

## PURSUING A GOOD LIFE IN THE LAW: PROFESSOR RICHARD BROOKS

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“How does one lead a good life in the law?”<sup>1</sup> This question pervaded the scholarly and teaching career of Richard Brooks, Professor Emeritus at Vermont Law School. Keeping the question alive is a huge challenge in the contemporary world of legal education, which tilts precipitously toward “pragmatic” concerns while training fewer students laboring under backbreaking debt, for scarcer and newly configured jobs. The challenge is to understand and remember why the question counts more than ever in these strained times.

Recently, some philosophers and social psychologists have rejected traits of character as explanations for personal behavior.<sup>2</sup> So-called “situationist” critics of character ethics have even denied the existence of character itself, citing psychological studies purporting to demonstrate that situational factors determine conduct.<sup>3</sup> On this view, the features of one’s institutional or workplace environment dictate how one will behave, overriding tendencies often attributed to character, such as the propensity to take risks,<sup>4</sup> to assist others in need,<sup>5</sup> or even to perceive oneself as morally accountable for individual decisions.<sup>6</sup> If this diminished view of personal agency is true, law students are entering a world of constrained autonomy, exacerbated by the lack of empowerment to select one’s work or workplace in a shrinking legal universe.

Professor Brooks’ personal identity ethics stand in stark contrast to the cramped view that our external constraints largely dictate what we do. The

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1. Richard O. Brooks, *Ethical Legal Identity and Professional Responsibility*, 4 GEO. J. LEGAL ETHICS 317, 317 (1990) (stating the “fundamental question in legal ethics”).
  2. John M. Doris, *Persons, Situations, and Virtue Ethics*, 32 NOÛS 504, 504-505 (1998).
  3. *Id.* at 504, 506-507 (proposing “situationist” psychology as a more reliable explanation for human behavior than virtue approaches).
  4. *See, e.g.*, Kenneth D. MacKenzie, *An Analysis of Risky Shift Experiments*, 6 ORG. BEHAV. & HUM. PERF. 283, 283 (1971) (group dynamics enhancing risky behavior).
  5. *See, e.g.*, Russell D. Clark III & Larry E. Word, *Why Don’t Bystanders Help: Because of Ambiguity?* 24 J. PERSONALITY & SOC. PSYCHOL., 392, 393, 399 (1972) (showing that experimental subjects in groups were less likely than alone subjects to respond to an emergency in the next room).
  6. ELIZABETH WOLGAST, *ETHICS OF AN ARTIFICIAL PERSON: LOST RESPONSIBILITY IN PROFESSIONS AND ORGANIZATIONS* 64-65, 143 (1992) (proposing that the sense of personal agency is necessary to avoid diffusion of responsibility).

sense of freedom that emerges in Professor Brook's writing perhaps underemphasizes well-documented research in social psychology, showing how circumstances shape people's decisions to obey authority,<sup>7</sup> conform their beliefs to their peers,<sup>8</sup> and lead them to accept collective risks they would never take on their own.<sup>9</sup> In "Ethical Legal Identity and Professional Responsibility," Professor Brooks depicts multiple legal characters that he claims offer a "rich variety of choice."<sup>10</sup> These characters include such familiar legal denizens as officer of the court, advocate, and problem solver, and some who are less obvious such as "reflective craftsman," social engineer, and "gentleperson."<sup>11</sup> Compounding the range of choices, lawyers can select their identities incrementally and in clusters.<sup>12</sup> The character notion of ethics conveys moral autonomy that is valuable to students facing some genuinely intractable aspects of the law and the profession. Better to aspire to become the kind of lawyer one hopes to be while crushed by debt and approaching a disempowering market than to succumb passively to perceived insurmountable forces.

Professor Brooks acknowledged student skepticism about ethics as reducible to "personal preference."<sup>13</sup> He also noted that students reject the value of ethics unless offered visions with "moral appeal" that guide them through specific ethical and legal conflicts.<sup>14</sup> Students will disregard theories "not clearly based upon any sympathetic ethical principles," no matter how analytically sound.<sup>15</sup> He predicted that students ultimately would reject Renaissance humanism in favor of more inclusive attitudes toward the nonhuman world.<sup>16</sup> Much in this prescient analysis motivates environmental students at Vermont Law School. Recent international developments inspire students. For example, Ecuador has included the

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7. See JOHN SABINI & MAURY SILVER, *MORALITIES OF EVERYDAY LIFE*, 60-61, 64-65, 70 (1982) (discussing the famous Milgram experiments and difficulty subjects had in extracting themselves from the pattern of following orders).

8. *Id.* at 84-85 (describing the Asch experiments in which peer influence interfered with subjects' ability to make objective judgments about which line on paper was longer).

9. See Daryl J. Bem et al., *Group Decision Making Under Risk of Aversive Consequences*, 1 J. PERSONALITY & SOC. PSYCHOL. 453, 453, 458-59 (1965) (describing how group decision making enhances risky behavior).

10. Brooks, *supra* note 1, at 321.

11. *Id.* at 322.

12. *Id.* at 363-364.

13. Richard Brooks, *The Future of Ethical Humanism, The Re-Introduction of Ethics into the Legal World: Alan Gewirth's Reason and Morality*, 31 J. OF LEG. EDUC. 287, 288 (1981) [hereinafter *Humanism*] (exploring Gewirth's theory as offering "some basis for values other than personal preferences").

14. *Id.* at 289.

15. *Id.* at 302.

16. *Id.* at 304-305.

rights of Pacha Mama (Mother Earth) in its Constitution,<sup>17</sup> and Bolivia has enacted similar legislation to protect the rights of nature.<sup>18</sup> Students cheer the compact between the Commonwealth of New Zealand and the Maori (Iwi) people to bestow legal standing and specific personhood rights on the Whanganui River.<sup>19</sup> Students are not naive about the challenges of such developments. They eagerly examine the confounding boundary and conflict of rights problems that these concepts pose. Yet nearly 50 years after Christopher Stone advocated granting legal standing to the environment,<sup>20</sup> some people – though not enough at home – are finally beginning to implement some ideas with “moral appeal”<sup>21</sup> beyond an entirely human-centered, economic framework. These steps are heartening and exciting. Maybe it is possible, after all, to move beyond the “arrogance of humanism”<sup>22</sup> in environmental law.

One bold illustration of the contemporary move away from narrow humanism is a growing international movement, variously identified as “Earth Jurisprudence,” “Ecological Law,” “Rights of Nature,” and “Earth Law.” Proponents of this perspective urge that laws be modified to reflect the ecological interdependency and interrelationship of everything in the universe.<sup>23</sup> For example, reformed property law would not place individual rights of ownership above the rights of other beings dependent on the land, including present and future humans, nonhumans, and natural processes. Property owners would have ecological responsibilities to refrain from degrading the land.<sup>24</sup> Land rights would be defined by features of the land itself and would vary among parcels.<sup>25</sup> The idea of conservation would be

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17. REPUBLIC OF ECUADOR CONSTITUTION OF 2008, Oct. 20, 2008, arts. 71-74.

18. Frank Chávez, *Bolivia’s Mother Earth Law Hard to Implement*, INTER PRESS SERVICE (May 19, 2014), <http://www.ipsnews.net/2014/05/bolivias-mother-earth-law-hard-to-implement/> (last visited Nov. 12, 2008) (discussing The Framework Law of Mother Earth and Integral Development for Living Well).

19. See general Christopher D. Stone, *Should Trees Have Standing? - Toward Legal Rights for Natural Objects*, 45 S. CALIF. L. REV. 450-501 (1972) (explaining why nature should have standing).

20. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017/7) (N.Z.), <http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>.

21. Brooks, *supra* note 13, at 289.

22. *Id.* at 304.

23. See, e.g., CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* 78, 112 (2nd ed. 2011) (arguing that human and earth jurisprudence are subordinate to natural systems that should regulate laws).

24. See, e.g., Eric Freyfogle, *Private Rights in Nature: Two Paradigms*, in *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE* 270-278, 275 (Peter Burdon ed., 2011) [hereinafter *EXPLORING WILD LAW*] (describing land owner’s limited ability to degrade their land).

25. *Id.* at 276.

“updated by ecological realities and clearly tied to a vision of responsible land use.”<sup>26</sup>

The task of re-envisioning the law and its ethical foundations along such lines is formidable because of the weight of culture and legal precedent. Longstanding “western” belief separates humans from the rest of nature and treats humans as superior over the nonhuman world that exists for our uses.<sup>27</sup> At worst, this exploitative attitude has despoiled our planet and caused a “sixth mass extinction, according to lawyer Cormac Cullinan, Earth Jurisprudence advocate.<sup>28</sup> At best, humans anoint themselves as planetary managers who “can do things better than nature.”<sup>29</sup> Western law protects individual and corporate control over the environment, but fails to protect ecological interests and species directly when conflicts arise.<sup>30</sup> This dominant western legal vision is incompatible with a modern scientific worldview,<sup>31</sup> perhaps summoning a new natural law theory that Professor Brooks deemed “largely out of fashion.”<sup>32</sup> Quantum physics poses “webs of relationships interacting in a network fashion with other systems” with inseparable parts.<sup>33</sup> On this view, nature is systemically complex and structurally diverse but intertwined.<sup>34</sup> Yet environmental law remains largely compartmentalized into media (water, air, land). Combined with granting legal power over lands or places to a few humans and corporations. American environmental law violates the welfare of nature as an integrated whole.<sup>35</sup> According to Earth Jurisprudence founder and Catholic theologian Thomas Berry, all individual things reach their realization in the “Great Self” of the universe, which is the source of all value.<sup>36</sup> Thus, an appropriate ethic seeks mutual benefit and reciprocity in relationships, aiming to heal and restore damage to the earth.<sup>37</sup> I do not know whether, or to what extent, Professor Brooks might accept these ideas. Actually, I could imagine him rejecting them wholeheartedly just to invite a debate! Yet, I think he would agree that exploring them is one way of searching for a worthwhile and meaningful life in the law.

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26. *Id.* at 278.

27. CULLINAN, *supra* note 23, at 44-46.

28. *Id.* at 35.

29. *Id.* at 52.

30. *Id.* at 63-64.

31. See PETER BURDON, *Eco-Centric Paradigm*, in *EXPLORING WILD LAW*, *supra* note 24, at 85-96, 88 (describing a modern worldview where networks and systems are central in modern biological and physical sciences).

32. Brooks, *supra* note 13, at 288.

33. BURDON, *supra* note 24, at 88.

34. *Id.* at 89.

35. CULLINAN, *supra* note 23, at 105.

36. THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* 190 (1999).

37. CULLINAN, *supra* note 23, at 116.

The promise of a “good life in the law” also motivates those studying Animal Law. Nothing could be more discouraging than law that brutalizes animals in agriculture, entertainment, research, wildlife conservation practices, and everyday cruelties. The immorality of this law has spiked with rapidly growing scientific knowledge about the cognitive and emotional lives of animals,<sup>38</sup> including invertebrates.<sup>39</sup> The students who pursue animal law strive to improve the existence of their fellow creatures step by tiny step, taking heart in paltry victories while stretching for pivotal moments. To them, “a good life in the law” is to reform the many laws that could be so much less painful for nonhumans. In my experience, those who persist are finding meaningful employment and are starting to make a difference.<sup>40</sup>

Professor Brooks is particularly critical of the narrow approach to ethics in law schools, despite the post-Watergate outcry for ethics codes and courses teaching codes.<sup>41</sup> Even the American Bar Association, which has promulgated the Model Rules of Professional Conduct, recognizes that “[t]he Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.”<sup>42</sup> Professor Brooks generally decried “the lack of ethical intellectual content in legal education,”<sup>43</sup> given the few courses grounding legal principles in “ethical systematic thought.”<sup>44</sup> Perhaps this is especially a problem in an environmental curriculum because the fundamental personal questions are ethical, such as: “How should I best live my life?” “What is my place in the universe?” “How

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38. See, e.g., MARC BEKOFF & JANE GOODALL, *MINDING ANIMALS: AWARENESS, EMOTIONS AND HEART* 128-129 (2002) (discussing animal “theory of mind” or “cognitive empathy” and its neurological basis).

39. See, e.g., JENNIFER A. MATHER ET AL., *OCTOPUS: THE OCEAN’S INTELLIGENT INVERTEBRATE* 115 (2010) (discussing outdated view that octopus is merely tissue).

40. See, e.g., Vermont Law School, Alumni Spotlight: *Kara Shannon JD’15 Animal Defender*, <http://connect.vermontlaw.edu/news/alumni-spotlight-shannon> (last visited Nov. 12, 2018); Animal Legal Defense Fund, *2016 Advancement of Animal Law Scholarship Winners* (May 12, 2016), <http://aldf.org/article/advancement-of-animal-law-scholarships/2016-advancement-of-animal-law-scholarship-winners>; and Evans & Page, <http://evansandpage.com> (last visited Nov. 12, 2018) (Noting the post-graduate employment of several Animal Law students: Nicholas Malkovich worked with the Jane Goodall Institute writing papers on primate personhood; Kara Shannon works with the American Society for the Prevention of Cruelty to Animals (ASPCA) on humane agriculture and animal welfare; William Lowrey, a promising animal litigator, worked[?] for the Animal Legal Defense Fund; and Geneva Page, my student before Vermont Law School even had a course on animal law, has a full time private practice devoted exclusively to animal law. The list does not include the many students who have had animal law internships and externships during their years of study).

41. Brooks, *supra* note 13, at 287.

42. MODEL RULES OF PROF’L CONDUCT, Preamble and Scope (AM. BAR ASS’N 1983).

43. Brooks, *supra* note 13, at 287.

44. *Id.*

should I treat the nonhuman world?” When it comes to law and policy, the questions are obviously ethical: “What are the boundaries of public responsibility of a company that pollutes?” “Should an American corporation use practices in developing countries that are environmentally prohibited at home?” “Should developed countries most historically responsible for carbon emissions bear more global responsibilities going forward to mitigate climate change and promote adaptations?” These questions deserve more than passing mention from course to course. Rather, they deserve at least some systematic ethical treatment, informed by centuries of “ethical systematic thought.”<sup>45</sup> In 1948 Aldo Leopold wrote: “No important change in ethics was ever accomplished without an internal change in our intellectual emphasis, loyalties, affections, and convictions.”<sup>46</sup> A deeper approach to ethics across the curriculum would probably hearten Professor Brooks, no matter how much he might be tempted to take a contrarian position.

So let Vermont Law School embrace the broad questions that Professor Brooks asked throughout his career, not merely as a historical nod to an erstwhile “liberal arts approach” to law school. Of course, bar exams, jobs, and mundane practice skills play a central role in contemporary legal education, and legal educators would be remiss not to emphasize them. The danger is to become so submerged in these most “pragmatic” pursuits that one overlooks the practical and motivating value of integrating these skills with a broader and more reflective approach. As Professor Brooks reminds us, the ultimate pragmatist John Dewey “urged that a truly liberal education will refuse to isolate vocational training from education.”<sup>47</sup> We can best serve our students with a reflective approach to the law that will simultaneously sharpen their thinking and prepare them for successful careers. Keep the approach of Professor Richard Brooks alive because a good life in the law is more important than ever.

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45. *Id.*

46. ALDO LEOPOLD, *THE LAND ETHIC* 237, 241 (Louis P. Pojman et al. eds., 7<sup>th</sup> ed. 2017).

47. Richard O. Brooks, *Undergraduate Legal Education as a Vehicle for Liberal Education*, 72 *LIBERAL EDUC.* 361, 366 (1986) (writing on undergraduate legal studies programs with liberal arts emphasis).