

## Bring back citizen-lawyers

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We now face crises in our economy, our ecology and our standing as the leader of the free world. To address these concerns, President-elect Barack Obama, a lawyer himself, has drawn on the legal profession more than any other to fill high-level posts. These appointments include Joe Biden, Hillary Clinton, Eric Holder, Ron Kirk, Janet Napolitano, Ken Salazar and Tom Vilsack. But how often do we hear these talented individuals described as lawyers rather than as politicians? Attorney General Holder aside, they merely happen to have a law degree.

That economists in government are "economists," but most lawyers in government are not "lawyerly," suggests a problem with both our profession's reputation and its self-perception. The vaunted image of the "citizen-lawyer," who deploys legal skills to serve the common good, has thoroughly disappeared from the popular imagination. Lawyers are seen as defending clients, not building societies.

This was not always the case. Lawyers played a key role in founding our nation and have strengthened it, especially in times of crisis. Most relevant to today's situation, during the Great Depression attorneys crafted the New Deal. Dispatched by the likes of law professor Felix Frankfurter, recent graduates and seasoned mentors alike fashioned innovative government approaches to management, regulation and service. Citizen-lawyers produced transformative law: a powerful tool to challenge and reconfigure social institutions. Transformative law has emerged through landmark U.S. Supreme Court decisions such as *Brown v. Board of Education*; groundbreaking statutes such as titles VII and IX; and precedent-setting state court victories and legislative innovations in areas like school finance.

Traditionally, devotion to public service was a critical part of the lawyer's professional role. Over time, however, public service and private practice came to be seen as irreconcilable opposites. Work for social justice was relegated to a career path called "public interest": practitioners were often poorly compensated and demoralized by 30 years of deregulatory politics that treated their reform efforts as obsolete.

Attorneys in private practice increasingly adopted a "business model," competing frantically for revenue. Clients no longer sought wise counsel but wanted streamlined service for narrowly defined interests. Private practitioners could scarcely imagine being able, let alone professionally obliged, to participate in social transformation. This situation is unhealthy. It squanders much of our best talent. Skills and perspectives gained in practice can benefit government. Travails and satisfactions of government service can rejuvenate practice. Working next to lawyers with divergent experiences challenges orthodoxies and ossification. By segregating public service from private practice, we have

weakened both.

### **A singular opportunity**

Is the citizen-lawyer a lost ideal? Let's hope not. Our country's current crisis of confidence provides a striking opportunity for lawyers to answer the call of service and restore national integrity and trust. We must resurrect the citizen-lawyer and the possibilities for transformative law.

A citizen-lawyer ethic would feed the hunger for consequential service that drives many to study law. Is this call for renewal fanciful? Not this year. As Americans lose jobs and homes, they better appreciate social safety nets that ensure minimum levels of security and dignity. People want advice from experts on law and policy about how to address the grave challenges we face. Legal principles — transparency, the individual's right to seek relief, deference to courts and legislatures, and the necessity for administrative oversight — are ascendant. No longer is free-market enthusiasm, with its hostility to regulation, the order of the day.

We as a society must determine how to restructure our affairs. We as a profession must recognize our potential contribution.

Professor Elizabeth Warren of Harvard Law School recently accepted Congress' call to public service, auditing the \$700 billion financial services industry bailout. She found that no one was tracking these massive disbursements, a lapse that testifies to the critical role of wise legal counsel from the outset when monitoring the compliance of such initiatives.

A corps of budding citizen-lawyers could act as emergency responders, and any money spent on them would be dwarfed by the savings from preventing waste and misappropriation of taxpayer dollars. Participation could be solicited from every sector of the profession, whether partners, associates, public interest lawyers, solo practitioners or recent graduates. Seasoned lawyers can help plan, manage, administer and oversee the nation's enormous plans for infrastructure-building. Young lawyers can readily be trained to provide much better oversight of these expenditures than we will otherwise find. These would not be career positions; they would not make anyone rich. But they would greatly enrich those who serve — in the development of skills, the exercise of practical judgment and a sense of patriotism and pride.

The time has come for us to resurrect the citizen-lawyer. We have a society to serve and a profession to renew.

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