such an ethics of alterity significantly advances the debate about lawyers' ethics is a large question beyond the scope of this short Review; my point here is simply to note for interested readers the convergences, alongside slight but illuminating differences, between trends in progressive legal ethics scholarship in England and Wales and in the United States. Nicolson's and Webb's less skeptical posture towards the contributions of postmodernism seems to allow greater openness to trends in contemporary ethics theory that could offer interesting applications in the legal ethics context.

Other conclusions at which Nicolson and Webb arrive also resonate with those of other scholars, but take different paths to get there. Nicolson and Webb, for example, emphasize the importance of lawyers not treating their clients as the "*homo oeconomicus* of classical liberal theory," which "may lead to paternalistic invasions of client autonomy where lawyers make unfounded assumptions about

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Another interesting comparative tidbit is presented by the authors' critique of the "cab rank" rule imposed on barristers and solicitor-advocates, which requires them to take on all clients who can afford their services in the order of their request for representation. NICOLSON, *supra* note 1, at 163. The British cab rank rule is sometimes cited in the U.S. legal ethics literature as an *improvement* over the U.S. system which grants lawyers wide discretion to pick and choose among prospective clients for reasons that can include jockeying for greatest status, publicity, and long-term income. DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 60 (2000) (contending that Great Britain's cab rank rule establishes a "more demanding principle concerning unpopular causes" than the discretionary U.S. system).

38. NICOLSON & WEBB, *supra* note 1, at 281.

39. *Id.*

their clients' needs, desires and interests, and treat cases as purely technical problems of how most effectively to vindicate their legal rights."<sup>40</sup> This set of observations echoes the focus of the *client-centered lawyering* literature generated by clinical law teachers.<sup>41</sup> But what Nicolson's and Webb's approach offers that this clinical literature does not—largely because it cannot, being focused by virtue of its practice origins on lawyering in the poverty law context—is the calibration of principles of client-sensitive lawyering to particular practice contexts. Because Nicolson and Webb advocate the linkage of legal ethics principles to specific settings, they can easily adapt their version of a client-sensitive lawyering model to variations in clients' political, economic, and social power. A poverty lawyer, for example, would be most concerned with being sensitive to his client's needs, desires, and interests and with amplifying his client's voice, but a corporate lawyer would be more concerned with the impact of her client's actions on "third parties, the general public and the environment."<sup>42</sup> Thus, Nicolson and Webb evoke both the U.S. legal clinicians' client-centered lawyering model and William H. Simon's lawyers' duty-to-do-justice ethics. In the United States, these two schools of legal ethics thought sometimes seem to hold each other at arm's length.<sup>43</sup> But in Nicolson's and Webb's version based in a postmodern ethics of alterity, the two approaches achieve synthesis into a richer and more sustained theory.

Finally, and most importantly in my view, Nicolson and Webb emphasize law teaching as a site at which the inculcation of situated, context-specific legal ethics values should take place. The authors argue for training lawyers to make practical ethical judgments in context, through the exercise of phronesis, much as clinical legal education seeks to do. They further argue for infusing ethical training across the curriculum, just as Deborah Rhode called for in coining the term "ethics by the pervasive method."<sup>44</sup> And, on a matter U.S. legal ethics scholars spend too little time emphasizing, the authors emphasize the choice of practice context as the most important ethics decision a beginning lawyer will make.<sup>45</sup>

Another section of Nicolson's and Webb's book focuses on the big picture context of the legal profession today in England and Wales. They place this

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40. *Id.* at 279.

41. *See, e.g.*, Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

42. NICOLSON & WEBB, *supra* note 1, at 280.

43. *See, e.g.*, William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1994) (critiquing certain aspects of client-centered lawyering model).

44. DEBORAH L. RHODE, *PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD* (1994).

45. NICOLSON & WEBB, *supra* note 1, at 283 (arguing that legal ethics education should help law students make ethical decisions about what type of practice to pursue and that this represents "the most significant ethical decision in a lawyer's career").

discussion early in the book, but I have left it for last because its implications are far less optimistic than what emerges from the material I have discussed above. Here again the authors' descriptions are often evocative of institutional and structural problems facing the U.S. legal profession. To take just a few examples, the legal professions of England and Wales face an end to a "climate of deference" about professional self regulation and the possibility of the "complete separation of representative and regulatory functions."<sup>46</sup> Legal education bears the marks of a "formalistic and 'technicist' " approach<sup>47</sup> and lawyers and students display "tendencies towards cynical instrumentalism," which students learn as a result of "general features of the law school experience" and the process of professional socialization.<sup>48</sup> Despite the different structure of a divided bar in England and Wales, both solicitors' firms and, to a somewhat lesser extent, barristers' chambers face growing economic pressures, resulting in increasing growth in size, less job security, and a greater sense of powerlessness about controlling conditions of practice.<sup>49</sup> Empirical studies of criminal defense work in Britain contradict " 'the professional rhetoric of providing an individualised service with continuous representation' by operating systems of routinised, discontinuous and often deprofessionalised client service."<sup>50</sup> These and many other trends the authors identify lead them to the conclusion that the big picture of the social, political, and economic context is "deeply postmodern in its complexity and elusiveness."<sup>51</sup>

Nicolson's and Webb's bleak observations about the structural, economic, demographic, political and regulatory contexts in which the British legal professions find themselves lead the reader to the obvious question as to whether the gentler, other-regarding, post-modern ethics the authors promote has any hope of prevailing in the harshly competitive practice environment they describe—ironically made all the more so by the influx of those traditional outsiders, such as women and people of color, on whom the authors seek to turn more attention through their ethics of alterity.

In the end, what may be of the most lasting significance about *Professional Legal Ethics: Critical Interrogations* is less its specific analysis than its willingness to take on received traditions and engage in searching, fresh and open inquiry for new ideas through which to inspire and guide the daunting project of achieving progressive reform in the legal ethics arena.

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46. In the United States, this trend towards outside regulation is most dramatically illustrated by the recent enactment of the Sarbanes-Oxley Act of 2002 and the Securities and Exchange Commission's promulgation of tough new proposed rules compelling lawyer disclosure of potential breaches of legal duties by corporations regulated under federal securities law.

47. NICOLSON & WEBB, *supra* note 1, at 66.

48. *Id.* at 70.

49. *Id.* at 71, 75.

50. *Id.* at 79 (quoting M. McCONVILLE ET AL., *STANDING ACCUSED: THE ORGANIZATION AND PRACTICE OF CRIMINAL DEFENCE LAWYERS IN BRITAIN* (1994)).

51. *Id.*