

On the Occasion of the Presentation of the Michael Franck Professional Responsibility Award to Dean Mary C. Daly, Posthumously May 28, 2009

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Thank you for inviting me to share a few reflections on the occasion of this national conference on professional responsibility. Thank you for honoring with your highest award the memory of a cherished friend of mine and a close colleague to many of you. I know how important this annual conference was to Mary. She attended many of them and was privileged, I know, to chair the planning committee for the 25th and serve as a member of many other conference planning committees. She so enjoyed and was challenged by her associations with you in the larger public interest.

The Michael Franck Professional Responsibility award bears the name of a pioneer in the development of codes of legal ethics and legal regulation in the United States. Like Mary Daly, he did his maiden work in New York City and then expanded his reach across the country as the reporter to the ABA Special Committee on Evaluation of Disciplinary Enforcement. As one colleague, Jeanne P. Gray, said of him on the establishment of this award: "You have done more than any lawyer I have known in my many years of work in the Bar to advance the cause of professional practice, by example, by personal commitment and dedication, by foresight and a remarkable sense of what is right and what works, by sound judgment and leadership, and by pure hard work." Those are words that also describe Mary Daly. She lived a life of remarkable service to others.

I was aware of Mary's work in the field of ethics in my role as dean of Fordham Law School during 18 of the 20 years she was a professor at the School. It was not, however, until I was asked to prepare a eulogy for a Mass at St. John's University celebrating her life that I came to see the enormity of her contributions to the field of legal ethics and the reach of her service to the academic and practicing bars of the United States.¹

Mary taught ethics, gave speeches, wrote books and articles, and served on committees, delegations, boards, panels and programs. She built bridges between the different segments of the legal profession and with other professions and other legal systems. She excelled at collaboration and consensus and community

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1. John Feerick, *In Memoriam: Dean Mary C. Daly*, 83 ST JOHN'S L. REV. 8 (Winter 2009) and John D. Feerick, *Dean Mary Daly: A Eulogy*, 77 FORDHAM L. REV. 1225 (March 2009).

building. She helped us to talk with each other. She saw needs and possibilities before others did so. She opened new areas for ethical explorations and development of standards. As Professor Roger Goebel noted of her work: "She became interested in the almost unknown field of international and comparative legal ethics and became the leading American expert on international and comparative ethics."² Mary consistently was at work to set ethical standards appropriate for American lawyers practicing in organizations and foreign jurisdictions. When she died on November 19, 2008, she left behind an enormous legacy of good works.

In honor of her memory and her life of service, I offer these reflections on what I refer to as the ethic of service. I view this ethic of service broadly and hold before you the lives of Michael Franck and Mary Daly as exemplars of a particular kind of service that promoted the public good.

The ethic of service is at the very heart of the legal profession. It can be expressed in paid or uncompensated government service, in a legal aid or legal defender's office, in a not-for-profit organization, in a school, in a bar association, in the representation of a client of limited or no means, in the representation of a client of means, in a community, and in many other ways and activities. Although ABA Model Rule 6.1 states that lawyers should aspire to provide legal services to the poor, there is no question that lawyers as individuals should see service to the poor as not just an aspiration, but as a personal and ethical obligation.

To quote the Corporation Counsel of New York City, Michael Cardozo, "The obligation to help those less fortunate has always been a fundamental tenet of the legal profession. The early Roman Empire provided for 'advisors to the poor.' By the Fifth Century of the Common Era, clergy were mandated to provide legal counsel to those who lacked resources of their own. A 15th century Statute of Henry VII directed justices to appoint attorneys for poor people."³

2. Personal communication from Professor Goebel. For her work in this area see RIGHTS, LIABILITY AND ETHICS IN INTERNATIONAL LEGAL PRACTICE (Daly & Goebel, eds.) (Transnational Juris Publications, Inc. 2d ed.); Mary C. Daly, *The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century*, 21 *FORDHAM INT'L L.J.* 1239 (1998); Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 *EMORY L.J.* 1057 (1997); Mary C. Daly, *Thinking Globally: Will National Borders Matter to Lawyers a Century from Now?*, 1 *J. INST. STUDY LEG. ETHICS* 297 (1996); Mary C. Daly, *Tourist or Resident?: Educating Students for Transnational Legal Practice*, 23 *PENN ST. INT'L L. REV.* 785 (2005); Mary C. Daly and Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 *GEO. J. INT'L L.* 401 (2007); *The Structure of Legal Education and the Legal Profession, Multidisciplinary Practice, Competition, and Globalization*, 52 *J. LEGAL EDUC.* 480 (2002); Mary C. Daly, *Teaching Integrity in the Professional Responsibility Curriculum: A Modest Proposal for Change*, 72 *FORDHAM L. REV.* 261 (2003); and Mary C. Daly, *What the MDP Debate Can Teach Us about Law Practice in the New Millennium and the Need for Curricular Reform*, 50 *J. LEGAL EDUC.* 521 (2000).

3. Michael A. Cardozo, *Rebuilding the City: The Opportunity to Help and the Obligation to Serve*, speech given at Central Synagogue's Jethro Luncheon, January 25, 2003, copy in possession of the author.

The notion of a lawyer as a public citizen was also expressed by Thomas Jefferson in framing the curriculum of America's first law school at the College of William and Mary. He saw lawyers as leaders of communities, states, and nations, placing the public interest above their own private interest. The lawyer codes of the early 19th century reflected as well the obligation to serve the public.

In his effort to understand the reasons for the legal profession and the rules and standards surrounding it, William Howard Taft, in his 1914 lectures on *Ethics in Service*, took note of the troubles, tribulations, and triumphs of the profession.⁴ He found from that review a "crying need for a learned and honorable profession of law." Rules of legal ethics, he said, were essential in order to help lawyers reconcile their duties to clients and courts in a "way which will best promote the effective administration of justice and the peace of society." He reminded us that the work of lawyers involves the securing of justice, which is an overriding purpose of a civilized society. Roscoe Pound referred to the legal profession as "a common calling in the spirit of public service." Unfortunately, too many of us treat this ideal as no longer descriptive of the American legal profession. I suggest that if this be the case, there is no better time than the present to revive this ideal as the world undergoes transformative changes in responding to crises in every area of human endeavor.

With our virtual monopoly on access to the law and the courts comes an obligation to serve the public. Lawyers are the gatekeepers of the justice system and the judges drawn from our ranks have the ultimate responsibility for seeing that justice is served.

The ethic of service runs throughout the modern Standards governing ABA-approved law schools and the Model Rules of Professional Conduct. The Standards for Law Schools, influenced by the provisions of the Model Rules, begin with a Preamble stating that law students must "understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice." The Standards add that graduates must "understand the law as a public profession calling for performance of pro bono legal services."

The overarching instruments of the American legal profession are given meaning in classrooms, bar programs, and in the daily practice of law. They emphasize the duty of lawyers to courts, clients, each other, and most especially to the public. William Howard Taft referred to the legal profession as the handmaid of justice. John W. Davis described lawyers as "sleepless sentinels on the ramparts of human liberty." Chief Justice Earl Warren spoke of lawyers' obligation to "further the cause of civil government." Whitney North Seymour, a former president of this Association and an undisputed leader of the bar for half a century, repeatedly

4. William Howard Taft, *Ethics in Service*, Addresses Delivered in the Page Lecture Series, 1914, before the Senior Class of the Sheffield Scientific School, Yale University, accessed from <http://pge.rastko.net/dirs/2/0/0/6/20066/20066-8.txt>.

expressed the view that lawyers had duties to protect and preserve the independence of the bench and bar; to work with judges to improve the procedures used in courts in the administration of justice; to review constantly the substance of the law itself; and to make certain that the concept of equal justice for all was not an empty aspiration in a lawyer's code.

When I attended law school fifty years ago and was admitted to the Bar in 1961, I was not familiar with such expressions as *pro bono publico* and professionalism or, for that matter, the aspirations voiced by Seymour and others. I do not recall reading or hearing about these subjects. This was a time when a course on legal ethics was not required in an American law school, and there were few programs on *pro bono* work and professionalism. Nor do I recall courses and programs on the philosophy, role and ramifications of the law and its institutions. There was no clinical legal education, which today offers invaluable opportunities to experience lawyering as a student in matters involving the otherwise defenseless and oppressed.

I learned my craft as I went, taking what I could from lawyers older than I, and seeking guidance from the little that was available by way of programs, articles, bar committees, and the like. I can't even begin to describe how difficult it was in the early going as a lawyer to work through issues of ethics in the field of alternative dispute resolution as I experienced them in labor and employment matters in such areas as arbitration practice, union organizing campaigns, collective bargaining, and plant shutdowns. Ethical issues seemed to exist everywhere.

Thanks to many of you, a beginning lawyer today cannot voice this kind of dissatisfaction in terms of guidance. Mary Daly said that "professional responsibility was the crown jewel of the United States legal profession . . ." But, at the same time, she had a much larger view of a law school curriculum than a single or multi-credit course on legal ethics. She took a single one credit course at one school and turned it into many courses, tying the teaching of ethics to the different practice areas in which lawyers find themselves. She enlarged the full time faculty teaching and writing about ethics so that the subject would have a greater reach within the institution. As part of her legacy, I co-teach one such course today involving ethics in the field of alternative dispute resolution.

Legal practice has grown in complexity. The contexts in which lawyers find themselves too often are filled with ambiguities, gaps, dilemmas and unyielding pressures that make the application of learning difficult to achieve. Sometimes the dilemmas in which lawyers find themselves are next to impossible. One commentator noted of Cyrus Vance, my personal hero, that his legacy was of a "decent man trying to cope with a nasty, brutual world in which the right answers are usually not clear and the consequences of decisions almost always have downsides."⁵

5. James Klurfield, *We Could Use More Straight Shooters like Cyrus Vance*, NEWSDAY, January 17, 2002 at A36, cited in Mary C. Daly, *Integrity in the Practice of Law: Teaching Integrity in the Professional Responsibility Curriculum: A Modest Proposal for Change*, 72 FORDHAM L. REV. 261, 264, fn. 14 (2003).

Mary Daly understood the complexity of life and law practice through her distinguished career as a practicing attorney in private practice and then as a federal prosecutor and law professor. She saw the subject of integrity from a multi-dimensional perspective—first, as a habit of mind that “stays the course of a lifetime.” It was to be exercised, she said, within a community and not in solitude. She saw it also as an institutional and personal virtue. People of integrity, she observed, instilled that passion in their students and shaped the character of organizations and institutions. She went further, stating that “integrity involves looking beyond one’s self, beyond one’s community, and even beyond one’s institution.” “Integrity,” she said, “is a virtue intimately associated with the common good.”

Of law school curriculums, she was blunt: “I think we have notably failed as legal educators. . . . In our casual indifference to the learning of other disciplines,” she said. She implored law schools to include in their curriculums the learning of other disciplines such as management theory, behavioral psychology, and cognitive science. As she put it in one of her articles:

“Organizational and management can greatly contribute to our understanding of how integrity is exercised in a corporate or law firm setting. Behavioral theory can shed much light on why some lawyers who genuinely perceive themselves as persons of integrity are unaware of the wrongdoing around them. Cognitive science can show how human beings are hard-wired to respond differently to certain types of moral dilemmas.”⁶

She added: “It is not idle speculation to imagine that at least a handful of lawyers snared in some of the more notorious corporate scandals over the past thirty-some-odd years would have behaved differently if they had been exposed to other disciplines’ insights into how to handle challenges to integrity.” By adding such courses to the curriculum, Mary suggested, “it enables us to better know who we are, and to be ourselves as best as we can be.” “Holding on to who you are and being yourself at all times as best as you can,” she said, “strikes me as being at the heart of integrity.”⁷

Although exploring, setting and raising professional standards were at the core of Mary’s work, she extolled in all of her roles the public mission of the legal profession, the assumption of obligations to the community. One of those fundamental obligations was providing access to justice to broader segments of the population. She wrote in her law school application, as a twenty-one year old, that she wanted to be a lawyer in order to work toward eliminating racial barriers and helping the indigent. She did this in her unique way as an educator. Having grown up in a family of modest means in one city, Mary understood that the problems of

6. Mary C. Daly, *Integrity in the Practice of Law: Teaching Integrity in the Professional Responsibility Curriculum: A Modest Proposal for Change*, 72 *FORDHAM L. REV.* 261, 268–69 (2003).

7. *Id.* at 277.

cities are intertwined with issues of justice—racial justice, economic justice, and criminal justice. These are all areas that lawyers can do something about.

Consider the present moment and all the opportunities it provides for lawyers to make differences. The legal profession was born for such moments and we have much work to do. There is a need for all of us, as Mary Daly did in her areas, to step forward with a bolder imagination and acceptance of the responsibilities that go with being lawyers and organizations of lawyers. Consider these alarming statistics: 80% of the legal needs of low-income Americans are not being met and the rise of poverty threatens to escalate this statistic. Studies suggest that more than half of the country does not understand the legal system and exactly what lawyers do. Surveys also indicate that less than half of America's lawyers participate on a regular basis in pro bono activities.⁸

Our courts and bar associations have responded with strategies to address these challenges. Among the challenges is harnessing the potential of the generation of lawyers who are seeking second careers and opportunities to continue to have purpose and meaning in their lives. I have examined along the way of my own life the manner in which the organized bar has sought to help lawyers in transition. It is laudable. But there is a desperate need at this time to develop a far broader and bolder agenda of creating access to justice opportunities for lawyers generally and finding new and innovative ways of drawing senior lawyers into areas that would benefit enormously from their insights, experiences, and wisdom. Law firms in the face of the economic crisis have taken important steps to encourage and help lawyers whose careers have been stalled to consider service opportunities in the meantime. The present crisis will ease; however, the population of aging lawyers who want to continue to contribute will grow astronomically. Schools such as Harvard University, commendably, have responded with leadership and second career programs for people of all backgrounds.

The American Bar Association and state and local bars also have taken important steps in these areas. The American Bar Association, which more than any other group expresses the strength of the legal profession, I respectfully suggest, needs to go far beyond where it is at this moment. Too many lawyers don't know where and how to connect and what connecting means in terms of balance in their lives. They, therefore, hesitate, hang back, and fail to be reached. The ethic of service demands much more of our legal institutions and each of us.

As I conclude, consider again what one lawyer, Mary Daly, whose memory you honor today, did to elevate the field of legal ethics. She began her work at one law school as a professor, then at another as a dean, and then as part of communities she helped develop nationally and internationally. Professor Bruce Green said of her: "It is impossible to paint the full picture of Mary's contributions to legal ethics and professionalism, because much of what she contributed was a product of

8. *See generally*, DOCUMENTING THE JUSTICE GAP IN AMERICA, A REPORT OF THE LEGAL SERVICES CORPORATION (2nd ed. 2007).

not what she accomplished but of who she was. At the same time that she excelled in lawyers' ethics as an academic and professional subject, she also, and more importantly, excelled in ethics as a way of life."⁹

Mary left us much too young but not without leaving behind an important agenda in expanding the professional responsibility curriculum, shaping the character of departments and organizations, and opening dialogues with other professions and with lawyers of different cultures, attitudes, and sensibilities. Her writings, which are listed at the end of a series of tributes to her in the *St. John's Law Review*, are filled with ideas and suggestions for implementing this agenda.¹⁰

Mary pursued impossible dreams and wanted us to do the same. This is how Dean William Michael Treanor of Fordham described her:

*"Sitting in Mary's office the day I met her, I saw a poster I have never forgotten. It had on it the picture of a clown—I always think of it as the opera character Pagliacci, though I am not sure why—and it said: 'To be good is not enough, when you dreamed of being great'. . . .Mary set the highest standards for herself and others, and wanted all she came into contact with to set their standards high and to realize their dreams. . . .She set an example for all of us. . . ."*¹¹

Mary Daly was an important part of our glory. She lived a life of commitment and dedication to ethics and professionalism, personifying the ethic of service.

9. Bruce A. Green, *Remembering Mary C. Daly: A Legal Ethicist Par Excellence*, 83 ST. JOHN'S L. REV. 23 (2009).

10. *In Memoriam: Dean Mary C. Daly*, 83 ST. JOHN'S L. REV. 38 (2009).

11. William M. Treanor, *Dean Mary Daly: A Tribute*, 77 FORDHAM L. REV. 1221, 1223–24 (March 2009).

