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Lives of Lawyers

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BOOK REVIEW

LIVES OF LAWYERS: By Michael J. Kelly, University Michigan Press 1994

REVIEWED BY ED GASKINS*

Michael Kelly, professor of law at Georgetown University and former dean of the University of Maryland Law School and practicing attorney, is convinced that “no coherent account of professionalism, legal ethics, or the contemporary legal profession is possible without understanding the workings of practice organizations.” This conviction has led him to explore five distinctive lawyer organizations, from which he concluded, “The organization has become the mediating force between lawyer, clients, and the community at large. The culture of the organization has become a crucial determinant of the quality of professional life.”

Three of the five organizations studied by Professor Kelly are private law firms. The McKimmon, Moreland firm in the New York City area is large, growth oriented, intensely competitive with other similar firms, hierarchial and financially successful. By contrast, Professor Kelly describes the small Buffalo firm of Mahoney, Borne as resistant to growth and non-hierarchial, with a stable of very loyal clients. It, too, is financially successful. Professor Kelly says that a Mahoney lawyer is a lawyer imbued with a specific set of values, which he describes as “a formidable

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array of commitments and constraints." In contrast, the McKimmon firm, while valuing the quality of its work service to its clients, is clearly driven by financial objectives. Completing the trilogy of private law firms is a four-person criminal defense and civil rights firm in Michigan which Professor Kelly describes as driven by the desire to serve the public good, but which is resistant to change and needs better financial management.

The fourth organization is the in-house legal department of a successful development company, which is driven by its intense loyalty to its "client" to demand that outside counsel provide quality legal services at reasonable costs while simultaneously lobbying internally for higher staff lawyer salaries. Finally, Professor Kelly examines the legal staff of a public utilities commission, whose statutory mandate is to serve the "public interest," but which must wrestle with what "the public interest" really means and with a changing role in fulfilling its obligations.

Professor Kelly suggests the legal cultures of the five organizations are so distinctive that the lawyers who work in them almost seem to be engaged in different professions. In one sense, the Mahoney approach could be described as "professional" and the McKimmon approach as "businesslike" and "bureaucratic." On closer examination, however, the Mahoney firm may in fact be more closely controlled, although the control is collegial and informal, rather than structural and hierarchal. Indeed, Professor Kelly suggests women and minorities might fare better in an organization that is bottom-line driven, and therefore more "objective," because there is less opportunity for the subtle discrimination prevalent in organizations grounded in more intangible (and therefore more subjective) values.

I found Professor Kelly's description of the five practice settings to be interesting and insightful, viewed from my perspective of twenty-nine years of law practice in two firms ranging in size (at different times) from four to forty-four attorneys. I believe these descriptions would be even more instructive to law students or young lawyers who have not had a similar breadth of experience.

Professor Kelly explains these five organizations present examples of the different interpretations of what it means to be a lawyer today. In Professor Kelly's view, every organization has a story to tell that encompasses the firm's history, clients, style (mode of communication, formality, informality, etc.), past and current leadership, financial priorities and conflict resolution. He

describes all five of the scrutinized organizations as successful, in that they have achieved the quest of "organizational integrity." That is, they have an understanding of their purpose and goals, and they have organized themselves consistent with that purpose and in a manner which is designed to achieve their goals. He suggests many lawyer organizations fail to achieve organizational integrity and are therefore confused, misdirected, and likely to fail, particularly given the changes that face the profession now.

Even organizations which have achieved organizational integrity, can still be overwhelmed by loss of leadership, financial failure, and the threat of what Professor Kelly describes as "opportunism" and "utopianism." "Opportunism" is the pursuit of short term advantages, in a way "inadequately controlled by considerations of principle and ultimate consequence." "Utopianism" is "a flight to abstractions that are a substitute for the hard choices of building an organization responsive to the economic or competitive realities of contemporary practice."

Professor Kelly concludes by suggesting there is a parallel between the individual attorney's quest for "personal integrity" and the quest for "organizational integrity" which he describes in some detail in the book. Although I agree with Professor Kelly that such a relationship exists, I was disappointed he did not elaborate on this connection so as to provide a more convincing argument to those who may be more skeptical of that linkage than I.

My personal conviction of the linkage stems from the correlation between the changes which took place in the law firm with which I was associated for twenty-four years as it grew from a new firm of four lawyers to an established firm of forty-four lawyers. Although by most objective standards the firm was successful in attracting quality lawyers and exciting work, with financial success and resulting influence and prestige, my personal dissatisfaction increased during the last five or six years of the firm's existence. (The firm ultimately was dissolved and the majority of its lawyers absorbed by an even larger firm.) In retrospect, I think Professor Kelly would say that we lost our "organizational integrity." That is, in our zeal to expand we recruited lawyers who were skillful and experienced, but whose personal and professional goals were not necessarily compatible with the firm's purposes and culture.

Ultimately, I formed a new firm with two long time friends (one a former partner) with whom I am personally and professionally compatible. The foundation of the firm, then and now, rests

on ten written principles that guide our decision-making, both short term and long term. Every person associated with the firm (both lawyer and non-lawyer) subscribes to the principles, and we share them with our clients and ask them to hold us to them.

By Professor Kelly's definition, we have achieved organizational integrity, although it is a constant effort to maintain that integrity. Because the purpose and goals of the law firm are consistent with my personal goals, I am happy with the organization, even though many other lawyers would be happier in a different environment.

In my judgment, therefore, Professor Kelly's basic premise is correct: the culture of the organization is a crucial determinant of the quality of professional life. I believe, however, he could have brought to bear additional evidence to support his proposition. For example, Stephen R. Covey's *Principle-Centered Leadership* discusses and explains "alignment" principles. The late Dr. W. Edwards Deming's concept of "total quality management" is consistent with Professor Kelly's understanding of organizational integrity and personal integrity. Finally, an extensive study undertaken by the North Carolina Bar Association in 1991, which ultimately led to a "Quality of Life Report," provides compelling evidence of increasing unhappiness among contemporary lawyers, and the reasons for that unhappiness. In a very real sense, that study can be viewed as an illustration of the difficulty of legal organizations achieving "organizational integrity" and the discomfort which lawyers experience when that quest is not achieved or when there is a misalignment between organizational integrity and personal integrity.