

FASPE

Fellowships at
Auschwitz
for the Study of
Professional Ethics

2019 JOURNAL

PROFESSIONAL EVOLUTION:
WHY TODAY'S PHYSICIANS MUST
RESPOND TO PUBLIC CRISES

HOW TO COVER CHINA'S
INTERNMENT CAMPS?

TEACHING OBEDIENCE



2019 JOURNAL

DESIGN

Trevor Messersmith

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ABOUT FASPE

Fellowships at Auschwitz for the Study of Professional Ethics (FASPE) is a program that challenges young professionals to develop as ethical and responsible leaders. In a modern civil society, professionals have tremendous influence: they play a critical role in shaping actions and discourse and actions in both the private and public sectors. FASPE impresses upon its Fellows the importance of their roles as professionals.

FASPE Fellows begin their examination of professional ethics by studying professionals in Nazi Germany, recognizing that it was their failure to act ethically and assert ethical leadership that enabled the devastating policies of National Socialism. Against this historical backdrop, Fellows then consider the ethical issues currently facing professionals in their respective fields, including how to identify, analyze, and respond to them.

Professionals designed, executed, and enabled Nazi policies. Lawyers drafted the Nuremberg Laws. Doctors conducted the first gassings of the disabled. Business executives used slave labor and produced the tools of genocide. Journalists became propagandists. Pastors and priests promoted or condoned racist policies.

Studying these perpetrators powerfully conveys the influence that professionals wield, creates a compelling context for discussing the ethical issues that Fellows will face in their careers, and underscores the urgency for ethical leadership today. Through its use of the power of place and its focus on the professionals as perpetrators, FASPE has created a unique means for studying contemporary professional ethics—and simultaneously has contributed an important and creative approach to Holocaust education.

OUR FELLOWSHIP PROGRAMS

FASPE currently conducts five fellowship programs—in Business, Journalism, Law, Medicine, and Seminary—with fellowships offered to graduate students and early-career professionals. Each FASPE Fellowship consists of a fully funded two-week study trip in Europe. FASPE Fellowships take place in Berlin, Kraków, and Oświęcim, where Fellows visit sites of Nazi history, including the former Nazi concentration camp of Auschwitz. Daily seminars are held at sites where professionals planned and enacted Nazi policies. Each year, FASPE accepts between 65 and 75 Fellows across the five disciplines from a diverse and competitive pool of international applicants. Each program travels with at least one other program, allowing Fellows to benefit from cross-disciplinary perspectives. FASPE Fellowships were developed in consultation with leading practitioners, academic institutions, and scholars. FASPE's faculty is drawn from practicing professionals, ethicists and historians.

OUR FELLOWS

The FASPE experience extends well beyond the two-week fellowship. Fellows build strong bonds during the program that deepen through FASPE's annual reunions, regular regional gatherings, professional networks, and other resources. Fellows also participate in FASPE's programming and governance. Our Fellows greatly value the FASPE community and draw regularly on their FASPE experiences. Fellows go on to pursue distinguished careers, enriching FASPE with their experiences and expertise and, most importantly, applying principles of ethical leadership to their work and to their engagement with their communities. Through our Fellows and their influence, FASPE seeks to have a lasting positive impact on contemporary civil society.

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INTRODUCTION

Letter from FASPE's Chairman

BY DAVID GOLDMAN

“What does it mean to be a *professional*? Do I have a special *responsibility* as a professional? What does it mean to be an *ethical* professional? What kind of professional do I want to be? How do I lead an ethical life in my profession?”

FASPE is in the business of asking questions, of pushing our Fellows to understand the importance of asking questions—about the propriety of their work, about their own behavior, about the conduct of their profession.

FASPE's rationale for connecting the history (the behavior of the professionals in Nazi Germany in the 1930's and 1940's) to the present may not be self-evident. It is grounded on two fundamental propositions, namely: (i) that the German professionals, even those whose behavior was the most egregious, were not born evil and that they acted out of choice, and (ii) today's professionals can learn about themselves and their own behavior by seeking to understand what motivated the German professionals.

Why does this matter? Again, the history comes front of mind. The professionals designed, implemented and executed what became the crimes of Nazi Germany. Lawyers wrote and enforced the laws (Nazi Germany was a “legal state”); doctors designed the mechanization of death—beginning with the murders of the disabled; journalists became propagandists; businesses employed slave labor to operate the war machines; architects and engineers designed the death camps; clergy cooperated in allowing churches to become instrumentalities of the state.

Professionals matter. Simple as that.

FASPE is not a genocide prevention program. We do not train professionals to be on the lookout for the next genocide. We do seek to display, with the vividness and clarity of history, the absolute responsibility of professionals to recognize and act on the influence that they have in their large and small communities. On issues large and small.

We are gratified by the hundreds of applications, coming from hundreds of different institutions, that we receive for a limited number of fellowships. We are honored by our many partner institutions in the United States, Germany and Poland. We are fascinated by the conversations that take place during our Fellowship trips. And, most, we are proud of our Fellows; as we enter our 11th year, FASPE Fellows are becoming leaders who are influencing their professions and their communities.

FASPE Fellows are continuing to explore the questions as they seek answers...
We thank all of our supporters for making FASPE possible.

— DAVID

Introduction

BY THORSTEN WAGNER, FASPE EXECUTIVE DIRECTOR

It is easy to sanctify policies or identities by the deaths of victims. It is less appealing, but morally more urgent, to understand the actions of the perpetrators. The moral danger, after all, is never that one might become a victim but that one might be a perpetrator or a bystander.

(Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin*. New York: Basic Books, 2010, p. 400.)

Dear alumni, dear friends and supporters of FASPE,

We are very proud to present the 2019 FASPE Journal to you. Thanks to the diligent and thoughtful editorial efforts of 2017 journalism fellows Yemile Bucay and Kate Harloe, and thanks to the creativity and dedication of a handful of alumni, we are able to offer you a set of powerful and compelling essays. Often introspective, self-critical and without accusatory finger-pointing, this year's contributions exemplify some of the best conversations taking place in the context of the FASPE fellowships and raise a number of crucial and complex questions of current professional ethics:

How do I make sure that my language as a journalist is not inciting hatred and dehumanizing the other—whether my work actually is covered by the freedom of speech and the freedom of expression or not? How do I as a journalist maneuver the dilemmas of *access*? If I accept the invitation by the regime to visit and report on its institutions of repression, I might be able to uncover its crimes, but might also run the risk of legitimizing its policies and becoming complicit in its propaganda efforts.

How do I as a doctor avoid becoming socialized into structures of uncritical obedience to authority that leave me numb to ethically questionable actions? And, one might add, how do I prevent my ethical compass from gradually deteriorating, without me noticing? What if I actually get to a point, where I am complicit in unprofessional or even criminal practices, but actually still perceive of myself as a morally intact person? More generally, do we need a broader definition of professionalism, both in medicine and other areas—a professionalism, which also includes a professional responsibility for systemic deficiencies, out of a commitment to social justice?

As a lawyer or a business person, why do I stay and work for a firm or company that is complicit in ethically flawed and highly problematic practices? Is it out of a desire for a validation that comes from *being good at something*, which gains the upper hand over the wish to *be good*?

Or does the *willingness to stay* also originate from an authentic—but eventually flawed and self-delusional—conviction that I might be able to mitigate worse from happening?

David Luban, FASPE Law faculty (2016) and member of our Academic Committee, elaborates on this, with regard to military and civilian officials, in an article that soon will be published: “When a regime comes to power that does awful things, or tries to, or threatens to, how should decent people in the government respond?”

“Staying in their jobs may turn them into ‘desk perpetrators,’” he writes. “But quitting the job may take away their only chance to temper awful policies—to become ‘desk mitigators.’ Yet mitigation is often the flip side of perpetration: to implement an evil policy, but try to make it less bad, is still implementing an evil policy.”

Luban wraps up his fascinating study of Bernhard Lösener and Helmuth James von Moltke by concluding: “Sometimes quitting is the right thing to do; but when there is *Spielraum* [room to maneuver], and a genuine prospect of mitigating evil, staying at the desk can be the righteous path. But only for those who actually resist.”¹

Similar to Luban’s approach, a recurring theme in several of the contributions to the 2019 Journal is the question of the relationship to *power*—ethics and power, the professional and power. And as Luban is embedding his analysis of complicity and mitigation in historical-biographical case studies, several of the authors here strive to give their topics historical depth and context.

I will close by recommending one of the best speeches that I have heard this past year. It addresses me as European—but it has a lot to say to Americans and other nationalities as well. You easily can find Timothy Snyder’s “Speech to Europe” online.

Snyder has in different contexts been very helpful and inspirational for our work. This speech, in particular, masterfully brings together past and present. He summarizes what he sees as central motives leading to the destructive force of the empire,

culminating in the Holocaust: ecological panic, state destruction, and dehumanization. And he raises some very powerful points about the need for a critical approach to our own history, as well as the rise of the digital empire and its new, and very real, dehumanizing potentials.

Another reminder of how important it is to take responsibility and confront these challenges as professionals.

Notes

1. David Luban, *Complicity and Lesser Evils: A Tale of Two Lawyers*, 2019, manuscript.

This story was developed by Wadekar on the 2019 FASPE trip, with help from faculty. It was originally published by Foreign Policy on August 14, 2019.

Will International Courts Investigate Pro-Trump Media?

Journalists who amplify the president's most divisive rhetoric should consult history—and perhaps a lawyer.

BY NEHA WADEKAR

Vermin, snakes, cockroaches, invaders—throughout history, politicians have used these words to describe people they've deemed unwelcome in their countries. But what happens when media outlets pick up this weaponized language, expand on it, and reverberate it throughout the nation? Are they, somehow, responsible for the outcomes that follow?

In the aftermath of multiple mass shootings, the United States is reeling with questions about rhetoric, accountability, and responsibility. The 21-year-old white man accused of opening fire in an El Paso Walmart on Aug. 3, killing at least 22 people and injuring dozens more, reportedly wrote a manifesto against Hispanic immigrants, claiming that his attack was a “response to the Hispanic invasion of Texas.” Some have pointed to U.S. President Donald Trump's rhetoric, specifically his repeated use of the word “invasion” to describe Central American migration, as inspiration for the acts. Trump, in turn, has blamed the media, accusing “fake news” of stoking national “anger and rage.”

The accusation is grossly unfair for most media outlets. But perhaps not for some, which have adopted the president's hateful rhetoric, built on it, and repeated it until it became true to their viewers. Studies have found that Trump's hateful rhetoric could be correlated with an increase in hate crimes across the country. Condoning Trump's words only strengthens the power of his message.

This has happened before. In Germany, in the years leading up to World War II, and again in Rwanda, in the years before the Rwandan genocide, journalists used weaponized language and fearmongering tactics that created an “us versus them” mentality and ultimately contributed to mass violence. In both cases, international criminal courts held specific journalists accountable for the words they published and broadcast, finding them guilty of incitement in some of the most egregious crimes in human history.

The key to both was dehumanization: reducing people to a subhuman level and removing the individuality of those people. From there, mass extermination is an easier sell to a public desperate to protect its way of life from the influence of outsiders. The reporters’ artful crafting of “the other” helped convince people that Jews, in the case of World War II, and Tutsis, in the case of the 1994 genocide in Rwanda, were subhuman groups that should be eliminated.

Today, journalists must consider whether the content that they are writing, publishing, and broadcasting creates, intentionally or inadvertently, an “other” that will ultimately incite violence.

The precedents set by landmark international cases are instructive. *Der Stürmer*, which means “the attacker,” was a Nazi propaganda newspaper founded and published by party member Julius Streicher from 1923 until the end of World War II. The tabloid paper was known for publishing incendiary, hate-filled content and had the power to influence masses, especially members of the lower class. As early as 1924, *Der Stürmer* caricatured Jews with large noses and misshapen bodies and portrayed them as vermin, snakes, or spiders to foster the image of Jewish people as the other.

Streicher was tried at Nuremberg, found guilty of crimes against humanity, and sentenced to death. “Streicher was widely known as ‘Jew-Baiter Number One’. In his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism, and incited the German People to active persecution,” the verdict read. “Streicher’s incitement to murder and extermination ... constitutes a Crime against Humanity.”

According to legal experts, the Streicher case marked the first time in which the international community held a journalist responsible for violence that resulted from content that he published. “The Streicher case effectively set a precedent in

international law for holding accountable media officials in inciting atrocity crimes, including genocide, although that term hadn't been coined yet," said Zachary D. Kaufman, an associate professor of law and political science at the University of Houston Law Center. In 1948, after Streicher's execution, the United Nations adopted the Genocide Convention, which specified "[d]irect and public incitement to commit genocide" as an international crime.

The Streicher case became an important precursor to the international trials that would take place after the genocide in Rwanda. In the spring and summer of 1994, members of the Rwandan majority group, the Hutu, committed mass slaughter against the minority group, the Tutsi. As the world sat by and watched, between 500,000 and 1 million Tutsis and moderate Hutus were murdered, and tens of thousands more were mutilated and raped in their own villages. The genocide began the day after the assassination of Rwandan President Juvénal Habyarimana on April 6, 1994, and ended several months later with the victory of the Tutsi-led Rwandan Patriotic Front.

In the years leading up to the genocide, prominent Hutu leaders turned some radio stations and newspapers into propaganda machines. Similar to *Der Stürmer* in Nazi Germany, they used animal references to paint the Tutsi as the other, invoking the Kinyarwanda words *inyenzi* (cockroach) and *inzoka* (snake). They also portrayed the Tutsi as an external threat to a nationalist cause with the word *ibytso*, meaning accomplices or traitors. This dehumanizing language helped facilitate the mass slaughter of up to 1 million innocent civilians in a country with a population of only 7 million.

In the aftermath, the United Nations established the International Criminal Tribunal for Rwanda (ICTR) and incorporated the "direct and public incitement to commit genocide" language from the 1948 Genocide Convention into the ICTR's statute. The court sentenced three media personalities—Jean-Bosco Barayagwiza, Ferdinand Nahimana, and Hassan Ngeze—to 30-plus years' prison time each, reduced from life imprisonment for Nahimana and Ngeze. Nahimana and Barayagwiza were both government ministers and founders of Radio-Télévision Libre des Mille Collines, the main independent radio station in Rwanda. Hassan Ngeze founded the widely circulated, alarmist newspaper *Kangura*, which means "awake," in 1990. According to media analysts, *Kangura* used tactics similar to those of *Der Stürmer*: short sentences, repetition, simple vocabulary, and cartoonish imagery.

The trial marked the first time there was a media-related conviction on “direct and public incitement to commit genocide” crime. “Without a firearm, machete or any physical weapon, [Nahimana] caused the deaths of thousands of innocent civilians,” the judges wrote in their ruling. “The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences.”

There are legitimate concerns surrounding the crime of incitement in relation to journalism—that it could infringe on freedom of speech and expression and that it could be misused as a tool to stifle legitimate dissent.

But the United States already enforces some limits on freedom of speech. The 1969 Supreme Court case *Brandenburg v. Ohio* found that speech that supports law-breaking or violence is generally protected by the First Amendment unless it directly encourages people to immediately take an unlawful action. “From Nuremberg’s Streicher case and the ICTR’s media trial, we have a much better sense of the relationship between speech and violence,” Kaufman said. “The adage that ‘sticks and stones may break my bones but words will never hurt me’ is not accurate. Words can cause harm. Serious harm.”

In the United States, we are seeing some of that harm unfolding. The El Paso gunman’s claim that his actions were a “response to the Hispanic invasion of Texas” shows that words matter. But where did his notion of the “invasion” come from, and who, if anyone, is responsible for spreading this ideology?

The role of the media requires scrutiny. On Oct. 12, 2018, 25 days before the U.S. midterm elections, some 160 Hondurans left the town of San Pedro Sula—fleeing gang violence, conflict, poverty, and hunger—to seek asylum in the United States. Cable networks embarked on a coverage frenzy, as the caravan became a proxy for political battles in the midterms. According to a study conducted by Media Matters for America, a nonprofit that monitors and analyzes the U.S. media, CNN, Fox News, and MSNBC spent a combined 15 hours covering the migrant caravan between Monday, Oct. 15, and Sunday, Oct. 21, creating a false sense of crisis in the country. Fox News dedicated nearly eight hours of airtime to the caravan. During that same period, CNN covered it for four and a half hours, and MSNBC covered it for two and a half hours.

The tone and tenor of the coverage varied between outlets. Media analysis of the coverage showed that CNN's and MSNBC's coverage spent time debunking Trump's lies about the caravan and included interviews with migrants to make their struggles more relatable to viewers. Print outlets also covered the caravan heavily, but their coverage focused more on facts: giving their readers information about the caravan, the conditions that caused the migrants to flee, and the challenges of traveling north.

Prime-time Fox News programs, by contrast, often used the words "invasion" and "invaders" to describe asylum-seekers in the caravan and invoked military verbiage such as "rushing," "storming," and "marching" to invoke fear and anger in their viewers. "I don't mean to be hyperbolic about it, but clearly what happened yesterday were people trying to invade our border," said Dan Bongino, a Fox News commentator, when describing a scuffle between migrants and border patrol agents in November 2018.

The broadcasting of the term "invasion" seems to threaten "human values" in precisely the way that the Rwanda judgment warned about. After all, what invades? Armies invade. Swarms of insects invade. How do people respond to invasions? They want to repel them.

Fox News declined to comment for this story.

Of course, not all Fox News anchors use such dehumanizing rhetoric. On Oct. 29, 2018, Shepard Smith took to the air to deliver this message: "The migrants, according to Fox News reporting, are more than two months away if any of them actually come here. But tomorrow is one week before the midterm election, which is what all of this is about. There is no invasion. No one is coming to get you."

Smith was correct. The caravan was not the existential threat that Trump and Fox News claimed. In the end, no invading army crossed America's border. According to the International Federation of Red Cross and Red Crescent Societies, some migrants were intercepted by the Mexican government. Many failed to reach the United States, decided to stay in transit countries, or voluntarily returned to their countries of origin.

Meanwhile, the number of hate crime incidents reported to the FBI has been increasing since Trump's election. FBI data from 2017 showed a 17 percent increase in hate crimes between 2016 and 2017. Half of the perpetrators were white, and 80

percent of the crimes were racially or religiously motivated. A recent study by researchers at the University of North Texas and Texas A&M University compared counties that held rallies for Trump in 2016 to counties that didn't but were demographically similar to those that did. The researchers found a 226 percent rise in hate crimes in counties that hosted Trump's rallies.

In continually repeating Trump's sound bites and, in certain cases, supporting his rhetoric, some journalists have contributed to the dissemination of this hateful message. This appears to have contributed to the rise of anti-immigrant, anti-Hispanic sentiment across the United States. We are still far off from any international trials to determine responsibility for potential incitement to violence. But the precedents show that reporters can and will be held accountable for the words they choose to use and for the outcomes that these words garner.

Neha Wadekar *was a 2019 Journalism Fellow. She is a Nairobi-based journalist.*

The following essay was written in response to this prompt, posed by business faculty: Have you faced an ethical dilemma since returning from our trip that you feel comfortable sharing with the group—in business or your personal life? What happened? How did you deal with it? Did the experiences or learning with FASPE change how you think about your own behavior, the behavior of others, or the situation more broadly?

Ethical Decision-Making at the Speed of Business

BY AUSTIN MCKINNEY

I recently faced an ethical dilemma at work that almost slipped under my radar. Because the stakes were relatively low, I initially did not even recognize this decision as worthy of ethical consideration. Yet, as we learned on FASPE, small decisions we make as professionals can have enormous consequences, if left unexamined.

After graduation from my MBA program, I joined a tech company that provides sales and marketing automation software to businesses. One of my main projects was to research if our company should sell its products in additional international currencies, and, if so, which currencies should be prioritized. I also had to design the operational plan for implementing the changes. It was, by most standards, a normal initiative for a mid-level manager. I was then expected to recommend a strategy to more senior executives for their final approval.

When the task was assigned to me, my education and experience kicked in, and I immediately started acting. I attacked this problem the same way that many business leaders would: I studied what our peer companies were doing; I dove into the internal data to see what had happened when we had previously opened sales in other currencies; I created a financial model for what the future results could be if we decided to take this path; and I started previewing my recommendations to leaders throughout the company.

The data I surfaced made me feel certain that I had an airtight argument. I looked at five different case studies in our company's history to create reasonable comparisons for what the company should expect to happen to revenue and costs if we opened to additional currencies. The numbers looked strong. I was confident. In fact, I was ready to be asked to lead the implementation of my recommendation. (Fingers crossed.)

However, when I shared my findings with another colleague, he mentioned, offhandedly, a scenario that I had not yet considered. He said that he was impressed by my research and that, overall, he supported my recommendations, but he encouraged me to look at another metric through a different case study. No problem, I thought. Later, when I ran those numbers on my own, the scenario and implied future results actually looked pretty bad. It did not support my original recommendation; it pointed in the opposite direction.

I quickly decided to forget his scenario and move forward without it. I had five solid case studies supporting my recommendations—why would this one outside data point mean anything? The evidence was strong. I genuinely wanted the company to adopt my ideas. I also wanted to gain the trust of my supervisors—and gain the responsibility—to lead an important change. As a result, I just went back to polishing my final presentation to senior executives. It was showtime.

As I said, I almost did not even think twice. One slide in a PowerPoint presentation was not worthy of weighty ethical deliberation, I reasoned. I was ready to nail my pitch to the executives and to get started on the real work of turning this idea into reality. But a few days later, something was gnawing at the back of my mind. Was my pride—and my desire to succeed—getting in the way? Was my personal attachment to a specific outcome clouding my judgement of what was best for the company? Was my bias toward action preventing me from undertaking a rigorous evaluation of the decision?

In some ways, the answer to all of these questions was yes. FASPE taught me that commonplace human emotions and ordinary professional pressures can motivate awful decision-making. Sometimes, that poor decision-making can lead to disastrous consequences for others. Business professionals pursuing their immediate self-interest can participate in acts of great harm to the company, its employees, or the society and environment in which it operates.

Ultimately, I decided to include the sixth case study. In my presentation to senior executives, I detailed one different data perspective that could potentially undermine my entire set of recommendations. I still lobbied hard, however, for my vision of the future.

In the end, I felt that I had been thoughtful and purposeful in my actions—giving due ethical consideration to a decision point that might have otherwise slipped by me unnoticed. In the chaos of business, with its ever-present demands for making decisions, taking risks, and achieving big goals, professionals should still protect adequate space for reconsideration. Seldom are we confronted with an abrupt, profound ethical dilemma; instead, we make many series of small decisions—often without reflection—that can lead us to consequences far more harmful than we originally envisioned. As business leaders, we must challenge ourselves to keep our minds present and our senses attuned to the world around us, so that we can recognize when an impulse, reaction, or decision warrants further reflection—and, sometimes, a correction. In this way, we can help prevent small decisions from accumulating into situations we never intended to create.

Austin McKinney *was a 2019 Business Fellow. He is a diplomat with the United States Department of State, currently serving in Mexico.*

Teaching Obedience

BY SARAH VAN DER LELY

I can say that I have always done my duty and have never done anything contrary to what was expected of me.

— *Eduard Wirths*
Chief SS doctor at Auschwitz

“The other day, I walked into the operation room. The patient, whom I had never met before, was already under general anesthesia and the gynecologist said, ‘Ah good, you’re here. Come do a vaginal examination to feel this massive polyp we’re about to remove.’”

This was stated by one of my fellow students during a so-called “medical ethics class.” Typically, in these classes, small groups of medical students discuss times when they had to make difficult ethical decisions. On paper, these classes should be an opportunity to talk about patient cases that were ethically challenging, and to review how these cases were handled by the medical team. In reality, however, most students use the class to confess instances when they had to bear witness to something—or were told to act in a way—that they felt was unethical.

In the aforementioned case, after weighing the pros and cons of doing the vaginal examination, the students in class unanimously felt that it was morally wrong to internally examine a patient who is unconscious and who had not given previous consent.

The teacher then asked: “So who would refuse to examine the patient?” A painful silence followed. No one raised their hand. Everyone was aware that they would rather act in a way they perceive as morally unacceptable than speak up to a supervising physician.

“There is probably no physician or medical student who has not seen or participated in callousness (or worse) in the treatment of patients in response to an order of a

resident or an attending physician,” Eric J. Cassell, M.D. and professor, wrote in an article about the obedience experiments of Stanley Milgram.^{1,2}

Multiple studies have found that up to 60% of students reported witnessing unethical treatment of a patient. Another study found that almost all of third- and fourth year medical students have witnessed physicians refer to patients in a demeaning manner.^{3,4} Over two thirds of students felt inclined to participate in this behavior to “fit in” and experienced feelings of guilt afterwards.⁴⁻⁶

Other studies have found that the majority of students have encountered mistreatment at least once during their internships.^{7,8} As result, over three quarter of students have reportedly become more cynical about the medical profession and over a third have considered dropping out of medical school.^{8,9} Despite this discontent, mistreatment is only rarely reported to faculty due to fear of potential repercussions and the perception that mistreatment is simply part of the medical culture.^{8,10}

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To some extent, obedience is a requirement of medical training. But history shows how easily that requirement for obedience can lead educated and intelligent professionals to follow orders uncritically, or to passively accept dangerous, unjust, or immoral situations.

The eugenics movement, which first arose in the late 19th century, led to tens of thousands of involuntary sterilizations globally, prompted a “euthanasia” program in Nazi Germany in which “feebleminded” people—many of them children—were killed, and culminated in the murder of millions of people.¹¹

In the wake of these mass murders, society was left to question how physicians could have been so deeply involved in such a barbaric movement.¹¹ It has been estimated that more than half of German physicians joined the Nazi party.¹² Physicians had a wide range of responsibilities with the regime: They decided which patients were “unworthy of life,” carried out lethal injections and involuntary sterilizations, performed experiments on prisoners, and selected people to be murdered in the gas chambers of the extermination camps. In the years since, many theories have emerged to explain how physicians could have drifted so far from the core values of medicine—compassion, healing, and the relief of suffering—and still consider themselves doctors.

In *The Nazi Doctors*, psychiatrist and scholar Robert Jay Lifton attempted to explain “the relative ease with which physicians—members of my own medical profession with its claim to healing—could be socialized to killing.”¹³ A large portion of his book focuses on the physicians at Auschwitz.

Perceived powerlessness

Many of the Auschwitz doctors described a feeling of powerlessness—of being “a tiny cog in someone else’s machine.”¹⁴ As a physician you had to carry out sterilizations “as it was simply ordered by the university which received its order from the state health offices,” one of Auschwitz’s doctors said in an interview with Lifton. In Auschwitz “you’re just there on the spot and helpless.” Another former Nazi doctor told Lifton that “it was a horrible thing but we couldn’t do anything [else].”¹⁴

Whether conscious or subconscious, this mode of thinking shifts the blame to the person giving orders, to the supervisor, or to the system. In the perception of these Nazi physicians, they were simply serving as agents. They believed they had no choice. By succeeding at being obedient, the doctors also, in their own minds, shed individual responsibility for their actions.

Doubling

Lifton also described a phenomenon he termed “doubling,” which he described as “the division of the self into two functioning wholes, so that a part self acts as an entire self.”

The other self “is created on behalf of what one perceives as one’s own healing or survival,” he continued. And in “avoidance of guilt: the second self tends to be the one performing the ‘dirty work.’”¹⁵

Professionals, in particular, may have a special capacity for doubling, Lifton argued. In them, a professional self can be joined to a prior self. In physicians, for instance, a “medical self” is almost a necessity. The “medical self” enables the physician to be compassionate (original self) but also to keep a professional distance (medical self). The medical self can be relatively unmoved by pain and grief, inured to death, and carry out challenging medical procedures that demand a certain distance.¹⁶

But doubling has a downside: it creates a self through which physicians can easily and quickly distance themselves from something they feel is unethical or unacceptable. The student from the above example, who was ordered to perform a vaginal examination on an unconscious patient without previous consent, would never do so as their prior self. Even if there is inner reluctance from the prior self, the medical self steps in and performs the examination because it believes it has to, thereby freeing the prior self from the moral conscience and responsibility.

Lifton argued that the danger of this “opposing self” is that it can become “unrestrained, as it did in the Nazi doctors.”¹⁷

“The way in which the doubling allowed Nazi doctors to avoid guilt was not by the elimination of conscience but by what can be called the *transfer of conscience*,” he wrote.

Rudolph Höss, commander of Auschwitz, listed the options: “Either to become cruel, to become heartless and no longer to respect human life [that is, to develop a highly functional Auschwitz self] or to be weak and to get to the point of a nervous breakdown [that is, to hold onto one’s prior self, which in Auschwitz was nonfunctional].”²⁰

Groupthink

At Auschwitz, doubling became not just an individual method but a shared psychological process and group norm. Irving Janis, psychologist and scholar, called this phenomenon “groupthink.”²¹

When a young doctor at Auschwitz was first taken to one of the selections, he was shocked. He reportedly said that he “didn’t want to be in a slaughterhouse...[and that] as a doctor his task is to help people and not to kill them.”²² Another physician later told Lifton that this argument was never used at Auschwitz, because “it would have been completely pointless.” If one of the doctors were to question the morality of his own actions, then he would implicitly be judging those of his colleagues. The young doctor was subsequently reassured by the camp commander, mentored by another doctor, and he participated in the selections without further incident.

The doctor...if not living in a moral situation...where limits are very clear...is very dangerous.

– *Auschwitz survivor*²³

In light of these and other dark pages in medical history, there is an obligation for physicians to constantly reconsider their practices. Although standard medical training today is in no way comparable to the practices of doctors at Auschwitz, some of the psychological mechanisms Lifton described are disturbingly familiar to medical students.

In their essay on professionalism, then-medical students Andrew Brainard and Heather Brislen painted the unsettling picture that most students “seem to adopt an implicit set of rules that place hospital etiquette, adherence to academic hierarchy, and subservience to authority above patient centered virtues.”

“Students become ‘professional’ and ‘ethical’ chameleons because it is the only way to navigate the minefield of an unprofessional medical school or hospital culture,”²⁴ they wrote. Students are molded into obedience, and learn that they get better grades in professionalism, when compromising their ethical standards and “mimicking the unprofessional behavior of their educators.”²⁵

Many students witness unethical acts for which the physicians in question are not held accountable, as they are protected by the hierarchy of authority.²⁶⁻²⁸ Because reporting or questioning these acts is regarded as disruptive and therefore unprofessional behavior, many students will very quickly learn to simply conform.²⁹ As a result students feel “mute” in morally distressing situations and complicit as bystanders to their superiors’ actions, which causes them to feel powerless and “trapped in a hierarchy.”^{24,29,30} This is a way for students to distance themselves from their inaction or immoral actions by shifting the blame to the system or supervisor and explaining to themselves that they have no choice.

It may very well be that, in order to adapt, students feel inclined to double and form a “medical self” that will act in the way that is expected of them. However, as Lifton and Rank described, the risk is that this medical self may ultimately replace the prior self.

The consequences of this cycle of hierarchic and social pressure, moral compromise, and consequent habituation are many. Most importantly, this can lead to an erosion in professional and academic integrity, as exhibited in a study showing that first year students were more likely than more advanced students to identify case scenarios describing academic dishonesty as being unacceptable.

Furthermore, a larger proportion of the more advanced students indicated that they had or would engage in such dishonest behavior.³⁴ The erosion of professional integrity was also evident in a survey that asked medical students in different years of their education about their experience with and attitudes towards cheating. In their first year, 97 to 100% of students said they expected not to cheat in medical school, but by their fourth year, up to a quarter of all students reported having cheated in activities directly related to patient care.³⁵ These actions, such as lying about having ordered a test, reporting findings elicited by others, and recording tasks not performed, were often motivated by fear or “the pressure to appear as if [one] knew everything.”³⁵ One respondent noted that she was actually advised by a resident that she “would come off better if [she] lied a little.”³⁵

If upcoming physicians have to create medical doubles for themselves to “survive medical school,” then it’s conceivable that, by the time students become residents, their medical selves will have replaced their prior selves, and will teach or oblige new students to double as well. The “see one, do one, teach one” approach in medicine only exaggerates this phenomenon through groupthink.¹ Brainard and Brislen argued that “students’ professionalism has been questioned when they disagree with a team.”²⁴ Or, as one student was told by his clerkship director: “the most important professional virtue is getting along with your superiors.”²⁴

Perceived powerlessness, doubling, and “groupthink” seem to be an essential part of the hidden curriculum that focuses on maintaining the hierarchy of authority.^{29,36} Physicians need to reexamine the structural mechanisms in medical training that can lead to future doctors valuing the obedience above all else, and that lead to their self-perception as a tiny cog in someone else’s machine.

We might simply feel bad, and let it go at that, when patients are mistreated because of undue obedience on the part of health care personnel, if it weren’t for other findings

of Milgram's research. For not everybody obeyed...Appropriate disobedience can be taught.

Eric J. Cassell¹

The issues of mistreatment of medical students and misuse of power by physicians have been known for decades. Yet policies and educational courses have failed to eradicate this structural mistreatment.³⁷ Researchers have suggested that the hidden curriculum might be inhibiting change.^{29,37}

Interventions such as courses on how to handle sexual harassment, mistreatment or unfair feedback do not address social pressures and institutional forces that lead to misuse of power.^{38,39} By teaching the students how to function in this broken system, educators confirm the status quo and encourage students to adapt and double in order to create a more resilient medical self. In some of these classes, students will be told that they can do better once they've become physicians, which creates the unfair expectation that individual students alone should initiate change of such institutional problems and incites feelings of guilt when students can't live up to these expectations. Brainard and Brislen concluded that "the current structure of professionalism education and evaluation does more to harm students' virtue, confidence, and ethics than is generally acknowledged" and leaves students "feeling persecuted, unfairly judged, and genuinely and tragically confused."²⁴

Talk about power

Instead of teaching students how to endure maltreatment during their internships, education should focus on how to responsibly handle the power that comes with being a physician. Through their career most students will come to accept the status quo, partly because they adjust, but most importantly because the higher they climb in the hierarchy, the more privileges they will experience as result of it. Because the hidden curriculum teaches students not to speak up, physicians are hardly ever criticized.

One of the ways to address this is to have students grade their educators. This would serve the dual purpose of creating a system to put a check on power, while also rewarding positive models.

Second, the evaluation system used to assess student performance can also be an important factor in the balance of power. Compared to a pass-fail approach, an A-F

grading scheme promotes peer competition and anxiety rather than collaborative learning.⁴⁰ Students have cited grades as one of the reasons to compromise their ethical standards.³ A pass-fail evaluation could help students feel less anxious about grades and more secure in their moral perspectives. In this system failing a student would have to be an extraordinary measure that is only taken in the case of irrefutable misbehavior. This would therefore protect the students from being subjectively punished with low grades for not “mimicking the unprofessional behavior of their educators.”

A third approach was taken by Yale School of Medicine almost two decades ago. During the school’s annual “Power Day” medical students would “define and analyze power dynamics within the medical hierarchy and hidden curriculum, using literature, guest speakers, and small groups.”²⁹ As a result, some units at select hospitals held weekly meetings, called “Power Hours,” in which staff and students discussed power within their departments. Instead of simply talking to students about power, the physicians (those in the position of power) were frequently reminded of their power in the hierarchical structure of medical practice—and of the consequences of their day-to-day actions. It's unclear whether these sessions led to structural change so far, but the aim is to positively reshape the hidden curriculum for future healthcare professionals.

Appropriate disobedience

In order to support the development of physicians who value altruism, integrity, and accountability above the hierarchy of authority, we have to stop regarding conformity as professional behavior.

Medical history should be incorporated into all medical schools’ curricula, with special attention to mechanisms that lead physicians to become subservient and numb to ethical responsibility. The values of critical pedagogy, which aim to awaken a critical consciousness, would be a welcome addition to the curriculum.⁴¹

Furthermore, students should be encouraged to be critical of institutions and to think regularly about their ethical responsibility. When students are disobedient in order to remain true to their moral standards, they should be applauded, not punished.

Recent articles have urged physicians to speak out against social injustice and unethical policies.^{42,43} But how will students ever become physicians who meet these demands when they're taught to be obedient, compromise their values, and quietly do what is expected of them? A critical examination and an open discussion of the power structures embedded in the hidden curriculum is urgent and essential to make future physicians morally conscious, courageous and—when necessary—disobedient.

Sarah van der Lely was a 2019 Medical Fellow. She will be graduating from medical school at the University of Amsterdam in April 2020, where she is currently working with faculty to bring a focus on power dynamics in medicine into the curriculum.

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How to Cover China's Internment Camps?

BY SARAH MATUSEK

Bahram Sintash follows news from China's Xinjiang Uyghur Autonomous Region closely, including last year's press tours of the camps. "I watch most of the videos and reports, but never see my father," Sintash said. "Many Uyghurs are watching."

He suspects the colorful choreography, ethnic songs, and detainees' smiles for the camera were prearranged.

Sintash's father, Qurban Mamut, was editor-in-chief of Xinjiang Civilization, a popular Uyghur cultural journal. When Mamut's wife complained the work ate up nights and weekends, he'd counter: *This is my responsibility*. He passed this conviction on to Sintash. Now a U.S. citizen in Virginia, Sintash is on a mission to prevent his father's erasure.

He believes his father's status as a Uyghur intellectual landed him in a detention camp after an arbitrary arrest in February 2018. His mother, still in Xinjiang, has blocked all communication with him, likely for security. Without updates, Sintash doesn't know who's still alive. An outspoken Uyghur activist and researcher, Sintash uses social media to demand that China offer proof of life for his father and other Uyghurs and release them. Otherwise, "China is destroying us," he said.

Internment camps for predominantly Muslim Uyghurs, Kazakhs, and other minority ethnic groups proliferated across the region in April 2017, a year after Xinjiang Party Secretary Chen Quanguo's arrival. Currently, an estimated one million or more people are held in these camps. China has explained the crackdown as a way to thwart perceived threats of "terrorism" and "extremism" in a region critical to Beijing's Belt and Road Initiative, a trillion-dollar trade and infrastructure project.

"Is it your choice to be here?" the BBC asked a young detainee, shown dancing in a documentary from June.

"Yes ... I was influenced by extremism and terrorism," he said. "A policeman at my village told me to get enrolled in school and transform my thoughts."

Uyghurs reportedly face detention for simply reading the Quran or sending money to a relative abroad. Allegations have emerged of political brainwashing, torture, and

deaths behind the barbed wire. The United Nations has called for access to investigate Xinjiang's alleged human rights abuses, which U.S. lawmakers have begun to call "crimes against humanity."

A senior Chinese official announced in December that all "trainees" had been released. Skeptical relatives demand proof. Even if some detainees have been released, reports have emerged of detainee transfers to prisons and other forced labor camps. Special facilities house children effectively orphaned by the system.

Press tours of detention camps aren't new. Governments have led press tours of their concentration camps at least since Spain's mass detention of civilians began in Cuba in the 1890s, writes Andrea Pitzer, whose *One Long Night* chronicles the history of mass civil detention. Nazi Germany made no secret of its first permanent concentration camp in Dachau. "To the contrary, the Nazi press covered its opening in detail, on the theory that merely knowing it existed would serve as a public deterrent," writes historian Doris Bergen in her book *War and Genocide*. A Nazi-run "show camp" called Oranienburg hosted numerous journalists in 1933.

"A huge blind spot with almost every regime is that usually early on they will let people come in and they will actually reveal their own unethical and inhumane treatment, because they're so blind to how bad it is, that they will sort of give part of their game away," Pitzer said in an interview over the phone.

In the Third Reich's words, the political prisoners were in for "reeducation." China has revived this language to defend the camps in Xinjiang. Although Beijing first denied the camps' existence—before they seeped into international news—the Chinese Communist Party (CCP) has offered tightly controlled tours of so-called "vocational training centers" to diplomats and select media. Journalists must consider access, privacy, and transparency when deciding how to engage. The ethical calculus extends beyond the tour itself as newsrooms consider what material to publish with the aim to minimize harm.

Of the foreign media that have tried to penetrate the Orwellian surveillance and security of Xinjiang, Bloomberg, the BBC, and Reuters are among outlets that have published reporting from tours of the camps. To varying degrees, journalists tend to be closely "chaperoned" on these tours, curbing their ability to independently investigate. Such disclosures to readers are crucial. Not only do they signal the range of reporting challenges faced in pursuit of the larger story, but also remind China that these tours won't be taken at face value.

Other journalists make ethical decisions not to pursue such trips. Pitzer, who has reported from Guantánamo Bay and Rohingya refugee camps, says she decided not to travel to North Korea while researching her book, since she lacked knowledge of Korean language and culture that could help her decipher the controlled environment.

“I didn’t feel I would be able to carry it off in a way that it would serve readers – and ethically represent the experience of those inside the camps,” she said on the phone.

A Western journalist who has covered mass detention in Xinjiang acknowledges that accepting tour invitations is fraught, since the course is designed to reinforce the illusion of open access.

“Simply signing up can sometimes be part of the sort of propaganda victory itself,” says the journalist, who cannot publicly discuss their outlet’s reporting on the camps.

Committing to the tour triggered intense ethical discussions surrounding sources’ representation, says the journalist. In some instances, if detainees appeared to reveal more than they may have preferred, those parts of the testimony were not included in the story.

Government-led tours’ limited access may be preferable to no access. “If [reporters] had refused the trip and there was no story told by anyone, then China’s treatment of Muslims does not become known,” Paul Fletcher, publisher and editor-in-chief of Virginia Lawyers Weekly, wrote in an email last summer.

Since then, troves of CCP internal documents leaked to the New York Times and International Consortium of Investigative Journalists and published in November shed further light on Xinjiang’s large-scale detention. Authenticated by linguists and experts, the official documents corroborate clues as to how the facilities work. The uncovered imperative from the ICIJ leak to “strictly manage and control student activities to prevent escapes” substantiates an observation from Peter Martin’s tour for Bloomberg: The dormitory doors only lock from the outside.

Fletcher, a former national president of the Society of Professional Journalists (SPJ) who serves on its ethics committee, also says journalists should explain ethical choices to audiences, an imperative found in SPJ’s Code of Ethics. Transparency elucidates limitations placed on the press by the tour hosts.

Bloomberg’s Peter Martin accomplished this when he employed the first person for his April 2019 report on Shu Le County Education Center. “I wasn’t able to speak independently with any residents on the trip, or travel around without being followed,” wrote Martin. “But the group was allowed to ask questions of officials, including repeated follow ups that at times angered our hosts.”

When BBC’s Beijing correspondent John Sudworth attempted to revisit a camp uninvited, his team was confronted by individuals who did not want them to film. In some ways, on-camera admonishments outside the camps provide more authenticity than their interiors, because, unlike the detainees’ choreography, this is not rehearsed.

At Hotan County Education Training Center, Sudworth presses a camp official to explain the logic of the official rhetoric.

“But doesn’t a place where people have to come, obey the rules, stay until you allow them to leave, sound more like a prison?” asks Sudworth, surrounded by tracksuit-clad “students” painting portraits. “Even if it’s a prison in which you can do some art?”

“Prison?” he pushes back. “Is there a prison where you can paint?”

Bloomberg’s headline – “How China Is Defending Its Detention of Muslims to the World” – further hints at the controlled circumstances of the tour. Martin added that though detainees allegedly could come and go freely, they could not leave without an official escort. Fletcher, SPJ’s former national president, would have preferred that the article also discuss the ethical pros and cons of Bloomberg’s decision to take the trip at all.

Reuters’ Ben Blanchard provided some context to his reporting in a short video. “These were most likely chosen for us because they are model camps,” he explained on-screen. “They are certainly very different from the kinds of camps that we have previously visited on non-official government trips, or at least that we have seen from the outside.”

Word choice presents another chance for transparency, especially as language has become increasingly politicized as China scrambles to manage its image. While many news outlets use quotation marks around “reeducation” or “vocational training camps” as a way to signal rhetoric from Beijing, Reuters has, at times, come under fire for appearing to accept China’s framing as fact. On Twitter, historian Rian Thum, who has researched Uyghur history in China, has criticized Reuters’ reference to detainees as “residents” in a photo caption. (In several other stories, Reuters does employ quotation marks around such terms.)

“Just like papers did with Nazi show ghetto/camp Theresienstadt,” Thum tweeted last year. “Journos writing on Xinjiang: educate your photo editors.”

Navigating informed consent leads to additional considerations around what to publish. Bloomberg didn’t identify camp detainees, or use pictures of their faces, “because it was unclear whether they were participating willingly in the events,” wrote Martin. While the BBC chose not to show handwriting on a wall that spelled “Oh my heart, don’t break,” the team did show many detainees’ faces, including beaming dancers who they engaged in close-up interviews.

The Poynter Institute’s Senior Vice President and Media Ethicist Kelly McBride sees the value of both approaches. “There’s this entire community of expats that are trying to figure out who’s in what camps...so that sort of information would be helpful to them,” she said on the merits of showing detainees’ faces.

Detainees are sometimes identified by acquaintances abroad through online content, like a now iconic photo from 2017 taken in a camp in Hotan. The photo was originally

posted to the Xinjiang Judicial Administration's WeChat account, according to Radio Free Asia.

Journalists must diversify their sources to balance reporting from the tours and carry out independent investigations when possible. McBride says that news organizations weighing government-led tours must commit to stories that are larger than the tour alone.

“Your purpose has to be to tell the truth about the camp, meaning that you have to be well-sourced so that you can get to the truth,” said McBride. “You need to be able to do the story without the government tour.”

She added that journalists should be prepared to use little information gleaned from inside the camps, “because it’s all so tainted.” News teams should also clarify logistics: Who will be interpreting? To what extent are you allowed to photograph, film, record?

Many outlets have increasingly referenced satellite imagery that shows the destruction of mosques in Xinjiang over time, drawing upon the work of Sintash and other researchers.

Survivors who have begun to exit the camps are also integral to the story. In the BBC documentary published in June, Sudworth includes an interview with former detainee Rakhima Senbay who spent over a year in the camp system for having WhatsApp on her phone. Ahead of tours, she says, detainees were warned they’d be sent to “a worse place than this” if they spoke out.

Senbay’s voice is a reminder to all journalists accepting terms of access: Scrutiny is key. After all, the truth of inside the camps might best be told by those who are free.

Sarah Matusek was a 2019 Journalism Fellow. She writes and edits for *The Christian Science Monitor*, where she is also a Poynter-Koch Fellow.

First-Year Associate

BY MIRIAM MARKS

From: Taylor S <taylors@newmail.com>
To: BarTrip <aroundtheworldin22days@groups.newmail.com>
[Subject] bar trip photoz 1:34pm,
August 23

all, my album full of our trip photos is linked here. note that portrait mode was applied sparingly, as it should be in most cases. i truly enjoyed beaching, eating, drinking, and otherwise celebrating with you all for three weeks, and i expect to see those of you staying in nyc frequently!! i also demand photo cred for anything that appears on the gram!!!! <3 <3 <3

From: Taylor S <taylors@newmail.com>
To: BBLs Exchange <bbls-buy-sell@bbls.edu>
[Subject] Looking for roommate, luxury 2BR, Midtown East 8:11pm,
August 24

Recent JD grad looking for roommate in Midtown East luxury apartment. Building has doorman, full gym, swimming pool, roof deck. Near all major subway lines as well as walking distance to most of the big Midtown law firms. Rent \$2,100/month with 9/1 start date.

Your roommate (me) is newly a lawyer, friendly, easygoing but clean, doesn't want the party to come home, will join the party out, and probably won't be home very often because of work.

From: Taylor S <taylors@newmail.com>

To: Mom, Dad

[Subject] found a roommate!

3:04pm,

August 26

already found a roommate! new person is a friend of a law school friend who graduated last year, working in finance. I'm not too worried about personality matches since neither of us will be around much. also, Dad, I know the place is expensive, but everyone I talked to last summer said that living walking distance from AWG more than paid for itself.

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] first week at AWG

8:49pm,

September 3

hi Mom,

sorry I didn't get around to calling, my first week at work was really long (but not all work, at least!). the firm wanted us to enjoy day #1, so it was like last summer's schedule. we spent most of the day in orientation, then lunch, more orientation, then drinks, and some of us stayed to go out to dinner. I'd been to the lunch place before because the tapas down the street are the hiring partner's favorite outside Barcelona (he said). dinner was at some new celebrity chef's SoHo location. I can't remember the name but I'll find out and I can bring you and Dad there for lunch if you visit over the holidays.

the rest of the week was roughly the same with fewer meals out and more work. I was able to leave by 7pm today, though, and there's nothing urgent this weekend. they gave us work phones, which we're supposed to keep on all the time.

most of the people I worked with last summer are still here, which is great, since I feel like I have a good set of friends in my associate class and the older years. plus it turns out I'll be on a team with that partner who brought me to the circuit court hearing last summer, Jon. he's a big deal in the firm, and I have a feeling his mentorship will be useful because some of the older associates seemed jealous that we sat next to each

other at dinner and talked a lot about his current case. he's also hosting a yacht party for the new associates on labor day!!

I'll give you a call after that to let you know how it goes.
love, T

From: Taylor S <taylors@newmail.com>

To: Jordan <jordanj1995@newmail.com>

[Subject] meet up soon??

1:32am,

September 14

i started work a couple weeks ago—it's WILD. i'm already on this huge case (can't really say much, but let's just say it's in the news, and our client is a big company). i'm working with this team headed by a partner who took us out on his yacht over labor day weekend and said next month we'll have a retreat in the hampton's. the hampton's!!! (i haven't been yet, ok?) anyway, let's grab drinks in midtown sometime??

From: Taylor S <taylors@newmail.com>

To: Jordan <jordanj1995@newmail.com>

[Subject] Re: Fwd: upstate winetasting for sam's bday

11:42pm,

September 19

ha! as if i could take the whole weekend off... wish i could make it 😞

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] Happy Birthday!

11:37pm,

September 26

happy birthday, Mom!!!! hope you've had a really good day—what've you been up to? could you hear my voicemail? I was worried that the subway noise got too loud in the background.

I'm still at work, otherwise I'd call on my way home. I'll try you this weekend. also check the mail tomorrow. We got our first paychecks, and I know you said your old Kindle was giving you trouble ☺
love, T

From: Taylor S <taylors@newmail.com>
To: Sarah C <sec986@bbbs.edu>
September 28
[Subject] Clinic brief

11:08pm,

Hey Sarah,

Hope your job is off to a really good start! I'd love to hear about your work at the immigration policy institute so far, it's great that you're putting our clinic work to immediate use. I've been at work a few weeks, and it's good but already really busy.

I was wondering if you could send me the final copy of the brief we wrote together in clinic—I'd like to use it as a writing sample (with full acknowledgement that it was a joint project, of course) for my clerkship applications as well as for whatever else comes next after AWG.

Let me know, and thanks!
Taylor

From: Taylor S <taylors@newmail.com>
To: Mom
[Subject] busy week
October 1

10:31pm,

hi Mom,

work has been pretty busy, but today my team submitted the big motion we've been working on, and I left the office at 8pm and got drinks with some of the other associates.

my last student loan letter went to the home address, so can you forward it to my NYC address? I told you I already started payments, right? Dad and I went over the numbers, and I'll be able to pay off everything in only two years since I saved a lot from the last two summers. I like the work here, but maybe in a couple years I can think about doing something in immigration like the clinic I did in school last year. I haven't gotten to do any pro bono work here yet (the public interest projects you can do at a big law firm), but they said that's usually reserved for more senior associates. I don't see Jon much, but my supervising associate thinks I'm doing really great work and says I can help with an immigration asylum case once this trial is over.

okay, now gonna start the new season of that spy drama you and Dad recommended!!
love, T

From: Taylor S <taylor@newmail.com>

To: Taylor S <taylor@newmail.com>

Bcc: . . .

[Subject] taylor's GOLDEN 25th birthday

10:44pm,

October 10

all, it's almost that time: yours truly turns 25 on the 25th!!! in honor of this historic occasion, let's ring in my mid-20s at GoldBar. meet outside on 10/24 at 11:45pm. see you all there.

what: taylor's 25th birthday

when: 11:45pm on 10/24

where: GoldBar

From: Taylor S <taylor@newmail.com>

To: Professor Perry <aperry@bbls.edu>

[Subject] Thanks again

11:08pm,

October 22

Hi Professor Perry,

I wanted to write again to thank you for your clerkship recommendation letter. Unfortunately, I haven't yet heard back from the judges on my application list. I believe you said you had personal connections with at least two of them, and I would

tremendously appreciate it if you were willing to follow up with them directly. I'm flexible as to timing in the next two years (or more) from now, although I would prefer to remain on the East Coast near my family.

Best,
Taylor

From: Taylor S <taylors@newmail.com>

To: Adam G <adamg@newmail.com>

[Subject] Keep in touch

9:08pm,

October 26

Hi Adam,

I wanted to follow up using your personal email address to express how much I enjoyed working with you last summer as well as for the past few weeks. I'd also love to chat about your new career adventures, since AWG probably similarly won't be in the cards for me forever. Let me know if you're free to grab a drink sometime soon?

My number is (917) 864 5954.

Best,
Taylor

From: Taylor S <taylors@newmail.com>

To: Jordan <jordanj1995@newmail.com>

[Subject] meet up

1:12am,

November 1

ugh phone died again. let's grab drinks this week? i want to get your thoughts on something...

From: Taylor S <taylors@newmail.com>

To: Alex L <alexl@newmail.com>

[no subject]

[Draft]

ive been thinking about you today, your birthday. you'll obviously get a casual text from me to that effect. our gestures at normalcy matter to me, too, don't worry.

how are you? what're you doing today? how will you celebrate? is there someone new you'll be celebrating with? these are the things i wonder and won't ask. along with: do you also write me email drafts and then delete them?

i'm ok. that's pretty much the only way to describe it since my job consumes everything. work recently hit a lull as my team wrapped up some big projects, so for now i can work "normal" hours and try to do some big-picture thinking (as you always encouraged me to do that) about future goals. i'm taking all the steps: figuring out how to keep applying to clerkships, talking to someone who just left the firm, looking at other kinds of law. you always used to talk about fulfillment, which i think i understand a little better now, although i still think it was easier for you to be fulfilled with your interests. if i were fulfilled by investigating everything terrible about the tech industry and still getting paid six figures for it, i'd be a journalist too. other than work i manage to see friends around midtown. my family is fine, although my dad's mom isn't doing well health-wise. and my dad is going to retire from work next month, which raises some other questions about money, but that's nothing new.

by the way, thanks for the birthday wishes, i guess. i'm not sure if it was easier or harder for me to get the generic text that you'd probably send to anybody. and i was kind of surprised you didn't realize it was my golden birthday, but i'll just assume you didn't know what that is (weirdly a bunch of my friends didn't). i had a good time, though, got people together at a club. it... was the first birthday of mine where it didn't feel weird that you weren't there.

that's enough for now. happy birthday, alex.

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] thanksgiving

9:08pm,

November 19

hey Mom, I know I thought I could come home for a few days around the holiday, but I'll be lucky if I can get Thursday/Friday off. we got a new case, and I'm on it with Jon and some senior associates. so I'll take the train down on Thanksgiving day and then come back Friday, probably. let me know if I can bring you a treat from the city. I

forget who you invited over, but if the younger cousins are coming, I'll pick up a box of Milk Bar cookies or something.

From: Taylor S <taylors@newmail.com>
To: Jordan <jordanj1995@newmail.com>
[Subject] Re: Fwd: Your Favorite Artists in Concert Near You 2:19am,
December 10

ahhh while i would so love to see the chainsmokers live, i don't wanna spend hundreds of dollars and have to bail if work is too much. speaking of... need to chat. the place on 48th, this weekend?

From: Taylor S <taylors@newmail.com>
To: Mom
[Subject] in the news 10:54pm,
December 21

hey Mom,
Dad sent me the news article today, so I'm assuming you saw it too. Guess you two did remember the name of my firm! kidding. Well I just wanted to say that the article isn't entirely accurate. We're not representing them in court, we're just providing strategic advice right now. And it's not like any of us actually support what's going on, but big companies are trying to comply with existing law, and our firm can provide that type of help. None of this means we endorse what our client's doing on the border, and we're certainly not enabling it.
anyway, has Dad said anything about the hospital bills for Grandma? I can call this weekend.

From: Taylor S <taylors@newmail.com>
To: BarTrip <aroundtheworldin22days@groups.newmail.com>
[Subject] news article 10:58pm,
December 21

since almost all of you have sent me this individually... bringing back our bar trip group to clarify to all of you together. AWG is providing "strategic advice"

(buzzwords, sure, but accurate). it's not like i'm flying to the border and building immigration detention camps myself. and it's not like i'm staying here forever, either. I worry about it, but i also know that i'm learning a ton about how this works so that when i switch sides—which i will!!!—i'll really be able to make a difference. plus jordan's over there defending wall street banks, so it's not like anyone's totally innocent (jk sry, jordan!).

From: Taylor S <taylors@newmail.com>

To: Sarah C <sec986@bbls.edu>

1:12am,

December 23

[Subject] Chat sometime?

Hey Sarah,

Hope you're having a good holiday season! Feels like forever ago that we were working on that immigration hearing motion in clinic, but I guess it's only been a year.

In any case, I was wondering if you have a few minutes to chat over the phone in the next couple weeks? You probably saw the news about AWG (where I'm working), and I was hoping to get your thoughts on a few things.

Thanks so much,

Taylor

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] train tomorrow

11:23pm,

December 23

I should arrive around 10pm, can you pick me up at the station? And then I have to head back on the 26th, but I can definitely visit Grandma in the morning. we can talk in person about the hospital bills. I'll bring some more Milk Bar cookies, and I got Dad the new fancy camera for his budding birding career (but shhh, it's a surprise!).

From: Taylor S <taylors@newmail.com>

To: Ben W <brw831@bbls.edu>

[Subject] Plaintiff-side work

3:07am,

December 29

Hi Ben,

It's been awhile since Property with Professor Black, I hope all is well. Our mutual friend Jordan reminded me that you've been doing plaintiff-side work for the past year and a half, and I'd love to hear more about it. What practice areas are you in at the moment? I'm also very curious whether and to what extent doing corporate defense work can be an asset for laterals at your firm (and how often your firm takes laterals, with what kind of experience, etc.).

Thanks so much,

Taylor

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] update and sleeping advice

11:04pm, January 2

hey Mom,

work hasn't slowed down. our team meets once a week, and even though we're working for that client, I'm trying to ignore that and just do my job. some of the other associates (the senior ones included) seem less comfortable. Jon keeps reminding us that we do plenty of good work and that we can't be judged by one client here or there. yesterday he pulled me aside to say he appreciates how hard I'm working and everything I'm doing, which is great but also probably means he can tell how tired I am. what were the OTC sleeping pills you said you were taking last year? I might need to try something stronger than melatonin.

ps hope you and Dad had a good New Year!

From: Taylor S <taylors@newmail.com>
To: Katrina L <katrinal1989@newmail.com>
[Subject] coffee this week?
January 4

9:09pm,

Hi Katrina,
Emailing at your non-AWG address—can we get coffee one afternoon this week? Maybe after our team’s client call on Wednesday? I’m hoping to get your feedback and also advice on a few things.
Thanks,
Taylor

From: Taylor S <taylors@newmail.com>
To: Mom
[Subject] meeting w/ Jon
January 9

11:01pm,

so today I met with the partner Jon, I think he’s meeting with each person on the team one-on-one because of all the news coverage. I assumed the worst, but he told me he really valued all of my work and could count on me to get the job done. he asked if I was doing okay and told me to take the weekend off, so I can take the train down Friday. let me know what you think.

From: Taylor S <taylors@newmail.com>
To: Dad
[Subject] financials
January 11

10:52pm,

I’m going to be home this weekend, so can we sit down and go over all the hospital bills for Grandma as well as my student loan paperwork? And, seriously, work is fine! don’t worry about me making smaller payments.

From: Taylor S <taylors@newmail.com>

To: Bill; Stephanie; Katrina; Charlie

[Subject] Re: united front

10:59pm,

January 13

hey all, I don't think it's enough just to keep this off our AWG emails. let's just get on a call. I'll follow up in a sec with a free conference line.

From: Taylor S <taylors@newmail.com>

To: BarTrip <aroundtheworldin22days@groups.newmail.com>

[Subject] Re: uh oh, Taylor's in the news again

2:26am,

January 16

rly appreciate that y'all use this group to record AWG's ongoing media presence. yes the firm is still working w the prison company. at the risk of defending myself, i'm learning a lot here. that company is literally one client in a portfolio...most of which are nothing like them. there's rly no such thing as a perfect firm with a clean slate. and the partner on my team told me yesterday that i'm "indispensable" to our prison client and the work we're doing. but, hey, that's what i get for going to a firm that doesn't have like 10,000 attorneys in it (hi, Jordan!).

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] Re: News about your firm

2:36am,

January 16

hey Mom, yeah, this more or less happened. a bunch of associates sent a letter saying they didn't want to work with the company anymore. i didn't sign it. someone leaked it to the media. more over the phone. we'll see what happens...

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] meeting update

10:54pm,

January 20

so AWG had a big meeting today, but it wasn't like the meeting lasted ten minutes and then we decided to go ahead with it. Jon was there for an hour and a half (which is like my salary's worth of his billable hours).we went over all the ethics and other issues having to do with the representation and talked about how important it was to resolve this problem the right way for both sides as soon as possible. Jon was REALLY mad about the letter. he said he respects the associates for taking a principled stand, but he probably hates that it got leaked and definitely is trying to figure out who wrote it. i'm glad i didn't sign it. plus it's not like signing the letter would actually change anything.

From: Taylor S <taylors@newmail.com>

To: Clerkship Office <clerkshipoffice@bbls.edu>

[Subject] Question about recommendation letters

12:05am,

January 25

To Whom It May Concern,

My name is Taylor, and I graduated with a JD last year. I believe your office still has my faculty recommendation letters on file. As I consider applying to clerkships again, should I still rely on these letters, or would you recommend that I use more current letters from supervisors at work? I ask only because the school has emphasized that letters should come from faculty. If that remains your advice, for how long will your office keep the faculty letters on file?

Thanks,

Taylor

From: Taylor S <taylors@newmail.com>

To: Katrina L <katrinal1989@newmail.com>

[Subject] Hope we keep in touch

9:12pm,

February 4

Hi Katrina,

Just wanted to say that I've really appreciated having you as a colleague these past six months. You've been so helpful in teaching me the nuts and bolts of litigation, and I'll always remember how patient you were as you helped me master very basic tasks.

I want to emphasize, also, that I really respect your decision to leave. I know it probably wasn't easy, and you've given me a lot to think about (in a good way).

I hope we keep in touch, and I wish you all the best.

Taylor

From: Taylor S <taylors@newmail.com>

To: BarTrip <aroundtheworldin22days@groups.newmail.com>

[Subject] Re: Re: Re: uh oh, Taylor's in the news again

3:17am,

February 8

glad at least one of you will back me up. there was no way i could sign the letter without burning a bunch of bridges for the the future. i can't leave right now. and i don't think they could fire me, but they could make my life truly miserable and basically force me out. plus i'm getting along better than ever w my mentor, and i gotta be on his good side if i ever want to get a clerkship or get out of here.

From: Taylor S <taylors@newmail.com>

To: Jordan <jordanj1995@newmail.com>

[Subject] CONGRATS

10:59pm,

February 16

dude. CONGRATULATIONS!!!! federal. district. court. that's huge!!! selfishly i'm also glad you'll still be in new york (even if brooklyn). everyone seems to really love EDNY, and your judge sounds amazing. remember me when you're a famous clerk, ok?! (and also let me take you out to celebrate this week??)

From: Taylor S <taylors@newmail.com>

To: Mom

[Subject] mid-year bonus!

9:52pm,

March 2

so I got my paycheck today, and it was WAY more than I expected. Since I'm me, I emailed HR right away to ask why, and they said discretionary mid-year bonuses were given to some first-year associates. I'll call with details :)

From: Taylor S <taylors@newmail.com>

To: BarTrip <aroundtheworldin22days@groups.newmail.com>

[Subject] Re: Andrew's goodbye party

1:14am,

May 1

another one bites the dust. can't believe you're already leaving nyc!!!! i hear the west coast firms let you leave at 6pm and wear jeans/flip flops to work (kidding abt the second part). would really like to hear the story of how you pulled this off, Andrew!

From: Taylor S <taylors@newmail.com>

To: Alex L <alexl@newmail.com>

[no subject]

[Draft]

alex,

even though you won't read this, part of me always thinks that just typing out my thoughts causes you to feel something. maybe you get a sense that i'm out here in this city, thinking about you and wishing you well, and hoping that you wish me well. on the train this morning, i read your latest article about facebook's data privacy breach with the new dating service. i can only imagine how much you probably loved researching and writing it. also a good extra reminder for me to get back in the game, as it were.

it's been more than a year since we last talked, i think? i wasn't at my best. if you remember how much of a mess i was during law school, i was even worse while studying for the bar exam. a lot has changed since then. i've written to you a few times (not that you'd know) and feel like, if i ever ran into you on the street, you'd be fully caught up.

i know that our differences in opinion on what a job is and what we do with our lives were just one of many problems we had. you've probably seen awg in the news lately, although i don't know if you connected the dots to me. i hate writing it down, but here it goes: awg is the firm that's representing the private prison company building immigrant detention centers. ive been at awg for almost a year. i've come to enjoy my job.

it's obviously not that i believe in this work, i don't. and i don't want to be here forever—no one does. this is temporary for everyone (except the partners, i guess). as we know, it pays. i've still been exploring my options—you always told me to do that. But it's not that easy. some of my friends got clerkships, one recently left a big firm for a smaller one in california. maybe my grades weren't good enough, or not being on law review was a problem, or i didn't go to an ivy league college. i'm not sure. but clerkships have escaped me, and most other jobs in government or in-house work require more experience. i need to be close to my family. i need to help them out financially. i need to pay off my student loans.

plus there's a partner here named jon. he's been so supportive making sure i take time off when i've worked too hard and giving me feedback on all my assignments. most associates don't get that kind of attention from partners at all—honestly i think i remind him of a kid he wished he had. jon isn't a bad guy, he actually just donated like \$100K to this immigration organization (funnily enough, where my old clinic partner sarah works now). we had lunch yesterday, and he told me that my focus and drive are rare, and that he thinks i can contribute “tremendously” to the firm. he's the best mentor i could hope for, and he's the only person who makes me feel like im good at what im doing. for what it's worth, you used to be that person for me.

i don't think i'll write again, alex.

From: Taylor S <taylors@newmail.com>

To: Mom, Dad

[Subject] one year at AWG!

11:55pm,

August 30

Emailing you both because I had my annual review yesterday. and they think I'm doing a GREAT job, especially given how the past few months have been going for the firm. and there's a salary bump going into my second year as an associate! Will call to fill you in tomorrow.

From: Ariel C <arielc@newmail.com>

To: Taylor S <taylors@newmail.com>

[Subject] running late

6:05pm, September 2

Taylor—

this time my phone died, but I had to let you know I'll be a little late tonight and will see you at 8:30pm (not 7:30pm) because of a work event. let's meet off the Bleecker 6 stop, like we planned before? also, I mentioned I was dating a lawyer, and my roommate showed me this Times article about some shitty firm that defended private prisons operating immigration camps along the border?? Um lol I hope that's not your firm!!! kind of kills me that the firm's name is “Allis, Well & Goode.”

anyway, see you tonight!

A

Author's Note

Our FASPE Law program focused in large part on the question of how seemingly good people become bystanders to injustice. We examined, in particular, the extent to which bright-eyed, idealistic young lawyers may find themselves defending clients involved in morally charged matters. As one example, we discussed the role of attorneys at the elite firm Cravath, Swaine & Moore in providing services to Credit Suisse as part of Holocaust restitution litigation in the late 1990s. We examined an internal memo circulated at the firm—since made public—in which young Cravath associates protested the firm's decision to represent a Swiss bank that collaborated with the Nazi regime to launder gold looted from victims of the Holocaust. The memo's author, as well as the associates who signed on, found Cravath's involvement morally reprehensible; others at the firm were convinced that they were helping Credit Suisse to do the right thing some fifty years after the events took place.

Countless law school graduates have been in similar situations, and many have stayed at their firms. As I attempt to illustrate in this story, I would guess that this willingness to stay stems, at least in part, from a deep-seated need for validation. Not only do high-achieving young law graduates want a good return on an expensive and lengthy legal education, but many of us want to feel as though we uniquely add value to our employer. We want to be good at what we do more than we necessarily want to do good.

Taylor is a present-day illustration of this trade-off. After one year at AWG, Taylor realizes that their (or his, or her) sense of self-worth is maximized by being a highly valued associate. As a result, Taylor begins to enjoy the position. Taylor pursued but was unable to obtain other opportunities and opted not to continually experience failure in their ongoing effort to be "good." Furthermore—and like most law school graduates today—Taylor is constrained by a number of socioeconomic circumstances that would not easily permit the pursuit of a dramatically different legal career with a much lower salary.

The willingness of individual bystanders to permit—and sometimes facilitate— injustice in order to further a sense of self-worth was very much on display in our learning throughout FASPE. Members of the Hitler Youth, the SS, the Polish militia: at an individual level, many simply wanted to excel in their prescribed roles. Some faced the possibility of death were they to defy the constraints of the law or acceptable

societal norms, but others simply wanted the validation that comes from being good at something. This choice of whether to be “good” or “good at” was, in my opinion, also well presented in the film dramatization of the Wannsee Conference. There, high-ranking German officials who sought to be “good” eventually opted to be “good at” Nazism. By eventually vocalizing support for the Final Solution, they chose to be “good at” being obedient, at following orders, at courting the approval of their superiors, and at acting out the values of the emergent Third Reich. Perhaps, had they insisted instead upon being “good” by opposing the Final Solution, they would have lost the sense of self-worth that stemmed from having attained high-ranking positions within the Party. Of course, they might also have lost their power, wealth, and lives.

Particularly in the modern legal context, the question remains: Does being “good” necessarily need to be diametrically opposed to being “good at?” Perhaps one strategy for a young lawyer such as Taylor is to rely on pursuits outside of their career to derive a sense of self-worth. Activities that remind one of humanity beyond one’s professional work, I think, are a critical part of giving ourselves space to more intentionally evaluate the significance of our actions.

I intended this story show not that Taylor could easily make a more ethical decision, but that Taylor faced a very difficult dilemma. And, by acknowledging that those who fail to be good may be constrained by many complex and deeply human factors, I challenge us—myself, my peers, those at FASPE and beyond—to develop even more compassionate and empathetic strategies for the promotion of ethical decisionmaking in the legal profession.

Miriam Marks was a 2019 Law Fellow. She is a federal judicial law clerk based in Brooklyn and soon to be a plaintiff-side class action attorney based in the San Francisco Bay Area.

Professional Evolution: Why Today's Physicians Must Respond to Public Crises

BY DANISH ZAIDI

In a recent Op-Ed for the Wall Street Journal, Stanley Goldfarb, the former associate dean of curriculum at the University of Pennsylvania's Perelman School of Medicine, wrote: "At 'woke' medical schools, curricula are increasingly focused on social justice rather than treating illness."¹ He goes on to lament that this emphasis on social justice and impacting policy is coming at the cost of "rigorous training in medical science." The profession, Dean Goldfarb decries, is "under attack" from progressives who are seeking to "politicize" medical education. His perspective is shared by those who fear that social justice—while a worthy goal—is not a part of medical professionalism; that macroscale moral quandaries are not what physicians were made to address.

Dean Goldfarb's position against population health is untenable. But he is part of an increasingly vocal group of physicians who argue that medicine is losing its traditional purpose as an empirical, scientific practice founded upon an intimate patient-physician relationship.²⁻³

To others, medicine is finally recognizing the impact of social and economic factors in determining a patient's—and population's—wellbeing. Empirical data shows that social factors can indeed become determinants of health, such as the zip code people were born in or the education level of household members.⁴ Lack of health insurance has been linked to adverse outcomes in hospitals.⁵ These factors are beyond the scope of the lab or bedside—they are macroscale in nature and have broad impact across the medical practice.

At the core of this ongoing debate are certain questions: What is the role of a physician? More pointedly: does "advocacy" have a purpose in medical practice? These questions underscore a tension within today's medical community that revolves

around a perceived shift in medical professionalism. This tension has long-term implications for trainees, as it has the potential to reimagine the work doctors intend to do and reshape medical curricula at every level.

Professions evolve both in understanding and in practice. The concept of professionalism in medicine has gone through countless changes from antiquity to today. In retrospect, many of these changes are generally considered to have benefited both patients and physicians. Today's medical community would benefit from not only appreciating this history, but adding to it. Looking ahead, a more robust understanding of social, political, and economic factors could continue to improve medical practice in both an empirical and normative way; but moral and ethical leadership is imperative toward realizing such change.

To understand the evolution of professionalism in general—and medical professionalism, in particular—we must first define the term. In doing so, one can borrow from a popular framework in religious theory that explores the “Three B’s” of religion: behavior, belief, and belonging.⁶ Using this framework, we can craft a useful working definition of “profession.”

Fundamentally, a profession is an occupation that is based on mastery of a “complex body of knowledge and skills.”⁷ However, this occupation is not simply unidimensional and technical in nature. Consider the classic saying: medicine is “both a science and an art.”⁸ There is a particular set of behaviors that drive the application of science in medicine; the manner in which data is communicated between physicians and delivered to patients; the reasoning process behind differential diagnoses and subsequent workups; and the way that harms and benefits are weighed before initiating treatment.

These behaviors are rooted in a particular set of beliefs that further define the profession. Beliefs can take the form of value statements like “the needs of the patient come first”⁹ or driving prima facie principles like autonomy, beneficence, nonmaleficence, and justice.¹⁰ Ultimately, these standardized behaviors rooted in a particular belief system create a medical community to which physicians belong, illustrated by the creation of guilds and associations dedicated to the betterment of its membership.

With this working definition in mind, we can begin to appreciate how the medical profession has changed over time. These changes continue to fit within the aforementioned framework of the Three B's.

A wide variety of factors can instigate change in any profession. Technology is arguably one of the greatest drivers in changing behaviors across industries. The “e-learning” revolution, for instance, has allowed people to access educational services, and has also shaped the way teachers share knowledge, whether through online modules or videos.¹¹ Beliefs about career agency changed the way law is practiced: what was once a lifelong commitment to a single firm has shifted in favor of lateral moves to accommodate family life and personal wellbeing.¹² Changing perceptions of women's role in the workplace reshaped demographics across industries.¹³⁻¹⁴

Medicine itself has dramatically evolved. Healers in ancient Mesopotamia, lacking a distinction between science and magic, prescribed medicinal plants alongside spells.¹⁵ Celebrated doctors of the past—Galen, Maimonides— shared an interest in theology, recognizing the spiritual (and sometimes untreatable) aspects of illness. Post-Enlightenment paved the way for a budding biophysical model of medicine, rooted in empiricism and evidence. Sir William Osler (who once considered a career in ministry¹⁶) reshaped medical training from an apprenticeship to a residency-based model. Years later, electronic health records (EHR) ushered in the age of Big Data, reshaping the way medical information is disseminated and studied. All of these shifts—and countless others—slowly but surely changed behaviors (seeing more patients for 15 minutes instead of seeing fewer patients through house-calls), beliefs (separating magical thinking from empirical science), and belonging (the age of subspecialization versus general practice).

While change is never perfectly linear or without flaw, most would agree that these shifts in medicine have vastly improved the profession. Medicine is more efficient, more accessible, and safer today than it has ever been in history—we would not want to go back to the time of the shaman. Today's rapid pace of technological advancement can sometimes elicit an understandable impulse to decelerate; nevertheless, the evolution of the medical profession continues to improve life in measurable ways for both patient and physician.

Today, most would still agree with the traditional, post-Osler view that places the moral center of medicine at the patient's bedside. The late Edmund Pellegrino, famed physician and bioethicist, wrote that the patient-physician relationship was a

“covenant of trust, a special kind of promise to serve those who require her [the physician’s] expertise.”¹⁷ This notion of medical professionalism centers, as a core responsibility, the physician’s obligation to serve the immediate patient. Such an understanding also emphasizes the tension between said duty and potential conflicts of interest (and implies that these “dual loyalties” may be unfeasible to balance).

Unfortunately, the lines of said responsibility have never been properly demarcated. If physicians regularly encounter patients who cannot afford the medicines they need, for example, do they then have a professional and ethical obligation to advocate for affordable drug pricing? And, if one accepts that a physician’s role is to serve the immediate patient above all else, what happens when systemic problems—such as poverty, racism, or limited health literacy—prevent the physician from providing the patient with proper care?

It is often obvious how “macroscale” problems like drug pricing harm patients, but these sorts of issues can also impact physicians. Recent studies have found that physician burnout is related to factors that are generally unrelated to direct patient care.¹⁸⁻²⁰ The desktop duties of EHR, obligations to “upcode” for insurance, and ever-diminishing face-to-face time with patients are only a handful of suboptimal “system-based” conditions causing cognitive decline and mental fatigue among physicians nationwide.²¹⁻²² Physicians could arguably benefit from addressing these issues publicly—and perhaps owe it to themselves to do so. Regardless, it is clear that social, political, and economic factors affect not only patients, but also physicians.

The natural response would be to mitigate the harm from these systemic issues in order to—as professional evolution has done in the past—make medicine more efficient, more accessible, and safer. One would be hard pressed to find solutions to macroscale issues at the bench or bedside. No amount of work in the lab itself will reduce the pricing of orphan drugs bought out by predatory capitalists. And while advancements in post-operative management may improve the treatment of a gunshot wound, they can do little to reduce the epidemic of gun violence. The most immediate and powerful way to mitigate the harm of these system-based problems is therefore through system-based solutions: through advocacy and policy.

Experts in public health have underscored the importance of policy in impacting macroscale problems for decades.²³ Looking ahead, medical schools must clarify what medical professionalism entails—including if and how the responsibilities of doctors extend from the bedside to the “outside.” If educators feel that macroscale issues

impacting patient and physician well-being are within the purview of medical professionalism—and if we agree that policy and legislation can positively impact such issues— then medical schools must consider incorporating advocacy when innovating their curricula.²⁴

While not all physicians may be comfortable advocating, few of them can deny the immense impact of organized medicine. History has shown how groups of physicians have commanded influence—and not always for the best. Physicians in Nazi Germany appealed to population health when reasoning that Jewish people were “infecting the Volk,” veiling genocide with scientific language.²⁵ Involuntary sterilization in the United States was done in the name of public health, where arguments were made for saving money and resources, and for reducing the perpetuity of disease.²⁶ These atrocities teach us that medical professionals, working as a collective, have immense advocating power to shape public perception and policy.

The medical community cannot disown this power, and must therefore have safeguards in place to ensure that it is used ethically. The commitment toward benefitting some should not inadvertently harm or violate the rights of others, namely minorities or the disenfranchised. To that end, another aspect of social justice comes into play: ensuring that the physician and medical workforce is representative of the diverse population that it serves. In doing so, diversity can “keep in check” the advocating power of the medical profession as a collective.

Ultimately, within the framework of the Three B’s, a focus on advocacy (1) changes behaviors by promoting civic engagement; (2) affects beliefs by reinforcing an appreciation for social, political, and economic determinants of health; and (3) expands a sense of belonging by widening the community of medicine to be more inclusive and representative of the population it serves. Instead of being afraid of how medicine is changing, we should be excited about how this next step in the profession’s evolution will benefit the providers and beneficiaries of medical care. Physicians should embrace advocacy and its power to improve the wellbeing of both patients and doctors. The evolution toward social justice is one of many shifts that has occurred in medicine over centuries; similar to prior shifts, this change will reshape professionalism in medicine for the better.

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What S. An-sky's Ethnographic Expedition to Visit Russian Jews Can Teach Reporters About How to Report on Trauma

With trauma victims, there's what happened and how it felt. Between the two, there's what's reportable.

BY MATTIE KAHN

From 1912 to 1914, the playwright S. An-sky (Shloyme Zaynvl Rapoport) led ethnographic expeditions to Jewish territories in the Russian Empire. In the end, he visited about 70 shtetls. An-sky had come to feel that folklore could serve as the basis for a new Jewish culture and he wanted to preserve it. He didn't just crave discrete facts, like dates or place names. He wanted to amass stories and music. He emphasized that the enterprise was not just “a scholarly [one], but also a national and timely mission;” he wanted to capture something of the narratives we tell about ourselves.

An-sky wrote reports on the expedition, drawing on what he found in dozens of towns across the Pale of Settlement. He collected roughly 1,800 folktales, more than 1,500 songs, at least 700 items, and hundreds of photos of *shuls* and gravestones. He was, of course, not a journalist.

There's a detail about An-sky's tour I've heard repeated over and over—about which I can find only a few elliptical references online (a fact-checker's nightmare). Here's how it was told to me: In shtetl after shtetl that An-sky visited, the elders of the town would take him to their cemeteries and point to one grave from the mid-1600s, centuries before their time. The elders would tell him about a couple whom the Cossacks had murdered under their own *chuppah*, not just in the prime of their lives but at the moment of their union. In each town, he heard the same account, and he

wondered who was buried in these graves. Perhaps once or twice, it had happened like that. But not 40 or 50 or 60 times.

The stories couldn't be true, he reasoned. At least, not quite. But he understood there was truth *to* them. So when An-sky sat down to write *The Dybbuk*, a play that would become his best-known work, he included a version of that narrative. A grave for newlyweds appears and we are told the lovers were slain on their wedding day.

An-sky wasn't a reporter. But his experience is one that journalists who report on trauma know well. There's the narrative a source tells, and then there are the facts. That the two don't always align doesn't and in fact *can't* mean that that person's experience is worthless.

The question is how does a reporter incorporate how a source understands their *own* experience, even when that experience might be rife with mistaken or blurry memories?

The tension between a source's understanding of an event and the facts is one that journalists who cover gender- and race-based violence perhaps feel most acutely, although those who report on the immigration crisis, gun violence, or any other number of topics might encounter similar ethical questions. No matter the beat, journalists have to develop best practices for reporting on trauma—and for fact-checking it in the process. But what does that entail when the material is real people's lives?

In reporting stories that involve trauma, a journalist has two aims. First, she must capture what happened; there is no feature or news bulletin if there is no set of circumstances that can be corroborated and explained. But second, the journalist also must capture the truth of the trauma. How it felt to people. What an event made them think or do or understand. Not just what occurred, but what it was *like*.

Of course, journalism that accomplishes the second goal at the expense of the first does the entire profession a disservice. Fiction can capture essential truths about life, but it needs to be accessed as such. To be reported, it—whatever “it” is—has to have been witnessed and attested to. But I would hazard that journalism which meets the first standard without meeting the second also poses an existential threat to the work that reporters do. We are all An-sky, meeting people who want us to understand the

conditions of their lives. The test for journalism, at this moment in particular, is how we do justice not just to the truth, but to the metaphor.

To consider that question, it is useful to focus on what we might now call “Me Too stories.” Interviewed for *Fresh Air* in September 2019, *New York Times* journalist Jodi Kantor assessed the imperative “believe women.” The expression speaks to the idea that when women come forward to report traumatic experiences—and in particular when those stories involve sexual assault—the default response should be to accept them as true. Believe women; as in, don’t perpetuate a culture that dismisses their claims, doubts their trustworthiness, and holds them responsible for violence perpetrated against them.

On *Fresh Air*, host Terry Gross noted that Kantor wasn’t a fan of the so-called catchphrase. She wanted her to elaborate. But in fact, Kantor explained, the spirit of the expression was one of her “lodestars.” She was a guest on the radio show to promote her and co-author Megan Twohey’s new book, *She Said*. More than one review had deemed it an *All the President’s Men* for the Me Too movement—a movement that Kantor and Twohey helped kick off with their watershed investigative reporting about Harvey Weinstein.

“Megan and I have devoted our careers...to documenting women’s stories and putting them into the paper,” Kantor told Gross. “So we do, in many ways, want to live and work in the spirit of that statement. But there’s a conflicting impetus in journalism, which is that everything needs to be scrutinized [and] everything needs to be checked.” So how does Kantor resolve the impasse? With a reframe: It’s not Kantor’s job to believe all women; it’s to (in her estimation) make the stories that she does publish about women as credible as possible. And that doesn’t mean she vouches for them. It means the facts do.

“[W]e believe that really solid, well-documented reporting protects women,” she said, adding, “the best way to get people to believe women is to document those women’s stories really thoroughly.”

This approach is not a panacea for the problem that journalists face when it comes to reporting on trauma, but it’s a clever, nuanced workaround.

However, the solve Kantor suggests—take these stories seriously, report on them aggressively, then verify and contextualize—works because the women Kantor and

Twohey report on have *agreed* to talk to them. Kantor's approach doesn't offer quite the same ethical roadmap to journalists who have to consider how to frame accounts in which the main parties don't want to participate.

As positive reviews for *She Said* started to roll in, another book from *Times* reporters—*The Education of Brett Kavanaugh*—made the news. The book takes a close look at now-Supreme Court Justice Kavanaugh's life, but focuses in particular on his battle for confirmation to the bench. It doesn't lack for revelations or deeply reported anecdotes. It made headlines, however, over an excerpt published in the *Times* that was so controversial, it's almost eclipsed the actual book.

In their full work, authors Robin Pogrebin and Kate Kelly charted a previously unreported account of sexual misconduct, dated from Kavanaugh's time at Yale. But when that tidbit was included—far down in the newspaper excerpt—an essential detail was lost in the process. The woman involved in the incident with Kavanaugh that the reporters describe (who is named in the book) had refused to discuss the matter with them, and the woman's friends told Pogrebin and Kelly that she had no recollection of it.

Pogrebin and Kelly's piece inevitably recalled Ronan Farrow and Jane Mayer's extensive reporting on another allegation made against Kavanaugh in the fall of 2018, in which Farrow and Mayer were transparent about the fact that Deborah Ramirez, the second woman to come forward against Kavanaugh, had to think hard about her encounter with Kavanaugh before deciding definitely that she felt confident enough in her memory to go on the record about it.

In *The Education of Brett Kavanaugh*, much of this is accounted for. But in the article (before its subsequent correction), no such caveat was made. Unlike Kantor and Twohey, who have provided an extensive record for their reporting process, and Farrow and Mayer, who are explicit about Ramirez's memory, this particular excerpt dustup proved just how severe the fallout can be for imprecision in trauma reporting. With stakes this high, there is no room for error and no allowance for what seems clearly to be an ethical gray area.

So, at this point it would be reasonable to ask *what's the An-sky connection?* What do contemporary journalistic accounts of misbehavior and sexual assault—some brilliantly rendered, others hobbled by errors and oversights—have to do with a long-dead playwright and Jewish ethnographer?

When An-sky set off on his trip, his goal was to record artifacts of culture for posterity—art and songs and stories that centuries of trauma and more recent violence threatened to snuff out. He knew that much of the ephemera of life disappears, but that certain truths transcend time.

Yes, we need robust local reporting to track the ins and outs of trends, from crime to demographics to fashion. But the purpose of journalism is to operate more like An-sky than like a police scanner.

An-sky never had to fact-check the murder that he immortalized on the stage, but he left a lesson behind for the reporters who would have to consider how to publish stories with holes, stories with gaps, stories that are talked about and believed but whose literal truth is hard to ascertain.

The lesson is not “believe victims.” It is to preserve the truth, with as much transparency about what it took to extract it as possible. It is to listen to victims, but not without context. It’s above all: Paint a picture of the world as it exists, because there will forever be people in whose interest it is to blot it out.

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Letter to the Editor: The Ethics of Proof-Texting

BY EMILY MORRELL

Happy is the nation whose God is the LORD,
the people whom he has chosen as his heritage.
— PSALM 33 (12)

TO WHOM IT MAY CONCERN:

I write to you as a graduate student of theology, a professing Christian, and a concerned citizen. Throughout the Independence Day holiday season, I have noticed numerous church signs in Greene County and the broader region displaying Psalm 33:12: “Happy is the nation whose God is the Lord.”¹ I admit, the verse used in juxtaposition with the holiday gives me pause.

I fear that churches displaying the verse without context or commentary are providing textual and theological backing for xenophobia and self-congratulatory nationalism. My argument may sound alarmist or overly-sensitive when local churches might have displayed the verse in an honest attempt to contribute to the holiday’s festivities. I understand that concern and appreciate the community’s effort to celebrate the holiday together. However, even if churches chose the verse with the best of intentions, the very fact of its selection points to a rise in theologically supported nationalism in our region that we are often loath to address.

If the logic of the twelfth verse of Psalm 33 is followed through to its conclusion without taking into account the chapter’s broader implications, it seems that nations who do not worship a Christian God are doomed to unhappiness. What about the more than 89 million Americans who do not identify as Christian?² Do people of other faith traditions have a part to play in the America this isolated verse presents?

Proof-texting the verse also implies that any national unhappiness is correlated to a lack of Christian faith. The phrase suggests that, if Christians adequately practice and profess their faith in the public and political sphere, then God will reward them with national—even political—happiness.

These conclusions lead me to wonder if displaying the verse on the anniversary of America's independence serves to celebrate independence at all. I worry that churches emphasizing the verse give tacit approval to dangerous nationalism and reinforce xenophobic prejudices regarding people and nations who practice religious traditions other than Christianity.

In a national and international political climate that is saturated with fear mongering, hate speech, and isolationist politics, it is imperative that people of all faiths take into account the ethical norms and implications of their textual and theological arguments. I fear that the broader ethics of proof-texting Psalm 33:12 do more harm than good. When cited alone and in reference to Independence Day, Psalm 33:12 normalizes a Christian, theocratic value system. If, as the verse claims, the only way a nation can prosper is through faith in the Christian concept of the Divine, then it follows that that nation would hope to adopt Christian mores in order to succeed. To suggest such a theocentric worldview on a day celebrating the independence of a nation that claims to separate church and state not only contradicts that founding tenant, but implicitly threatens the freedom of the nation's citizens who are not professing Christians by creating dangerous in-group and out-group categories.

This is a region full of Christian churches that, I believe, work to create spaces where people know they are loved. In the spirit of that work, I invite congregations to reflect on the ways in which their language and method of citing scripture might inadvertently work against such a noble goal. This is not a matter of conversion, soul saving, or politics but rather an attempt to expand our community's theological discussion beyond such narrow bounds. Psalm 33 is a beautiful text, as intricate and profound as this community and the people who call it home. Therefore, I am convinced that the text and this region are both worthy of serious study and sources of surprising hope.

Happy Fourth,
EMILY MORRELL

Emily Morrell was a 2019 Seminary Fellow. She is a third year student at Columbia Theological Seminary in Atlanta, Georgia, pursuing masters' degrees in Divinity and the Arts.

Notes

1. All Biblical citations are drawn from the New Oxford Annotated New Revised Standard Version.
2. Frank Newport, "Percentage of Christians in U.S. Drifting Down, but Still High," Gallup.com. June 07, 2017. Accessed July 10, 2019.

Written Upon the Hearts of Men: Taking Natural Law Seriously for Combatting Tyranny

BY WILLIAM E. BRAFF

Lawyers Need to Study Tyranny (Because it Studies Us)

Could any person, born in an inauspicious time and place, become a Nazi? Could any society fall prey to the same institutional and moral decay that transformed the Weimar Republic into a regime of state-sponsored (and citizen-condoned) terror and murder? Questions of this sort should lead us to reflect on the nature of human beings and society, such as whether we share an innate ability for evaluating social justice. Answering these big picture questions depends, in part, on our response to natural law's claim that humans can access a fixed moral code independent of time, place, and culture.¹ Under this theory, human beings must reject laws and regimes that violate this shared conception of justice. It follows that natural law theory rejects the claim that governments and laws derive legitimacy simply from a legislative or electoral process. From that perspective, pithily stating "law is law" ignores the human capacity for identifying and abiding by fundamental moral truths.²

These philosophical considerations may strike the legal practitioner as mere academic navel gazing. But that response ignores the hazard of a legal profession that fails to seriously reflect upon the moral infrastructure necessary for resisting the onset of tyranny and state-sponsored atrocities. After the horrors of the twentieth century, lawyers need only look to the mass graves in Cambodia and extermination camps at Auschwitz to grasp the devastating consequences of a society unmoored from common notions of justice.³ When a government denies its citizens, or a subset of citizens, basic protections, procedures, and rights, it falls upon the legal profession to stymie those deprivations and bring injustices to attention both at home and abroad.

From antiquity to modernity, despots and tyrants have frequently expressed disdain for lawyers.⁴ Civil rights and legal processes prevent tyrannies, spanning from tyranny of the mob to tyranny of the despot, from fulfilling their essential function:

doing whatever they want to whomever they want, whenever they want.[5] So we shouldn't be surprised that many societies rejected Roman law "above all for [its] formal procedures," as Montesquieu, a French philosopher best known for his treatise *The Spirit of the Law*, tells us.⁶ Responding unfavorably to the concept of written laws and procedural guarantees, one Germanic tribe, Montesquieu writes, "cut out lawyers' tongues and said 'Viper, stop hissing.'"⁷ If the legal profession wants to keep its collective tongue, then discussing the nature and weaknesses of tyranny must be a priority in the legal community. This is as true today as it was in Montesquieu's time. Caught in this ancient conflict, the responsible lawyer must study the ends and vulnerabilities of tyrannies or accept culpability for failing to prevent government-sanctioned atrocities.

Although our legal system aims to protect rights and procedures, there is no surefire guarantee that it will be good or just. Tyrants, liberators, radicals, and conservatives alike compete to use law to implement their preferred policies. So invocations of the law itself, perhaps under the slogan of law and order, are not dispositive of good or just intentions. To explore the relationship between justice and positive law, this Article begins by reviewing the teachings of twentieth century political philosophers Leo Strauss and Gustav Radbruch on natural law and the Nazi regime. Next, this Article tackles the process of applying a natural law framework to tyrannical regimes, referring both to proponents and resisters of tyranny. Distinguishing between the two, this Article contends that natural law arguments are more compelling when resisting an unjust regime than when defending such a regime. By drawing upon universal principles and rights, natural law lends itself to combatting injustices and not perpetuating them. Looking to Nazi Germany as a case study, this Article promotes taking natural law seriously as a safeguard against tyranny and government-perpetrated horrors.

Applying Natural Law to History: Reflections of Strauss and Radbruch on Nazi Germany, Despotism, and Legal Philosophy

Law does not arise spontaneously from the void or flow from a divine fount. So establishing a regime requires creating a legal system that reflects a common moral code, i.e., agreements about what constitutes the good society.⁸ That means, society arises from "an association of people who are joined together by a sense of common ends . . . and whose highest end is to cultivate an understanding of justice and morals among their own members."⁹ To further this project, societies develop laws to enforce and inculcate shared moral teachings and principles.¹⁰ In short, our knowledge of

right and wrong ideally informs lawmaking—not the other way around. Even so, the twentieth century provides a cautionary tale about how a despotic government can debase this approach by creating a state-imposed morality, which tends to result in death, terror, and dehumanization. This Section reviews the works of two scholars, Leo Strauss and Gustav Radbruch, to understand the interplay between tyranny, law, and human nature. That matters because grasping the relationship between legal positivism, natural law, and despotism helps lawyers diagnose and combat state-sponsored injustices.

Strauss, perhaps the preeminent natural law scholar of our time, began his project of revitalizing the Western natural law tradition by studying the rise of Nazi Germany and the global failure to swiftly diagnose Hitler's tyranny for the terror it was. Born into a German-Jewish family at the turn of the twentieth century, Strauss fled Europe to escape Nazism and anti-Semitism.¹¹ Inspired by the failure of “present-day political science” to “grasp tyranny as what it really is,”¹² Strauss penned *On Tyranny* to analyze the difference between ancient and modern tyranny. *On Tyranny* begins with Strauss' exegesis of Xenophon's *Hiero*, a dialogue in which Hiero, the tyrant of Syracuse, debates the difference between the tyrannical life and private life with the poet Simonides.¹³ By turning to the classical understanding of tyranny, Strauss explores why Western nations were slow to recognize Nazism as a tyrannical scourge.¹⁴ He attributes this failure to political scientists relying on technical descriptors, such as dictatorship, totalitarianism, and authoritarianism, but lacking the philosophic or moral framework required for condemning a state as tyrannical.¹⁵

Strauss remarks that tyranny cannot be equated with lawlessness, arguing that Xenophon's *Hiero* reveals the gap between justice and order.¹⁶ In other words, an authoritarian state may produce a good and just life for its citizens whereas tyranny and despotism cannot.¹⁷ To distinguish between tyrannies and healthy regimes that are not accountable to citizens, a lawyer or political scientist needs an independent standard for evaluating the justness or goodness of a state. Shocked that the rise of Nazism “did not lead to renewed interest” in scholarship devoted to understanding how thinkers from the “classical period” viewed natural law or the nature of tyranny, Strauss turned to Xenophon's *Hiero* as a touchstone for analyzing tyranny.¹⁸ Through the lens of that dialogue, Strauss developed his thesis that the West's shift from its natural law tradition to embracing positive law produced a pervasive relativism that cannot distinguish between good and evil regimes.

For Strauss, the hallmark of modern tyranny is reliance on a combination of technology, ideology, and science devoted to “the conquest of nature.”¹⁹ In other words, modern tyrants seek to reshape human beings and human nature, a feat never envisioned by classical tyranny.²⁰ Regimes dedicated to the debasement and perversion of human nature, both at the individual and social level, deserve the label of tyranny regardless of whether they are authoritarian, democratic, socialist, or so on. By using the state to reprogram the thoughts, desires, and relationships of human beings, Strauss argues that modern tyrannical regimes, like Nazi Germany, aspire to become perpetual and universal replacements for preexisting moral codes.²¹ Although classical political philosophers, embodied by the ancient Greeks, recognized that tyrants may wish to pursue a reprogramming of human beings and human society, they rejected that project’s possibility. That’s because they believed human nature, given our status as political animals with an innate sense of morality, could not be altered by even the most capable tyrant.²² Only in modern times do tyrants view their subjects as fundamentally malleable. This account of modern tyranny illuminates Strauss’ contention that tyranny stems from a rejection of the natural law tradition.²³

In Strauss’ corpus, the cardinal sin of modern political thought is the rejection of natural law and natural right. He begins *Natural Right and History* by observing that all societies possess distinct customs, laws, and institutions. Given this deduction, there are two possible responses: (1) either all ways of life, ranging from democracy to aristocracy to cannibalism to incestual societies, are equally justifiable, or (2) some ways of life are better, i.e., more just, than others.²⁴ Strauss grounds his argument on man being an evaluative creature, meaning that humans can think through whether practices are good or bad, both comparatively and objectively. From this insight, Strauss concludes that men are naturally drawn “to look for a standard with reference to which we can judge of the ideals of our own as well as of any other society.”²⁵ Natural law functions a neutral touchstone for comparing regimes and laws, meaning knowledge of natural law is the only solution to “the problem posed by the conflicting needs of society.”²⁶

Natural law, as understood by Strauss, “is connected with a teleological view of the universe” where “[a]ll natural beings have a natural end . . . which determines what kind of operation is good for them.”²⁷ Thus, modern philosophy’s rejection of natural law creates grave consequences because it leaves mankind without a guide to the good life.²⁸ After surveying the origins of modern political thought and the failure of modern states to swiftly condemn Nazi Germany as tyrannical, Strauss concludes that the modern liberal regime produces “bourgeois” citizens who “lack the greatness

of soul of the ancients.”²⁹ For that reason, modern political thought, divorced from classical concepts of human teleology and virtue, suffers an “absorption of natural right by the positive law.”³⁰ This supremacy of positivism over natural law in modern political thought constitutes a crisis of moral identity, as it becomes impossible to make objective claims about justice.³¹ For Strauss, only a revitalization of the West’s natural law tradition will properly equip lawyers and lawmakers for opposing the atrocities and unjust regimes of tomorrow.³²

While Strauss’ insights come to us in the form of political philosophy, his reflections on the breakdown of civil society in the twentieth century reverberate with German legal philosophy from that period. Gustav Radbruch, arguably the most renowned German legal theorist of his era, survived the rise and fall of the Nazi regime. Before the ascendance of Hitler and the breakdown of German civil society, Radbruch espoused legal positivism. He opined in 1932 that “the professional duty of the judge [is] to validate the law’s claim to validity, to sacrifice his own sense of right to the authoritative command of the law, to ask only what is legal and ask not if it is also just.”³³ While some scholars debate whether Radbruch completely embraced legal positivism before the Nazi takeover of the German legal system,³⁴ the commonly accepted theory is that Radbruch abandoned his positivistic outlook in favor of natural law only in response to his experience during Hitler’s reign.³⁵ For instance, Radbruch’s first post-World War II publication states: “There are, therefore, principles of law that are stronger than any statute, so that a law conflicting with these principles is devoid of validity. One calls these principles the natural law or the law of reason.”³⁶ Yet Radbruch limits the application of the external standards of justice provided by natural law theory to extreme political scenarios, such as “the altogether unique circumstances of the twelve Nazi years.”³⁷ With this caveat, Radbruch asserts a connection between resisting tyranny and embracing natural law principles.

Radbruch’s legal theory echoes Strauss’ political philosophy: both scholars agree that a positivist understanding of law cannot sufficiently guard against tyranny and, thus, renders society vulnerable to a capable despot. Tyranny, at least as it appears in modern times, aspires to distort citizens’ views of nature and justice by rejecting any standard of decency aside from what the state announces. Otherwise stated, despotism denies any relationship between law and morality. But natural law grounds itself in a shared human morality and rejects regimes that breach our fixed moral standards. Drawing on this approach, Radbruch concludes: “Where there is not even an attempt at justice, where equality, the core of justice, is deliberately betrayed

in the issuance of positive law, then the statute is not merely 'false law,' it lacks completely the very nature of law."³⁸ While positive law can, at times, prove sufficient to produce justice and a functioning civil society, turbulent political environments may produce regimes, like Nazi Germany, incapable of tracking any recognizable moral code. Under such conditions, citizens cannot merely accept the regime's laws as valid and just. Looking at the reflections of Radbruch and Strauss on Nazi Germany, natural law appears to be a viable mechanism for challenging the injustice of another regime.

Admittedly, the writings of Strauss and Radbruch on the relationship between positivism, natural law, and tyranny might at first strike lawyers as airy theorizing divorced from the realities of lawmaking and legal advocacy. But the debate about natural law cuts to the core of developing a contemporary jurisprudence that accounts for the state-sponsored horrors of the past century. For instance, if law is valid simply because it complies with legislative formalities, as legal positivism concludes, on what basis could we conclude that state-endorsed genocide is wrong? After all, Nazi, Germany went through the motions of codifying many of its injustices before executing crimes against its own citizens. Strauss and Radbruch present lawyers a language for articulating why murders and dehumanizing acts committed by a tyrannical state are still crimes even when the perpetrator declares them to be legal.³⁹

An Appeal to Nature: Understanding Why Claims of Natural Law Align with Resisting, as Opposed to Implementing, Tyranny

Even granting Strauss and Radbruch's contention that insufficient respect for natural law opens the door for tyranny, many obvious questions remain if we wish to use their insights to bolster our legal system. Most devastating to the natural law project is the observation that we lack a neutral, omniscient arbiter for settling claims of natural law and natural right.⁴⁰ For instance, consider the hypothetical situation of a citizen claiming his or her regime violates natural law while the regime asserts its laws adhere to a universal, objective standard of justice.⁴¹ This conflict, at least in a despotic state, would almost certainly be resolved by the government's monopoly on power, not the justice of the state's laws as judged by a natural law standard.⁴² From this exercise, we see that a regime can invoke natural law just as easily as those resisting the regime may cite the natural law to declare the regime unjust. To overcome this impasse, we must understand tyranny and why natural law functions not as a rhetorical strategy equally viable for tyrannies and their resisters, but as a kryptonite uniquely constituted to combat despotism.

Many nations, in both Western and non-Western regions, recognize the right to resist an illegitimate or overreaching government.⁴³ Generally, this right arises when a regime abuses its citizens and offers no valid legal remedy to oppose noxious state action.⁴⁴ From Chinese jurisprudence to Blackstone to the American Founders, many thoughtful observers of legal systems have found a right of resistance in the natural law concept of fixed ethical standards that limit state action.⁴⁵ Considering that these diverse political traditions all invoke the right to resist tyranny and the concept of an external repository of justice independent of codified law, it seems the kinship between resistance and natural law cuts across cultures. As a result, those resisting tyranny instinctively draw on the natural law principle that certain actions taken by a regime, such as ethnic cleansing and creation of an aggressive secret police apparatus, trigger the right to rebel.

Given the compatibility between resisting tyranny and natural law jurisprudence, the lack of a neutral arbiter for natural law claims becomes less important, if not moot. When those resisting tyranny invoke the right to rebel, they draw upon a principle with deep historical roots accepted by numerous and diverse cultures. This form of resistance occurs in sharp distinction from the erasure of rights pursued by tyrannies. For instance, the revocation of German civil rights and the creation of special courts under the purview of the Gestapo and the SS occurred under the guise of legality.⁴⁶ These steps, taken towards the despotic goal of creating an unopposable regime, could not be justified by any external code of justice or morality. Modern tyrannies, in their goal to distort human nature and our inclination towards justice and fairness, take legal action inimical to natural law—those regimes seek to become the sole standard for justice and injustice. So natural law claims strike tyranny at its foundation because natural law theory asserts external, fixed standards for morality and justice that cannot be twisted or ignored by the state. The logic of natural law thus cuts against the core elements of tyranny, making it a powerful tool to resist despots who wish to operate outside any code of conduct other than their own.

Rejuvenating the American Natural Law Tradition

Hearing words like genocide, ethnic cleansing, gas chambers, death camps, and secret police evokes a visceral reaction. It is nearly unfathomable for someone to visit a mass gravesite, such as Auschwitz-Birkenau, and not conclude that the horrors that transpired on that ground were not only evil, but universally condemnable by any legitimate conception of morality or justice. As a FASPE Law Fellow, I embarked on

an intensive three-week study of the Holocaust. This program included visits to concentration camps, including Auschwitz-Birkenau and Sachsenhausen, accompanied by a detailed study of German society and law during the Nazi era. After viewing the death camps and grappling with what it means that millions of men, women, and children were lawfully driven from their homes and summarily executed, it became painfully clear that the positivist claim that “law is law” simply cannot pass muster as compatible with civilized society.⁴⁷ Never again.

That said, the legal field should not reevaluate its core jurisprudential tenets based merely on habits of the heart and subjective notions about what is just, unjust, or tyrannical. Yet tyranny poses a grave threat to lawyers because it demands the rejection of a legal system that restricts the state in any meaningful way. Taking this threat seriously, lawyers need to be equipped with a robust framework for identifying and opposing tyranny. Understanding that tyranny's calling card is reshaping societal morality in the most amenable way for the regime to achieve its goals,⁴⁸ those who wish to resist tyranny must accurately understand the relationship between human nature, justice, and law.

Even if the legal community decided to agree that natural law jurisprudence effectively combats tyranny and offers fuel for the resistance of despotism, this theoretical approach must be put into effect if we are to profit from it. Considering natural law has essentially been dead letter in American jurisprudence since the end of the *Lochner* era,⁴⁹ courts and academics may balk at a return to a natural law perspective. And critics of natural law accurately contend that natural law conflicts with a consistent reliance on text and precedent, meaning natural law jurisprudence may introduce some instability and unpredictability into our legal system.⁵⁰ Yet this criticism usually comes from scholars writing and living in a functional democracy that generally respects human rights and dignity. Were these scholars to live under an unjust regime, it is far from certain they would defend adherence to that regime's texts, precedents, and procedures.

As Radbruch reminds us, exceptional historical times do exist where the positive law of a regime no longer aims to produce a good and prosperous society. When these circumstances arise, lawyers need to be equipped to challenge a tyrannical regime at a foundational level rather than fight the regime in the regime's own courts. To be sure, American legal educators and lawyers should broaden their jurisprudential horizons and reexamine our natural law heritage, especially given recent concerns about burgeoning fascism in America and Europe. Although demanding a paradigm

shift in the legal academy and on the bench might be overly ambitious, galvanizing grassroots interest in natural law jurisprudence among law students, academics, and practitioners would be a wise first step.

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Notes

1. Heather Leawoods, *Gustav Radbruch: An Extraordinary Legal Philosopher*, 2 Wash. U. J.L. & Pol'y 489, 490 (2000) ("Natural law reflects and can be captured in terms of a morality thesis, which holds that law and morality are necessarily connected. Laws are identified as legally valid only if they comport with morality; when morality conflicts with a law, the law is deemed to be invalid.").
2. Douglas G. Morris, *Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War*, 34 Law & Hist. Rev. 649, 650 (2016) ("As a matter of history, Radbruch excused Nazi-era judges who had missed his jurisprudential point, because they had succumbed to the legal theory of positivism that had long permeated German legal thinking. 'Positivism,' Radbruch wrote, 'with its belief that 'law is law' rendered the German judiciary defenseless against arbitrary and criminal laws.'").
3. These atrocities cannot be separated from the realm of ideas. For instance, failure to ignore the dangers of relativism has been particularly dangerous in modern times. We see this in Gertrude Himmelfarb's account of Heidegger. She writes: "Looking into the abyss of philosophy, one might say, Heidegger saw the beasts of Nazism and found them tolerable [because he was] . . . [d]ivorced from any 'essential' truth, from any practical morality, and from the political consequences of his own philosophy." Gertrude Himmelfarb, *On Looking into the Abyss: Untimely Thoughts on Culture and Society* 16–17 (1994).
4. See, e.g., John W. Brabner Smith, *Hitler Hated Lawyers: A Story of Resistance to Tyranny*, 43 Am.Bar Ass'n J. 1105, 1105 (1957) ("Hitler hated lawyers as he did horses. They represented a society where he did not 'belong' and which frequently thwarted Nazi projects. As late as 1941, Hitler, in a public address, bitterly excoriated the legal profession for 'obstructing' Nazi ideas of justice and threatened those who continued to resist his platform.").
5. Alexis De Tocqueville, *Democracy in America* 273 (Phillips Bradley ed., Alfred A. Knopf 1972) (1835) ("Men who have more especially devoted themselves to legal pursuits derive from those occupations certain habits of order, a taste for formalities, and a kind of instinctive regard for the regular connection of ideas, which naturally render them very hostile to the revolutionary spirit and the unreflecting passions of the multitude.").
6. Montesquieu, *The Spirit of the Laws* 308 (Anne M. Cohler, Basia C. Miller and Harold S. Stone, eds. 1989) (1748).
7. *Id.*
8. George Anastaplo, *Human Being and Citizen* 74 (1975) ("Law depends on a sense of morality among citizens: the law, in turn, promotes morality.").
9. Hadley Arkes, *First Things: An Inquiry Into the First Principles of Morals and Justice* 14 (1986).

10. *Id.*
11. See Stephen F. Feldman, *Democracy and Dissent: Strauss, Arendt, and Voegelin in America*, 89 Denv. U. L. Rev. 671, 674–75 (“By the end of the 1940s, Strauss, Arendt, and Voegelin were established political philosophers within the American intellectual community . . . While in Europe, they had not only witnessed the collapse of the democratic Weimar Republic into Nazi totalitarianism, they had suffered personal hardships and dislocations because of the Nazi perversions of the state. Strauss and Arendt fled Germany because they were Jews . . . From their vantage, American democracy was too fragile to leave unexamined.”).
12. Leo Strauss, *On Tyranny* 23 (1948).
13. *Id.* at 3.
14. *Id.* at 23 (“[W]hen we were brought face to face . . . with a kind of tyranny that surpassed the boldest imagination of the most powerful thinkers of the past—our political science failed to recognize it.”).
15. *Id.*
16. *Id.* at 74 (“[T]he identification of ‘just’ and ‘legal’ would make impossible the evidently necessary distinction between just and unjust laws.”).
17. Strauss gives the example that a king may have absolute discretion over the law, but we do not consider all kings to be tyrants. Only the unjust deeds or the malevolent nature of a ruler warrant condemnation as befits tyranny. See *id.* at 75.
18. *Id.* at 23.
19. *Id.* (“In contradistinction to classical tyranny, present-day tyranny has at its disposal ‘technology’ as well as ‘ideologies’; more generally expressed, it presupposes the existence of ‘science,’ *i.e.* of a particular interpretation, or kind, of science. Conversely, classical tyranny . . . was not meant to be applied to the ‘conquest of nature’ or to be popularized and diffused.”).
20. *Id.*
21. *Id.* at 27.
22. *Id.* at 128.
23. *Id.* at 210 (observing that by rejecting the classic view that human teleology is possible, modern political philosophy “lower[s] the goal of man” by denouncing the belief in “a stable standard by which to judge of any actual order”).
24. Leo Strauss, *Natural Right and History* 3 (1953).
25. *Id.* (“But the mere fact that we can raise the question of the worth of the ideal of our society shows that there is something in man that is not altogether in slavery to his society, and therefore we are able, and hence obliged, to look for a standard with reference to which we can judge the ideals of our own as well as of any other society.”).
26. *Id.*
27. *Id.* at 7.
28. *Id.* at 3–4 (“[T]he rejection of natural right is bound to lead to disastrous consequences . . . It admits being unable to help us in discriminating between legitimate and illegitimate, between just and unjust, objectives.”).
29. *Id.* at 253.
30. *Id.* at 286.
31. See Corrine Pelluchon, *Leo Strauss and the Crisis of Rationalism* 256 (Robert Howse trans., 2005) (“Strauss . . . claims that the crisis of our times is the crisis of the West and that this has to be understood in terms of the history of thought. But for Strauss, the crisis of our times is a crisis of political philosophy, it is linked to the disappearance of political philosophy.”)
32. The capacity of America to adequately appreciate the import of natural law remained an open question for Strauss. Immediately after citing the Declaration of Independence’s natural law language of self-evident truths and unalienable rights, Strauss ponders: “Does this nation in its

- maturity still cherish the faith in which it was conceived and raised?” Leo Strauss, *Natural Right and History* 1 (1953).
33. Gustav Radbruch, *Legal Philosophy*, in *The Legal Philosophies of Lask, Radbruch, and Dabin* 119 (Kurt Wilk trans., 1950).
 34. Leawoods, *supra* note 1, at 495.
 35. *Id.* Scholars generally agree that Radbruch transformed his thought after living through the twelve-year period of Nazi rule in Germany and classify his post-World War II writings as more amenable to natural law.
 36. Gustav Radbruch, *Five Minutes of Legal Philosophy*, in *PHILOSOPHY OF LAW* (Joel Fienberg & Hyman Gross eds., 1991).
 37. Leawoods, *supra* note 1, at 502.
 38. Gustav Radbruch, *Statutory Non-Law and Suprastatutory Law* (Bonnie Litschewski Paulson & Stanley L. Paulson trans., 1993).
 39. As Hadley Arkes explains: “Any man who understood what Hitler did, understood the most fundamental things he had to know in order to come to the understanding of why genocide is wrong . . . With all of our inclinations these days to seek the sociological or nonmoral explanation for oral systems, we often overlook an explanation that must remain immanently plausible: that certain people do injustice not because they fail to understand what they are doing, but precisely because they do understand. They do it for their own gain or aggrandizement, and they may do it for the sadistic pleasure they find in the suffering of others. They may do it, in some cases, for the love of evil itself.” Arkes, *supra* note 9, at 156–57.
 40. See Lino A. Graglia, *Lawrence v. Texas: Our Philosopher-Kings Adopt Libertarianism as our Official National Philosophy and Reject Traditional Morality as a Basis for Law*, 65 *Ohio St. L.J.* 1139, 1145 (2004) (“The advantage of a natural law theory, John Hart Ely cleverly pointed out, is that ‘you can invoke natural law to support anything you want. The disadvantage is that everybody understands that.’”).
 41. Yet we need not even resort to hypotheticals. The Nazi regime did just this. See Elle Gilley, *Illegal Laws and Legal Crimes: An Introduction to a Lawyer’s Opposition to Hitler*, 2 *FASPE Final Project J.* 17, 18–19 (2011) (describing how “the Nazis had already co-opted natural law reasoning” by the mid-1930’s).
 42. John Locke addresses this issue directly, stating that in regimes where “a barefaced twisting of the laws so that they protect or even reward the violence or injuries perpetrated by some men or some party of men,” which constitutes a “manifest perversion of justice,” creates a scenario where injustice is “dressed up in the name, claims, or forms of law.” In such a scenario, which can be described as living under tyranny, citizens have “nowhere on earth to appeal to justice, meaning the “only remedy in such cases [is] an appeal to heaven.” John Locke, *Two Treatises of Government* § 168 (C.B. Macpherson ed, 1980) (1690).
 43. Tom Ginsburg, Daniel Lansberg-Rodriguez and Mila Versteeg, *When to Overthrow Your Government: The Right to Resist in the World’s Constitutions*, 60 *UCLA L. Rev.* 1184, 1191 (2013) (“The right to resist has a long history in political theory and has been a feature of political thought in different societies, ranging from ancient China to the American founding. Where it has appeared, the right to resist has been tied to the notion that people can legitimately resist their government in certain situations.”).
 44. *Id.* at 1191–92.
 45. See *id.* at 1196–1207.
 46. Norman L. Greene, *Nazis in the Courtroom: Lessons from the Conduct of Lawyers and Judges Under the Laws of the Third Reich and Vichy France*, 61 *Brook. L. Rev.* 1121, 1132–34 (1995).
 47. We can observe a similar problem caused by relativism and positivism in the discipline of history. See Himmelfarb, *supra* note 3 at 142–43 (“Hard cases, it is said, often make bad law.

History, however, too often consist of hard cases, and historical methods are designed to accommodate them. For all historians, traditional and ‘new’ alike, the hardest case in modern history is surely the holocaust. It is especially hard for postmodernists, who face the prospect of doing to the Holocaust what they do to all of history—relativizing, problematizing, ultimately aestheticizing or fictionalizing it . . . It is this ‘revisionist’ thesis that postmodernists would like to avoid. But they can only do so by the kind of verbal legerdemain that is their stock-in-trade—and that has created the problem in the first place.”)

48. Walter R. Newell, *Tyranny: A New Interpretation* 26 (2013).
49. Hon. Diarmuid F. O’Scannlain, *Natural Law in the American Tradition*, 79 *Fordham L. Rev.* 1513, 1515 (2011) (“Lochner, and similar cases of that age, were seen as instances of ‘natural law reasoning.’ Thus, criticism of “the Lochner era” became bound up with criticism of the natural law. And, by the time *Griswold v. Connecticut* was decided, all nine of the Justices had decried the use of the natural law in judging.”).
50. *Id.* at 1514–15. (“Others believe that natural law, regardless of its existence or its historical pedigree, is dangerous. Their concern is that natural law might empower judges to base decisions on their own sense of justice, rather than relying on traditional legal sources such as text and precedent. This last thread of criticism is hostile to natural law, not merely apathetic. It asserts natural law concerns are antithetical to responsible judging.”).

*This story was written by FASPE Law Alumni Nila Bala and Attorney Lars Trautman. It was originally published on November 8, 2019 by Slate, as part of **Future Tense**—a partnership of Slate, New America, and Arizona State University that “examines emerging technologies, public policy, and society.”*

A Wearable Wiretap

A new generation of ankle monitors offers a range of advanced features—and raises a host of thorny questions.

BY NILA BALA AND LARS TRAUTMAN

Earlier this year, Chicago officers strapped an ankle monitor onto Shawn, a 15-year-old awaiting trial on charges of robbery. The ankle monitor offered police the ability to track Shawn’s whereabouts, helping ensure he’d show up for his court date. But unlike traditional ankle monitors, Shawn’s was equipped with speakers and a microphone, theoretically enabling two-way communication between Shawn and law enforcement. His mom told the Appeal that she worried that officials were eavesdropping on them: “[T]hey can hear everything. We could be here talking about anything.”

According to the Appeal, Cook County officials use these capabilities to remind children about upcoming court dates or to charge their monitoring devices, but “no probation officer has used the device in violation of the law.” But Shawn’s case may be just the beginning. Historically, electronic monitoring devices were designed to provide information on geolocation only (and warn officials if an individual attempted to tamper with the device). Lately, however, officials in D.C., Chicago, and elsewhere have started using devices that have two-way communication capabilities. Although these new devices promise some added benefits, those are overshadowed by significant costs to dignity, privacy, and rehabilitation.

On any given day, more than 100,000 people in the criminal justice system are under some form of electronic monitoring, a number that has increased by 140 percent in the past decade. Most commonly, this entails wearing a device around the ankle—the prototypical GPS ankle bracelet—while the individual is released on community supervision. Community supervision encompasses programs where individuals are

monitored by law enforcement but are in their own community instead of behind bars; it can be used either pretrial or after adjudication, such as with probation and parole. The ankle bracelet may not technically be mandatory in many instances, but the individual usually has just two choices: monitoring or incarceration.

Just as people awaiting trial often prefer monitoring, so, increasingly, do jurisdictions. Many prisons and jails have reached capacity, and opposition to cash bail is growing. That makes community supervision an appealing alternative to both pretrial detention and post-conviction incarceration, but whether even standard electronic monitoring produces improved liberty or undue interference in an individual's life often depends on one's perspective. To many prosecutors and judges, it serves as one of the only alternatives to incarceration for individuals deemed higher risk. To many civil liberties and criminal justice advocates, it represents an unnecessary and burdensome form of "e-carceration" for individuals who would comply with court conditions even without such monitoring.

But in a system where some form of incarceration is the only alternative, a return to the community may well seem worth the inconvenience and surveillance that come with electronic monitoring. There's also some evidence that electronic monitoring may reduce the likelihood of a person reoffending, though the research is not entirely clear. And the projected cost savings of monitoring over incarceration are attractive to government officials who feel that some sort of enhanced supervision is necessary for a given individual.

We must ensure that any developments adopted for criminal justice purposes are in fact in line with justice.

It seems almost natural that as technology advances, so would the specs of electronic monitoring devices. In 2014, the company SecureAlert, now known as Track Group, released the ReliAlert XC3, the two-way device Shawn and others have been required to wear. It boasts improved cellular range and clarity, a 60-hour battery life, and a new tamper-proof alarm, in addition to its speakers and microphone. Those calling capabilities could allow officers to get in touch with individuals on probation, who can be hard to reach, or let probation departments issue warnings that an individual is close to violating curfew or traveling outside of an allowed area. The advertising materials for the ReliAlert XC3 claim "real-time violation intervention." One watchlike monitoring device from another company promises not only calling features but "motion sensors, vibration alerts, messaging, heart rate and blood pressure

detection.” It does not as yet appear to be in use, but someday these enhancements could reduce sources of miscommunication and potentially prevent violations before they occur.

But that ostensible protection comes at the price of increasingly intense and granular surveillance, not to mention intrusion into individuals’ lives. When probation and police officers are able to call individuals through their devices, they can do so at any time without warning—and their calls cannot be refused. Officials say they are not using the enhanced features and have merely adopted these new monitors for other benefits like improved battery life. But there has been at least one report of an individual receiving a call anyway.

Even more troublingly, the two-way communication features of some of these devices mean that whoever is doing the supervising can listen in on them at any time, anywhere. This represents a massive, potentially ongoing invasion of privacy, even for probationers who have diminished rights to privacy under law. Perhaps of most legal consequence is the ability to listen in on conversations with one’s attorney, which undermines attorney-client confidentiality and violates the constitutional right to counsel.

By turning probationers into listening posts, the devices also risk violations of third-party privacy rights—as conversations with one’s family or employer, for example, become exposed to government surveillance. In some states, like Illinois and California, this is illegal: Wiretapping laws forbid listening in or recording a conversation without the consent of all parties. But even where it is wholly legal, this capability is likely to serve as a source of isolation for the person being monitored, since few of us would invite the government to surveil even our most innocent conversations.

The next step here might be physiological eavesdropping that could expose an individual’s health conditions, sleep patterns, or even insight into their moods. Add sophisticated algorithmic analysis, and this type of monitoring could border on the predictive. One wearable in the consumer space, for instance, is designed to predict when a couple might be about to have a fight.

Community supervision is not just about monitoring and surveillance; it’s about rehabilitation and helping individuals reenter society. Likewise, in designing community supervision programs and products, we cannot limit ourselves to the

preferences or needs of the people in charge of those programs, or the people placing the purchase orders for those products. Pretrial services and probation departments are incentivized to prioritize public safety over all other goals—they are punished for enforcement failures but are not rewarded for successes, since those individuals do not come back to the system. It's no surprise, then, that the technology is designed almost exclusively with monitoring and surveillance in mind.

Many of these monitoring devices have been attached to individuals who have not even been convicted of a crime—namely those under pretrial supervision while awaiting their day in court. These people retain the presumption of innocence, making the privacy invasion features of these devices that much more galling. Electronic supervision in the pretrial context is meant to ensure that these people return to court and to deter them from committing a crime in the interim. It is unclear that calling or listening features are necessary to advance that mission. Sometimes the simplest innovations can be the most effective: For example, the criminal justice system has already found great success in sending defendants text reminders of their court dates—a method that implicates few, if any, privacy concerns.

While makers of wearable technology will continue to iterate and innovate, we must ensure that any developments adopted for criminal justice purposes are in fact in line with justice. It is essential that new devices respect the privacy and dignity of the individual and don't add new features unnecessarily. Shawn, for example, told the Appeal that the monitor makes him feel like a slave and doesn't leave him room to think.

“Supervision” is only half of the community supervision equation. Monitoring has to allow individuals to move forward with their lives and once again be, simply, full members of the community.

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Good Leaders Make Good Doctors

Most people think of doctors as scientists, caregivers or educators. But we must also understand doctors as leaders.

BY DHRUV KHULLAR, M.D.

During our final year of medical training, I would take turns with the other senior residents responding to cardiac arrests in the hospital. We'd spend weeks camped out in the doctor's lounge, our hearts racing at the prospect of a patient's heart stopping, bracing for the moment a shrill pager or overhead speaker would signal an emergency.

When the signal came, two dozen clinicians of different ranks and specialties would descend on the patient's room. It was then the on-call senior's job to conduct an efficient, morbid, sometimes miraculous symphony to revive a patient whose heart had stopped beating.

The clinical aspects of running a code are straightforward, requiring little more than a handful of medications and a stopwatch. But the leadership task is exceedingly complex. Within seconds, the doctor in charge needs to impose order on a chaotic room rife with alarms, shouts, needles and tears. Who's performing chest compressions? Intubating the patient? Checking lab work that might unearth a clue? Who would be alerting the I.C.U. that a patient will — hopefully — be transferred within minutes?

Most people think of doctors as scientists, caregivers or educators. But we must also understand doctors as leaders. Physician leadership is critical for better patient outcomes, clinical performance and professional satisfaction. That's true not only during emergencies, but also for managing chronic diseases or improving hospital efficiency.

Consider a recent effort to improve care for patients with heart attacks — who are twice as likely to die at low-performing hospitals as high-performing ones. In a two-

year program created by Dr. Leslie Curry of Yale and Dr. Elizabeth Bradley, now president of Vassar College, the Leadership Saves Lives initiative trained clinical leaders from 10 hospitals, with a focus on changing hospital culture and promoting proven practices. Clinicians received leadership education through yearly meetings, semi-annual workshops and continuous remote support.

Hospitals where leaders were able to transform culture — through engaging staff, better managing conflict and communicating more effectively about new care processes — saw large reductions in heart attack death rates. The Leadership Saves Lives Toolkit has been promoted by the American College of Cardiology and is now being used by some parts of the National Health Service in England.

“We know culture matters,” said Dr. Bradley. “But we wanted to show that you can take tangible steps to improve culture by training leaders. We thought we’d see an effect. We didn’t expect to see it so fast.”

Strong leaders are not only good for patients, but also for doctors, as a program from the Mayo Clinic illustrates. Each year, clinicians at Mayo assess their supervisors — all of whom are physicians — on a Leader Index, a simple 12-question survey of five leadership domains: truthfulness, transparency, character, capability and partnership. Does the physician-leader support colleagues? Are they approachable and fair? Do others feel psychologically safe working with them?

The results have been impressive. For every one-point increase in a leader’s score, there is a 9 percent improvement in professional satisfaction and a 4 percent decrease in burnout among frontline doctors. Across departments, nearly half of the variation in satisfaction can be explained by the Leader Index score of the chairperson.

“If you had an orchestra, you wouldn’t want a conductor who’s never played an instrument,” said Dr. Stephen Swensen, former director of leadership and organization development at the Mayo Clinic. “It’s the same with hospitals and physicians. Physician leaders are important — and the most important leader is the one closest to you.”

More broadly, developing physicians as leaders may be good for the medical profession as a whole. A central force behind doctor dissatisfaction is bureaucratic intrusion and loss of professional autonomy. The number of non-physician administrators in the American health care system has skyrocketed in recent decades,

and many physicians feel frustrated by policies imposed by those they perceive as disconnected from the realities of clinical care.

Grooming doctors to assume leadership roles could help. Physicians are happier when their bosses are also physicians, and hospitals with physician chief executives seem to perform better than those with non-clinical leaders.

And it's probably good to start the process early. Medical school admissions have traditionally focused on test scores and GPAs, but assessing leadership skills may be just as, if not more, important for selecting students who will become good doctors. Some residency programs, including my own at Massachusetts General Hospital, have recognized the need to formalize leadership education and have introduced business school-inspired courses on management and emotional intelligence.

Increasingly, medical groups are also creating dedicated pathways for physicians to hone leadership skills and assume graded levels of responsibility over time. For example, Sound Physicians, a company that employs more than 3,000 physicians across the country, has a pipeline for doctors to advance through structured rungs of leadership — emphasizing a different mix of clinical, strategic and business skills at each stage, from individual practitioner to the C-suite. The training includes in-person and online courses, as well as an annual conference, to help doctors develop management and leadership competencies, and learn how to apply these skills within their organizations. Since introducing its leadership development program, the company reports less turnover, higher morale and better growth.

Today, talk of leadership is so pervasive it can sometimes feel empty — the stuff of resume-padding and political advertising. But in medicine, effective leadership has tangible benefits. As our health system continues to struggle to devise ways to improve quality and reduce costs, it's increasingly clear that a healthy culture can lead to better medical care. For their patients and their colleagues, doctors must be leaders.

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