Making Coffee and Other Duties of Citizenship

Owen M. Fiss†

The Yale Law School is a special institution. Many have made that claim and many have sought to define what makes it special. To my mind, the specialness of the Yale Law School could be understood in terms of its relationship to Arthur Leff. That specialness is revealed by the capacity of Yale to attract so remarkable and unique an intelligence as Arthur Leff; by the ability and willingness of Yale to sustain and nurture those talents of his that were truly original; and by the capacity of Yale to evoke in the dedicated and busy scholar, not just service and loyalty, but also a deep affection. Arthur Leff returned Yale's regard for him with a light-hearted, cheerful and loving devotion. He was an extraordinary citizen.

Citizenship in an academic institution is a high and difficult art. The difficulty largely stems from the peculiar character of the institution: It exists as an entity that transcends any individual and yet has no greater end than the furtherance of individual creative capacities. We speak of communal goals—the education of the profession and the pursuit of truth—but we know that the attainment of those goals decisively depends on activities that are profoundly individualistic. Scholarship is lonely; so is teaching. Each depends on the expression of talents and capacities that are individually possessed; each requires a self-conceived and self-imposed discipline; each involves an engagement in activities that can only be done alone, like reading a book; each requires an individual to worry an idea to the point of exhaustion, and then finally to forge that idea into a coherent, persuasive and distinctive position. There is a collective dimension to the Law School, to be certain, but it does not deny the centrality of the individual in the realm of ideas. The collectivity should be seen instead as a resource for individual creativity. It helps us to turn our loneliness into productive ends. It provides us with books; it provides us with classrooms; it provides us with students; it gathers the economic resources that will free our time; it embodies and thus transmits the ideals of the profession; it provides us with colleagues. The Yale Law School is a communal enterprise dedicated to individual fulfillment—in truth, an organized anar-

† Professor of Law, Yale Law School.

chy—and the citizenship that it invites reflects its complicated and somewhat contradictory nature.

To begin with, the institution imposes a set of uniform obligations: the standard teaching load (never to be defined with any precision at Yale) and the usual array of committee assignments. These obligations are not very demanding—no standard obligation can be; they are the minimum, but the sad truth is that for many of us the minimum becomes the maximum. Not so for Art. He impeccably discharged those obligations and went far beyond them. He realized that the standard exactions were the most trivial ones and that if the institution is to achieve its grandest purposes, more is required, a lot more. He realized, for example, that someone had to make the coffee.

I came to the Yale Law School in 1974. At that time Art was only in his late thirties, but he already had achieved a measure of distinction. He was known, even in Chicago, as one of Yale's most popular teachers. He had already made important contributions to contract law. Just that spring he had published a review of Richard Posner's *Economic Analysis of Law* that was spirited and amusing but nonetheless staggering in its scope and erudition.[1] The image of Art I had pieced together from a distance was indeed exalted. I therefore experienced something of a cultural shock when during my first days here I discovered Art in the Faculty Lounge deeply absorbed in that intricate process of making coffee. He moved with dispatch, a clear vision, and with a special kind of pleasure. I was, to say the least, puzzled. He tried to reassure me: I had not come to the wrong place. He proudly explained that his campaign to obtain the coffeemaker for the Faculty Lounge was his most important contribution to the world of ideas.[2] Art was a model for many of us, and though the history of Yale in the late 1970's has not yet been written, I have a hunch that it will turn out that *our* most important contribution to legal education has been to substitute milk for the non-dairy creamer.

The coffee was, of course, simply a prop. Art's talk about making coffee was but a modest way of expressing the central tenet of his theory of citizenship: The highest duty of the citizen-scholar is to talk about ideas. He was in the Faculty Lounge for conversation in the morning. He was available for lunch (with one or two forgivable lapses for squash). He was in the Lounge in the late afternoons, to continue the discussion begun earlier that day or weeks before. He was a regular at those organized evening conversations of the faculty, somewhat pretentiously called the

1. *Economic Analysis of Law: Some Realism about Nominalism*, 60 VA. L. REV. 451 (1974).

2. In my one effort in field research, the Dean reported that Arthur singlehandedly shopped for the machine, purchased it and even installed it in the lounge—the ultimate lesson in effective administration in an anarchy.

Legal Theory Workshop. In fact, he helped establish the one law that governs the Workshop, the law of inverse relationship, which holds that the weaker the paper the better the discussion—the local talent plays a larger role. He even was—so I am told—a member of the most distinguished and exclusive group within the Law School: the weekly poker game. And he always found the time to read the rough drafts of our work. He had a knack for criticizing a draft in a way that was both true to his intellectual standards and that also made the author feel good about himself (talking about a high and difficult art). He was careful, patient, and exceedingly conscientious: He was the only person on the faculty who read all 32 revised versions of *Social Justice in the Liberal State* and got a kick out of each one.

Art was motivated in all these civic activities by a broad ranging curiosity. There was no subject, no field of learning, scientific or humanistic, that was not of great interest to him. Dick Posner once complained to me of the impossible standards Art had imposed in that review I have already mentioned. Apparently it was not enough, Dick complained, for the legal scholar to become an economist; he also had to become an anthropologist, philosopher, linguist and historian (of course, in time, Dick became all those things, but I fear not in the way Art contemplated).

In his final weeks Art sat in his living room and many of us visited him there. It was hard for Art to speak and now and then, when he needed a rest, he would pause and glance out the window. The visitor might continue the sentence, but soon he too would stop and glance around the room. What the visitor would then see was truly a monument to the value of liberal education: shelves and shelves and shelves of books, beautiful books, alluring books, well-thumbed books, from almost every field of learning. Arthur Leff was the most liberally educated person I knew.

I must also acknowledge, alas, that Art sought pleasure: He talked about ideas because he thought it was fun. He delighted in ideas. He loved to learn something new or to hear an old argument reformulated. There was, as he said, a special joy in having something true truly put. I insist, however, that there was more to Art's civic activity and his talk about ideas than a desire to have fun or to satisfy his own curiosity. He also acted from a conception of duty.

Arthur grasped an essential truth about the university law school and also about scholarship and teaching. Scholarship and teaching are indeed lonely, but until the word appears in print or the sentence is uttered in class, there is a place and a need for the kind of support, encouragement and help that a community of intellectuals can provide for one another. The Yale Law School was, for Art, such a community and he was determined to mobilize its every capacity. He did so by making coffee—by

talking about ideas in a way that made participation by others irresistible. Yes, he talked about ideas because he liked it; he talked about ideas because he was curious; but he also talked about ideas because he saw it as the highest duty of a citizen-scholar.

Sometimes, I must admit, Art got carried away with his sense of duty: Once he allowed the Dean to have some influence on what he taught. He was, as everyone who has any connection with this institution knows, a sensationally successful teacher. The students loved him, and they had good reason to do so. He was witty, lively, even entertaining. He was also demanding. He proved that it was possible to be both funny and learned. His success was achieved in all the pedagogic formats that have yet been devised by the Yale mind or even the Educational Planning Committee: the large section; the small group; the lecture course; the seminar; and the reading group, that occult curricular entity that spontaneously formed around Arthur Leff each year and that met from week to week at such elegant lecture halls as Yorkside Pizza. I was curious about this extraordinary success and, I should probably admit, somewhat envious. I pressed Art for his secrets.

One day I asked what led him to include evidence in his repertoire. I knew of no one who taught both contracts and evidence and wondered whether such radical diversity in his offerings was the key to the success for which I was searching. His explanation for the combination was quite simple: He asked the Dean to prepare a list of courses that had to be covered if we were to maintain our front as a *law* school. The Dean obliged (graciously I am sure—the list was long) and Arthur chose the evidence course from the Dean's list. I responded to this explanation with a look of utter amazement—could it be that Yale's finest citizen had committed treason? Imagine discussing a teaching program with the Dean. The Registrar maybe, but the Dean never. I was reeling in disbelief. My temperature rose and my face became flushed. Art tried, as he did on so many occasions, to calm me. He quickly, very quickly, and yet very gently, assured me that he was not recommending this process for anyone else. Besides, he said, he enjoyed the course.

There was at times an appearance of indifference to Art, a certain casualness. These qualities surfaced in his scholarly work, and veered off in the direction of a nihilism. That divided us on substantive matters. When Art gave me a reprint of his justly celebrated article *Unspeakable Ethics, Unnatural Law*,[3] he said that the entire range of ethical views represented in western civilization could be mapped out along the second floor corridor of the Law School. That corridor also came close to being a map of

3. 1979 DUKE L.J. 1229.

the Bronx. He started with me and my search for absolutes; then he moved on to Bruce Ackerman and his engagement in what might be called "liberal dialogue"; next was Jerry Mashaw who, I regret to report, has only an honorary degree from the Bronx High School of Science. He noted Jerry's attempt to construct a constitution for the administrative state. Finally, Art moved to his own office at the head of the corridor, which he tried to convince me was some sort of nihilist abyss. The difference between Art, Bruce and myself was the difference between Pelham Bay, Girard Avenue and the Grand Concourse. (And given the fact that I am talking about three kids who grew up in the lots of the Bronx during the same era of American history, can it be any wonder that New York is a moral Tower of Babel?)[4]

My reaction to Art's substantive views was predictable. I often told him that he was only pulling my leg—his professed nihilism was so inconsistent with all that I knew about him. You can imagine what he said about my search for objective truth. I will leave it to you on another occasion to determine who was fooling whom, but I must now insist that when it came to the important matters—to Arthur's relationship to other people; to national politics and the search for justice; or to the quality of academic life and the kind of contribution that an individual could make to that life—there was not a trace of indifference. About these matters Arthur Leff cared, he cared deeply.

The qualities that some might have thought of as indifference were entirely of a different character. One was respect. Art appreciated each individual's needs and concerns, and translated that respect into tolerance—tolerance for differences and idiosyncrasies. In all the corridor conversations, he never voiced a mean word about anyone. Never. He accepted people as they were and was determined to see the best in each and, even more, to bring out the best in each. He treated everyone—staff, students and faculty—with the greatest respect. Arthur also was very funny. While many of us would express our disappointment with a sharp word or a long face, as an outward sign that we cared, Art chose to cope with such situations with a shrug, an angelic smile, or sometimes a stunning one-liner.

Tolerance and respect are required for an academic community; humor is not. Nor is music. Art loved music and a few years ago placed a stereo system in his office. He was determined to keep his door open, as a way of assuring his colleagues that he was still available for conversation, and

4. The world is smaller than you think: Forty-three years ago last February my mother was a patient in that elegant Grand Concourse establishment, Dr. Leff's Maternity Hospital. Arthur informed me that the hospital, once belonging to his uncle, is now one of New York's leading abortion clinics, and he saw in that circumstance another sign about the true nature of the universe.

thus he resorted to earphones. Day in and day out, he sat hunched over his desk, working on his dictionary, listening to music through a set of earphones—a Dali-like image of the contemporary dictionary writer, caught in a web of words and wires. Most of the time he kept the beat with a pencil—res ipsa loquitur set to a Brandenburg Concerto. Once in a while, however, usually late Friday afternoons, after a most exhausting week of teaching, the beat of the pencil would change. It would change to loud, loud, very loud humming. The pace would quicken, the pitch would sharpen, and in time Art's humming would fill the corridors and enter that sanctuary known as my office. The silence was broken; I became startled and disoriented. Where am I? Who am I? Then I would hear a few bars from Charles Black's harmonica, in perfect harmony with Art's loud, loud humming: I knew exactly where I was.

All of Art's contributions—the humor, the music, the coffee—were far beyond what we had a right to expect from anyone. They were gifts, and of a kind that made the Yale Law School in the late 1970's such an extraordinary place and Arthur Leff so distinctive a personality within the institution. He was, in the very best sense of the word, a character. He gave the institution a style, a tone and even a shape. Some have described the social organization of the Yale Law School in terms of a straight line: Each faculty member has important relationships with his colleagues on the immediate right and left, but none with those at the ends of the line. For Art this was false. For Art the Law School was a circle, not a straight line, and he was in the center of that circle. He was admired and liked by everyone. He drew us closer together.

The Faculty Lounge of which I have spoken, and that was, for Art's colleagues, his most important classroom, is on the second floor of the Law School. It is a beautiful room. It contains two large club chairs, now upholstered in white, both facing the door. Art always sat in one of those chairs, usually the one closest to the fireplace. That chair is now empty, but I do not see it that way. When I go into the Lounge for morning coffee, I think of Art in that chair. When I sit through one of the meetings of the Governing Board (or is it the Expanded Governing Board? or is it an Executive Session of the Faculty?), I think of Art in that chair. When there is a lull in the discussion of the Legal Theory Workshop, I glance at that chair and think of Art. At those moments I feel the loss, I feel it acutely, I experience the sadness of his death anew, and yet I am also able to find in that image—in my remembrance of Art in that chair—the fortitude that we now seek. I am reminded of that extraordinary citizen of this extraordinary institution. I am reminded of the special role that Art played in the life of the Yale Law School and the need of the institution for his special kind of citizenship. I am reminded of the capacity of the Yale Law School—so proud, so noble and at times so impersonal—to respond to Art with gratitude, with admiration, and with love.