

# Educating law students to be business leaders

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What is needed now is to implement ancient insights by reorienting every phase of law school curricula and skill training toward the achievement of clearly defined democratic values in all the areas of social life where lawyers have or can assert responsibility.<sup>1</sup>

## Introduction

### *Law students become business managers*

Professor Sherr has suggested that law students need to be educated for the roles they will assume in the industrialised law firms of today and tomorrow. These roles require teaching “the basics of management”,<sup>2</sup> including business strategy, financial risk analysis,<sup>3</sup> and work design.<sup>4</sup> Law firms need to insure that clients are not hurt by the divisions of labour of the delivery system for legal services in the industrialised law firm; these roles require learning case and staff management.<sup>5</sup>

This paper suggests another reason why legal educators ought to consider teaching responsible business management. Many of our students will become managers of public and private businesses. Many of them will seek class and status success. If law schools are able, oughtn’t they teach organisational leadership? At the least, law schools need to be aware of how the skills they are teaching are or are not transferable to business environments.

In England, “less than 60–70% of English law graduates try to qualify (the numbers fluctuate) and many fewer pursue a career in legal practice”.<sup>6</sup> William Twining has predicted that “in [the] future only about 30–40 per cent of law graduates would even have the opportunity to qualify”.<sup>7</sup> In Australia, in 1991, “slightly less than 60 per cent of persons working with legal qualifications were working as lawyers” and it is predicted that in 2001 the percentage will be “between 40 and 50”.<sup>8</sup> In Japan, notoriously, and much of the rest of the world, most of those who read law do not enter the legal profession.

In the US, even though legal education is a postgraduate degree, between 15

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and 60% of entering students do not intend to practise law.<sup>9</sup> For example, at elite law schools, in the early 1970s, Robert Stevens found that a motivating reason of “some” or “great” importance was “the desire to become a politician” for 47% of the students and “to go into business” for 37%.<sup>10</sup>

In the US, on graduation, a much higher percentage of law graduates enter the practice of law than would be expected by these numbers. Depending on the school and the marketplace for legal services, well over 75% of US law graduates seek to qualify.<sup>11</sup> We do not know how many US law graduates do not spend their entire working life in the practice of law. John Warwick Montgomery returned from teaching in the US with the impression that “No one particularly worries about an oversupply of lawyers, since . . . some fifty per cent of all American law graduates do not in fact end up practising law: they enter related fields—business, administration, politics, education, etc.—as a matter of personal choice”.<sup>12</sup> The numbers are not likely to be quite so high and US educators are not quite as sanguine as Montgomery reports. Downsizing law schools is on the US agenda: “Seventy-six of the ABA’s 177 accredited law schools had smaller entering classes in 1994 compared to 1993”.<sup>13</sup> Wallace D. Loh, as President of the American Association of Law Schools, posited that US law schools must respond to “Diminished demand for the products of legal education, reflected in one of the worst placement markets for graduates in a generation”.<sup>14</sup>

Legal educators everywhere are training students who will not enter the profession. No longer does the profession effectively restrict the numbers of students who study law. In this age of mass education, the production of law graduates is determined more by middle-class aspirations than professional controls.<sup>15</sup> In 1994, when the (British) Association of Law Teachers debated the motion “This House believes that we are producing too many law graduates”, in a Committee Room of the House of Lords, Professor Dawn Oliver, argued “that it is strange to suggest cutting the number of law graduates at a time when the United Kingdom is generally thought to need more well-educated people with transferable skills”.<sup>16</sup> From the applicant’s perspective, all that needs to be added is that these transferable skills enable them to realise their class and status aspirations.

In the US, many law graduates enter business. In rural areas, where the honour of the bar and its purse are not well met, a study of the Missouri Bar found that about half of the lawyers operate another business in addition to their law practice. Even in Missouri cities, Landon found that about one-quarter of all lawyers operated a business in addition to their law practice.<sup>17</sup> In metropolitan cities, lawyers leave the practice of law for investment banks, consulting and accounting firms.<sup>18</sup> *The Wall Street Journal* notes “a growing number of lawyers who have relinquished law practices in recent years to assume senior management posts at corporations ranging from telecommunications conglomerates to automobile makers to movie studios. Certainly there have always been some law-school graduates who have opted to go into business. But what makes this recent spate of legal defectors noteworthy is the sheer number making the switch”.<sup>19</sup>

In the US, law graduates are well represented among the corporate elite. A 1979 study found that 15.4% of corporate chief executive officers were trained as

lawyers, and are found in not “just one or two types of industry, but are found throughout the American corporate economy”.<sup>20</sup> Moreover, while only half of all corporate chief executives have any graduate degrees, for those who do, law training accounted for 32.1%, while 30% held MBA degrees.<sup>21</sup> These law graduates have become business leaders.

### *A mechanical forum*

In recognition of the class and status aspirations of my students, I attempted to survey this business elite, seeking their views on the transferability and non-transferability of their legal education.<sup>22</sup> I invited members of the business elite to advise law students and law schools. From a law school, I asked former students of some law school to advise the legal profession. From their perspective, they told the path for lawyers to business success. They assessed, as labelled on the survey instrument, “legal practice in an industrial career”,<sup>23</sup> “the competitive advantage of legal training and practice experience”,<sup>24</sup> and “law school preparation for non-legal positions in business or industry”.<sup>25</sup> They gave career advice to law students and practising attorneys. They told this one law professor how legal education ought to be transformed.<sup>26</sup>

I intentionally skewed the responses.<sup>27</sup> I sought advice. I invited a message bearing advice for law students, law schools and the legal profession. I provided a technique, a mechanical forum, for law graduates running business to address the legal profession. I invited these business actors to paint themselves with the strokes of legal professionalism, even though they are “not considered members of the legal profession by professional ideology or professional organizations”.<sup>28</sup> Those who responded provided their picture of legal professionalism’s relation to corporate power. For an audience of lawyers, they sang of how to succeed in business.

### **Who are they?**

They are law graduates who run big US businesses. They were identified from the biographical section (Volume 2) of the 1995 *Standard & Poor’s Register of Corporations, Directors, and Executives*, which contains a listing of over 60,000 key executives of corporations “with sales of 1 million dollars and over”.<sup>29</sup> To emphasise the role of law training in a career in a business, I excluded those whose entry listed not only a law degree but also another graduate degree. Also excluded were individuals who were only members of a board of directors or general counsels of a corporation. These exclusions emphasise that the goal was to hear from law graduates whose work involved the exercise of business line or staff authority.

Five hundred potential respondents were randomly selected. Of the 500 potential respondents, mailings were returned as undeliverable for 58 and 102 responses were received, for a response rate of 23%. This response rate is well within the norm for studies of executives published in management journals.<sup>29a</sup> Given the pressures executives face, researchers are grateful if a quarter of the surveys are returned from this type of population.

Due to the response rate, however, it can be argued that the respondents

Table 1

Variable	Potential respondents (percentages)	Actual respondents (percentages)
Mean age	58.94	55.94
Median age	57	56
Executive title	64.1	67.6
Vice-President	35.9	32.4
	( <i>n</i> = 442)	( <i>n</i> = 102)
Financial services	51	40
Other services	30	37
Manufacturing	19	23
	( <i>n</i> = 260)	( <i>n</i> = 102)

significantly differ from the population. To measure non-response bias, the respondents were compared to the potential respondents by age, job title, and industry (see Table 1).

The close fit between the potential and actual respondents by these measures gives some confidence that the respondents may be rather representative. By age and title the variance is less than 5%. Although the fit by industry is a match by rank-order, the variance is greater. This larger disparity may be a result of the fact that for 41.3% of the potential respondents it was impossible to determine the industry in which they worked. The actual respondents' industry was determined by the information they provided. The potential respondents' industry (*n* = 260) was determined by the name of the company for which they worked. The large numbers of potential respondents working in financial services probably reflects that this industry is readily identifiable from the name of the company, e.g. Main Street Bank.

Nonetheless, given this response rate, caution must be taken in interpreting findings of statistical significance from this data. Fortunately, the lack of variation in the data is as relevant as its variance; the respondents tell a story. We know these respondents wanted to address the law review audience. Further research can indicate whether or not they are representative of the population of lawyers who run big business.

This is a group of men. Of the 102, only one is a woman. Their median age is 56.

In modern corporations, one can distinguish between line and staff authority, between operational executives and functional managers.<sup>30</sup> Two thirds (*n* = 69) of them are operational executives; their job-titles are President, CEO, COO and the like. One third (*n* = 33) of them are functional managers; their titles are CFO, Vice-President for Human Resources, VP of Marketing, and the like. As whether the respondent was an executive or a manager was significantly related<sup>31</sup> to age, one can assume that some of the managers in this group are potential executives.

Forty percent work in the financial services industry, 37% in other services, and 23% in manufacturing. A larger previous study opined that legally-trained CEOs were more likely to be found where the corporate environment is heavily regulated.<sup>32</sup> The distribution between industries of this group is consistent with that prediction.

This group is a particular subset of law graduates who work in business. Many law graduates work for large corporations in the finance and legal departments,

serve as general counsel, and as members of the board of directors. This group is restricted to those who were not only employed by business but also worked at business. Other law graduates after reaching prominence in managerial careers retire or return to law practice. This is a group that has remained in their business careers. Other law graduates get another professional degree in addition to their legal one. This group ventured forth in business armed only with a JD. Other law graduates choose to enter businesses other than large ones. This is not a group of real estate or insurance brokers or owners of small businesses.

More than half, 56% (57), of the respondents went into legal practice upon graduating law school: six worked as lawyers for the government, seven joined corporate legal departments, and 44 (77%) went into private legal practice. They assumed operational or executive authority in business after a period ranging from 1.5 to 23 years in legal practice. All of the lawyers who entered business from legal practice either joined the corporate legal department or were hired as a vice-president or as an assistant to a vice-president.

Of the respondents, 44% (45), never practised law. Three were executives before they went to law school and five joined family firms as executives. The career of the others (37) may be described as entry into the business world at, or on a short route to, a staff vice-presidency. Only four did not become a vice-president either immediately upon graduating or within 2 years thereafter. Eighteen upon graduating from law school returned to or stayed at the company for which they had been working prior to or during law school. Three were already executives. For the other 15, the law degree was followed in less than 2 years by a career jump from lower management to the managerial or executive level.

This is an elite group. From their careers, they can believe, as one put it, that "b[usiness]-school careers place young people into business at the skill development level first. Lawyers tend to enter at middle or senior management levels".<sup>33</sup>

This is an elite group. It is a group of law graduates who have certainly achieved the class, status and power aspirations associated with law graduates. Law students, like lawyers, may be concerned not only with their first job, but also with their careers.<sup>34</sup> Dean Kronman has opined that law schools need to be focused on the fact that their students live *a life* in the law, which will take them through many types of positions of responsibility.<sup>35</sup> In their careers, this group has had the opportunity to exercise business statesmanship. In this mechanised forum, this group is acting as statesmen for the legal profession. Listen to their message, knowing from whom it is coming. In listening to their message, remember that it is spoken by men who forged their careers from the 1950s to the mid-1970s.<sup>36</sup>

### **Their message**

*What are the skills required for business success?*

Leadership and communication skills are the most important assets for business success, both of which can be enhanced by legal training. When combined with character and courage, they almost assure success in any business.<sup>37</sup>

Successful people's explanations of their success tend to the conclusory. Whiggery is their style. Their manner of address is hortatory and their presumptions of the deserving being rewarded comforting. The preceding quote, at one level of generality, is a way of presenting the message of this group. It is the message as presented in commencement speeches (once a stable source for law review articles): develop character and courage, learn to communicate with others, and you will be a successful leader.

Fortunately, the mechanical forum allows for interpretation, generating more specific advice. I managed to soften the tendency to whiggery by asking the group to segregate their legal training and practice experience from their careers. I asked them to advise law graduates for "job interviews for non-legal positions", describe how their law background may have "impeded or constrained your success in business", and give an account of what they had to learn for business success which "you had not been prepared for by . . . law training and practice".<sup>38</sup> I invited them to view their legal training as a contributory, debilitating and incomplete asset in their success.

The respondents were presented with a laundry list of 22 skills, described as those "which are important in business", culled from writings about skills JDs can bring to non-legal careers.<sup>39</sup> Each was asked to decide "whether or not your legal training or practice helped develop these attributes". Although the respondents were seeking to communicate the contribution law made to their careers, the mechanical response demanded allows an interpretation of their responses in which they are communicating the skills they think are important to business success. A factor analysis of the responses ( $n = 100$ ) allows interpretation of how the respondents made sense of the attributes provided.

Applying this interpretive technique to the responses, the rotated factor matrix generates five factors (see Table 2). One factor combines the ability to "recognize when more information [is] needed" with "dependability". Call it *analytic skill*. A second combines "assimilating new data quickly" and "strategizing". Call it *problem-solving skill*. A third combines the attributes of "managing projects" with "work well without supervision" and "writing", and perhaps "communication". Call it *professionalism*. A fourth combines "managing people" (not projects, as above), "motivating people", "empowering people" and "cost-consciousness". Call it *business leadership*. The fifth combines "following rules", "treating others impartially", and "wanting equity for others". Call it *being a law merchant*.<sup>40</sup> A factor analysis suggests that the respondents saw five skills as important to business success: analytic, problem solving, professional, business leadership and being a law merchant.

*Does legal education and practice experience develop business skills?*

The respondents went to different law schools, at different times. The respondents had different types of law practices, for different lengths of time. The central tendency is for a legal education of the early 1960s and on graduation becoming an associate at a corporate law firm.

Table 2. Attributes important in business. VARIMAX rotated factor matrix

Item	Factor 1	Factor 2	Factor 3	Factor 4	Factor 5
"recognize when more information is needed"	0.67839				
"dependability"	0.76986				
"assimilating new data quickly"		0.67573			
"strategizing"		0.67184			
"managing projects"			0.69223		
"work well without supervision"			0.60859		
"writing"			0.60496		
"communication"			0.51184		
"managing people"				0.78567	
"motivating people"				0.80207	
"empowering people"				0.88403	
"cost-consciousness"				0.83257	
"following rules"					0.67688
"treating others impartially"					0.78906
"wanting equity for others"					0.65004
	(analytic skill)	(problem solving)	(professionalism)	(business leadership)	(law merchant)

The respondents had different views of whether they had developed through legal education and practice experience the skills needed for business success, but the concern for them was not to rank legal education, but to advise it. The successes and failures of their education and experience both provide advice. The variable is not their willingness to credit law with their success. The variable is how they see law inter-relating to business success.

This group chose to respond to my survey. In response to the laundry list, all said that law developed some attribute important to business. Seven were law boosters, checking that it developed every attribute on the list.

On the other hand, in response to whether there were parts of their law school training and practice experience that "impeded or constrained" their "success in business", 42% replied that there were ( $n = 77$ ). Those who answered in the affirmative represented a similar percentage of functional vice-presidents and operational executives. There was a statistically significant correlation with whether they had practised law: whereas only 25% of those who hadn't practised provided a response indicating how law had impeded their success, 53% of those who had practised provided such a response.<sup>41</sup> Those who spent more time in law were more willing to admit having a trained incapacity that "law trains the mind as it narrows it". Nonetheless, all but one had advice on how law school can better train business leaders.

In the following, I divide the analysis between those who did and those who didn't practise. This is based on the assumption that one may learn skills important in business not in law school, but in practice.<sup>42</sup> I also performed analysis by the

industry in which the respondent worked. Except where noted, industry didn't make a statistically significant difference.

*Analytic skill.* Legal education and practice develop the analytical skills needed in business, the respondents agreed. Over 90% of the group said that their legal training developed their abilities to recognise "when more information [is] needed" and to engage in "dispassionate analysis". Stressing their analytical abilities also was the most often given bit of advice that the respondents offered to graduates seeking non-legal positions.

As one who never practised law put it, legal education is "thought-process driven. As a result, it establishes a certain management process and philosophy". A BA in Chemical Engineering, who went from law school to marketing and manufacturing management, said, "I went to law school because the thinking process is a great background and would do it again". The case method in particular was mentioned for its abilities to train "logical thought", to "cut through verbiage, look dispassionately at an issue, weigh pro-cons", and to "manage multiple perspectives and absorb, distil great deal of information". An actuary at an insurance company, who worked at the firm during his law school career, becoming a VP for a functional department at the company shortly after graduating, put it as follows: "I think law graduates tend to be more thoughtful and conceptual. They can quickly identify issues in a new situation and visualize a framework to organize the details. Their quick ability to perceive a practical framework leads to good probing questions—something many executives of other backgrounds lack".

Those with practice experience agreed that their analytic skills were developed, but in contrast to those without practice experience, they linked analytic skills with the ability to solve both legal and business problems. Three added to the list of attributes "developed by their legal practice and training" that of "decisiveness" and one added "tenacity". The tenor of their comments is not of law's training of the ability to organise problems, as it is with those who didn't practise. Their tenor is that of solving problems, e.g. "Lawyers are trained to think and approach problems. The training is arduous and interdisciplinary and to survive one must be a quick study".

*Problem solving.* In describing themselves and in their advice to job applicants, those without practice experience infrequently emphasised the ability of law graduates to make business decisions and solve business, as opposed to legal, problems. A CEO and Chairman of a manufacturer when he went to law school, said, legal education developed his abilities "to create solutions". A banking CFO advised, "[Law] graduates ought to stress the broad application of law training to business problems". Only three others without practice experience credited their legal training with making contributions to their business problem-solving abilities.

But, those who graduated from law school and did not practise, described how they were able to quickly assimilate legally relevant information, strategise about legal decisions, and engage in legal problem solving. They uniformly mentioned that their presence allowed their businesses to make better legal decisions and avoid legal



liability. For example, a member of the public relations department of an industrial corporation who went to law school while working, promoted to Manager of the Government Relations Department on graduating, becoming an operational executive 4 years later, says his corporation was "well served by my recognizing potential liability and avoiding it, as well as my understanding promise and commitment vs. suggestion, etc". One noted that his substantive legal knowledge helped him to evaluate merger proposals of a type that wasn't contemplated, let alone taught, when he went to law school.

Those who had practised thought they brought to business not only analytic skills, and legal problem-solving abilities, but also an ability to solve business problems. In advising law students seeking non-legal positions, 17 ( $n = 39$ ) respondents who hadn't practised focused on the substantive base legal education supplies. In response to the same question, 17 ( $n = 49$ ) respondents with practice experience emphasised that law developed business problem-solving skills.

In discussing how the corporation was well served by his legal experience, a respondent with 5 years of legal practice experience emphasised his ability to change the corporation's response. One with 8 years "influenced corporate plans". In advising potential applicants, one with 9 years urged them to stress their "education in analysis of a problem and alternative solutions available". A respondent with 10 years practice advised graduates to stress their "problem solving skills ... their abilities to combine legal principles with practical business requirements". With 12 years of practice experience (as inside counsel), the President of a manufacturing company declares: graduates of law schools have "the thinking process no other discipline teaches: identification of issues, understanding of precedents, anticipation of problems, and design of solutions which are logical and sustainable over time". A lawyer with 15 years private practice experience told graduates to stress that "legal training provides an excellent basis for problem solving in any industry: get the facts, analyze them and decide on proper solution to problem". With 16 years of experience, one claimed, "People with business training are more inclined to know it all and head with great speed in the wrong direction". Another who left 23 years in legal practice to become CEO of a client's manufacturing firm said, "the case method is invaluable learning to be a good decision-maker".

The shorter the time the respondent spent in legal practice, the more likely they would view legal experience in terms of analytic, not problem solving, skills. A lawyer who left practice after 1.5 years to become a functional manager, advised graduates to emphasise "their knowledge of legal implications of business decisions". Another, who went to law school while in an insurance company's claims department, after graduating spent 2 years in the corporate legal department, before being appointed VP of the claims department, stressed that "legal issues are intertwined in business decisions". With 4 years of practice experience, one respondent emphasised that "law school graduates are trained to focus on details that may not be significant by themselves but that are critical when assembled together". These responses are comparable to those given by respondents without practice experience.

Like those without practice experience, those with it emphasised that substantive legal knowledge is an asset in business, but, whereas it was the second most given

bit of advice to applicants from those without practice experience, from those with it, the value to business of substantive legal knowledge trailed not only analytical, but also problem solving, and communication skills.

While five respondents who had not practised thought lawyers were better able to make decisions and resolve business problems, 19 of them thought that lawyers often were less capable of performing this essential managerial task. They argued that lawyers are unable to “find an absolute answer” and “take risks”. They are “overly-cautious” (three), “incapable of making rapid decisions” (two), “unable to deal with uncertainty” (three), “fence-sitters” (one), and “poor evaluators of risk” (three). These respondents’ views may be summarised by one who wrote that “lawyers are too slow to arrive at decisions and are brakes, not accelerators”. Or, “lawyers are too argumentative, instead of finding solutions to problems” “law teaches caution in decision making”. Nine mentioned a “lack of creativity”.

Their explanations for why lawyers lacked business problem-solving skills ranged from attacks on legal education (“Law school fails to give a good idea of a business risk and how to evaluate it”, or “lawyers are taught to be entirely rational and literal. If it is not worded exactly, it is not exactly right”, or “legal training focused on how the law might be leveraged for the company’s advantage, but not identifying the strategic alternatives and their implications”) to self-selection by those who enter law school (“My experience has been that most business people enjoy making decisions and most good lawyers avoid making decisions for their clients and focus on giving impartial advice. Most of business is much more subjective and intuitive. I believe these are two different personalities”) to the difference between legal and business decision-making (“Business decisions are not always based on the letter of the law and negotiation and compromise are basic to most business decisions”, or, legal training is not helpful since most business decisions are in “grey areas”, or, as another put it, “made with imperfect data”. Two who advised graduates to stress their analytic training also thought that the training was not useful in business because “law relies on previous case law. You don’t have that advantage in business” and “Legal training stresses conformity to routines, tried-and-true solutions, discounting creative lawyering”). A CEO may have summarised these responses: “Business is understandably reluctant to deal with the ‘legal’ way of thinking. Business decisions must be tempered by an understanding of legal risks, not driven by them. Graduates must (honestly) be able to balance legal and business risks, and clearly understand the different ways of thinking”.

Of the 57 respondents with practice experience, only nine (as compared to the 19 of 45 without practice experience) mentioned that lawyers generally are poor business problem-solvers. All nine denied that their experiences adversely affected their problem-solving abilities, but suggested that this is the normal effect. Their explanations for this effect mirror those offered by those who hadn’t practised: “Because law school trains one to see there are only many imperfect answers, lawyers find it difficult to quickly pick one”. Another respondent claimed that too many lawyers can only think “in a box”. As another explained: lawyers are “too rigid, tied to the letter of the law, afraid to be creative, incapable of strategizing for results . . .”. “The focus of law school training is on advocacy of any position which, in many regards, is an essential

skills for our legal system. But, business . . . focuses on results and accomplishments. To that extent, business schools have a clear advantage. Very few lawyers are, in my judgment, good executives even though they're articulate and valuable."

All the respondents appear to share one understanding of how a law background disables in business. The problem is that lawyers generally are "too dogmatic and allow too many answers to persist", are highly risk averse and over analyse matters. This problem appears to reflect a difference in controlling norms. As one put it, in business you need to "understand that the law isn't the end to be served. Rather, the practice of it is a means to a number of ends—business success and economic prosperity being one of them". Or, as another put it, in entering business he had to learn not only about the "lack of absolutes/truths" but also he "had to learn objectivity in business".

*Professionalism.* The professionalism factor appears to mean different things for those who did and did not practise. For those who didn't practise, it appears to be linked to the display of analytic skills. For those who had practised, it points to exercising business leadership.

In advising applicants, those without practice experience who mentioned law schools' training of oral and written communication skills (13) linked it, as one put it, to law schools' training in the ability "to present matters in a logical and orderly manner". Of the respondents without practice experience who mentioned communication skills, only one mentioned its link to getting a solution adopted. Three thought that lawyers' communications skills were not only lacking in persuasion, but also were so jargoned that they diminished the analytical skills of graduates. Another thought that legal education made him overly verbose.

Of those who practised, 18 respondents advised job applicants to mention their communication skills. Of these, 12 tied them to other skills: three claimed law graduates can stress their abilities to compromise and negotiate and nine mentioned their abilities to persuasively communicate. As one said, law graduates not only have analysis and problem-solving skills, but "they can beat out others by their communication skills, both written and oral". Another explained his success by attributing to his legal education his "credibility, knowledge, communication and the clarity of his underlying justifications". As in the quote introducing this section, for those who practised, leadership is linked to communication skills.

*Business leadership.*

I have become acutely aware, with each passing year, that less and less of what I actually do as a lawyer involves purely legal matters, while an ever-increasing amount of time is spent motivating, persuading and just dealing with people . . .<sup>43</sup>

In response to the laundry list, of those who didn't practise, less than one in ten thought that legal education developed any of the ingredients of business leadership: the skills to manage, motivate and empower people combined with cost-con-

sciousness. Of those who did practise, only one in five accredited these skills to their law background.

In response to the question asking what they had to learn when they moved from law to business,<sup>44</sup> the respondents emphasised the business leadership factor. Thirty percent of the respondents without practice experience ( $n = 37$ ) said they had to learn in business how to manage and deal with people. An even larger percentage of those who had practised mentioned needing to learn the attributes of this factor: 54% ( $n = 52$ ) answered this question mentioning that they had to learn how to manage people and 50% reported having to develop people skills. Six specifically mentioned having to learn team-building skills.

The group wanted to communicate that business leadership requires motivating and empowering people. In business, “the single most important thing is people skills. Learn to communicate with people—don’t talk down to subordinates or fawn over supervisors”.

Those without practice experience criticised legal education: “Law school focuses on the individual and never mentions how to effectively manage staff, either support or junior professionals. Lawyers’ poor image in society comes from their high egos and their poor people skills”. Another advised law schools to “teach and preach the benefits of humility”. Eight mentioned that lawyers lack leadership and teamwork skills (e.g. “business graduates have better skills at managing people and leading them”, “lawyers don’t know how to work in teams” and “business graduates are more intuitive with people”), and five respondents mentioned a problem with lawyers being stereotyped by others. As another said, himself engaging in stereotyping, lawyers are “undiplomatic with tremendous egos and incapable of working in teams”.

Those with practice experience explained lawyers’ lack of people skills by noting differences between law and business firms: “Lawyers are the only kings in law firms, but corporate life involves a process of gathering a consensus”. Three mentioned needing to learn how to develop a corporate culture and communicate core values, and five that in their law practice they didn’t have to learn to delegate. These numbers may be compared to the four who mentioned having to learn cost-consciousness. One with 23 years of practice experience claimed it had made him overly trusting of clients and one with 2 years of experience said he had to learn in business that simply because the law was enunciated, people would not necessarily adhere to it. Another says that law decreased his empathy with people.

A few respondents thought legal education and practice experience did develop the skills necessary for business leadership. Legal education was praised by one who noted that his “general training in law has been very helpful in negotiations and political issues at work”. Another credited his practice experience with developing his “self-confidence, good listening skills and the ability to get along in a variety of people situations”.

*Law merchant.* Over 90% of the respondents thought that legal training and practice developed the “following rules” attribute of the law merchant factor. Less than 30% of the respondents, rather equally divided between those with and without practice

experience, thought that “treating others impartially” and “wanting equity for others” were developed.

Two who hadn’t practised stressed that law school did a poor job in imparting ethics: “A deal is not good unless both parties are satisfied. Do not feel that you have to win or get the best of the other party”. While one law graduate admitted that legal training made him “more cynical and less trustworthy”, two mentioned that their legal training impeded their careers because people distrust attorneys and don’t think “any longer” that lawyers are “smart and honest”.

Two respondents with practice experience mentioned the ethical credibility derived from legal experience. As one put it, he thought his corporation was well served by his legal experience which made him “be careful and put ethical considerations at the top of the value list”. Except for these two respondents, however, no others mentioned that being a law merchant was developed by their legal training and practice experiences. As one respondent, who practised law for 21 years, put it, he had to learn when he left legal practice for business “that finding solutions that are fair and reasonable is the objective of dispute resolution, not who is legally right or wrong”.

### **Their advice to law schools**

American law schools may in the future endeavor to assist their students in gaining relevant nonlegal training . . . The practicing bar and law schools themselves may find it desirable to establish more alternative outlets for those with law-related interests who would otherwise flood the clogged legal employment market or spend three years securing a J.D. only to emerge unhappy and uncertain about career goals.<sup>45</sup>

The respondents were asked “What courses, other than business law courses, would you advise a student who aspires to a career in business to take in law school?”.

The good news is that law schools need not change much. The respondents most often replied suggesting specific substantive law courses currently being taught: 52% of the recommendations were for traditional law school classes (such as legal research and writing, contracts, environmental law, intellectual property law and ADR).

Teaching finance and accounting was their second most frequent recommendation: 27% (61 of 227 recommendations) were for finance and accounting courses. Finance and accounting skills are currently being taught at US law schools in courses on security regulation and business planning, as well as “Accounting for Lawyers”. Again, the respondents did not see the need for great changes at law schools. They thought that financial skills are sufficiently important that they deserve their own courses. Accounting skills are so basic to all business work that they do not belong in the backwater of the law school. As one put it, “many lawyers seem to have exceptionally underdeveloped mathematical abilities for people of their intelligence”.

Of their other recommendations, 15% were for business school courses (such as management, personnel management and marketing) and 11% were for communi-

cation courses (including legal research and writing). The courses recommended did not correlate with the job title of the respondent or with whether they had practised law.

The course recommendations appear to respond to the perceived gaps between the skills required for business success and what the respondents thought they obtained from their law training and practice experience. The suggested courses emphasise the skills needed for business leadership and being a law merchant.

There were recommendations for courses teaching teamwork skills, collaborative skills, leadership, diplomacy, psychology, organisational behaviour and human resource management. The theme of developing business leadership skills also emerged indirectly. Five said that law school ought to improve their teaching of communication skills, teaching expository writing in addition to argumentative writing and public speaking in addition to trial practice.

The skills required in being a law merchant were often mentioned in the context of ADR (Alternative Dispute Resolution) courses. Seventeen mentioned that law schools ought to teach compromise skills. Nine mentioned that law schools ought to improve their teaching of ethics, especially to include business ethics. According to these respondents, fairness is not stressed as much in law school, as it is useful in business decisions. Three explicitly suggested courses on fairness and equity.

Only eight respondents (six who had practised) said training students for a non-legal career in business should not be a function of law schools. Seven respondents thought the demand for law school training for non-legal careers was so strong that they suggested separate (more practical) courses for those students in law school inclined to work in non-legal jobs. Four respondents recommended a joint degree. One lawyer with practice experience and one without recommended shortening the JD program to the length of an MBA—2 years—and one that law schools offer a short course for those who don't want to practise. Six lawyers with practice experience urged that law students be allowed to take some MBA courses. Much more common were responses that spoke to how law schools could maximise the value they added, improving their training of the skills required for business success.

Although their responses suggest that the respondents were fairly satisfied with the law school curriculum, they were strong supporters of the "Law in Context" movement as the manner of presenting the subjects. Broadening teaching style, examining non-legal ramifications of the law, making courses more practical were frequent responses. They recommended that business law courses pay attention to corporate cultures and how companies respond to regulation. As one put it, law schools "ought to offer actual business problems and opportunities in situations like mergers or antitrust litigation". Another that "contract ought to be taught in such a way that it includes why the party wants it, how to negotiate it, then, finally, how to draft the agreement".

## Discussion

[D]o law graduates who follow nonlegal careers actually use the skills acquired in law school, or is the law degree merely a status symbol built upon wasted social resources?<sup>46</sup>

The lawyer is today compelled to participate in decisions that represent a synthesis of many factors, of which legal rules are often only a part, and sometimes a very subsidiary part. . . . Today nearly all lawyers have to make "business decisions," . . . for they have discovered that this is what clients demand.

These decisions are not arrived at by the lawyer independently, but in consultation with men [sic] of different training, who bring to the conference table distinct contributions that must somehow or other be fused into the final solution. Here, then, is a process into which he must be initiated and started off right in law school. He must learn what is involved in deciding not only what legally can be done, or what action will be legally effective, but what should be done, all things considered, when all points of view have been drawn into account.<sup>47</sup>

[B]usiness leaders who begin their careers as lawyers . . . can present themselves as technocrats or lawyers, whichever better exploits their social capital at a particular moment. . . . [They] can play simultaneously on a double register, that of law and that of business custom, depending on their strategies and interests of the moment.<sup>48</sup>

This article reports on a survey that attempted to assess the fates of legal training and practice in the lives of those whose careers have taken them to non-legal executive positions within US corporations. The respondents were asked to assess the contribution of legal training and practice to careers in business. The instrument sought to guide respondents to segment the contributions of their legal training and experience from their business experience. They were asked to assess how their legal training and experience contributed to their being, what Donald Schon might call, reflective practitioners in business.<sup>49</sup>

By asking the respondents what skills are developed by legal training and practice, what skills they needed to develop when they entered business, what skills they would advise law graduates and lawyers to emphasise in job interviews for non-legal positions and how they would assess the strengths and weakness of legal education, the survey sought to elicit their views on how legal training, conjoined or not to practice experience, interacts with the skills required in business. It sought to distinguish a particular form of symbolic capital.<sup>50</sup>

Their responses, no matter how statistically valid, reflect a particular form of elite ideology. Lawyers, like other professionals, "develop 'repertoires' or ideologies of self-description to advance their interests".<sup>51</sup> The survey asked for a representation of their group "that has surreptitiously slipped into the science of this very group".<sup>52</sup> They were asked to describe an embodied set of skills and habits that they used to achieve strategic advantage and to relate this embodiment to the legal field as a whole. To a law professor, they explained that such symbolic capital is recognised as power.

The study assumed, and the respondents agreed, that the symbolic capital acquired in a legal career—educational credentials and experiences—were relevant

to success in business. A critical study of successful businesspeople in Britain and France concluded:

Educational credentials are far from replacing the emphasis given at the most senior levels to the intangible personal qualities given by nature, developed through family upbringing and through the incidental curricula of the most formative secondary and higher education years ... The education system is far from monopolizing access to particular parts of the elite managerial structure and still less of dominating promotion and selection policies and chances of access to the few positions at board level in major concerns.<sup>53</sup>

Certainly, if understood as ‘replacing’, ‘monopolising’ and ‘dominating’ other factors, the explanations for success given in this survey are highly suspect. The legal profession does not have jurisdictional control of these jobs, but this does not deny, that, coupled with the perquisites of background and the development of individual talents, selling their legal training and experience—and perhaps the skills therein developed—was part of how they achieved success. Even the intangible personal qualities, of which Whitley speaks, may only be recognised because of the symbolic capital acquired through a legal career.<sup>54</sup> As Useem and Karabel conclude, “differences in the amounts of both scholastic and social capital possessed by senior corporate managers powerfully affected their positions *within* the stratified ranks of corporate management”.<sup>55</sup> This elite ideology is a piece of the cognitive, regulative and normative systems of corporate life.<sup>56</sup> As four respondents simply said, “having a JD carries weight”.

The survey responses suggest that managerial success might be thought to be composed of five skills: analytic, problem solving, professional, business leadership and being a law merchant. All five, according to the respondents, can be marketed as developed by legal training and practice. Yet, the unwary or inadequately prepared law graduate may not develop them.

The respondents agreed that legal training and practice developed the *analytical skills* required for business success, except with respect to financial and accounting skills. The most given bit of advice to law students seeking non-legal careers in business was to take accounting and finance courses. The centrality of financial and accounting skills to business success represents an acknowledgment of the neoliberal regulatory state’s focus on macroeconomic management and the encouragement of capital flows.<sup>57</sup> Part of the ideological ferment of the triumph of neoliberalism is a belief that financial factors, not legal threats, ought to be the prime movers of business decision-making.<sup>58</sup>

The competition in the US between law firms and accounting firms for consulting business<sup>59</sup> is replicated in intra-corporate struggles, with success for those legally trained depending on their abilities to claim access to the skills of accountants. This competition at the level of analytic skill, which all respondents saw as the primary skill developed by legal training, confirms analysts who depict cognitive skills as the market makers in professionals economies.<sup>60</sup> But the respondents’ assumption that lawyers can master (at a level sufficient to attain corporate power)



finance and accounting suggests that these analyses overplay the role of abstract knowledge in professional competition.<sup>61</sup>

Analytical skills can be mislearned in legal practice. If a lawyer is overly literal or unable to work with imperfect data or in the absence of controlling precedent, she will not succeed in business. In business, analytic skill disfavors "a retreat into technicism"<sup>62</sup> for one of its component factors is recognizing "when more information is needed".

Unlike Hartmann's analysis,<sup>63</sup> this study finds that lawyers' abilities include more than analytical skills. Hartmann found that lawyers couldn't successfully compete with "business management experts and graduates of" business schools over decisions that required "familiarity with [the business]", rather than legal skill.<sup>64</sup> If legal training and experience only teach analytic skills, this conclusion makes sense, but it fails to explain his other finding that "the higher up the hierarchical scale they are", the more "lawyers have been able to maintain their elite status".<sup>65</sup> Can one imagine that analytic legal skills are more valuable the higher one is on the hierarchical scale? If, as the respondents to this survey suggest, the symbolic capital of law includes other than analytic skills, then those legally trained need not always lose in competitions over business decision to management and business experts. The ability of lawyers to claim managerial skills is not only claimed by the respondents in this study, but also is confirmed by a study of corporate salaries which found that only marginal increases in salary were given to members of corporate legal departments who had an MBA degree in addition to their law degree.<sup>66</sup>

The *problem-solving skills* required for business success are developed by law training, but even more so by legal practice experience, according to the respondents; but here too there can be mislearning. Lawyers may be inflexible, fence-sitters, overly cautious and act as brakes, not accelerators. Decisiveness is the problem-solving skill that lawyers must market. They must sell themselves, as one respondent put it, as 'a can-do, practical lawyer'.

The *professional skills* required for business success are developed by law training and practice, according to the respondents; but here too, there can be mislearning. Lawyers may communicate in jargon or be overly verbose. They may understand advocacy, but not managing projects to produce results.

The *business leadership skills* required for business success also can be developed by legal training and practice, according to the respondents; but here, mislearning appears more often. The respondents berated many lawyers for their poor people skills. Empowering people, a component of this factor according to the group of old men surveyed, appears not to be an ability normally developed by law training and legal practice. As one put it, "Lawyers are the only kings in law firms, but corporate life involves a process of gathering a consensus". The respondents suggested teaching teamwork and humility in law school. For law graduates to market themselves to business requires them to demonstrate that their experience has taught them about managing, motivating and empowering people. Surprisingly, for the corporate elite, "outsider scholarship", with its emphasis on the empowerment of silenced voices, creates an important market asset.

The *law merchant skills* required for business success also can be gained from

legal training and practice, according to the respondents; but, here too, there is often mislearning. Some lawyers are not honest or have no skill at compromise. They don't understand that "fair and reasonable is the objective . . . not who is legally right or wrong". The respondents suggest teaching ADR in law school and marketing themselves as understanding the dangers of being overly litigious.

These findings match those of studies that have been done of legal education's relation to success in law firms. Although rated "extremely important" for the practice of law,<sup>67</sup> practising lawyers argued they didn't learn in law school techniques of "instilling others' confidence" and "effective oral expression".<sup>68</sup> More recently, the President of the ABA noted that "[i]t is the rare law school that explains to graduating lawyers that across the desk from them are people that they need to be able to communicate with".<sup>69</sup>

A rather coherent picture of how law training and practice interrelate with business decision-making emerges from these responses. First, almost uniformly the law graduates thought their legal training was an asset to them in their business careers.<sup>70</sup> Second, people matter and lawyers need to learn how to get along with people. Even if practice teaches persuasion skills, legal experience is all too often guilty of teaching incorrect human resource management skills. The bottom line matters and lawyers need to learn cost-consciousness. Fairness matters and lawyers need to learn more than an adversary ethic. A fair solution, which motivates cooperation, whose costs are controlled, is the stuff out of which business successes are made. Lawyers have analytical and communication skills that can help them reach such results. For some, however, their legal experience impedes their reaching such solutions. For others, their legal experiences need to be complemented by skills and orientations ignored in legal training and experience.

Both the ability of those with legal experience to claim their successful mastery of these skills, as well as the absence of these skills in a generalised unwary lawyer, are features of an ideology that can be called 'practical legalism'. Practical legalism combines attributes of flexibility, adaptiveness, people skills, marrying opposing points of view, being not overly-adversarial, and understanding legal principles in terms of both fairness and business risks.

The best indicator of practical legalism's ideological status is how the respondents answered the laundry list of attributes presented to them. By and large, both those who had a career in legal practice and those who didn't said the same skills were developed and were not developed by their legal career. Intuitively, this makes little sense, for it indicates that legal practice doesn't develop skills. Furthermore, it is inconsistent with the many respondents who remarked that their practice experience developed skills important to business. The best explanation appears to be that there is an ideological map of how law and business intersect, which I call 'practical legalism' and is the rather coherent picture just described.

The ideological status of practical legalism made it possible for all but one of the respondents to manipulate their legal training and experience to show its relevance for managerial success. This manipulability in turn may explain why only four of the respondents suggested combining a business with a law degree. It also explains, although those with and without practice experience were able to

present law training and practice experience as debilitating and incomplete assets in business, how they also were able to indicate that they developed the skills required for managerial success by avoiding certain contingent factors or assimilating latent skills.

Practical legalism is not just part of the ideology of the elite actors here surveyed. Practical legalism has been found to be part of the ideology of other business actors and lawyers. Bardach and Kagan discuss "the tendency of businessmen to think of regulation as an ongoing process of encountering problems and searching for cost-effective solutions . . . through negotiation and compromise".<sup>71</sup> In their study of international arbitration, Dezalay and Garth paint the same picture in describing the pull "toward relatively, informal business-oriented dispute resolution".<sup>72</sup> Practical legalism is part of what has been described as "the American style of lawyering". In trying to import it into France, the Rennes school emphasises that lawyers "must not only know the law, they also have to grasp business needs and have the ability to work with multidisciplinary teams" to solve business problems.<sup>73</sup>

In my study of inside counsel, I also found the ideology of practical legalism, although I did not name it.<sup>74</sup> That both groups share the same ideology is not that surprising as 21 of the respondents to this study had served as inside counsel. Perhaps, more revealing, is that neither group normally exercises auditing control in the corporation. I found that corporate legal departments did not practise preventive law by assuming auditing control because that would require them to act "in the role of a policeman . . . [rather] than an ally in an effort to run the company profitably and legally".<sup>75</sup> In this study, none of the respondents managed auditing departments, with the exception of finance. Although they were or had served in many staff positions, none had been vice-president for product quality, safety, and the like. Like inside counsel, legally trained managers are subject to the ideological image that they are going to be police or nit-pickers. To succeed, they must counter that image and show that they are "can-do, practical" allies. To exercise auditing power, for one legally trained, is to run against the grain of practical legalism and to diminish one's symbolic capital.

Weber's discussion of formal-rational authority has often misled students of the legal profession. Lawrence Friedman,<sup>76</sup> Dezalay and Garth<sup>77</sup> and others who have posed the "Weber vs. Confucius" debate have rejected Weber, noting that the American practice of law appears to depend on personal skills and being practical, rather than applying systematic reason. Their conclusions mirror those in this study, which found that lawyers working at non-legal jobs in business market their people skills and practical judgment, but then, we are all following Weber, rather than disagreeing with him. For these scholars seem to have forgotten Weber's distinction between civil and common law lawyers: in England, he told us, legal honoraries ruled not by systematic reason, but by "personal qualities", sometimes drawing on traditional and charismatic authority, sometimes by making "essentially empirical" decisions.<sup>78</sup>

Following Weber, one might take as the defining feature of practical legalism its procedural, rather than substantive, focus. Although practical legalism stresses the importance of context, it lacks focus on what is at stake in the contexts. In

describing what one needs to demonstrate to succeed in business, the findings of this survey are remarkably similar to a study of success in lawyering that examined how lawyers are evaluated in large law firms, district attorney, city attorney and corporate legal offices. Ignoring the different goals of the lawyers in these contexts, it produced the following laundry list as a summary: “dealing with clients, writing, speed and diligence, legal analysis, creativity in solving legal problems, relations within the firm or organization, reliability and thoroughness, knowledge of the law, responsibility, judgment or common sense, oral presentation, general attitude, and supervisory skills”.<sup>79</sup> The findings here also are difficult to distinguish from what public and private organisations claim they are trying to teach in their managerial training and development programmes: “[A] great deal of managerial training is focussed on improving job performance in the areas of human relations, self-awareness, problem-solving and decision-making, motivation/values, and general management”.<sup>80</sup> And, they are difficult to distinguish from the, perhaps tongue-in-cheek, advice that “One way [for law schools] to get [their] students hired—assuming the all-important grades—is to foster the skills that one might acquire from a finishing school: good manners, social grace, and good grammar and pronunciation”.<sup>81</sup>

The skills and their misreadings that the respondents present are pieces of elite ideology. Their presentation is shaped both by the markets that have recognised their symbolic capital and by the recognition they are seeking from a law review audience. They present practical legalism so that it increases their abilities both to define their own capital and to ignore normative issues. The respondents claim to have judgment. Their success shows that their judgment is valuable. They don’t, except procedurally, however, tell us why it should be valued.

The manipulability of practical legalism may give the respondents a sense of freedom, but not necessarily the reality of independence. It doesn’t explain at all clearly what values and policies they are pursuing in work.<sup>82</sup> Corporate norms, as the neo-institutionalists remind us,<sup>83</sup> must make peace with the state’s normative structure. How that peace is made is not answered by how the respondents defined the skills required in business and in their comments about the misreadings.

In the US, lawyers have acted as “self-confident coordinators of the political and economic elites rather than as a distinct and subordinate caste within the elites”.<sup>84</sup> Whether the respondents surveyed here are coordinators or subordinated is impossible to tell from the data provided. Without a focussed development of what practical legalism substantively means, we can only conclude that the respondents took from law only “ideological training for willing service in the hierarchies of the corporate welfare state”.<sup>85</sup>

Future work needs to bring practical legalism more into focus. Furthermore, there is a need for a study of more recent law graduates than those surveyed here. Studies that compared legally trained with non-legally trained executives would be most useful for developing an account of how legal training matters. The symbolic capital of law needs to be explored in other markets, such as governments and the non-profit sector. To study lawyers, as this study shows, one need not study them working in law firms or other legal employments.

## Notes

- [1] Harold D. Lasswell & Myres S. McDougal, Legal education and public policy: professional training in the public interest (1943) 52 *Yale Law Journal* 203 at 207.
- [2] Avrom Sherr, Professional work, professional careers and legal education: educating the lawyer for 2010 (2000) 7 *International Journal of the Legal Profession* 325 at 331.
- [3] *Ibid.*, at 332.
- [4] *Ibid.*, at 331.
- [5] *Ibid.*, see also Robert Eli Rosen, Problem-solving and serving the organizational client: legal diagnosis and professional independence (2001) 56 *University of Miami Law Review* 179.
- [6] William Twining, Rethinking law schools (1997) *Law & Social Inquiry* 1007 at 1015.
- [7] William Twining, *Blackstone's Tower: The English Law School* (London, Sweet & Maxwell, 1994), p. 74.
- [8] Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (New York, Oxford University Press, 1996), p. 75.
- [9] See studies cited by Olavi Maru, *Research on the Legal Profession: A Review of Work Done* (Chicago, American Bar Foundation, 1983), p. 235, n. 19.
- [10] Robert Stevens, Law schools and law students (1983) 59 *Virginia Law Review* 551 at 616.
- [11] See, for example, Rita Simon *et al.*, Have there been significant changes in the career aspirations and occupational choices of law school graduates in the 1960s? (1973) *Law & Society Review* 95 at 100.
- [12] John Warwick Montgomery, The American law teaching experience (1993) *Law & Justice* 120 at 131.
- [13] Patricia G. Barnes, Cutting classes: many law schools are shrinking along with the job market (1995) 81(December) *ABA Journal* 26.
- [14] Wallace D. Loh, Law faculty in the 21st century: responding to megatrends and new realities (November 1996) 96(4) *The Newsletter (AALS)* 1.
- [15] Cf., Richard L. Abel, Comparative sociology of legal professions (1985) *American Bar Foundation Research Journal* 5.
- [16] Twining (1994), *op. cit.*, p. 61.
- [17] Donald D. Landon, LaSalle Street and Main Street: the role of context in structuring law practice (1988) 22 *Law & Society Review* 213 at 222.
- [18] John Flood, The cultures of globalization: professional restructuring for the international market, in: Yves Dezalay & David Sugarman (Eds) *Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets* (London, Routledge, 1995).
- [19] Ellen Joan Pollock, Order in the boardroom: lawyers rise to CEO, *Wall Street Journal*, 11 September 1996, p. B1; see also Bruce Rubenstein, The climb to the executive suite: how to become your legal department's next client, *Corporate Legal Times*, November 1994, p. 1; Maureen Cain, The symbol traders, in: Maureen Cain & Christine B. Harrington (Eds) *Lawyers in a Postmodern World: Translation and Transgression* (Buckingham, Open University Press, 1994), p. 27.
- [20] Tom Priest & John Krol, Lawyers in corporate chief executive positions: career characteristics and 'inner group membership' (1986) 14 *International Journal of the Sociology of Law* 33 at 36; see also Tom Priest & R.A. Rothman, Lawyers in corporate chief executive positions: a historical analysis of careers (1985) 12 *Work & Occupations* 131.
- [21] Priest & Krol, *op. cit.*, p. 38.
- [22] The survey instrument is given as Appendix A.
- [23] See Appendix A, between questions 5 and 6 (emphasis omitted).
- [24] See Appendix A, between questions 7 and 8 (emphasis omitted).
- [25] See Appendix A, between questions 11 and 12 (emphasis omitted).
- [26] The cover letter that accompanied the survey instrument asked: *How can law schools better prepare students to assume positions in business and industry?* (emphasis in original).
- [27] The cover letter fore-grounded the presumed fact that "many law students (in increasing numbers) will not spend their careers practising law". I headed the cover letter: *RE: Law Graduates with Careers in Business and Industry* (emphasis in original). I informed my respondents that the survey

- [67] Frances Kahn Zemans & Victor G. Rosenblum, *The Making of a Public Profession* (Chicago, American Bar Foundation, 1981), p. 12.
- [68] *Ibid.*, p. 136.
- [69] Roberta Cooper Ramo, A practitioner looks at globalization (1995) 46 *Journal of Legal Education* 597 at 600.
- [70] Thus, they mirror a respondent to Baird's survey who commented: "I am the President and Chief Executive Officer of a 10 million dollar manufacturing company. I never practiced law. I joined my company directly from law school. My law school education is *invaluable* in business—every day for dozens of reasons (mostly obvious). I would recommend law school or some amount of 'legal training' for *all* businessmen". Leonard L. Baird, A survey of the relevance of legal training to law school graduates (1978) 29 *Journal of Legal Education* 264, 268 (emphasis in original).
- [71] Eugene Bardach & Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Philadelphia, Temple University Press, 1982), pp. 79–80. Cf. Robert A. Kagan, Do lawyers cause adversarial legalism: a preliminary inquiry (1994) 19 *Law & Social Inquiry* 1.
- [72] Dezalay & Garth (1996), *op. cit.*, p. 117.
- [73] David Trubeck *et al.*, Global restructuring and the law: studies of the internationalization of legal fields and the creation of transnational arenas (1994) *Case Western Reserve Law Review* 407 at 452.
- [74] Robert Eli Rosen, The inside counsel movement, professional judgment and organizational representation (1989) 64 *Indiana Law Journal* 479 at 519–525.
- [75] *Ibid.*, 520.
- [76] Lawrence M. Friedman, Borders: on the emerging sociology of transnational law (1996) 32 *Stanford Journal of International Law* 65 at 76.
- [77] Dezalay & Garth (1997), *op. cit.*, 111.
- [78] Max Weber, *Max Weber on Law in Economy and Society*, translated by Edward Shils & Max Rheinstein (Chicago, Chicago University Press, 1954), p. 52 n. 25, p. 230.
- [79] Leonard L. Baird *et al.*, *Defining Competence in Legal Practice, The Evaluation of Lawyers in Large Firms or Organizations* (LSAC 79–1, 1979), pp. 177–178.
- [80] Burke & Day, *op. cit.*
- [81] Bryant G. Garth & Joanne Martin, Law schools and the construction of competence (1993) 43 *Journal of Legal Education* 469 at 499.
- [82] Cf., Charles Derber, The proletarianization of the professional: a review essay, in: Charles Derber (Ed.) *Professionals as Workers: Mental Labor in Advanced Capitalism* (Boston, G.K. Hall, 1982).
- [83] Marc C. Suchman & Lauren B. Edelman, Legal rational myths: the new institutionalism and the law and society tradition (1997) 21 *Law & Social Inquiry* 903 at 917–928.
- [84] Roberto Mangabiera Unger, *What Should Legal Analysis Become?* (New York, Verso Press, 1996), p. 83.
- [85] Duncan Kennedy, Legal education as training for hierarchy, in: David Kairys (Ed.) *The Politics of Law: A Progressive Critique*, 2nd edition (1990), p. 38.

APPENDIX A

SCHOOL OF LAW  
UNIVERSITY OF MIAMI  
SURVEY

(Feel free to write in margins, on back or attached sheets)

I. BACKGROUND—The following 5 questions relate to your career path. Answer them, or enclose your resume. (If you enclose your resume, skip this background section. If you have had significant experience as a practicing lawyer, GO TO section II, question 6. If not, GO TO section III, question 8.)

1. Since graduating from law school, what have been your significant employments? (list (1) industry, (2) title, (3) approx. years in the position)

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2. In what INDUSTRY are you currently working? (e.g. banking, entertainment)

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3. What is your current TITLE? \_\_\_\_\_

4. In what way(s) if any, does your TITLE not correspond with your responsibilities?

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5. When you first worked in INDUSTRY, did you join a firm with which you had been associated prior to law school? \_\_\_\_\_ Did you join your family's firm? \_\_\_\_\_

II. LEGAL PRACTICE IN AN INDUSTRIAL CAREER (If you never had significant employment as a practicing lawyer, skip this section and GO TO question 8.)

6. Before you moved into industry, did you represent the organization you joined as a lawyer? \_\_\_\_\_ NO  
\_\_\_\_\_ YES (IF YES, was your representation principally \_\_\_\_\_ litigation \_\_\_\_\_ transaction; other describe) \_\_\_\_\_

7. The following is the list of reasons for leaving legal practice. Were they important or not important to you:

- |                                       |                     |                      |
|---------------------------------------|---------------------|----------------------|
| a. limits on earnings                 | a.(important_____)  | (not important_____) |
| b. time commitments                   | b.(important_____)  | (not important_____) |
| c. qualms about the adversary system  | c.(important_____)  | (not important_____) |
| d. billing issues                     | d.(important_____)  | (not important_____) |
| e. lack of responsibility for results | e.(important_____)  | (not important_____) |
| f. to be more help to people          | f. (important_____) | (not important_____) |
| g. lack of creativity                 | g. (important_____) | (not important_____) |
| h. lack of social value               | h. (important_____) | (not important_____) |
| i. to have more control               | i. (important_____) | (not important_____) |
| j. to have less conflict              | j. (important_____) | (not important_____) |
| k. inefficiency of law practice       | k (important_____)  | (not important_____) |

OTHER REASONS \_\_\_\_\_

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