

# Scholars, Teachers, and Servants

*James Grimmelmann*

It is beyond conventional to say that the three principal duties of academics are scholarship, teaching, and service. One example: “Almost all colleges pay lip service to the trilogy of teaching, research, and service.”<sup>1</sup> Another: “The fundamental obligations of university teachers for teaching, research, and academic citizenship are the same for all academics.”<sup>2</sup>

But this is an age of crisis and reflection for higher education, and scholarship is under siege. Critics condemn a system of hiring and promotion that seems to focus scholarly productivity to the exclusion of all else. On this view, the university exists to meet the needs of its customers: students. Faculty who step out too long of the classroom to pursue their own research are acting disloyally, as are those who step out to harangue society. This is a consumerist mindset; it sees academics as servants, and bad ones at that.

It is easy to describe this as an attack on scholarship *qua* scholarship, in which case the replies are timeworn and predictable. The pursuit of knowledge is an end in itself, research benefits society in the long term, and so on. These are primarily defenses of scholarship; they are arguments for why society ought to support it. It seems to me that these replies, important as they are, miss something equally important in the contemporary critique of scholarship. They do not respond to the student who asks why her tuition dollars should pay for law review articles, or the one who complains that his Torts professor was too busy with conferences to hold office hours. There is a gap between saying that something should be done and saying who should do it. Not all attacks on the academy are attacks on scholarship; a defense of scholarship is not necessarily a defense of the academy. There is a point here, one worth taking seriously, and it is subtler than the argument that scholarship itself is inherently worthless.

The modern university does not just combine the three missions of scholarship, teaching, and service; it combines them in *the same people*: the faculty. This choice, although often put in terms of academic freedom, also reflects a belief that these missions have something to do with each other, that all three benefit when they are done together. They were united for a reason, and we should not lightly put them asunder. When done well, these activities reinforce each other. Scholars are better teachers and better public servants; teaching is good groundwork for scholarship and good practice for service; service helps define the goals of scholarship and teaching. The argument for severing scholarship from teaching is unper-

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<sup>1</sup> ERNEST BOYER, SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORIATE 15 (1990).

<sup>2</sup> EDWARD SHILS, THE ACADEMIC ETHIC 104 (1983).

suasive. But as a critique of what scholar-teachers currently do, it may have more bite. The problem if there is one is not in the ideal but in the implementation.



The essence of an academic attitude to the world is close, careful, and systematic study in search of truth. Confronted with a gap in her understanding, an academic hits the books. This attitude is progressive: it combines humility in one's knowledge with optimism about one's ability to learn more. This process has a name, and that name is "research."

Unfortunately, "research" is a bit of an overloaded term, so I would like to be precise about what I have in mind. I will emphasize four features. First, the forms of research are many: conducting experiments, observing the world, interviewing people, reading texts, and reading others' analyses all count. Anything that yields knowledge through diligent effort is a form of research; Second, research in this sense is the hallmark of the academic mindset, but academics have no monopoly on it. Anyone who delves deep into a subject is researcher, regardless of affiliation. Researchers in private industry and at non-profits count, and so do bloggers and journalists who bring the appropriate attitude to their work. Third, it is common to talk of a professor's publications as her "research," but this usage is error. The research process precedes publication, and scholarly publications are just one output of research, along with teaching and service. (More on this shortly.) Fourth, the purpose of research is to ascertain the truth about the world, whatever it may be. A researcher may have a hypothesis, but she is ready to abandon it if the evidence is otherwise.

Scholarship, teaching, and service are the three principal uses of research. Each is a way of communicating research's results; each speaks to a different audience. Scholarship is for other researchers, teaching is for students, service is for society. They have in common that they are based on the results of research, diligently conducted and honestly reported. The academic's commitment is to do research and convey the knowledge thereby gained to whomever needs it; peers, students, and the public depend on academics to get it right; This way of thinking about the nature of scholarship, teaching, and service has important implications for which activities should count as doing them.

Start with scholarship. The content of a publication and the attitude behind it are more important than the form it takes. A rushed and superficial treatment of a subject based on idle speculation and a little Googling is not scholarship, even if it appears in a prestigious journal. But a serious treatment of a subject based on careful thought is scholarship, even if it circulates only on a mailing list or a website for pre-prints. Scholarship is reported research that other scholars find useful; the medium of the reporting is irrelevant as long as it is reasonably calculated to come to the attention of those would benefit from it. And similarly, the identity

and affiliation of the author are irrelevant; the company of scholars is not limited to faculty.

Next, teaching. Teaching is a broad term, and not all teaching is academic. Good primary-school teaching may be based on research about effective pedagogy and curriculum design, but the teacher does not need to be directly engaged with that research. Liberal education and professional education are different. There, students acquire a body of research-based knowledge and the mental tools to apply it to new problems. That said, we should be broad-minded about the academic teaching that matters, rather than defining a teaching mission in terms of a specific group of students, while taking the definition of that group for granted. Legal education, for example, can be much broader than training lawyers.

Finally, there is service. Here, I mean the external service that takes place beyond the university's walls rather than the internal service that helps govern and maintain the university. Writing for a popular audience and speaking to reporters can be external service; so can filing amicus briefs and testifying before governmental bodies; so can law-reform efforts, *pro bono* representation, writing letters to the editor to clear up gross misconceptions, and much more. These are service when they are carried out by academics in their capacity as academics: experts in a matter who are qualified by dint of the research they have done on it. A professor who speaks to an issue beyond a specialty she has trained herself in speaks as a citizen, not as an academic.



Scholarship, teaching, and service, rightly understood, are not three isolated activities competing with each other for academics' time and attention. They are mutually supporting, and the same work can help with all three. To the extent that this is the case, it is a convincing answer to the critic who contents that academics waste their time when they do anything but teach. To the extent that it is not the case, it is a rebuke to academics, because they are falling short in a duty to lead integrated professional lives.

The most obvious overlap, so obvious as to be trite, is that knowledge acquired through long effort is knowledge that can be shared in the classroom or with the public, as well as with one's scholarly peers. Just as it would be a waste to do research and then not publish it, it is a waste to do research and then not teach it or bring it to the public. (There may be other reasons not to, such as limited time, but the decision should be made on that basis, and not on the faulty rationale that the only audience for research is other scholars.) To quote Edward Shils, "The proper audience of the results of research should not be conceived of only as other scientists as specialized as the producers of these results ... . The

wider public should also be included in the audience.”<sup>3</sup> This is both an opportunity and an obligation. If we want scholars to publish, we should also want them to teach and to present in the public sphere.

Something similar is the case when an academic selects research projects. Society’s needs for knowledge present themselves both inside and outside the classroom. Inside, they provide the demand for education, or, if you prefer, they provide the justifications that make education important. (Teaching is in this respect a kind of indirect service.) Outside, there are both specific policy problems and a more general public curiosity. It is routine and reasonable for academics to pick research projects in view of these missions. To say that a topic is “important” is to say that it is informed by teaching and by service. In Peter Markie’s words, “One does not simply invent ideas to hear oneself talk. There is a context that gives ideas their point and their significance; one can advance new ideas only by showing how they function in that context.”<sup>4</sup>

Academics also can and should approach teaching and service with a scholarly attitude. Saying “I don’t know” to a colleague’s question at a paper workshop and saying “I don’t know” to a student’s question in the classroom are both occasions for the same follow-up: doing the research to find out. The expertise that qualifies academics to contribute to public discourse is not just a specific expertise based on previous work; it is also the general expertise of being able to develop answers to particular questions. Thus, while we should value service as service only when academics are able to contribute as experts, we should recognize that part of their expertise is the ability to delve deeply when the need arises. Derek Bok: “There are ... forms of consultation and social criticism that typically call for years of study and reflection of a kind that cannot readily be achieved by those who work outside a university setting.”<sup>5</sup>

Academics can do better and worse jobs of integrating the three. Teaching, in particular, can be either too scholarly or not scholarly enough. Some anecdotes may be illustrative. One of my college friends, reading aloud the course description of a particularly esoteric seminar, quipped that it should be renamed “Things I Have Been Thinking About Lately.” That professor subordinated his teaching to his scholarship; the seminar was a continuation of his scholarly agenda by other means. At the other extreme, everyone has a story about a professor who gives the same lectures every year for decades, word for word. Her teaching could benefit from a more scholarly attitude; she would not think about publishing the same article, word for word, year after year. Stephen Cahn: “A professor who

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<sup>3</sup> *Id.* at 76

<sup>4</sup> PETER J. MARKIE, *A PROFESSOR’S DUTIES: ETHICAL ISSUES IN COLLEGE TEACHING* 201 (1994).

<sup>5</sup> DEREK BOK, *BEYOND THE IVORY TOWER: SOCIAL RESPONSIBILITIES OF THE MODERN UNIVERSITY* 73.

depends on tattered, yellow notes reflecting timeworn thinking is as guilty of malpractice as the physician who relies on antiquated treatments.”<sup>6</sup>

There is an important difference in emphasis here from more familiar defenses of scholarship in higher education. We want to have scholars and public servants as teachers not because they are the *most qualified* but because the process of *engagement* in scholarship and service makes them better teachers. Markie again: “First, the expectation is not simply that professors actively engage in their disciplines; it is that we engage in our disciplines in a way that supports our teaching. Professors bring the practice of their discipline into the classroom.”<sup>7</sup>

My point is that because the synthesis of scholarship, teaching, and service is characteristic of the university today, any convincing defense of the university must justify that synthesis and live with the consequences. In Derek Bok’s formulation, “While the various functions of the university could be reorganized and redistributed ... something important would be lost.”<sup>8</sup> If scholarship exists for its own sake, separate and apart from teaching and service, then scholars have no good argument for why society should support them as teachers and tolerate their service. But if, on the contrary, scholarship should be integrated with teaching and service, then academics should continually be asking themselves whether they are being true to this integrated ideal, not just to the scholarly ideal. Being an academic means keeping abreast of the literature in your “service” courses; it means polishing the anecdotes in your lectures and the footnotes in your articles in the same way. Being a scholar in a university setting creates an obligation to carry your work and your wisdom beyond the university’s walls for the betterment of society. One reason that professors have failed to make this obvious defense of the importance of scholarship to teaching and service as forcefully as they should may be a bit of a guilty conscience about these duties to be scholarly teachers and scholarly public servants.



Combining scholarship, teaching, and service is usually thought to pose a threat to academic integrity. One version of the argument is that scholarship is its own end, so to link it to other missions risks compromising it. Another version is that service in particular distracts faculty from scholarship and teaching and tempts them to take positions at odds with the truth.

There is something to these arguments, but I would characterize things differently. Academic integrity is the integrity of research: of following the truth where it leads. That is precisely what is valuable about the academic attitude, regardless of whether it is applied to scholarship, teaching, or research. In all three

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<sup>6</sup> STEPHEN CAHN, *SAINTS AND SCAMPS: ETHICS IN ACADEMIA* 42 (1986)

<sup>7</sup> MARKIE at 5.

<sup>8</sup> BOK at 19.

fields, society trusts academics to get the research right. Indeed, the academy is the one institution in society wholly oriented to getting the research right, free from outside influences.

The issue, then, is not that service is uniquely corrupting to scholarship. Service is potentially corrupting of *research*, and to that extent can compromise everything academics do. The professor who is paid to take a position and dedicates her research to proving that position sins against other scholars, to be sure, but she also sins against the public. It is no answer to say that professors should avoid service for this reason; that simply leaves that public even worse off, with no independent voices at all. There is a duty to serve, and that means a duty to serve honestly, presenting the truth. Society depends on disinterested experts.

The details will often be difficult to negotiate. A good starting point is that paid service is *prima facie* problematic. Professors who take it on need to make an affirmative case that they can do so without compromising their analyses. This is not to say that money is the root of all academic evil; there are ways to undercut one's integrity for free. A professor who speaks out publicly in support of causes whose righteousness he is convinced of does what we want of him, but when his advocacy crosses back into producing scholarship to support his views, he pursues something other than truth.



My argument so far neglects some important features of the university, most obviously academic freedom. I would like to say a little, therefore, about the relationship between professors' duties as academics and their conditions of employment. There is a necessary gap between aspiration and implementation. Professors *should* strive to do all three, but that is not to say we ought to *make* them do all three all the time. There are a variety of reasons why the obligations society imposes on people stop short of the obligations they should impose on themselves. Here, three concerns loom large. First, there is academic integrity, as discussed above.

Second, there is the inherent uncertainty of research. It is a creative, innovative endeavor in a crucial sense: the researcher setting out on a project does not know what she will learn. (If she knew everything in advance, it would not be a project we should dignify with the name of "research.") This commitment—to seek the truth and follow it where it leads—means that every research project is risky. The truth may be surprising, or disconcerting, or uninteresting, or not to be found. We need to leave academics substantial room to fail, and an academic who does not regularly fail in her research is being too conservative in her choice of questions. (Of course, it is good to fail quickly and recognizing dead ends quickly is part of the researcher's craft, but a good researcher asks some questions that end up leading nowhere.) The same is as true in teaching and service as in scholar-

ship. The academic spirit requires casting a critical eye on what one teaches and how one teaches it, constantly looking for better explanations or bits of classroom *shtick*. It similarly requires an open mind when looking into something that concerns the public; maybe the truth about a viral video will be strange and surprising.<sup>9</sup>

And third, faculty themselves have diverse interests, expertise, and talents. They are trained in different disciplines and in different research methods. Some are outgoing and quick-tongued; others are withdrawn and choose their words with care. Some are intuitive, others methodical. There are foxes and hedgehogs, wanderers and homebodies.<sup>10</sup> Some have personal experiences that give them particular insight into particular issues; others are natural expositors who can explain anything clearly. Any good system will recognize this diversity and channel faculty into jobs and projects where they can do the most good; almost always, the individual faculty member is better positioned than anyone else to know where that will be.

These are the basic conditions of academic freedom. The university as an institution owes academic freedom to all its members when they research, when they publish, when they teach, and when they serve; that freedom attaches the moment they cross the university's threshold. It follows that much of the time, professors will as a practical matter have substantial discretion over what they do and how. They can use that discretion to prioritize one of scholarship, teaching, and service over another, or to prioritize particular projects. They can choose to carry out their work in isolated silos, or to shirk that work entirely. But even if they will not be called to account by anyone else for what they have chosen, the ethical imperative to choose wisely remains.

We accommodate this discretion in a few ways. One is to group academics into departments, schools, and universities. A department naturally brings together colleagues with diverging interests; among them they cover the curriculum and hopefully learn from each other. A university groups its departments to offer a coherent set of programs; it finds affinities and promotes them with institutes and centers. The academy as a whole offers even broader diversity. As Henry Rosovsky noted, most American universities do not teach Sanskrit, but it is important that some of them do.<sup>11</sup>

Within any of these groupings, it is also fitting and proper that faculty differ in their inclinations toward scholarship, teaching, and service. It is better to have

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<sup>9</sup> See, e.g., Douglas Wolk, *The Syncher, Not the Song*, THE BELIEVER, June/July 2006, <http://perma.cc/P4ZB-DWNJ>. Wolk's unearthing of the complicated origins of the "Numa Numa Dance" video is a masterpiece of lay musicology.

<sup>10</sup> See Lawrence Solum, *Foxes, Hedgehogs, and the Legal Academy*, LEGAL THEORY BLOG (July 10, 2007), <http://perma.cc/WUQ9-BMUT>.

<sup>11</sup> HENRY ROSOVSKY, THE UNIVERSITY: AN OWNER'S MANUAL 234–35 (1990).

someone who is enthusiastic and skilled in the classroom than someone who is burnt out and distracted. Not everyone has the energy to speak to the press, or the greater energy to do impact litigation. Almost every scholar has a fallow period, during which tending to teaching is an opportunity for revitalization. Faculty have, I have been arguing, an obligation to mesh scholarship, teaching, and service. They will pursue that obligation with different emphases and in different ways. What is important is that no one is entirely cut off from any of the three, and that the overall balance is healthy. Departments and professional networks are important not just in spreading ideas but in keeping academics of different inclinations and at different points in their own cycles connected to an academy that cares critically about all three.

I do not believe that a system of tenure is crucial to the above. It is valuable, and it is a good idea. But it is not an essential feature of the academic enterprise. Academic freedom is only a right not to be punished for one's views; it has more in common with an employee's right not to be punished for complaining of sexual harassment than it does with judges' life tenure. Security of position is a structural device that goes substantially further: it sets a presumption of continued employment and a high substantive threshold for overcoming that presumption. There are good pragmatic reasons to have a tenure system: it is a powerful safeguard of academic freedom and it attracts faculty to make the deep and lifelong commitments required to be good professors. But there are also good pragmatic reasons not to universalize it: tenure is a poor fit for those whose engagement with the university is peripheral rather than central, and a long probationary period is crucial in selecting faculty willing to make those deep and lifelong commitments. The university as we know it could exist without tenure; it could not exist without academic freedom.

To put this another way, *time* and *freedom* are more important than *tenure* as such. Society gives academics two great gifts: the immense amount of time needed to truly understand a matter in all its messy complexity, and the freedom to pursue that study regardless of whom it may frustrate or frighten. It trusts them as scholars to use that time well, but when they do, the insight they acquire is essential also for them as teachers and servants. Tenure is an elegant system for linking time and freedom, but again, it is the time and freedom that matter. Overburdened tenured professors are less able to achieve excellence than untenured ones who are left to their work. “[L]eisure opens the possibility of genuinely free thought—thought born of wonder and free to unfold in accordance with its own internal demands.”<sup>12</sup>

My view of the close connection between scholarship, teaching, and service suggests that scholarly publication should not hold pride of place as the crucial

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<sup>12</sup> Talbot Brewer, *The Coup That Failed: How the Near-Sacking of a University President Exposed the Fault Lines of American Higher Education*, HEDGEHOG REV., Summer 2014.



determinant of who enjoys tenure's protections. There are, to be sure, good reasons to insist on publication. First, publication is externally measurable in a way that research itself is not, so rewarding scholars based on their paper trail rather than their private learning makes the process objective, or objective enough, to make academic freedom possible. Second, publication supports the ethical obligation to publish: having done the work to understand a subject, the scholar does her colleagues and the world a disservice by keeping the knowledge to herself. And third, research done for teaching or service purposes will often be capable of producing a scholarly publication as well, so looking to publications will capture some of that work. But often is not always, and universities should recognize teaching and service as fully as scholarship when done with the academic mindset. Indeed, they should encourage it; there is something presumptively wrong with a CV on which teaching and service are afterthoughts.

Finally, a note on faculty governance. My definition of service focuses on external service. Internal service may be important, but it is a subsidiary importance. Internal service is maintenance, necessary to keep the academy's machinery functioning; it is not something valuable in itself. Indeed, it is not inherent in the nature of the university that internal service be carried out by the faculty, rather than by the administration and professional staff. There are good pragmatic reasons to entrust some or all of this work to the faculty: one is to safeguard academic freedom (about which more later), and another is that faculty are uniquely familiar with the problems and their solutions. But these are *pragmatic* reasons; a faculty that retreats from self-governance may be making a terrible mistake, but it does not thereby cease to be a faculty.



This view of the scholarly enterprise provides another way of thinking about the challenges facing legal education today. First, it contextualizes the conversation about scholarship's "costs." Richard Neumann did a much-reported calculation that put the cost of each law review article somewhere between \$25,000 and \$100,000, depending on the author's compensation and productivity.<sup>13</sup> On one level, this is a condemnation not of law professors but of how they publish: it reminds us that the standard law review article is an absurdly inefficient way of transmitting legal knowledge. But there is also an issue with the denominator, which would be a good metric for the value of scholarly productivity only if scholarship stood alone and isolated. (Those who insist that it does play directly into the hands of their critics.) An academic who uses an afternoon to trace back a line of cases shows up in Neumann's numbers if she does the work for an article but not if she does it for a course. From this perspective the scholar who is more

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<sup>13</sup> Karen Sloan, *Legal Scholarship Carries a High Price Tag*, NAT'L L.J. Apr. 20, 2011.

dedicated to teaching looks like the bigger wastrel. At the end of the day, the actual *academic effort* invested by the two is the same, and we should be encouraging academics to invest it where the insights they gain will be most useful to others.

This view of academics' duties is inclusive about who counts as a legal academic. Traditional "doctrinal" faculty have no monopoly on the tripartite commitment to scholarship, teaching, and service. Clinical teaching is teaching of a particularly intensive variety. To say that it is experiential or practice-oriented is simply to locate it along the spectrum from liberal to professional education, both ends of which are worthy callings. A clinician whose students work with live clients serves those clients; a clinician whose students engage in impact litigation or amicus briefing or law reform serves the legal system more broadly. Again, both versions are worthy callings.

That leaves scholarship, and this is where the clarity of vision that gave us the law-school clinic truly shows itself. Good clinicians are full-fledged members of the scholarly community; their primary emphasis is not on the scholarly leg of the stool, but their stool still has three legs. In addition to pedagogical theory (which every professor should have some acquaintance with but clinicians often do particularly well) good clinicians are necessarily engaged with the substantive scholarship on the fields in which they teach. This is not to say that every clinician must be a productive scholar, not to the same degree as a doctrinal professor, or even necessarily at all. But if they are engaged in close, careful, and sustained study, they are academics in every sense that counts. A faculty whose clinicians are not part of its scholarly conversations is failing as a faculty.

It's not just clinicians. Law librarians literally spend their professional lives in closer proximity to scholarship than anyone else on a faculty; they regularly teach, and their libraries almost always have a public-facing commitment. Legal practice faculty teach first and foremost, but to say that makes them only teachers is to put the cart before the horse. The same is true of adjuncts. A law-firm partner who co-edits a treatise, for example, is engaged in a form of scholarship, and ideally comes to the classroom as a scholar as well as a practitioner. What matters is that one participates in the tripartite commitment to scholarship, teaching, and service. Someone who does is a professor in the sense that matters, regardless of their formal position or rank. Indeed, they have a better claim to the name than a doctrinal faculty member who lets one or more of the branches wither. To be *only* a scholar is to be not *fully* a scholar.

There are also consequences at an institutional level in the present age of straitened circumstances for law schools. It is better to scale back one of the three missions than to give it up entirely; almost any institutional price is worth paying to keep them united. Take teaching loads and compensation, both of which are under great pressure as law schools' budgets contract. Law school faculty today are well paid and teach relatively little by historical standards or by the standards

of other disciplines. If those trends reverse, it may be hard on faculty, but it will not strike at the essence of what they do. All the evidence we have is that professors who teach six courses a year and earn half what law professors do are still meaningfully professors.

On the other hand, taking scholarship out of law schools would destroy them. A world where students preparing for the bar sit for self-paced MOOCs taught by a few well-paid brilliant lecturers is a world in which something essential has been lost—not just for society but for students themselves. What belongs in the canonical course on Contracts? Today, those choices are driven by the conversations among the hundreds of faculty who teach some version of the course and the thousands of faculty who study one of the many facets of contract law. To cut those conversations off from the course is to cut the course off from the world.

Even more fundamentally, there is no reason to go to the barricades to defend the autonomy of law schools as distinctive institutions within the academy. What matters is the preservation of legal scholarship, teaching about the law, and service relating to the legal system. If those are done by professors located in law schools teaching law to future lawyers, so be it. If those are done by professors located in legal studies departments teaching law primarily to non-lawyers, so be it. If they are done by professors scattered throughout the faculty of arts and sciences, so be it. Being a law school is not the essence of what a law school does.



A modern academic has three jobs: scholarship, teaching, and service. To say this is not just to say that all three are worth doing, not just to say that all three are worth doing by the same institution, but to say further that all three are worth doing by the same people. To put it this way is to emphasize that scholarship, teaching, and service really are a trinity: a single essence with three forms.

This unity is under attack. Critics of the academy argue that scholarship and service are distractions, and that teaching would be better off without them. For many academics, it is teaching and service that are the distractions from the rewards of scholarship. And those who focus on society's many problems sometimes see scholarship and teaching as impractical distractions. But to sunder them is to give up something essential, because the autonomy of the academic can be justified to society only when all three are united. Teachers who are scholars are something more than mere servants.