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Recasting the LL.M.: Course Design and Pedagogy  
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Taking Popular Culture Seriously: Towards Alternative Legal Pedagogy  
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Objective of the Journal

The *Socio-Legal Review* (SLR) is a student-edited, peer-reviewed interdisciplinary journal published biannually by the Law and Society Committee. The Journal aims to be a forum that involves, promotes and engages students and scholars to express and share their ideas and opinions on themes and methodologies relating to the interface of law and society. SLR thus features guest articles by eminent scholars as well as student essays, providing an interface for the two communities to interact.

The Journal subscribes to an expansive view on the interpretation of “law and society” thereby keeping its basic criteria for contributions simply that of high academic merit, as long as there is a perceivable link. This would include not just writing about the role played by law in social change, or the role played by social dynamics in the formulation and implementation of law, but also writing that simply takes cognizance of legal institutions/ institutions of governance/administration, power structures in social commentary and so on. Through this effort, the journal also hopes to fill the lacunae relating to academic debate on socio-legal matters among law students.

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The manuscript should be on any theme exploring the interface between law and society. Each volume of the Socio-Legal Review consists of Articles and Notes from the Field. Additionally, Legislative Comments are also published some years. This year, a new section, Book Reviews, has been introduced.

Notes from the Field consists of shorter pieces designed to provide a glimpse into a new legal strategy, political initiative or advocacy technique applied in the field, a current problem or obstacle faced in legal reform or development work, or a new issue that has not yet received much attention and needs to be brought to light. This section is designed for the student researchers, legal practitioners, field staffers, and activists who often have the most significant insights to contribute, but the least time to write the longer, scholarly articles.
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SOCIO-LEGAL REVIEW

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India.
The first of this year’s publications of the *Socio-Legal Review* dedicates itself to a specific and special theme: *legal education and practice*. This year, the National Law School of India University, Bangalore (which has published this Review for nine years now) celebrates twenty-five years since its establishment. The relevance of this theme is not only in acknowledgement of this milestone, but also, and more importantly, in providing an opportunity for academic debate and reflection of the development of legal education, its institutions and the legal profession at this crucial juncture. The direction in which legal education in India is headed has drawn the attention of academics and practitioners alike in the recent past, and, we hope, will continue to be debated fiercely.

The articles in this publication are, however, not limited to a discussion of legal education in India. They are a collection of the thoughts and studies of scholars who have and continue to engage with the law in academic capacities in Indian and international universities, and through their experiences with legal communities generally.

In *Peel Off Lawyers: Legal Professionals in India’s Corporate Law Firm Sector*, Professor Jayanth Krishnan uses Marc Galanter’s understanding of power relationships among the legal community in offering his own understanding of how hierarchies in the legal profession are preserved, and how best to overcome them. Focussing specifically on the recent growth of law firms in India, Professor Krishnan captures a recent phenomenon he terms *peeling off* – identifying a new class of lawyers who break the mould of Galanter’s framework in creating their own set of rules.

Dean Maria Lopez and Natasha Lacoste, in *Women Leaders in the Areas of Higher Education, the Legal Profession and Corporate Boards: Continued Challenges and Opportunities in the United States* narrow the issue of power relationships in offering an empirical analysis of the challenges faced by women in achieving their career aspirations in three specific areas: appointments in higher educational institutions, the legal profession, and the corporate world. While
much of their research is based on statistics in the United States, the themes the authors outline find relevance in legal communities in other parts of the world, encouraging readers to consider the solutions they ultimately propose.

Professor Sudhir Krishnaswamy and Dharmendra Chatur, in *Recasting the LLM: Course Design and Pedagogy*, discuss the introduction of the one-year Master of Laws (LLM) programme in India, accentuating the difficulties that continue to persist in achieving the goals of LLM courses. The authors select a compulsory course in law and social transformation to make their evaluation and illustrate their argument, focusing their attention on the deficiencies in Professor Ishwara Bhat’s *Law and Social Transformation* in meeting the objectives of course curriculum. The authors’ ultimate conclusion that the structuring of syllabi and inadequacy of textbooks to aid in achieving the goals of the LLM are significant hurdles to the development of an effective pedagogy in the advanced study of law draws the reader’s attention to the need for substantial reform.

*It’s All About the People: Hierarchy, Networks and Teaching Assistants in a Civil Procedure Classroom* details more personally the experiences of Professor Jennifer E. Spreng in teaching Civil Procedure in an under-graduate classroom in the United States. Challenging the traditional teacher-student relationship, Professor Spreng makes way for more complex, inter-personal relationships, effectively creating an institution of the classroom itself. Importantly, the author accords priority to the roles played by teaching assistants in the classroom, urging us to recognise and respect the value in their contributions.

Danish Sheikh in *Taking Popular Culture Seriously: Towards Alternative Legal Pedagogy* discusses the academic value in a course in law and popular culture, based heavily on his experiences teaching a course in law and popular culture with Mr. Lawrence Liang at the National Law School of India University, Bangalore. Popular culture, Sheikh argues, offers wider access to law, and helps us recognise our perceptions of law itself. He addresses more specifically the issue of how to design a curriculum in law and popular culture, transgressing a variety of media, including movies, books and music.
I would like to use this opportunity to mention that Sheikh’s enthusiasm in teaching law and popular culture has been shared by a large number of students at the National Law School of India University, who attended the course he conducted with Mr. Liang and the Editorial Board of the *Socio-Legal Review* over several months this last academic year.

In collectively addressing a wide range of concerns pertaining to legal education and the practice of law, both in India and globally, the purpose of selecting this theme has not been restricted to its role in encouraging academic debate only. Edited and published exclusively by students of law, I hope that the publication of this careful selection of articles, collectively impressing upon the reader the need to address the deficiencies in law as a discipline and as a career, is of value in bringing about the kinds of changes we are beginning to recognise and address today.

Finally, I would like to acknowledge the tireless contribution of Deputy-Chief Editor Nidhisha Philip, whose assistance in the publication of this issue has been invaluable; the efforts of the editors, line editors and technical editor of the Editorial Board over the last year; the generous assistance and continued encouragement of our Peer Review Board and Advisory Board; the guidance of our Faculty Advisor Professor A. Nagarathna; and finally, the endless support of Professor R. Venkara Rao, the Vice-Chancellor of the National Law School of India University, Bangalore. Without the collective efforts of these individuals, the *Socio-Legal Review* would have been unable to maintain the high academic and professional standards I am proud to showcase in this publication.

Priya Urs,
Editor-in-Chief,
*Socio-Legal Review*,
Bangalore,
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**PEEL-OFF LAWYERS: LEGAL PROFESSIONALS IN INDIA’S CORPORATE LAW FIRM SECTOR**

**Jayanth K. Krishnan***

*This study is about hierarchy within the legal profession — how it presents itself, how it is retained, and how it is combated. The socio-legal literature on this subject is rich, with many roots tracing back to Professor Marc Galanter’s famous early 1970s article on the ‘Haves’ and ‘Have-Nots.’ Galanter’s piece and the work of those influenced by him rightly suggest that resources — institutional, financial, and demographic — contribute to whether lawyers are, and remain as, part of the ‘Haves.’ Yet, while resources of course greatly matter, as this study will argue other forces are significant as well. One set, in particular, relates to what the social-psychology literature has termed mobbing — a phenomenon that contributes to the reinforcing of hierarchy through certain aggressive and passive tactics that those with power use to consolidate their reigns and hinder the upward mobility of the employees beneath them. In the setting of the legal profession, the result can be an environment where ‘Have-Not’ lawyers within an office are commonly left to feel insecure, powerless, and stuck in the legal employment positions in which they find themselves.*

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*** Professor of Law, Indiana University-Bloomington. This study emerged from the author’s involvement in Harvard Law School’s Globalization, Lawyers, and Emerging Economies (GLEE) Project, and in particular, he is grateful to David Wilkins, David Trubek and the entire Harvard-GLEE team for their support. In addition, for their comments at various stages, the author thanks: Luis Fuentes-Rohwer, Marc Galanter, Jonathan Gingerich, Vikramaditya Khanna, C. Raj Kumar, Ajay Mehrotra, Ethan Michelson, Ashish Nanda, Christiana Ochoa, Victor Quintanilla, Viplav Sharma, Carole Silver, and Umakanth Varottil. Drafts of different portions of this article were presented at: Harvard Law School (2012), the ABA’s Section on International Law Conference (2012), the U.S.-India Business Council (2012), and the Jindal Global Law School, India (2012). Great thanks also to the two external reviewers who provided excellent feedback to the author. And the author expresses profound appreciation to his excellent research assistant, Patrick W. Thomas. Finally, to the many lawyers (to whom anonymity was assured) who gave their precious time, the author is deeply grateful.
To evaluate how resources and mobbing interact, this study returns to the place from where Galanter's original inspiration for the 'Haves' article came: India. The results of a multi-year ethnography are presented on the Indian corporate bar. Since India liberalized its economy in 1991, numerous Indian corporate law firms have thrived, even post-2008. But often steep professional pyramids exist within these firms – perpetuated by those with power exerting a combination of resource-advantages and mobbing-techniques – that can leave lower-level lawyers feeling excluded from this success. To combat this hierarchical status quo, unhappy lawyers are increasingly peeling-off to start their own new law firm enterprises. Peel-off lawyers are thus seeking to become the new 'Haves.' However, the goal for peel-off lawyers is not solely to earn higher incomes but also to create environments that are more democratic, transparent, and humane. As this study argues, such opportunities are now possible because of a more liberal, globalized economy, and given the commitment to greater egalitarian norms, this development is indeed welcome, especially as the next generation of corporate lawyers emerges within India.

I. INTRODUCTION

II. LAWYERS AS THE HAVE – AND THE HAVE-NOTS.

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I. INTRODUCTION

For students and scholars of socio-legal studies, Professor Marc Galanter's 1974 “Why the ‘Haves’ Come-Out Ahead”\(^1\) remains a seminal article in the literature. The ‘Haves’ piece has been lauded, evaluated, taught in classrooms, and deliberated extensively at conferences and symposiums for decades.\(^2\) Galanter’s article, in short, sought to provide a conceptual framework for understanding how those who possessed resources and experiences fared better in litigation than those who did not.\(^3\) Moreover, his notions of “one-shotters” versus “repeat players” have become familiar terms of art within the literature, and his discussions of how lawyer-sophistication affects client-chances of success in court are now well-accepted, ‘Galanter-invoked’ propositions.\(^4\)

Galanter’s ‘Haves’ article implicates the American system of justice in its analysis, and American law and social science scholarship has been directly impacted by this research. But the real source of inspiration for the piece came from Galanter’s extensive experience in India. Prior to writing the article from the confines of his office at Yale Law School where he was on fellowship, Galanter had spent much of the 1960s in India, researching legislation that sought to improve the lives of the country’s most vulnerable and deprived population of untouchables, or Dalits.\(^5\) It was through his Indian experience that Galanter’s early worldview towards law and social justice was shaped; his engagement with lawyers, clients, judges, and the courts in India served as the basis for his belief that while the ‘Haves’ retain seemingly insurmountable advantages over the ‘Have-Nots,’ “utopian”\(^6\) reforms ought to be pursued in the hopes that real changes to the status quo could emerge.

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2. The referencing and literature review of the ‘Haves’ article appears later in this article.
3. See generally Galanter, supra note 1.
4. Id.
6. See Galanter, supra note 1, at 144, 149.
In 1999, the journal that first published the ‘Haves’ article, *Law and Society Review* (LSR), celebrated the twenty-fifth anniversary of the Galanter-piece.\(^7\) That issue of the LSR brought together luminaries in the field who each discussed the valuable contributions of the article. A few years later, a book edited by Herbert Kritzer and Susan Silbey did something similar.\(^8\) In these commemorations as well as in scores of other works, scholars have sought to discern whether Galanter’s thesis applies in a range of settings, both within the United States and abroad.\(^9\) Within much of this literature an underlying premise is that the ‘Haves’ are strong because they are perched in positions of power within existing hierarchical pyramids. But another question inspired by the Galanter-article arises: *How are the ‘Haves’ able to enjoy such privilege in the first place and thereby continue their dominance over time?*

For those clients who constitute the ‘Haves,’ Galanter argued that one reason was because they had resources to hire lawyers. ‘Haves-clients’ could use lawyers (particularly those with specialized skills) to be guardians of their interests. As Galanter noted, such clients would strategically employ lawyers to “structure the transaction, play the odds, and influence rule-development and enforcement policy.”\(^10\) Otherwise put, lawyers were vigilant surrogates for those who they represented on a regular basis.\(^11\)


\(^10\) See Galanter, *supra* note 1, at 118.

\(^11\) Although, it is important to note that Galanter recognizes that lawyers in this situation will not blindly follow their clients’ wishes. Lawyers, he argues, need to be protective of their own socio-economic positions. This is because “lawyers have a cross-cutting interest in preserving complexity and mystique so that client contact with this area of law is rendered problematic. Lawyers should not be expected to be proponents of reforms which are optimum from the point of view of the clients taken alone. Rather, we would expect them to seek to optimize the clients’ position without diminishing that of lawyers.” *Id.*
The luxury of being part of the ‘Haves,’ of course, was not restricted to clients. Lawyers too could be classified as such. Galanter recognized this point, but even as he recently noted, it played only a minor role in his article. Therefore, the aim of this study is to build upon Galanter’s insights in order to focus on how some lawyers can become and remain as the ‘Haves’ while others within the profession struggle as the ‘Have-Nots.’

Section One of this study reviews the literature on this subject. As will be seen, there is variation as to what qualifies lawyers as being part of the ‘Haves’ regime. For example, depending upon context, ‘Haves’-lawyers may possess one or more of the following: personal wealth, government connections, politically powerful and rich clients, or an affiliation with an economically strong, high-status firm. The way lawyers gain access to – and then eventually power over – these assets and contacts frequently depends, not surprisingly, on how talented they are. But other demographic, background, and institutional factors matter as well, which Section One documents.

Section Two introduces a second literature into the discussion, which this study contends needs greater consideration by those who examine how – at least in terms of the legal profession – the ‘Haves’ are able to retain their positions of power within their professional circles. The social psychology literature is referenced in this section, and as a review of this material shows, a set of entrenched norms and behavioural patterns exercised by those with privilege also tends to contribute to the reification of the status quo. As scholars from this field have found, certain aggressive and passive tactics are often employed by power-brokers as a means of consolidating their reigns and hindering the upward

12 Indeed, Galanter acknowledges this point himself, noting that lawyers “are themselves RPs [repeat players].” Id. at 117.
13 Author conversation with Galanter (Sept. 28, 2011).
15 It is conceded here that a firm with high status or prestige may not necessarily have a high, strong, or positive reputation. This point is discussed further in Section One. Further, the sources that discuss this point will be noted in Section One.
mobility of those beneath them. The result is a climate where the ‘Have-Nots’ are commonly left to feel insecure, powerless, and stuck in the employment positions in which they find themselves. In *Bourdienian* terms, the ‘Haves’ possess and wield a type of valuable capital that greatly advantages them within this context.16

Section Three then moves to an examination of whether this evidence found within the social psychology literature applies to a legal profession setting. With the fortieth anniversary of Galanter’s publishing the ‘Haves’ manuscript soon approaching,17 it seems most appropriate to return to the legal environment where he gained his first experiences on this subject: India. Relying on ethnographic and interview data collected from the field during 2010, 2011, and 2012, this section proposes to examine the corporate sector of the Indian legal profession.18

To close observers of the Indian bar, the selection of this sector will be logical. Since India liberalized its economy in 1991, corporate law firms have garnered great attention from domestic and international clients, academics, and the media.19 In particular, equity partners within the elite firms have

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17 The article was published in 1974, but the writing was completed three years earlier, as Galanter was not able to find a publisher for the manuscript between 1971 and 1974. Author conversation with Marc Galanter, (Sept. 28, 2011).


19 *See generally* Krishnan, *Globetrotting Law Firms*, supra note 18.
reaped enormous financial gain. Liberalization has further enhanced the power of these lawyers already at the higher-end of the pyramid.

At the same time, of course, not all Indian corporate lawyers can be part of the ‘Haves.’ Indeed many feel frustrated by the long hours they work, the low pay they receive, and the limitations of upward mobility. With liberalization and the continuing globalization of the Indian economy, though, these unhappy lawyers see opportunities for bettering their economic lots. Increasing numbers have made an affirmative decision to break from their current employers – usually law firms but sometimes corporate counsel in-house offices or other settings – in order to create a new set of circumstances in hopes of achieving greater professional satisfaction. Such peel-off lawyers – the focus of this study – aspire to have more institutional security and more resources. In Galanter-terms, peel-offs wish to be part of the ‘Haves.’

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20 Id.  
21 On the corporate counsel point, see most recently, Kian Ganz, SRGR Senior Associate, Videocon Counsel Start Up Corporate-IP Firm in Noida, GK, LEGALLY INDIA (Aug. 2, 2012), http://www.legallyindia.com/201208022992/Law-firms/srgr-senior-associate-videocon-counsel-start-up-corporate-ip-firm-in-noida-gk. In addition, lawyers have been known to peel-off from foreign law firms and return to India, but in these cases the interviews reveal it is more for a combination of personal reasons (a desire to go home) and professional opportunities (a desire to work in a relatively more vibrant market) rather than frustration at the foreign law firm itself. Less commonly found however, at least in data collected for this study, are lawyers graduating from educational institutions – within India or abroad – and directly starting up corporate law firms of their own.  
22 For a recent piece on start-up firms, in which the journalist interviewed the author, see Kian Ganz, Asking Clients: Can Small Legal Start-Ups Compete with the Big Boys? And Do You Have to Risk Your Neck? LEGALLY INDIA (Aug. 12, 2012), http://www.legallyindia.com/201208133008/Analysis/asking-clients-can-small-legal-start-ups-compete-with-the-big-boys-and-do-you-have-to-risk-your-neck. For a discussion on the role of globalization and the changing nature of India’s legal profession, see David B. Wilkins and Mihaela Papa, Globalization, Lawyers, and India: Toward a Theoretical Synthesis of Globalization Studies and the Sociology of the Legal Profession, 18 INT'L. J. LEGAL PROFESSION 175 (2012). To be sure, there are lawyers within elite law firms who have strong feelings of economic and professional frustration, who do not risk openly challenging the presiding authority as the fear of adverse consequences is simply too high. This point will be explored in Section III. At times, these lawyers employ what James Scott has famously referred to as “weapons of the weak” – or the use of more implicit means of resistance – to challenge those who subordinate them. See James Scott, WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE (1985). Also see TYLER AND BLADER, supra note 16. Yet for most of these recipients,
But as this Section will additionally argue, peel-off lawyers are also often motivated to leave their former environments because of an existing, debilitating hierarchical culture they perceive as being reified by those with power. As the evidence will suggest, there is a set of forces at work—exemplified by the social psychology literature—that reinforces this steep hierarchical ethos in two ways. First, actions can be taken by power-holders that are obvious and intimidating—such as overt bullying, harassment, or verbal degradation. Or second, the actions can be more indirect in nature, which also fosters a sense of superiority by the ‘Haves’ and an inadequacy by the ‘Have-Nots.’ In this latter circumstance, it is not unusual to find the former engaging in systematic behaviour such as constant name-dropping, self-aggrandizement, repeated references to prestigious ties, games of intrigue, and other passively insulting actions that breed insecurity by those who regularly feel and already are beholden. It is this constellation of actions that contributes to disillusionment and motivates the disaffected lawyers to peel-off.

Yet that there exists this peel-off phenomenon, as this article will argue, is indeed a positive development. Emerging is a new and exciting corps of legal professionals within India who are aggressively competing in the legal services space and are making their mark within this sector. However, peel-offs are not necessarily ‘one-offs.’ A group of peel-off lawyers who form a firm, for instance, can and sometimes do become much like the lawyers from whom they sought to distance themselves, thereby prompting another round of peel-offs. The result is even more players entering the evolving and rapidly growing Indian legal services sector. And while there are various challenges that confront peel-offs, there remains among them a genuine belief that the presence of a more liberal, global Indian economy now offers greater professional opportunities that were previously not available.

II. LAWYERS AS THE HAVE—AND THE HAVE-NOTS

As stated, with the focus on clients (particularly those who are litigants) the Galanter-article only looked cursorily at how lawyers can be part of the ‘Haves.’ Still, for Galanter these privileged practitioners tended to have high socio-economic status, elite pedigrees, affiliations with prestigious firms, and clients who were wealthy. Conversely, ‘Have Not’ lawyers were likely to be “drawn from lower socioeconomic origins, to have attended local, proprietary or part-time law schools, to [have] practice[d] alone rather than in large firms, and to [have] possess[ed] low prestige within the profession.” Furthermore, Galanter also argued that ‘Haves’-lawyers usually had ample networks and connections that they used to enhance their professional standing. Subsequent research on the Chicago bar in 1975 confirmed many of these intuitions.

Galanter tapped into a conversation that earlier scholars had been addressing for some time. In 1959, Dan Lortie found that professional environment — even more than where one attended law school — contributed most to a lawyer’s reputation and standing. Jerome Carlin drew a similar conclusion in his study of solo-practicing lawyers. Carlin documented how because they lacked resources, struggled to earn decent livings, and had weak skills-training and often little talent, solo-practitioners ultimately cut corners and engaged in disreputable ethical practices, which thereby

23 See Galanter, supra note 1, at 115-19.
24 Id. at 116.
25 Id. at 115-19.
27 The scholar Abraham Blumberg observed a similar point in his study of prosecutors and defence lawyers, noting that such lawyers with high professional standing exploited their connections and influence — among allies and adversaries alike. See Abraham Blumberg, Criminal Justice (1967), also cited by Galanter, supra note 1, at 115, 118. See also Abraham Blumberg, The Practice of Law as a Confidence Game, 1 L. & Soc. Rev. 15 (1967).
entrenched their poor socio-economic standing. Other studies by scholars such as Ladinsky, Handler, and Smigel also highlighted how stratification of the legal profession was directly tied to structural factors, including employment location, sources of business, and closeness to government officials.

If not explicitly stated, the message intimated throughout these works was that the hierarchy present within the legal profession was often intentionally and purposively perpetuated by those with power. Scholars in subsequent years further pursued this point. Scholarship emerged describing how both aggressive and passive anti-Semitism kept Jewish lawyers from upward mobility within historically Protestant-dominated firms for several decades during the twentieth century. Detailed and differing perspectives showed how various forms of gender dynamics affected – and frequently hampered – the progress of aspiring female lawyers within their employment settings.


Joel F. Handler, The Lawyer and His Community: The Practicing Bar in a Middle-Sized City (1967).


On this point of stratification, Galanter notes this observation as well. See Galanter, supra note 1, at 116 n. 50. For more recent studies, see MILTON C. REGAN JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (2005), and see, Elizabeth Chambliss, Measuring Law Firm Culture, in LAW, POLITICS, AND SOCIETY: LAW FIRMS, LEGAL CULTURE, AND LEGAL PRACTICE (ed., Austin Sarat 2010).


See, e.g., Cynthia F. Epstein, Women in Law (1981). For work discussing how women lawyers are as dedicated to their positions but often face choices that are binary, as between work and family, see John Hagan & Fiona Kay, Gender in Practice: Lawyers’ Lives in Transition (1995); John Hagan & Fiona Kay, Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice, 41 L. & Soc’y Rev. 51-78 (2007); Fiona Kay & Elizabeth Gorman, Women in the Legal Profession, 4 Ann. Rev. L. & Social Sci. 299
usefully explained how two main strands of thought – the human capital school versus the social capital school – accounted for much of the literature’s focus on why women lawyers tended to earn less and face greater hurdles in professional advancement. There has also been a range of empirical studies focused on the hurdles that racial minorities – particularly African Americans – faced in pursuing successful legal careers. And in 2001, Herbert Kritzer added another dimension to this discussion by dispelling the common perception that contingency fee plaintiff’s lawyers were a homogenous group. Rather, this segment of the bar


38 See Kritzer, supra note 26.
was stratified along income levels, types of work performed, and client base, and this stratification, as Kritzer showed, affected the lawyers’ attitudes towards issues like “fee shifting (loser pays), damage caps, right to jury trial, and client solicitation.”

For many of these studies, stratification is related to the extent to which lawyers are specialized. The prevailing belief is that with greater specialization comes greater expertise. Lawyers who possess such specialized skills are thought to be in higher demand by those (typically wealthier) clients seeking more sophisticated legal services. As such, what develops are different universes – or what Heinz and Laumann have referred to as “hemispheres” – of lawyers, with some serving elite corporate clients and the vast majority of others representing more individual-based claimants. As another important study puts it, those lawyers in the former group often wind-up ‘taking it all,’ in that they earn more, have more power within their profession, and are happier with their careers and more optimistic about their future professional prospects.

All of this scholarship highlights various ways that hierarchy can be entrenched within the legal profession. This literature has hugely enlightened our understanding of lawyer-dynamics. Yet, beyond economic, demographic, and institutional factors, hierarchies are able to persist also because of certain behavioural tactics employed by those possessing positions of power. As the next section illustrates, these tactics can be exercised purposively in order to sustain the existing hierarchical pyramid and psychologically demoralize those who seek to challenge it.

III. HIERARCHY THROUGH A PSYCHOLOGICAL LENS

Over the past two decades the social psychology literature has been at the forefront of examining how particular behaviours contribute to hierarchical structures in the workplace. The scholarship in this area has been international,
with much of the first empirical evidence coming from Scandinavia. During
the 1980s and 1990s, the late Heinz Leymann helped pave the way for what
he referred to as employment-based “mobbing.” 42 For Leymann, mobbing,
or workplace bullying, was a complicated phenomenon that involved a range
of repeated, unwanted, and intimidating acts; all had the ultimate effect of
psychologically terrorizing an intended target in the employment setting. 43 Others
from Scandinavia also explored this subject, including the Norwegian scholar
Stale Einarsen, who saw workplace mobbing manifested in multiple ways. 44 One
mobbing method could be in unfair workloads and unreasonable expectations
foisted upon the target by the superior. 45 Another might be in the blocking
of a subordinate’s career advancement. 46 Still another could be through more
interpersonally devious methods against those with less power, ranging from
purposeful ignoring, rumour-mongering, and engaging in false accusations to
actions such as threats, aggression, and intimidation against these individuals. 47

During the past decade, many other psychologists have followed-up on
these different strands. 48 Two authors who have showed that workplace stress can

42 See, e.g., Heinz Leymann, Mobbing and Psychological Terror at Workplaces, 5 VIOLENCE &
VICTIMS 119 (2000); Heinz Leymann, The Content and Development of Mobbing at Work,
5 EUR. J. WORK & ORG’L PSYCHOL. 165 (1996); Heinz Leymann & A. Gustafsson,
Mobbing at Work and the Development of PTSDs, 5 EUR. J. WORK & ORG’L PSYCHOL.
251 (1996).
43 Id. at all cites; see also James E. Bartlett II & Michele E. Bartlett, Workplace Bullying:
An Integrative Literature Review, 13 ADVANCES IN DEVELOPING HUM. RESOURCES 69,
71-72 (2011) (although, interestingly, this review does not include any citations
to the pioneer Leymann).
44 See Stale Einarsen, Harassment and Bullying at Work: A Review of the Scandinavian Approach,
5 AGGRESSION & VIOLENT BEHAVIOR: A REVIEW JOURNAL 371 (2000); see also Stale
Einarsen, Helge Hoel, Dieter Zapf, & Cary Cooper, Bullying and Emotional Abuse in the Workplace: International Perspectives in Research and Practice (2003).
45 Id. at both cites; see also Bartlett & Bartlett, supra note 43, at 72-75.
46 Id. at all cites.
47 Id. at all cites.
48 See, e.g., Dawn Jennifer, Helen Cowie, & Katerina Ananiadou, Perceptions and
Experience of Workplace Bullying in Five Different Populations, 29 AGGRESSIVE BEHAVIOR 489
(2006) (discussing data from over 600 “managers, teachers, technicians, call centre
operators, and engineers” on how organizations can best cope with systematic
bullying in the workplace); Maarit A-L Vartia, Consequences of Workplace Bullying with
Respect to the Well-Being of Its Targets and the Observers of Bullying, 27 SCAND. J. WORK
ENVTL. HEALTH 63, 66 (2001) (noting degradation of subordinates by giving them
be exercised on a horizontal continuum as well as vertically are Gary and Ruth Namie. Serving as both scholars and practitioners, the Namies have written extensively on how, first, mobbing behaviour can range in intensity and type by, for instance, starting off as relatively minor incidents but then escalating into acts that are much more serious. Furthermore, while these actions are often perpetrated by a superior on a subordinate, they can occur also horizontally among members of the same cohort – a point noted too by other researchers.

Taken together, what these many studies show is that the social and psychological difficulties encountered within the workplace are real and multi-dimensional. In 2011 Bartlett and Bartlett produced an important literature review...
review, detailing the different emotional pressures that help entrench hierarchies within the employment context. The below visuals illustrate the different planes under which tensions can be experienced – supervisor vis-à-vis subordinate (vertical mobbing) – and colleagues vis-à-vis colleagues (horizontal mobbing).52

**TABLE 1**

**WORK RELATED MOBBING [SUPERVISORS TARGETING SUBORDINATES]**53

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>[Assigning] Work Overload</td>
<td>Shifting Opinions</td>
<td>Excessive Monitoring</td>
</tr>
<tr>
<td>Removing Responsibility</td>
<td>Overruling Decisions</td>
<td>Judging Work Wrongly</td>
</tr>
<tr>
<td>Delegation of Menial Tasks</td>
<td>Flaunting Status/Power</td>
<td>Unfair Criticism</td>
</tr>
<tr>
<td>Refusing Leave [Requests]</td>
<td>Professional Status Attack[s]</td>
<td>Blocking Promotion</td>
</tr>
<tr>
<td>[Having] Unrealistic Goals</td>
<td>Controlling Resources</td>
<td></td>
</tr>
<tr>
<td>Setting up to Fail</td>
<td>Withholding Information</td>
<td></td>
</tr>
</tbody>
</table>

52 The tables are drawn from Bartlett & Bartlett, *supra* note 43 at 73-75. Where needed to contextualize for the discussion in this paper, more description and detail are added to the tables in brackets.

53 *Id.* at 73.


**Table 2**

**Personal**

**Indirect [Methods of Mobbing]**

([Can Occur between Supervisor & Subordinate or among Peers Themselves]^{54}

<table>
<thead>
<tr>
<th>Isolation</th>
<th>Gossip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ignoring</td>
<td>Lies</td>
</tr>
<tr>
<td>Excluding</td>
<td>False Accusations</td>
</tr>
<tr>
<td>Not Returning Communications</td>
<td>Undermining</td>
</tr>
</tbody>
</table>

**Table 3**

**Personal**

**Direct [Methods of Mobbing]**

([Can Occur between Supervisor & Subordinate or among Peers Themselves]^{55}

<table>
<thead>
<tr>
<th>Verbal Attack/Harassment</th>
<th>Personal Criticism</th>
<th>Negative Eye Contact/Staring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belittling</td>
<td>Intentionally Demeaning</td>
<td>Intimidation</td>
</tr>
<tr>
<td>Yelling</td>
<td>Humiliation</td>
<td>Manipulation</td>
</tr>
<tr>
<td>Interrupting Other</td>
<td>Personal Jokes</td>
<td>Threats</td>
</tr>
</tbody>
</table>

Bartlett and Bartlett’s amassing of the literature also shows that these different perspectives on mobbing are not mutually exclusive. Within an employment setting there may be overlap and there may be involvement of multiple parties, some of whom are instigators in certain circumstances and victims in others.^{56} Moreover, as they and other previous scholars have recognized, the effects of such behaviours can take a serious toll on organizations and individuals in numerous ways. For example, there is evidence that the productivity of victims declines as

^{54} Id. at 74.
^{55} Id. at 75.
^{56} Id. at 72-75.
the instigation continues or intensifies.\textsuperscript{57} There are other costs, including healthcare expenses for victims and legal costs associated with lawsuits.\textsuperscript{58} And where the workplace is allowed to remain toxic as a result of such an atmosphere, studies show a decrease of morale, ineffective leadership, and a marked decline in the reputation of the particular institution.\textsuperscript{59}

Social psychologists recognize of course that mobbing can intersect with the areas of harassment (including sexual harassment) and employment discrimination. Harassment and discrimination are often viewed by some as falling “under a bullying umbrella.”\textsuperscript{60} At the same time, however, mobbing is frequently studied separately from harassment and discrimination.\textsuperscript{61} Perhaps one reason is because


\textsuperscript{58} Bartlett & Bartlett, \textit{supra note 43}, at 75-76 (noting other studies, for example, see Namie (2003), \textit{supra note 49}; Susan L. Johnson, \textit{International Perspectives on Workplace Bullying among Nurses: A Review}, 56 INT’L NURSING REV. 34 (2009); Susan Gardner & Pamela R. Johnson, \textit{The Leaner, Meaner Workplace: Strategies for Handling Bullies at Work}, 28 EMP. REL. TODAY 23 (2001); Lyn Quine, \textit{Workplace Bullying in Nurses}, 6 J. HEALTH PSYCHOL. 73 (2001); Jacqueline Randle, Keith Stevenson, and Ian Grayling, \textit{Reducing Workplace Bullying in Healthcare Organizations}, 21 NURSING STANDARD 49 (2007); Judith Macintosh, \textit{Experiences of Workplace Bullying in Rural Areas}, 26 ISSUES IN MENTAL HEALTH NURSING 893 (2005)).


sexual harassment, in particular, is seen by some as inherently distinct from other forms of workplace intimidation. Another possibility may be that because sexual harassment and employment discrimination have statutory and case law roots, social psychology scholars who focus on mobbing opt to eschew these subjects in their analyses, leaving them instead to be addressed by legal scholars. Interestingly, one academic who has bridged the gap is law professor David Yamada. Yamada has spent much of his career writing on workplace mobbing from a legal perspective while also being sensitive and aware of its business, social, psychological, and human dignity ramifications. Yamada’s work helped spawn the New Workplace Institute, and he is also a key researcher at the Workplace Bullying Institute founded by the above-mentioned Gary and Ruth Namie.

For work that has specifically argued for keeping the distinction between sexual harassment and more general workplace bullying, see Jessica A. Clarke, Beyond Inequality? Against the Universal Turn in Workplace Protections, 86 IND. L. J. 1219 (2011). See also Jordan F. Kaplan, Help is on the Way: A Recent Case Sheds Light on Workplace Bullying, 47 Hous. L. Rev. 141 (2010). For such an analysis, see, e.g., Douglas R. Richmond, The Contemporary Legal Environment and Employment Claims against Law Firms, 43 Tex. Tech. L. Rev. 471 (2011). Obviously this is not to suggest that all social psychology scholars have omitted studying sexual harassment and employment discrimination. But as seen above, much of the literature treats bullying distinctly from these two areas. See also Katherine Lippel, The Law of Workplace Bullying: An International Overview, 32 Comp. Lab. L. & Pol’y J. 1 (2010) (a special issue providing a comparative approach to this development, featuring Yamada as well as Helge Hoel, Philipp S. Fischinger, Diego Lopez Fernandez, Rachel Cox, and Joan Squelch); Michael E. Chaplin, Workplace Bullying: The Problem and the Cure, 12 U. Pa. Bus. L.J. 437 (2010).


For background on Yamada, see: http://www.law.suffolk.edu/facultydirectories/faculty.cfm?InstructorID=59. Yamada has also drafted the Healthy Workplace Bill, which is currently being deliberated by several state legislatures. For background on this bill, see: http://www.workplacebullying.org/wbiresearch/wbi-colleagues/; and see, http://healthyworkplacebill.org/. See also David C. Yamada, Crafting a Legislative Response to Workplace Bullying, 8 Emp. Rts. & Emp. Pol’y J. 475 (2004). Note that, for this issue of this journal, Yamada also served as editor of a special symposium on this topic.
The above literature review highlights how there is great empirical evidence to support the contention that hierarchies within work environments can be the result of systematic socio-psychological factors. The research has been international in scope and conducted in a range of professional sectors, with the important commonality being degradation, exclusion, or intimidation meted-out on more vulnerable employees by instigators seeking to enhance their own power. As will be discussed next, that such behaviour is occurring within the Indian corporate bar importantly contributes not just to the hierarchy that exists but also to why peel-off lawyers are responding the way they do.

IV. HIERARCHY WITHIN THE INDIAN CORPORATE LAW FIRM SECTOR

1. More than Just the Big Names – Demographics and Methodology

The Indian law firm sector clearly has experienced great growth since the country liberalized in 1991. The British-based RSG Consultancy recently ranked the top forty law firms in India on the basis of satisfaction by Indian and foreign clients, as well as the views of Indian lawyers. Although the study has a few methodological limitations, the information is useful for our purposes because

66 Indeed the concept itself, depending on country and context, varies as well – it is known as mobbing in certain parts of Europe, moral harassment in other parts of the continent, and workplace bullying in the U.S. See Maria Isabel S. Guerrero, The Development of Moral Harassment (or Mobbing) Law in Sweden and France as a Step Toward EU Legislation, 27 B.C. Int'l & Comp. L. Rev. 477 (2004).

67 This study should be commended because it conducted important qualitative interviews with “231 clients, of which 103 were multi-nationals. The rest were Indian corporations including 41 in the ET500 [ECONOMIC TIMES] of which 11 were in the top 20. Banking and financial institutions made up 65 of all respondents, nearly 30% of the sample group.” In addition, it also interviewed and investigated 70 Indian law firms.” And the ranking itself was based on how these respondents viewed each firm along the following dimensions:

· Quality: score based on performance in deals tables for M&A, project finance, private equity and capital markets by both value and volume for the past 12 months and past 3 years; feedback from clients on quality of work, expertise and service delivery.
· Profile: score based on a count of total number of mentions and qualitative feedback from clients, Indian lawyers and foreign lawyers, with greater weight given to unprompted recommendations.
· Capability: score based on size of law firm by number of lawyers and estimated turnover, capability by practice area and locations, feedback from clients on ability to handle large scale work and client assessment of the firm’s bandwidth.”
of what it shows in terms of post-1991 law firm growth. Namely, of these forty top firms, eight formed between 1991 and 1999 and fifteen emerged after 2000.

**Table 4**

<table>
<thead>
<tr>
<th>Firm (by RSG Rank)</th>
<th>Year Created</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Amarchand Mangaldas</td>
<td>1917</td>
</tr>
<tr>
<td>2. AZB &amp; Partners</td>
<td>2004</td>
</tr>
<tr>
<td>4. Khaitan &amp; Co</td>
<td>1911</td>
</tr>
<tr>
<td>5. Luthra &amp; Luthra</td>
<td>1989</td>
</tr>
<tr>
<td>6. Trilegal</td>
<td>2000</td>
</tr>
<tr>
<td>7. DSK Legal</td>
<td>2001</td>
</tr>
<tr>
<td>8. Desai &amp; Diwanji</td>
<td>1930</td>
</tr>
<tr>
<td>10. Lakshmi Kumaran &amp; Sridharan</td>
<td>1985</td>
</tr>
<tr>
<td>10. Anand &amp; Anand</td>
<td>1923</td>
</tr>
<tr>
<td>10. S&amp;R Associates</td>
<td>2005</td>
</tr>
<tr>
<td>13. Mulla &amp; Mulla</td>
<td>1895</td>
</tr>
<tr>
<td>15. Wadia Ghandy &amp; Co</td>
<td>1883</td>
</tr>
<tr>
<td>15. Crawford Bayley &amp; Co</td>
<td>1830</td>
</tr>
<tr>
<td>15. Majmudar &amp; Co</td>
<td>1943</td>
</tr>
<tr>
<td>15. Bharucha &amp; Partners</td>
<td>2008</td>
</tr>
<tr>
<td>19. Fox Mandal</td>
<td>1896</td>
</tr>
</tbody>
</table>

See RSG-India: Top 40 law firms 2011 at 5, http://rsg-india.com/sites/default/files/RSG%20Top%2040_2011.pdf. Note, the dates of the firms’ years of creation come from the on-line legal magazine, Legally India, http://www.legallyindia.com/wiki/Indian_law_firms. Even though these RSG data are important, there are a few restrictions. First, it is hard to determine the extent to which the clients were familiar with all forty firms in the table. Second, were solo practicing senior advocates interviewed? It appears not, and if not, why not? This point is important to consider because many senior advocates (particularly those working in the Supreme Court) serve as corporate, courtroom litigators and work hand-in-hand with many law firms and corporations. They too would be a crucial source of information on the reputation of law firms in India. And third, government officials, it seems, were not interviewed. This is significant because much of law firms’ big infrastructure and project finance work is on behalf of the government.
In addition, on a key corporate law front – mergers and acquisitions (M & A) – even though there has been a decline in work over the past year, the total value


and number of deals completed between 2009 and 2011 remain impressive, with post-1991 Indian law firms making their mark here as well. Table 5 aggregates and compares the number of pre-1991 versus post-1991 firms working on these top deals.

Table 5

<table>
<thead>
<tr>
<th>Year</th>
<th>M &amp; A Deals and Indian Law Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>Total M &amp; A deals involving Indian law firms</td>
<td>214</td>
</tr>
<tr>
<td>Total value of M &amp; A deals involving Indian law firms</td>
<td>~$47bn</td>
</tr>
<tr>
<td>Pre '91 Indian firms involved</td>
<td>5</td>
</tr>
<tr>
<td>Post '91 Indian firms involved</td>
<td>10</td>
</tr>
</tbody>
</table>

70 See Ganz, 2011 M & A League Table, supra note 69 (citing Merge Market, www.mergemarket.com, as the source for the data). See also Indian M & A Roundup, MERGER MARKET (Jan. 13, 2010), http://www.mergemarket.com/pdf/Indian-M&A-Year-End-2010-roundup.pdf, Neha Chauhan, Desai & Diwanji Rules 2009 M & A Roost with Amarchand, AZB, Khaitan, LEGALLY INDIA (Jan. 13, 2010), http://www.legallyindia.com/20100113388/Corporate/-/MA/desai-a-diwanji-rules-2009-maa-roost-with-amarchand-azb-khaitan (citing Merge Market data for this year). Note, for the 2009 and 2010 data, foreign law firms were included in the tables produced by Merge Market, whereas for 2011 foreign law firms were separated out. As such 2009 and 2010 data were calculated by counting them from two locations. For 2010, this included: a) the table entitled: “Legal Advisor League Tables by Value – 2010” and b) “Legal Advisor League Tables by Deal Count – 2010.” (http://www.mergemarket.com/pdf/Indian-M&A-Year-End-2010-roundup.pdf). For 2009, this included: a) the table entitled “M&A advisers by volume, 1 January - 31 December 2009” and b) the table entitled “M&A advisers by volume, 1 January - 31 December 2009.” http://www.legallyindia.com/20100113388/Corporate/-/MA/desai-a-diwanji-rules-2009-maa-roost-with-amarchand-azb-khaitan (citing Merge Market data for this year). The result was that for 2010, when drawing on the two tables to ascertain the Indian firms, the list included: AZB, Trilegal, Talwar, Thakore and Associates, Amarchand, S & R, Crawford Bayley & Co., Luthra & Luthra, Desai & Diwanji, Tatva, Khaitan & Co., Nishith Desai Associates, J. Sagar Associates, and DSK Legal. For 2009, the list included: Desai & Diwanji, Khaitan & Co., AZB, Amarchand, Trilegal, J. Sagar Associates, Luthra & Luthra, Nishith Desai Associates, Platinum Partners, DSK Legal, P & A Law Offices, and Talwar, Thakore and Associates. For both years, the respective number of deals and their values were tallied for each firm to produce the number in Table 5. Admittedly, this is not the ideal way of comparing all three years, but given the lack of separation of foreign firms from the 2010 and 2009 Merge Market data, this approximation is the best that can be done; and moreover, it highlights the main point: post-1991 firms have played a major role in M & A deals in India.
Per respective year, more post-1991 law firms have been involved in these
deals over this three year timeframe, with AZB (formed in 2004) handling the
most M & A work in 2010 and 2011.\footnote{See Ganz, 2011 M & A League Table, \textit{infra} note 69 (citing Merge Market as the source for the data). See also \textit{Indian M & A Roundup}, \textit{Merge Market} (Jan. 13, 2010), http://www.mergermarket.com/pdf/Indian-M&A-Year-End-2010-roundup.pdf.} AZB has become an elite powerhouse and is spoken of in the same league as India’s historic and largest firm, Amarchand
& Mangaldas & Suresh A. Shroff & Company.\footnote{Much ink has been devoted to these two firms. For a sample of background pieces, see Rajeev Dubey, \textit{The Art of the Deal}, \textit{Business World} (Aug. 20, 2011), http://50.17.217.105/businessworld/businessworld/content/Art-Deal.html. See also interview of Zia Mody by Abha Bakaya, The Date: Pathbreakers, Bloomberg Television (Aug. 7, 2011), http://www.youtube.com/watch?v=vXLBgAYNPBY; Anthony Lin, \textit{Not Just a Family Matter}, \textit{The Asian Lawyer} 22 (Summer 2012).} Furthermore, another report
discusses how for the 2011 calendar year, ten Indian law firms were involved in
the representation of 186 infrastructure and project finance deals that were worth
over 79 billion U.S. dollars.\footnote{Prachi Shrivastava, \textit{Amarchand Replaces Luthra at Top of 2011 Project Finance League Table}, \textit{Legally India} (Feb. 8, 2012), http://www.legallyindia.com/201202082558/Projects/amarchand-replaces-luthra-at-top-of-2011-project-finance-league-table (citing data from Dealogic, and noting: “In seventh place on the list is one-year-old project Clasis Law, where Mumbai-based projects partner Ishtiaq Ali completed 14 deals worth $3.6bn, after it broke away from ALMT Legal.”).} And one of the firms, KJSV, formed in 1996, is an interesting
combination of old and new, serving as a recent offshoot of the historic Khaitan
& Company which was founded in 1911.

These examples highlight how lucrative corporate law work in India is
being done by a variety of firms with a range of histories. Some pre-1991 firms
trace their roots to the colonial era, like Amarchand and Fox Mandal, but also
include others such as Crawford Bayley, Tyabji Dayabhai, Wadia Ghandy, Kanga

\footnote{Prachi Shrivastava, \textit{Amarchand Replaces Luthra at Top of 2011 Project Finance League Table}, \textit{Legally India} (Feb. 8, 2012), http://www.legallyindia.com/201202082558/Projects/amarchand-replaces-luthra-at-top-of-2011-project-finance-league-table (citing data from Dealogic, and noting: “In seventh place on the list is one-year-old project Clasis Law, where Mumbai-based projects partner Ishtiaq Ali completed 14 deals worth $3.6bn, after it broke away from ALMT Legal.”).}

\footnote{Id.; see also \textit{infra} Table 6; Neha Chauhan, Khaitan Jayakar Sud and Vohra (KJSV) Oens in Pune and Makes Two New Partners, \textit{Legally India} (May 11, 2010), http://www.legallyindia.com/20100511803/Law-firms/khaitan-jayakar-sud-and-vohra-kjsv-opens-in-pune-and-makes-two-new-partners.}

For all these firms, including Amarchand, which has over 500 lawyers today, each started with small numbers and has grown with the opening of the economy. However, the manner in which they have historically governed themselves has tended to follow one of two models – the family-based, kinship approach or the personality-driven approach. Kinship firms typically have adhered to deeply-wedded rules and norms that limit upward mobility for the vast majority of lawyers within them. In addition, although these firms tend to be wealthy and prestigious, there is great disparity in compensation between those (relatively few) who are equity partners (typically family members) and the rest of those who are not. Personality-driven firms have tended to see a single lawyer (or perhaps two or three lawyers) serve as the defining figure of the particular law firm. In these firms, most major executive decisions must be approved by this individual, including compensation, work assignments, significant client-related matters, and

75 See infra Table 6; see also Krishnan, Globetrotting Law Firms, supra note 18.
76 Colleagues of mine in the Harvard Globalization, Lawyers, and Emerging Economies project have worked on this point. However, their important work is not yet available for citation; when it does become so, it will of course be cited. For parallel reference support, see Id. at both cites. See also Lin, supra note 72; note also that Amarchand had just 30-plus lawyers during the late 1990s. Such increase in personnel parallels a point made in the literature by Marc Galanter and Simon Roberts in their evaluation of elite British law firms. As they note, today’s mega-powerful, mega-sized ‘Magic Circle’ firms started off in London as boutique, family-based enterprises in the early twentieth century but then grew exponentially following the economic boom after the Second World War. With economic growth, whether it is in the United Kingdom or in India during the 2000s, the legal services sector expands. See Marc Galanter & Simon Roberts, From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century, 15 INT’L J. LEG. PROF. 143 (2009).
77 Colleagues of mine in the Harvard Globalization, Lawyers, and Emerging Economies project have worked on this point. However, their important work is not yet available for citation; when it does become so, it will of course be cited. For parallel reference support, see generally Krishnan, supra note 18; see also Kian Ganz, Indian Law Firms: Too Young to Live, LIVEMINT.COM (Feb. 16, 2012), http://www.livemint.com/kianganz.htm; Kian Ganz, India’s Biggest Law Firm Prepares for Next Stage of Evolution, LIVEMINT.COM (Feb. 17, 2012), http://www.livemint.com/2012/02/17011534/India8217s-biggest-law-firm.html.
78 Id. at all cites.
the hiring, firing, and promotion of other lawyers in the firm. Yet with kinship and personality-driven firms there can be and is overlap between the two in how these businesses operate, with some of these firms affirmatively implementing strategies meant to adapt to the changing times, including the embracing of principles such as greater inclusiveness and participation, transparency in governance, and meritocracy.\textsuperscript{79}

Since the opening of the markets, the dynamics of this traditional legal services space has changed the face of the Indian law firm sector. Within the past decade – although really dating back to 1991 – peel-off firms have become important providers of legal representation to a greater array of clients. Newer firms with purposefully bold names like Platinum Partners, Phoenix Legal, Indus Law, and Tatva Legal\textsuperscript{80} have been in the thick of several noteworthy corporate and transnational deals over the past decade. So too have firms like S & R Associates, Talwar Thakore & Associates, and Bharucha & Partners,\textsuperscript{81} each having peel-off lawyers within them with tremendous corporate experience.

Moreover, contrary to conventional wisdom, the corporate law firm sector in India is not restricted to just three or four dozen firms. The website HG.Org lists approximately 600 Indian corporate law firms in its directory.\textsuperscript{82} Admittedly, this site is imperfect because lawyers pay a small fee (under $200) to list their firms on it, thus contributing to a possible over-inclusive element to the database.\textsuperscript{83} (There is also under-inclusiveness to the site, as several well-known firms are not on it.) But the fact is that even if a fraction – say twenty percent – are actual law firms in the way typically conceived (rather than an individual Indian courtroom advocate calling him or herself a firm), then already the number of such Indian firms present in the marketplace exceeds one-hundred. As an alternative source,

\textsuperscript{79} Id. at all cites.
\textsuperscript{80} See infra Table 6.
\textsuperscript{81} For a listing and dates of establishment of these firms, see id.
\textsuperscript{82} See hg.org, under the law firms tab. In order to see the listing, select India under the “country” category. Then in the word-search box, enter “corporate.” Twelve pages with approximately fifty firms per page will appear.
\textsuperscript{83} Furthermore, the data on the firms vary considerably. For some, there are extensive backgrounds and histories, while for others there is little information at all – thus begging the question of which firms are actual business operations and which ones are not.
the author and his research assistant mined every news story from *Legally India*, the most in-depth electronic magazine of its kind that covers Indian law firms, from August 12, 2012 back to 2009 when this e-daily first appeared. The author and his assistant also conducted searches from other databases, and during the ethnographical research in India the author learned of additional firms as well. The results appear in Table 6, which highlights over two hundred corporate law firms within the country, with the likelihood being that there are many more. (For the purposes of this study, a firm is an organization that is consistently engaged in transactional, corporate matters and/or corporate litigation. Such a firm may do non-corporate litigation as well, but corporate work remains a part of the regular routine. Note, some observers may contend that a firm must mean having at least two partners within it whose agreement comports to the Partnership Act of 1932. But not all firms within the country follow this model and thus register under this law. For this reason, the study employs a necessarily broader definition of what a corporate law firm is.

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84 Great thanks go to the excellent and indefatigable research-work of my student, Patrick W. Thomas. The table draws upon multiple sources to bring this information together, including *Legally India*, the *India Business Law Journal*, Martindale Hubble, RSG, the websites of different law firms, the Society of Indian Law Firms website, contacts within the bar, various internet searches, BarandBench.com, ChambersandPartners.com, Linkedin.com, Economictimes.Indiatimes.com, Who’s Who Legal, Legal500.com, Practical Law Company, Indianlawyer250.com, www.scribd.com, and www.worldtrademarkreview.com. In addition, the following rules were followed to establish the year that a firm was founded: 1) Where there was no question as to the founding, that year was obviously used. 2) If one firm absorbed another, and the absorbing firm kept the same name, then Table 6 proceeded with listing when that absorbing firm was originally founded as the founding year. 3) If there was a merger and then the name of the firm changed, then indeed the date of the merger was considered the founding year. 4) If a firm simply changed the name without changing itself, then the name of the date-change would not count as the founding year, and what would be used would be the date the firm (before the rebranding) came into existence. 5) If two firms merged and then split-up, and both continued to remain afterward as individual entities, Table 6 referred back to the dates they each emerged as the respective founding years.

85 As stated, there is not a comprehensive directory of corporate law firms in India; thus there is a need to compile and triangulate the data in this manner, and with this type of endeavour there are firms sure to be inadvertently omitted.
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Of the above group over one-hundred have emerged just since 2000, with virtually all having a peel-off character to them.86 Hence, India’s corporate legal sector continues to grow, and one reason is because of peel-offs, which have made the market increasingly exciting and promising for clients, law school graduates, and the lawyers themselves.87

In terms of who precisely peel-off law firm lawyers are, they tend to be in their late twenties and early thirties. (Although that is not always the case—consider that three of the most prominent peel-off lawyers in recent years were senior partners in highly-reputed firms.88) Furthermore, those who have peeled-off from

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86 The exact number is one hundred and two. Having a ‘peel-off character’ means that in most cases these firms emerged as a result of lawyers leaving a previous firm to establish a new entity. However, in some cases, a firm already existed, but then a lawyer left a previous firm, joined with this already-existing firm, and thereby altered the nature and structure of the already existing firm. The most common example occurs when a peel-off joins a solo practicing courtroom advocate, to whom he/she is typically related. From there the new entity takes on a much more firm-type of existence—hiring more lawyers, moving into transactional work (instead of purely litigation), and likely moving into an office that conveys a more traditional firm-like presence.

87 This point was made very astutely in a business journal article in 2009. See Alfred Romann, *Rising Stars, Unsung Heroes*, India Business Law Journal 37 (March 2009). The India Business Law Journal is an extremely helpful resource for those interested in tracking law firms in India. The magazine dates back to 2007, and this study relies on the journal’s discussions of the different firms in its various issues in order to create Table 6.

88 Colleagues of mine in the Harvard Globalization, Lawyers, and Emerging Economies project have worked on this point. However, their important work is not yet available for citation; when it does become so, it will of course be cited. (For parallel supporting cites, see ones below.) There will be a further discussion of the peel-off youth in the
the traditional corporate law firms generally are graduates from the more highly reputed Indian law schools. They have also had some international experience – as a student in an international moot court competition, or as a holder of a foreign law degree, or having done work abroad while a lawyer in a former firm. Peel-offs typically favour liberalizing India’s legal services market as well. In fact, from a self-perception point of view, they see themselves as global lawyers, as professionals who are intimately familiar with the global legal landscape.89

This phenomenon of peel-off lawyers, while seeming to occur in greater numbers today, is not entirely a recent occurrence, however. One of India’s largest and most successful and respected firms, Jyoti Sagar Associates, has been described by its founder as a firm that was a start-up in the 1990s, after this lawyer broke-off from his uncle’s firm, which was and remains a well-known outfit in its own right.90 While it started as a peel-off, JSA has become a type of establishment firm, where although attrition rates are comparatively not as high as other firms, there are those who do leave and do seek to pursue their own paths – much in the same way as the organization’s original peel-off lawyer, Jyoti Sagar, did years ago.

next section, but some examples of senior peel-offs departing their formers places of employment include the following prominent lawyers: Suresh Talwar, who spent decades at the firm of Crawford Bayley before starting-up TTA, Talwar, Thakore, and Associates, in 2007. See Monica Behura, A Host of Start-Up Law Firms Show the Way, ECONOMIC TIMES (Sept. 11, 2009), http://economictimes.indiatimes.com/opinion/india-emerging/a-host-of-startup-law-firms-show-the-way/articleshow/4996959.cms. Then there are Alka and M.P Bharucha. The former started her career at Mulla & Mulla and then went to Amarchand, before starting up Bharucha & Company in 2008. M.P. Bharucha was also a partner at Amarchand prior to the formation of the peel-off with his wife. He also was at Mulla & Mulla as well. See INDIAN LAWYER 250, http://www.indianlawyer250.com/people/41059/inl250/5/alka-bharucha/; also see http://www.indianlawyer250.com/people/22962/inl250/99/mp-bharucha/. And recently, the famed arbitration lawyer and former partner at Amarchand, Ciccu Mukhopadhyaya, left the firm to go to the courts as a senior advocate. See Kian Ganz, Amarchand Senior Equity Litigator Ciccu Leaves with Gown & Blessing to Start Senior Counsel Practice, LEGALLY INDIA (Jan. 4, 2012), http://www.legallyindia.com/201201042465/Law-firms/amarchand-senior-equity-litigator-ciccu-leaves-with-gown-a-blessings-to-start-senior-counsel-practice.

89 This summary of attitudinal information comes from a summation of the interviews, which will be discussed in the next section.

Thus, to better understand today’s landscape interviews were conducted between 2010 and 2012 mainly with lawyers from firms listed in Table 6. In total, interviews with thirty-six lawyers representing twenty-five family and personality-driven firms were completed. In addition, interviews occurred with twenty-five peel-off lawyers. Most of these peel-off lawyers have indeed formed firms, but interestingly not all have, which will be discussed below as well. Furthermore, beyond just the interviews, for several of these peel-offs, the author was allowed to shadow these lawyers and spend time within their settings. This methodological technique of “soaking and poking”—famously associated with the social scientist Richard Fenno’s ethnographical style (although used of course by others)—rendered a greatly nuanced picture of the respective environments. The next section will shed insights into both the culture of the corporate firm sector and the motivations for this departure-phenomenon by peel-off lawyers.

2. Why Peel-Off Lawyers Peel Off

i. Galanter’s Haves’ Motivations

Lawyers who have left firms that are more traditional (family-based) or personality-driven in order to form new firms of their own cite several resource and institutional justifications for their decisions. Without exception, one key contributing factor to the departures was the perception of the inequity in compensation packages. As one peel-off lawyer who left a prominent law firm stated, “From the moment we started, our salaries were so low. We made in a year what first-year associates in Western firms make in month!” From the interviews, as well as from data gathered by another resource, it appears that yearly starting salaries for entering associates within the country’s traditional and more established personality-driven firms range from $15,000-$25,000. These

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91 To protect the anonymity of the respondents, they will not be identified.
93 Author interview (May 18, 2010).
94 This information is based on the aggregate interviews conducted between 2010 and 2012. It is also confirmed by other sources, including Lin, supra note 72; see also Legally India’s research page on salaries for lawyers, http://www.legallyindia.com/wiki/Indian_lawyer_salaries.
figures do not include potential bonuses or year-end raises based on performance, but even accounting for these additions, a first-year associate is unlikely to earn higher than $30,000 per year.

To counter the charge that first-year associates are underpaid, senior level partners at four different established firms argued that the comparison to American or British salary structures was not appropriate. For one thing, they contended, the purchasing power of Indian associates is far greater than that of their counterparts in the U.S. or U.K. “10 lakhs a year [roughly $20,000], plus benefits, plus mobile [phone] is a bloody lot here,” 95 decried one partner. Moreover, there is a market and fairness-to-clients issue. According to these different partners, in the Indian context clients are unwilling to pay exorbitant hourly rates for the work-product of junior lawyers — who, while smart, often do not know much substantive law and tend to be adequate writers at best. 96 Partners at such firms who are in charge of billing-rates do not — as one lawyer suggested — seek to bilk clients. 97 With comparatively less revenue generated than what American and British firms enjoy, such Indian firms have to adjust their compensation packages to associates, which is why salary structures are what they are. A final defence given is two-fold, namely that Indian associates are not saddled with as much law school debt as American graduates and thus do not demand such high salaries. And that as Indian associates continue their tenure within the firm, salaries do escalate. As one partner commented, “especially if they are good, they can be very well-off without even being a partner.” 98

Many peel-off lawyers, though, scoff at these arguments. Kinship and personality firms by their very nature, they suggest, are not flat but rather pyramid-structures where disproportionate influence is vested by those who control the reigns. (Even a senior partner at a smaller, but well-known family-based firm, conceded as much. 99) Take salaries, for example, which in these firms are not

95 Author phone interview (Feb. 18, 2012).
96 Id.; author interview with respondents (May 18-19, 2010).
97 Author phone interview with respondent (Feb.18, 2012).
98 Id.
99 Email quote: “Most of the law firms are proprietary in nature (being dominated by one individual or in some cases by 2 - 3 members of the same family). The firms are
uniformly distributed but rather are discretionary. Even a senior level associate can expect only a percentage of her/his salary to be fixed at the start of the year, leaving a portion (sometimes upwards of 40-45%) to be determined at the end of the fiscal year by the partners in charge. Otherwise put, there are built-in glass ceilings for those who are not family-members or who are not part of the ‘in-control’ group. Thus, a key motivation for peel-offs who leave is to be part of – or to create – a more transparent, merit-based organization where there is satisfying and predictable remuneration.100

The idea that firm governance and the decision-making processes should be less top-down and more transparent goes beyond salary. The manner in which traditional and personality-driven firms delegate work-assignments also can be frustrating, particularly for already disaffected associates. This point plays out in two cross-cutting ways. On the one hand, some lawyers who depart do so because they feel too pigeonholed and intellectually constrained. These are lawyers who wish to be exposed to a range of legal areas and often also want to do pro bono work. Instead they find themselves limited to certain practice sectors where the pressures of billing and meeting client and partner demands prevent experiencing other opportunities.

On the other hand, there are those who peel-off because they want to move in a much more specialized direction. These lawyers seek to maximize their time working in areas they especially enjoy, without having to answer to superiors who may not be attuned to, or interested in, these particular sectors. Three examples highlight this point. The first involves a peel-off boutique that focuses mainly on two legal sectors. This firm has just a handful of equity partners and associates, and a small number of staff assistants. One of the founders was at a traditionally elite law firm before forming this partnership, and the motivation was clear. This person wanted independence, to be a boss, and to focus exclusively on those practice areas that was the individual’s inspiration to become a lawyer from the outset. At the former place of employment, the lawyer was spread too thin and

100 Author interviews (July 12-13, 2011).
described it as “wearing ten different hats.”[101] Another partner at this same peel-off firm stated it another way about his previous place of employment – that he was constantly (and poorly) multi-tasking for different partners who worked in different departments.[102] When they finally could work on their areas of interest, they were not given opportunities to interact with the clients, because of their status as associates.

Second, this idea of peeling-off to concentrate on specific areas has made public news for another firm, Verus Advocates. Started in February of 2011, Verus has already opened four offices (Delhi, Mumbai, Kolkata, and Hyderabad) and has a total of fifteen lawyers – five equity partners and ten salaried lawyers.[103] The story of Verus is one of exciting entrepreneurialism. The founding partner is Krishnayan Sen, a graduate of the elite NALSAR law school in Hyderabad, who spent time apprenticing under the famous Supreme Court lawyer, V.R. Reddy. Sen then took over his father’s kinship-based firm, Udayan Sen & Company, in Kolkata.[104] In 2009, Krishnayan Sen decided to close the family firm and join a highly-regarded peel-off, Bharucha & Company, whose two founding partners are the extremely well-respected husband-wife team of Marezban and Alka Bharucha.[105] (The Bharuchas were formerly partners at Amarchand & Mangaldas until they left in 2008.[106])

Less than two years into his tenure, however, Sen left the Bharuchas to start his own firm, Verus.[107] Boldly, Sen opened three offices at the same time, in Mumbai, Delhi, and Kolkata. He soon added an office in Hyderabad. He

101 Author interview (July 11, 2011).
102 Author interview (July 11, 2011).
105 Id.
107 See Ganz, 4 NUJS Partners, supra note 103.
made this decision to peel-off to focus on his two passions, corporate law and litigation – where he could be the leader of his own organization, and where he could pursue his dream of creating a firm that could be of value to domestic and foreign clients on these two fronts. In 2012, Sen attracted two associates away from his former employer to join Verus as equity partners and two other litigators from Delhi to lead his office in the capital city. For the entire Verus team – particularly the equity partners – not only is the firm now national and a prime example of how there are different layers to the peel-off process, but there is also a focus and in-depth commitment towards two areas of the law that most appeal to the group. As Sen has noted, “I think it’s possibly going to be a distinguishing factor, having a very strong balance of both corporate [lawyers] and litigators.” And Verus’ Jay Parikh (one of the new equity partners) has commented that, “It was the entrepreneurial bug that bit me . . . . This was always something on the backburner in a sense, because I had always thought of doing something on my own and it came up as a brilliant opportunity.”

The third example relating to specialization is that for many peel-offs a key motivation for leaving firm practice is to become experts not in two or three areas, but rather in one – litigation in the upper courts, namely the Supreme Court. Most of India’s practicing lawyers are solo advocates who work as litigators in the country’s courts. The lower level district courts house the largest percentage of these lawyers, with smaller numbers working in the state appellate High Courts, and even fewer practitioners working exclusively in the Supreme Court. (Particularly in the north of the country, it is not uncommon for upper judiciary lawyers to slide back-and-forth between a state High Court and the Supreme Court.)

Within each of these arenas, there is a hierarchy that exists where prestige and wealth accompany those at the top of the respective pyramids. Overall,

108 Id.; see also Ganz, Young Entrepreneur, supra note 104.
109 Id. at both cites.
110 See Ganz, supra note 103.
111 Id.
113 Id. at both cites.
however, those at the top of the Supreme Court bar are viewed as the most reputed, famous, powerful, and richest lawyers in the country—sometimes even financially surpassing the top equity partners working in the most elite law firms in India. This select corps of solo practicing advocates comprises a number of no more than one hundred, with many having the luck of inheriting their business from their (typically male) relatives.

These specific professionals serve as role models, or what one peel-off lawyer redundantly called “aspirational inspiration” for those with the ambition to be purely litigators. This individual described his time at his old firm in this way: “I did the sh*t work that was crucial, but my boss met the clients and would be the one in court.” Although he might accompany his supervisor on such trips to court, his role was nevertheless marginal. Moreover, even his firm would at times turn to a set of esteemed Supreme Court advocates on complicated, high-value matters, which only further enticed this lawyer to leave. As the interviewee remarked:

I think if I work hard, maybe I can be the next Fali [Nariman] or Harish Salve [two of India’s most famous Supreme Court litigators]. Who knows? But those are the guys who have made it, and they have the power and money to do other good things too.

The “other good things,” to which this lawyer refers involve, for example, assisting on public interest litigation petitions or writing influential books or being involved in education (through adjunct teaching, for instance). Empirical research on this point shows that, in fact, solo practicing advocates in the upper judiciary often have relatively more social capital, influence, and resources to take on a diverse array of community-based activities.

Beyond seeking to practice more generally or, alternatively, in a more specialized manner, some lawyers peel-off for other reasons. Some depart to

114 Id. at both cites. See also Marc Galanter & Nick Robinson, India’s Grand Advocates: A Distinctive Segment of the Indian Legal Profession in the Age of Globalization, forthcoming.
115 Id. at all cites.
116 Author interview (July 12, 2011).
117 Id.
118 Id.
119 See Krishnan, Lawyering for a Cause; Krishnan, Transgressive Cause Lawyers, supra note 112.
pursue higher educational degrees in hopes of entering academia, whether in India or abroad.\textsuperscript{120} Others leave to be part of a policy think-tank or non-governmental association. Still others peel-off but stay in the corporate world, by lateralling to another firm or joining a corporation as an in-house counsel lawyer. For this last set, the decision to remain in the corporate sector is based upon two factors: being able to maintain a similar or even better standard of living and having the assurance that there will be greater time, flexibility, and opportunities to engage in not-for-profit causes to which they feel committed.\textsuperscript{121}

One other institutional and resource-based reason for why peel-offs leave can relate to gender. Nearly three-quarters of peel-offs interviewed here were men. It is not known for certain whether this percentage reflects the situation throughout the country, but given information received from informed participants, the figure may indeed be representative. Of the women lawyers from whom data was gathered, several left their employers to join-up with a peel-off firm because these new settings offered greater institutional support for starting a family. One lawyer, who was married, said that because of how few women were in her former workplace, let alone in positions of power, there was a sheer lack of understanding of the pressures she faced at home, at her job, among her extended family, and within her social community.\textsuperscript{122} Another expressed frustration that time away to have a baby counted against her in terms of salary, promotions, or both.\textsuperscript{123} By peeling-off and finding firms where accommodating family-leave policies were in place, these lawyers were able to have a much better work-family balance.

\textsuperscript{120} For a discussion on Indians coming to the United States to obtain L.L.M. degrees, see Swethaa Ballakrishnen, \textit{Homeward Bound: What Does a Global Legal Education Offer Indian Returnees?}, 80 \textit{Fordham L. Rev.} 2441 (2012). The leading scholar on the subject of foreign students seeking graduate legal education is Carole Silver, see e.g., Carole Silver, \textit{States Side Story: Career Paths of International LL.M. Students, or "I Like to Be in America,"} 80 \textit{Fordham L. Rev.} 2383 (2012).


\textsuperscript{122} Author interview (Feb. 19, 2010).

\textsuperscript{123} Author interview (Mar. 13, 2012).
At the same time, several women lawyers at certain traditional and powerful personality-driven firms have had chances to leave for promising peel-offs, but they have opted to say no. For some of these women lawyers, they are simply not interested in having a family and their main ambition is moving-up the professional ladder. They are satisfied with their remuneration, the prestige of the firm, and the work they are doing. For others who have family ambitions, they remain because their present firms provide institutional benefits, including maternity leaves and accommodating environments that allows for success at work and the opportunity to have a family. A few firms even provide daycares (or what in India are called crèches) for employees’ children.

In reflecting on the difference between women lawyers who peel-off and those who do not, it appears that the latter tend to be in firms that are at the very top of the ‘Elitelaw’ pyramid. Those less satisfied with their circumstances, by contrast, can be in a range of other places. However, when women lawyers do peel-off, a common reason is because they perceive their respective settings as having insufficient institutional support and resources dedicated to the issues that they feel are important to them. Their motivation to leave, therefore, tends to be based on a desire to be in a climate that is structurally committed to providing them professional and personal satisfaction.

Decades back, when Marc Galanter discussed why the Haves have advantages, access to strong institutions and availability of resources served as his underlying explanations. The above discussion involving peel-offs offers just another layer of proof supporting his classic argument. Yet are such tangible factors all that matter in this analysis? The next section suggests that important psychological forces play a role as well.

3. Psychological Motivations for Peeling-Off

It has already been observed that India’s legal profession is extremely hierarchical. Within the corporate legal sector, visible cleavages are present as well. To start, in many corporate law firms there are multiple layers that lawyers

124 Author interview with one such lawyer (Nov. 10, 2010).
125 Author interview (with a different lawyer) (Nov. 10, 2010).
must climb before reaching the top of the leadership-pole.\textsuperscript{126} A first-year lawyer is referred to as a new associate and upon promotion can move to senior associate, then to principal associate, then to salaried partner, and finally to equity partner. The time it takes to make these upward jumps vary, and in several kinship and personality-driven firms it is difficult to become an equity stakeholder without being part of the family or the founding team of lawyers.

That lawyers who peel-off feel frustration at this hierarchy is palpable. Knowing that the odds of making partner – salaried or equity – are long, junior level lawyers resignedly accept that this is part of the corporate firm system in which they work. Yet what they have difficulty accepting, and ultimately what helps to contribute to their departures, is that the hierarchy is reified by the incorporation of emotionally harmful norms into the workplace. Indeed as highlighted above, these hurtful behaviours reflect the mobbing actions that the social psychology literature has been describing over the years, and the application to the Indian corporate legal sector, in particular, appears to manifest in different ways.

Yet before detailing these accounts, it is crucial to note the extreme sensitivity that peel-off lawyers have towards publicly discussing the impact of mobbing. Repeatedly, peel-offs emphasized that they would never publicly acknowledge the ill-treatment they felt at their former firms. Where press releases announcing their departures were involved, for example, several peel-offs noted how they happily touted their terrific relationships with their ex-colleagues and the amount that they learned while working in their previous posts.\textsuperscript{127}

Peel-offs frequently take extra efforts to stay in contact with those whom they formerly worked; they send holiday cards, invite their former colleagues to social gatherings, and even sometimes refer business to them. The reason is simple and often is one of self-interest. Peel-off lawyers wish not to burn bridges and believe that maintaining good relationships (at least publicly) will reap benefits for them as they seek to pave their new career paths. Given that many of these peel-offs

\textsuperscript{126} This information and the information in the remaining part of this paragraph are based on cumulative years of study on the Indian law firm sector undertaken by the author.

\textsuperscript{127} This point was repeated in almost all of the multiple interviews the author had with the different peel-off respondents. See methodology section, III. A supra.
are young, and that the legal services market in India is a series of interconnected networks, they simply cannot afford to alienate colleagues who may be helpful to them in the future.\textsuperscript{128}

That said, the motivation to depart along with seeking material gains, is also tied to a keen desire to be in a more emotionally conducive environment that fosters professional development and personal fulfilment. To begin, on the professional side, by far the most frequently cited frustration by peel-offs is a feeling that, work-wise, they are in situations where they cannot succeed. Examples within various levels of the law firm pyramid highlight this point. Consider those instances where an upper-level associate is given an over-abundance of responsibilities with unreasonable deadlines and little staff support. Here such work can include managing multiple partners’ case files, drumming-up client business, mentoring junior-associates and law student interns, serving on various firm-committees, and being expected to participate in a range of external bar association activities. Upper-level associates with these tasks are often told by their superiors that it is because the firm has faith in them that they are in charge of so much. “We believe in you, we trust you, and we need you,” recounted one upper-level associate’s conversation with a partner who repeatedly saddled the former with multiple tasks.\textsuperscript{129}

And certainly this type of comment is not always gratuitous. Upper-level associates who receive such responsibilities frequently are highly respected within the firm. They are seen as smart, personable, multi-talented, and hard-working. They receive these busy workloads because they are known “to get things done.”\textsuperscript{130} After all, they have made it as a senior or principal associate – a feat accomplished by only a select few within Indian ‘Elitelaw’ – because of their intelligence, impressive work-product, and political skills. It is only rational then for partners-in-charge to rely upon these lawyers to do the necessary (albeit more time-consuming) work of the firm.

\textsuperscript{128} These consistent patterns, again, came through in the multiple interviews the author had with the different peel-off respondents. See methodology section, III. A \textit{supra}.
\textsuperscript{129} Author interview (Nov. 13, 2010).
\textsuperscript{130} \textit{Id.}
Yet for many upper-level associates, there is scepticism that increased responsibility is a reward for being appreciated. In fact, they believe it is just the opposite. One peel-off’s story serves as a nice representation. This lawyer started as a first-year associate at a well-known but smaller family-firm and progressed up the ladder to an upper-level associate in a shorter-than-usual span of time. His ambition for becoming an equity stakeholder, he concedes, was well-known, which he claims led to the imposition of a ‘glass-ceiling’ upon him by the partners.\footnote{131 Author interview with lawyer (different than id) (Nov. 13, 2010).} Because these partners knew that they could not legitimately cast him as incompetent or as rendering poor services, this lawyer contended that they instead saddled him with an extraordinary amount of “busy work.”\footnote{132 Id.}

As such, he routinely would be at the firm working seventeen-to-eighteen hour days. Yet he still would not be able to complete all of his assignments. As the social psychology literature might call it, this lawyer was literally mobbed with work. The lawyer’s inability to meet the demands of his superiors soon resulted in negative feedback. At first the comments were snide – implied remarks that if he could not handle this amount of work now, how would he be able to make it as a partner where the responsibilities are that much greater? The criticism intensified, and although the lawyer knew it was pretext, he could not help but begin to feel some self-doubt in his abilities. This insecurity became especially pronounced during those times when his superior would berate him in front of others. Finally, he decided – as is said in India – to submit his papers, informing his superiors that he would be leaving to join another recent start-up firm.\footnote{133 Id.}

In settings where there is intense pressure from the top, it is not surprising to see similar behavioural patterns trickle-down. As another upper-level lawyer mentioned, although he sometimes felt badly about it, he was very demanding on his juniors. Not only would he give them difficult projects, but he would be critical, and at times, yell at them.\footnote{134 Author interview (May 17, 2010).} Senior associates at other firms acknowledged they behaved similarly, and they too conceded that they verbally accosted their younger colleagues. Too often the standard of behaviour would be to scream first and
listen or ask questions later. While not seeking to be excused, their explanation was that as upper-level associates they were being squeezed by their supervisors and as a means of seeking relief they delegated matters to those beneath them. However, frequently these junior level associates were only one-to-two years out of law school, and they were too inexperienced. Their writing was poor and they had little ability to grasp key legal concepts. Simply put, they were untrained – and because their immediate superiors were under intense pressure themselves, these young lawyers ultimately received great amounts of scrutiny and scolding and little of what they needed most – mentorship.\footnote{135 This account was reflected during the interview with \textit{id.}, but also was a pattern cited during interviews with other similarly-situated lawyer. \textit{See} methodology section, III. A \textit{supra}.}

Indeed consider two junior peel-offs who were each previously in smaller but respected firms. The patterns for these junior lawyers were similar. Work would be assigned, but it would be in an area of the law with which the associates had little familiarity. In each case, they would study and research the respective subject-matters, but they inevitably would have questions and need assistance. Emails would be sent to supervisors but replies were rare. “Getting an audience,”\footnote{136 Author interview with the two lawyers (May 18, 2010). (Quote from just one of these two).} as one of the associates mentioned, with the superior was difficult because of how infrequently the latter was in the office. In the beginning, these junior lawyers also sought help from others in their cohort, but this was not a reliable source of assistance; fellow associates either had little time to aid or were as clueless on the legal matter being researched. Moreover, there was a general fear that asking too many questions – whether to peers or supervisors – might lead people to make assumptions about the lawyers’ competency levels.\footnote{137 \textit{Id.}}

The ramification of such absentee mentorship was that the work-product, which was often a memo or draft of a client-letter, was inadequate. Even the junior lawyers conceded as much.\footnote{138 \textit{Id.}} But to them, the lack of tutelage signalled something more, especially when they encountered frustration from their supervisors over the poorly-submitted product. Namely, it represented a deliberate tactic where the junior
lawyers believed they were being set-up to fail. In the eyes of these associates, they were being placed in a sink-or-swim environment. They knew they were cheap to hire and expendable. Those few who ‘got it’ – because they knew how to politic, learned quickly on their feet, or for some other reason – remained, and those who struggled left, which is exactly what happened to these two lawyers.139

If being mobbed with assignments and suffering – as well as engaging in castigation represent one set of experiences of certain lawyers who peel-off, there are other ways lawyers can feel alienated. For example, both junior and senior level associates can often feel as though they are not given proper credit by their respective superiors when jobs are performed well and, as already stated, too frequently feel blamed when projects go awry.140 In addition, lawyers can experience frustration because of how little work they are given, a sign they can perceive to be as purposive. Above, it was mentioned that the Indian economy in the post-2008 period has not seen as much drag compared to other industrialized countries; nevertheless, legal work has tapered some. An interesting phenomenon though has occurred within many corporate law firms. While acknowledging that specific legal sectors have not been as busy, partners from different law firms hasten to point out that their hiring of lawyers continues.141 Corresponding media accounts, discussions with junior lawyers, and observations of specific firm environments all indicate that the recruitment of associates remains.142 The reason seems to be two-fold: with salaries for first and second-year associates still being affordable for management, firms can continue to hire without taking much of a financial hit. Furthermore, firms worry that if they do not hire, that would send a negative cue to present and potential clients that business is suffering, which would be bad publicity.

139 This account is based on id.
140 These consistent patterns, again, came through in the multiple interviews the author had with the different peel-off respondents. See methodology section, III. A supra.
141 This sentiment was expressed repeatedly during the author’s conversations with a range of law firm partners. See methodology section, III. A supra. The two main areas cited as experiencing a downturn were capital markets and banking.
The result is that at firms where business has been slow, associates often find themselves without much work to do.143 Then when a project does emerge, the dynamics of who is appointed to work on what becomes more than just routine delegation. Those who are given projects from their higher-ups tend to be ‘repeat-receivers’ (assuming their performance is good), while those who are passed-over continue to remain idle. A climate of dissonance ensues between those who are busy and those who are not, where the latter feel shunned by their superiors and resentful towards their fellow associates. In fact, un-busy lawyers firmly believe that they are being ignored because of personal politics, not because they lack talent or are in the wrong department. The perception is that they simply are not part of the in-group.144

Add to this the fact that concurrently such supervised lawyers can face a range of personal indignities, or what the literature has described as direct personal mobbing. Such put-downs might include charges of stupidity and an overall lack of intelligence to derogatory comments on appearance. One lawyer, for instance, remarked how his boss was known to say harshly, “How can you be so dumb?”145 Another commented that he was regularly denied permission to be part of client-meetings because the superior bluntly stated that the junior would not make a good physical impression.146 (According to this associate, he felt the real reason for exclusion was based on the supervisor not wanting to share the spotlight.147) Other direct insults cited by different subordinates involved laughing at an associate’s use of the English language, being teased (in front of others), given only negative reinforcement, and relatedly, being constantly yelled orders at, all which effectively eroded the individual’s dignity and self-worth.148 Even one upper-level associate remarked that in all his time at his firm, he could not recall

143 This trickles down to interns as well, who may go many days without any assignments at all.
144 These consistent patterns, again, came through in the multiple interviews the author had with the different peel-off respondents. See methodology section, III. A supra.
145 Author interview (May 17, 2010).
146 Author interview (May 18, 2010).
147 Id.
148 These points are based on multiple conversations author had with different interviewees over the course of the information gathering process. See methodology section, III. A supra.
his boss ever using the words “may”149 or “please.”150 Instead, harshly-stated phrases such as “get me this”151 or “do that”152 were ones regularly employed.

For anyone familiar with Indian workplaces, these accounts will not appear to be the least bit surprising. Several of the lawyers interviewed resignedly noted that most people simply accepted the persistence of such demeaning behavioural patterns. There also appears to be a significant and worrying amount of *indirect* personal mobbing that breeds insecurity among those targeted. There are numerous forms that this particular mobbing can take. When it occurs, however, especially over a prolonged period, it contributes to an enormous lack of confidence for those who endure it, and the overall effect on firm-culture is negative. Cleavages develop and fester and feelings of ostracism grow, resulting in an inharmonious climate.

Much of this behaviour described by the respondents was based on subtle, often tacit, and difficult to quantify metrics. These were their impressions and perceptions, but ones that mattered and affected why these lawyers were unhappy, and why they sought to depart their workplace environment. Moreover, while much of the indirect mobbing was discussed in terms of superiors vis-à-vis subordinates, it was occasionally cited as occurring laterally among peers as well.

To begin, for associates who felt indirect personal mobbing from the top down, most of them stated that it happened through the process of being ignored or facing subtle verbal jabs from their supervisors.153 The comments could range in nature, but fundamentally they dealt with the associates feeling as though they were not part of the right social circles or socioeconomic backgrounds as their bosses.154 If the subordinates came from elite schools and their bosses did not – or vice versa, that might prompt a series of indirect, snide, and offensive

149 Author interview (July 11, 2011).
150 *Id.*
151 *Id.*
152 *Id.*
153 These points are based on multiple conversations author had with different interviewees over the course of the information gathering process. See methodology section, III. A *supra*.
154 *Id.*
comments. If the subordinates were from economically privileged backgrounds while their bosses were not – or vice versa, that too might generate subtle verbal accosting. For example, some noted finding themselves on the receiving-ends of remarks highlighting a silver-spooned upbringing or, conversely, being from a less-developed part of the country. Or if there were differences based on language or gender, mildly but still hurtful and repetitive insults might ensue. Or, simply put, where personalities did not mesh, that could be enough to foster passively-aggressive, negative comments from the superior.\footnote{Id.}

Beyond words, indirect mobbing could occur through different types of social encounters. So, superiors might dine, have drinks, or just pleasant visits during office-hours with only those who were like the superiors themselves.\footnote{Id.} Relatedly, those associates who were part of the in-group, as opposed to those who were not, would be privy to more information on such matters like the business-state of the firm, who the new hires-and-fires were, as well as random gossip ruminating within the office.\footnote{Id.} And within group-settings, the self-perceived excluded lawyers regularly could feel isolated, believing that superiors subtly (but purposely) would undermine them or dismiss their input in front of the others, which would only further lower the targeted associates’ confidence-levels. Again, for these subordinates it was nothing overtly done by their superiors; rather, it was the subtle, implied, but still real conduct that left them insecure.

Advantaged-associates also participated in diminishing the identity of the targeted lawyers. This lateral indirect mobbing could be seen as an adult-form of what is referred to in India as ‘ragging.’ In these cases, the advantaged lawyers could team-up on the marginalized individuals by engaging in similar subtle actions that the superiors were described as doing. Targeted associates here might experience the quiet jokes, sarcasm, and affirmative exclusion. Targeted lawyers might also see their peers whispering or glaring in an intimidating manner. Here too, these behaviours, while not overtly aggressive, still could have the effect of shaking the confidence of the marginalized lawyers. These were hostile, disruptive actions

\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
surreptitiously clothed in indirect conduct upon which it was difficult to complain. After all, how might an aggrieved individual frame a complaint without looking feeble or paranoid? And would not a complaint of these types only lead to further acts of indirect intimidation?158

Clearly then these targeted-lawyers felt serious barriers in terms of remedying their circumstances. In theory, this group could organize and form a clique of its own. They could mock, chide, and openly stand-up against their ‘Haves’ peers. But there was no evidence of such collective, rebellious behaviour occurring based on the research conducted. The reason seemed simple enough: these lawyers already felt in a tenuous spot; they were fragmented, had little political, economic, or social capital, and were afraid of losing the little they had.

Still, this is not to say that those who were the targets did nothing in response. Both as a means of coping as well as exhibiting some defiance, these lawyers employed different passive forms of resistance. Within their own circles, some engaged in private ridiculing of those who hazed them. Imitating idiosyncrasies, gestures, and accents of superiors or advantaged-peers were not uncommon.  

158 Id. There is another area where pressure can be applied – both in an indirect but also direct manner: sexual harassment. As stated earlier, sexual harassment is often analysed distinctly from mobbing. In India, however, there has been an absence of serious anti-sexual harassment legislation to date. In 1997, the Indian Supreme Court issued a judgment that recognized sexual harassment as violating the Constitution’s Fundaments Rights, (see Vishaka v. State of Rajasthan, A.I.R. 1997 S.C. 3011). See also Avani Mehta Sood, Redressing Women’s Rights Violations Through the Judiciary, 1 JINDAL GLOBAL L. REV. 137, 149 (2009). But bills codifying protections for victims have stalled in Parliament for years, with the most recent detailed one languishing since 2010. See Protection of Sexual Harassment in Workplace Bill, 2010 http://pib.nic.in/newsite/erelease.aspx?relid=66781. For these reasons, sexual harassment would reasonably fall under the mobbing-framework. Nicole Oversier, Sexual Harassment and Consensual Flirting, The Firm Video Review, LEGALLY INDIA (Aug. 30, 2010), http://www.legallyindia.com/201008301239/Dispute-resolution-arbitration-litigation/sexual-harassment-and-consensual-flirting-the-firm-video-review. However, of the respondents interviewed for this study, sexual harassment was not cited as a motivation for peeling-off. Recall that the number of female peel-offs interviewed for this study was comparatively small. There thus is likely an under-representation of respondents affected by sexual harassment. This point seems underscored by the fact that women’s organizations and different governmental bodies have documented that sexual harassment – applied against victims both indirectly and directly – is a serious problem within the Indian corporate sector. More research and greater sample sizes on this important topic are required with respect to law firms before specific conclusions are drawn.
Others looked to staff workers or those lower on the hierarchical ladder for support, airing their complaints about those whom they disliked. Then there was the tactic of gossip and hearsay. In one case, a disgruntled associate took pleasure in telling a story he had heard about another associate submitting a purposely faulty assignment to a group of partners and then blaming the poor work-product on improper instructions from the immediate supervisor – who apparently was thereafter disciplined. In another instance a lawyer claimed to know that favoured-associates received “money under the table” as an incentive to join the firm. (The money would then not have to be reported as taxable). Neither of these two instances could actually be proved during the research for this project, but the point is that the author heard permutations of both of these episodes during other unrelated conversations with different parties in different firms. Each time, the conveyors of the stories exuded confidence and a sense of empowerment in being able to cast their colleagues in such a bad light.

Notwithstanding these forms of passive resistance, for those who felt on the periphery, they by and large continued to “lump it,” until the lack of professional satisfaction combined with the personal unhappiness reached a level they could no longer endure, leading them to peel-off to pursue another career path. For those who went to another firm, or who created their own firm, their desires could not be clearer. They wanted exciting work, but as importantly, they yearned for less hierarchy, more mentoring, and greater collegiality, and their view was that being part of a peel-off operation offered such an opportunity. As will be summarized next, these hopes have had to confront the challenges of working in the hyper-competitive Indian corporate legal services space. In many cases, practical realities have taken priority over aspirational ideals.

159 This turning to lower-ranking people also gave the confidants a sense of importance, which in-turn produced a certain level of trust, loyalty, and respect – feelings otherwise so absent in the targeted-lawyers daily professional lives.
160 Author interview (Feb. 19, 2012).
161 See information provided in supra note 21.
V. CONCLUDING THOUGHTS ON BEING A PEEL-OFF: EXPECTED AND UNEXPECTED CHALLENGES

While there is much excitement and anticipation from peel-off lawyers about starting a new chapter of their lives, it is important to realize that not all have had the same experiences once leaving their former places of employment. This concluding section will focus on the challenges peel-offs face in two settings: in their new firms and in the courts, the latter being where some have sought to make a career as solo-practicing advocates in the upper judiciary.

For those who have left to be in a newer firm setting, there are three dimensions to this type of departure. First, lawyers can move to existing firms that are not peel-offs. One recent and high profile example involves Sumes Dewan and his shift from Fox Mandal to Desai & Diwanji.162 Both firms here trace their roots to pre-independence times,163 and Dewan, prior to joining Fox Mandal, was at K.R. Chawla & Company, established in 1996 by Harvansh Chawla that boasts offices in Delhi, Bangalore, and Singapore.164 Dewan’s most recent lateral move is especially important to note for this study, because it highlights that peel-off lawyer-departures from one firm to another do not necessarily mean starting anew.

Of course, becoming familiar with new faces and new office politics takes time and there are certainly learning curves on these fronts. But going from a firm like Fox Mandal that dates back to 1896 to a firm like Desai & Diwanji that originated in 1930 is inherently different than joining a newer peel-off firm, let alone starting-up one from scratch. This is also the message from others in similar

162 Kian Ganz, Fox’s Sumes Dewan Bolster Desai & Diwanji Delhi, Says Clients Will Join, LEGALLY INDIA (July 12, 2012), http://www.legallyindia.com/201207052936/Law-firms/foxs-sumes-dewan-bolsters-desai-a-diwanji-delhi-says-clients-will-join. (Note, Dewan was not interviewed for this project).
163 Fox Mandal traces its roots back to 1896 and Desai and Diwanji traces its roots to 1930. See Table 6 supra.
positions as Dewan. Several associates and partners who have moved from one established firm to another have done so because of the relative stability present at the subsequent place of employment. Going to a firm that is well-known and perceived as legitimate can also make it easier for the departing lawyers to bring their existing client-bases with them; arguably this is what appears to have occurred in Dewan’s move to Desai & Diwanji.165

A second way lawyers can depart from one firm to another is where the latter place of employment is not an established firm but rather a peel-off itself. Here, the type of peel-off office to which the lawyer is moving can vary, as described above. Where the firm is longer-standing, the transition can likely be less dramatic than compared to going to a newer start-up. And third, lawyers can depart to form their own firms.

Lawyers going to a newer peel-off and those creating their own firm often face similar challenges. Initially, many from both camps may envision less hierarchy. They may believe that there will be greater merit-based evaluations, enjoyable camaraderie, and exciting opportunities to engage in diverse legal matters, including pro bono work. Also, they may imagine that this new enterprise means more democracy and participation in terms of how the firm functions on a day-to-day basis.

To be sure, for some peel-off lawyers these expectations are met at their new workplace environments. For certain others, though, the outcomes do not manifest in the ways they anticipated. As this latter group comes to learn, even in peel-off settings pyramid-structures exist, as do cliques, favouritism, and competition for social capital.

Consider several instances of junior lawyers departing their places of employment to existing, albeit younger peel-off firms. One lawyer described the firm to which he was moving as having “no big name lawyers”166 in it. Apportioning the little work that existed by the partners among the associates was difficult and always political. Another mentioned that he felt pressure to bring in

165 See Ganz, Fox’s Sumes Dewan, supra note 162.
166 Author interview (Mar. 13, 2012).
business for which he had no training. Still another lawyer relayed that it was impossible not to see partners privileging certain associates over others. And multiple peel-off lawyers recounted mobbing episodes occurring— in similar ways as it was discussed above. Overall, for those who felt disaffected after joining an existing peel-off, the sentiment was that it was a struggle to find professional satisfaction, to work on diverse legal matters, and to be free from interpersonal politics. Furthermore, because they were now in much smaller environments, when tensions did arise the whole office had the potential for becoming poisoned with bad feelings, which has been the result in some of these situations.

For those who have left to start firms where they could be partners, there have been challenges as well. So much of how the transition unfolds depends upon the professional reputation of these lawyers. “Big-name lawyers” find the change to be less financially worrisome, mainly because they are often able to bring a lucrative client-base to their new setting. An endowed portfolio brings instant credibility and social capital, and having financial security allows for energies to be devoted to other necessary matters. Conversely, lesser-known partners can struggle not just to attract clients but also to manage the day-to-day affairs of the office.

Regardless, both types of partners can and do encounter difficulties. For several of these lawyers, they have never been rainmakers or the public face of their place of employment. To be sure, having this opportunity can be what motivates lawyers to start their own practices. But once that reality sets in—that they are responsible for bringing in business, meeting payroll, overseeing staff, and the like—the pressure to perform can be intense. As some of these lawyers

167 Author interview (Sept. 3, 2011).
168 Author interview (July 15, 2011).
169 This information is based on multiple conversations author had with different interviewees over the course of the information gathering process. See methodology section, III. A supra.
170 These lawyers can gain seek to gain lines of credit from banks. They are also more easily able to lease office space, hire staff, and purchase necessary technological equipment—including the much-needed back-up electricity generators. ‘Haves’-partners who peel-off, therefore, can have an easier time, especially in comparison to those who do not have such initial resources.
have learned, there is a different suite of skills between being a good lawyer with legal talent and being an effective administrator and leader.\textsuperscript{171}

These peel-off partners can also face management conflicts in their new environments. Recall that many of these lawyers departed from their former employers because of a desire to be part of a more democratic and transparent system of evaluation and accountability. However, in their new legal settings they are now the ones responsible for ensuring that there is openness, and as several peel-off partners have come to learn, they are often unable to satisfy the different constituencies on this front.\textsuperscript{172}

Take two cases, which although different, are similar in the types of experiences felt by peel-off partners. The first is of a former associate from a small, well-known firm who left to form a new firm where he is partner. This person shares power with a group of other colleagues but has come to believe that egalitarianism is not always the best method of running a law firm. He and the leadership have made a number of unpopular decisions. Certain associates have been promoted in an accelerated manner to the outrage of those who have not. Some associates are relied upon for important projects more heavily than others, and input is sought from specific associates while contributions from others are impliedly ignored or dismissed.\textsuperscript{173}

This peel-off partner insisted that these decisions were based on justifiable reasons. At his previous job this lawyer was not involved heavily in the governance of the firm. Presently, however, these responsibilities are part of his portfolio. He has learned that some associates are simply better, more likable, more dependable, and harder-working than others. To not distinguish among the stronger associates from the weaker ones, he argues, would hurt the firm financially, demoralize the productive personnel, and ultimately affect how clients are treated. Yet he now recognizes the impact such differentiation can have and how it can be negatively interpreted by his junior colleagues.\textsuperscript{174}

\textsuperscript{171} This information is based on multiple conversations author had with different interviewees over the course of the information gathering process. \textit{See} methodology section, III. A \textit{supra}.

\textsuperscript{172} \textit{Id.}

\textsuperscript{173} Author interview (June 2, 2011).

\textsuperscript{174} \textit{Id.}
The case of a second peel-off partner who started his own firm some years back sheds further light. This office has a handful of equity partners and a group of associates as well as a small number of staff assistants. In addition to the tough choices this lead partner must make, perhaps the most difficult is how he feels a need to be ‘top-down’ in much of the decision-making process. He is conflicted all the more by the fact that at his previous position he was an associate who struggled and felt excluded from the governance of the firm. That was his motivation to leave. But being in a leadership role has led him to do things that he never anticipated. He admits he often cancels or cuts-short appointments with people who are “low priority.” He frequently ignores what he categories as unimportant emails or texts. He delegates assignments and expects immediate results, even when he knows he has not given proper instructions or been a good mentor. He often finds himself micro-managing matters in an unpredictable fashion, which can shake the confidence of associates and staff-members.

If this lawyer’s only drawbacks were that he was a bad manager of his time, he could probably justify his behaviour along cost-benefit lines. But he also yells. He screams and makes demands in often rude and unpleasant ways. He can treat subordinates poorly, harshly, and derogatorily. While surely not universal, the same patterns were observed among other partners who peeled-off and formed their own firms. Otherwise put, and conscious or not, these peel-off partners can and do engage in mobbing, which is of course sadly ironical.

Many peel-off partners were not willing to discuss this aspect to their management style. Some took great offense when questions were raised about why there appeared to be such a culture of aggressiveness towards subordinates. Compared to how they were treated at their old firms, a few partners retorted, their current workplace environments were serene. Yet the observations spent at different peel-off firms showed the definite presence of mobbing. Many peel-off partners engaged in behaviour that they abhorred while at their

175 Author interview (Nov. 8, 2010).
176 Id.
177 Id.
178 This information is based on conversations author had with different interviewees over the course of the information gathering process.
former places of employment. However, the direct, indirect, professional, and personal mobbing they experienced and sought to escape appeared within the new workplace settings. Despite the rhetoric of wanting a more flat governing structure, hierarchy can and did persist and was enforced in part through the same types of mobbing techniques described above. And when there was pushback from junior colleagues unhappy with this treatment, partners responded by reverting to behaviour with which they were familiar – mobbing, which then led to even more deepened cleavages.

Thus far this concluding section has focused on lawyers peeling-off to firms. Another setting where they can go, and unfortunately experience and exhibit mobbing behaviour, is in the judiciary working as courtroom advocates. It is difficult to know the number of law-firm lawyers that have left to work exclusively in the courts. There is no systematic tracking mechanism, and the departures that are known tend to be ascertained through word-of-mouth or by media reports. (These were the two methods used in this study.)

But for those who have made this move, it appears primarily to be with the intent of working within the upper-judiciary. Yet these lawyers, especially if they are relatively unknown, often bear even worse mobbing than in the firms they left. There is, for example, the firm-associate who peels-off and apprentices under an established senior advocate in the courts. It is not unusual for the apprentice to work long and gruelling hours often in uncomfortable chambers at a low salary. Furthermore, the apprentice can be a witness to – or even a victim of – intense verbal abuse by the superior.

Apprentices in this situation tend eventually to peel-off and start a solo-practice. Once again, they can be the recipient of mobbing, particularly if they do not have family connections or other ties within the bar that can help them succeed. Such peel-offs can be shunned by senior advocates who may not refer

179 In fact, while it can and likely does occur in some parts of the country, no peel-off for this study was observed to move from a firm to the district courts.
180 This information is based on conversations and observations the author had with different interviewees over the course of the information-gathering process. See methodology section, III. A supra.
clients to them, who may not involve them in professional or social events, or who may speak ill of them to judges, other lawyers, and clients as a means of undercutting their professional ascendancy. These peel-offs effectively encounter a glass ceiling, which makes it very difficult for them “to make-it,”181 as one interviewee frustratingly concluded.182

There are of course those instances where lawyers who break-away from firms to move into the courts succeed with little adversity. These circumstances tend to be when the lawyer has a reputation as a strong litigator or kinship connections with an already prospering courtroom advocate. When these factors are absent though the likelihood is that the peel-off lawyer entering the courts will face difficulties, both in terms of mobbing as well as the usual challenges that accompany any start-up law practice. Finally, what is disheartening is that many of these same lawyers engage in several of the harsh bullying tactics vis-à-vis those lower in status to them. In other words, the cycle of mobbing continues to repeat itself in the courts as well.

This study has sought to describe the pluralism and diffusion within the Indian corporate law firm sector, including the impact psychological forces play. One natural follow-up question – but which is for another day – is why, when it comes to mobbing in particular, do those who have suffered and been victims often participate in these demeaning tactics against those who are less powerful than them? Should these victims not be more sensitive, especially since they know how debilitating these actions can be? Briefly, for those familiar with the literature on this subject, the answers are mixed.183 Some studies have found a relationship

181 Author interview (May 17, 2010).
182 A similar set of experiences can occur for the law firm peel-off who moves directly into a solo-practice without doing an apprenticeship.
183 This debate has been perhaps best been documented and reviewed, in terms of the literature, by Cathy Widom, who has discussed the cycle of violence as it relates particularly to children and abuse. For a sample of Widom’s work that reviews many of the debates, various studies, and empirical findings, see Cathy Widom, Does Violence Beget Violence? A Critical Examination of the Literature, 106 PSYCHOL. BULLETIN 3 (1989); Cathy Spatz Widom, The Cycle of Violence, 244 SCIENCE 160 (1989); Cathy Spatz Widom & Helen W. Wilson, How Victims Become Offenders, in CHILDREN AS VICTIMS, WITNESSES, AND OFFENDERS: PSYCHOLOGICAL SCIENCES AND THE LAW 255 (Bette L. Bottoms, Cynthia J. Najdowski, & Gail S. Goodman, eds. 2009).
between being a victim and then having that victim become an abuser.\textsuperscript{184} The theory here is that victims are socialized to believe that the treatment they received is acceptable and thus repeating this behaviour too is acceptable. Other studies, however, show less of a causal connection.\textsuperscript{185}

There are alternative answers that may emerge as being more India-specific. One might be the notion fact that in India nothing ever gets done unless people are prodded and aggressively pushed. As this argument might follow, because there is such inertia within Indian society, verbally accosting subordinates is necessary in order to have basic tasks completed, let alone more complicated ones. Another response might be that given India’s historic caste structure, it is not surprising to see such variations of hierarchy manifesting in the workplace. Still others may suggest that it is unfair to judge Indian workplace actions through a single normative lens. Believing that Indians ought to act a certain way towards one another in professional settings, without recognizing there may be cultural nuances and accepted-understandings among the negotiating parties, ignores the reality that Indians might well operate under different norms that those found in other societies.

Obviously these essentialist and culture-based arguments will resonate with some. For example, might certain lawyers be guilty of mobbing others on the basis of caste? Perhaps. But caste is complicated because while traditional upper-castes may have advantages in some settings, in other contexts this is not the case. Rather, as discussed above, being a member of a particular family or religious community, or linguist group, or coming from a specific law school or region of the country may be more indicative of what is behind the relationship between a superior and subordinate. Surely caste can be intertwined with all of these factors but, simply put, more research and subtle investigation of caste are needed before blanket-conclusions can be made in this regard.

There is also a response to the claim that Indian workplaces are distinct and should not be normatively judged. The fact is that the above data show that

\textsuperscript{184} Id. at all cites.
\textsuperscript{185} Id. at all cites.
mobbing is not something that victims enjoy. For these victims, mobbing is a transgression of their human dignity. That it continues in newer contexts by newer perpetrators only confounds those striving to end its dominance.

With that said, the fact is there are now more ways out than ever before. Because of liberalization and globalization, increased opportunities exist for lawyers to peel-off. More Indian lawyers have real hope that they too can become part of the ‘Haves.’ To be sure, achieving this goal remains difficult, yet that is what makes studying the Indian legal services sector so interesting. Yes, yesterday’s legitimately disgruntled recipient of mobbing may be tomorrow’s aggressor – but tomorrow’s victim may respond by peeling-off from the peel-off. If this pattern continues, the number of peel-off lawyers will only further increase, which will spawn even greater competition within this space. Moreover, consider if foreign law firms are introduced into the market – something that even various Indian opponents predict will occur: more players will be in the arena, which will likely mean more and newer norms emerging, with a hopeful one being the reduction of mobbing as a standard practice. For many, this development would be welcomed by victims enduring such hardship as well as by those who seek a greater level of professionalism and respect within the workplace.

186 This may explain also why once they attain a certain amount of power, peel-off lawyers seek to consolidate their position through the tactic that they so despise – mobbing.

187 For a discussion of this topic, see Krishnan, *Globetrotting Law Firms*, supra note 18.
Many believe the "woman problem" has been solved, since women are now represented in powerful positions in government, academia, business, and the law. It is true that women today occupy more positions of power than ever; however, these numbers are quite small at the top level, especially for women of color. This article begins with an overview of women in the workforce and their presence in education; and then goes on to review the current data on women in three settings—higher education faculty, the law, and corporate boards. Next, it examines the barriers women encounter in reaching the top positions in their respective fields. Common obstacles women face include: gender stereotypes, the struggles of balancing work and family life, a lack of mentors and mobility. The article concludes with potential solutions to the impediments faced by women.
I. Introduction

Many believe the “woman problem” has been solved, since women are now represented in powerful positions in government, academia, business, and the law in the United States.¹ It is true that women today occupy more positions of power in that country than ever; however, these numbers are quite small at the top level, especially for women of color.² This article seeks to build on an earlier publication by Dean María Pabón López, The Future of Women in the Legal Profession: Recognizing

² Id.
the Challenges Ahead by Reviewing the Recent Trends,
and introduce some other topics for consideration. It should be noted that the statistics referenced throughout this article focus on women in the United States; but the barriers and issues that women face, and thus the proposed solutions, transcend to global settings.

In 2008, Dean López assessed the current trends of women in the legal profession in the United States. In that article, she reviewed data collected by the Commission of Race and Gender Fairness, which was created by the Indiana Supreme Court. She also compared the Indiana study to data on a national United States level. Her findings indicated that since the first Indiana study, conducted in 1990; the trend that women are not reaching the highest areas in the law profession has continued, as evidenced by the Indiana study conducted in 2004.

This article begins with an overview of women in the workforce and their presence in education; and then goes on to review the current data on women in three settings—higher education faculty, the law, and corporate boards all over the United States. These three, rather disparate, areas were picked for discussion because they highlight the issue that women are underrepresented in all facets of U.S. society. Also, the authors are especially interested in the number of women in law, specifically law school faculty, since this is an area they encounter on a daily basis. Next, the article examines the barriers women encounter in reaching the top positions in their respective fields. In this section, barriers that women face generally are discussed; for instance, gender stereotypes, the struggles of balancing work and family life, and a lack of mentors and mobility are analyzed. This section also examines barriers women face which are specific to higher education, the law, and corporations.

The article concludes with potential solutions to the impediments faced by women in the United States. For example, general recommendations include: that organizations should be amenable to employees working remotely and should

4 Id.
5 Id. at 55.
6 Id. passim.
7 Id. at 55.
offer more flex-time and sick leave to both genders. In addition, assumptions regarding the undervaluing of childcare or that women “choose” to work in less demanding jobs need to be altered in U.S. society and worldwide. Regarding the law, various solutions may encompass: a reexamination of the law firm work culture; educating law students about work experiences in the legal profession; and a renewed commitment to addressing the status of women in the law. In the corporate area, solutions involve encouraging women to pursue financial and legal careers, and examining steps taken by other countries regarding the dearth of women on corporate boards.

II. WOMEN’S PRESENCE IN THE WORKFORCE AND EDUCATION IN THE U.S.

1. Women in the Workforce

Women’s participation in the U.S. labour force has increased dramatically since 1950. In 1950 women comprised a mere 34% of the workforce, and in 2012 they comprised 57.7% of the workforce. Interestingly, while women’s participation in the labor force has increased, men’s participation has declined. Furthermore, the number of women in the workforce is projected to grow more rapidly than the number of men. By the year 2020, it is estimated the female workforce will grow by 7.4% while the male workforce will grow by 6.3%. Although women have entered the workforce in large numbers and their participation in the workforce is projected to continually increase; today, as it was historically, there is a demarcation between the genders in what type of work they perform.

Women with children are working more than ever; and there are a large number of women working with young children at home. In 2011, 55.8% of

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9 *Table 3. Employment status of the civilian non-institutional population by age, sex, and race*, U.S. BUREAU OF LAB. STAT. (2013).
mothers who had children under one year worked and 63.9% of mothers who had children two years of age worked.\textsuperscript{13} The number of women with children under eighteen that work has also risen. In 1975, 47.4% of women with children under the age of eighteen worked,\textsuperscript{14} compared to 70.6% in 2011.\textsuperscript{15} Of these working women, a little over one-third were the sole income producers of the household.\textsuperscript{16} Among families where both husbands and wives worked, wives earned more than their husbands 29.2% of the time.\textsuperscript{17} The number of women working part-time versus the number working full-time has remained relatively constant over approximately the last thirty years.\textsuperscript{18}

Historically, U.S. women’s salary has lagged behind that of men’s. Although the numbers have gotten closer, there is still a substantial difference between the two; especially for women of color. Compare women’s percentage of median annual earnings to men’s—in 1960, women made 60.7% of men’s salaries and in 2011, they made 77.0% of men’s salaries.\textsuperscript{19} The ratio between men and women’s salaries was fairly consistent at around 60% from the 1960s to around 1982.\textsuperscript{20} Interestingly, this longtime statistic has a biblical reference—a chapter in Leviticus states that a woman’s value is worth thirty shekels of silver and a man’s value is worth fifty.\textsuperscript{21}

\begin{footnotes}
\item[15] Table 5. Employment status of the population by sex, marital status, and presence and age of own children under 18, 2010-2011 annual averages, U.S. Bureau of Lab. Stat. (2012). The percent of men with children under eighteen that work is 93.5%. Id.
\item[16] Women and Economy, supra note 10, at 11.
\item[18] Women and Economy, supra note 10, at Figure 4. In 1984, 27% of women worked part-time and 73% worked full-time. This number is basically the same in 2009, with 26% working part-time and 74% working full-time. Id.
\item[19] Table P-40, Women’s Earnings as a Percentage of Men’s Earnings by Race and Hispanic Origin: 1960 to 2011, U.S. Census Bureau, Current Population Surv., Ann. Soc. & Econ. Supplements (2012) [hereinafter ‘Table P-40’]. In 2011, the median annual earnings in dollars for full-time women workers was 34,875; and the median annual earnings in dollars for full-time men workers was 42,459. PINC-05, Work Experience in 2011—People 15 Years Old and Over by Total Money Earnings in 2011, Age, Race, Hispanic Origin, and Sex, U.S. Census Bureau, Current Population Surv., Ann. Soc. & Econ. Supplements (2012) (see Female, 15 Years and Over, All Races, and Men, 15 Years and Over, All Races).
\item[20] See Table P-40, supra note 19.
\end{footnotes}
The most recent statistics from 2013 show the median weekly earnings for women who worked full-time was $704 and for men it was $867. Thus, women are making 81.2% of men’s salaries. All minority women made less than their male counterparts. Also, women of color, excluding Asians, made less than white women. The wage gap between the genders was greatest for white women and Asian women. Age also plays a role in the salary difference between women and men. However, there are differences between reporting years. For instance, in 2010 younger women’s salaries were the closest to men’s; and as women aged the salary gap between the genders increased for each age category. Contrasted to 2011, where the salaries for the youngest category of women, ages 16-19, showed a larger gap than the 20-24 and 25-34 age categories. Although the difference between men’s and women’s salaries may not seem drastic, this variance can have significant consequences. For example, “if current wage patterns continue, a 25-year-old woman, who works full-time, will earn $523,000 less than the average 25-year-old man will by the time they both reach 65.”

Statistics demonstrate that education has a positive effect on earnings—the higher the educational level, the more money one earns. However, women's

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22 Usual Weekly Earnings of Wage and Salary Workers First Quarter 2013, U.S. BUREAU OF LAB. STAT. Table 2 (Apr. 2013).

23 See id.

24 Id. Black or African American women made $597, 89.63% of Black or African American men, at $666. Hispanic or Latina women made $531, 89.54% of Hispanic or Latino men, at $593. Asian women made $831, 78.54% of Asian men, at $1058. Id.

25 Id. White women made $723. Id. White men made $888; thus, white women made 81.41% of white men's salaries. Id.

26 Id. White women made 81.41% of white men’s salaries, and Asian women made 78.54% of Asian men’s salaries. Id.

27 HIGHLIGHTS OF WOMEN’S EARNINGS IN 2010, REP. 1031 BY U.S. BUREAU OF LAB. STAT. Table 1 (July 2011) [hereinafter ‘HIGHLIGHTS OF EARNINGS 2010’].

28 HIGHLIGHTS OF WOMEN’S EARNINGS IN 2011, REP. 1038 BY U.S. BUREAU OF LAB. STAT. Table 1 (Oct. 2012) [hereinafter ‘HIGHLIGHTS OF EARNINGS 2011’]. Women’s earnings as a percent of men’s for the following age groups in 2010 and 2011: 16-19 years, 94.6% (2010), 88.6% (2011); 20-24 years, 93.8% (2010), 93.2% (2011); 25-34 years, 90.8% (2010), 92.3% (2011); 35-44 years, 79.9% (2010), 78.5% (2011); 45-54 years, 76.5% (2010), 76.0% (2011); 55-64 years, 75.2% (2010), 75.1% (2011); 65 years and older, 75.7% (2010), 80.9% (2011). Id.; HIGHLIGHTS OF EARNINGS 2010, supra note 27, at Table 1.

salaries lag behind men’s in all areas of education attainment.\textsuperscript{30} For example, women’s salary for all education levels is 81.04% of men’s salary; and women’s salary is 74.92% of men’s salary for all college graduates.\textsuperscript{31} Furthermore, the median salary of management, professional, and other related occupations for women was 71.61% of men’s.\textsuperscript{32} Even though women’s salaries lag, women’s growth of earnings has been higher than that of men’s. Earnings for women with a college degree have increased by 30.8% since 1979; whereas earnings for men with a college degree have increased by only 16.3%.\textsuperscript{33} The numbers are even more startlingly when all women and men are compared, not just college graduates. “Women’s earnings grew 44% from 1970 to 2007, compared with [a] 6% growth for men.”\textsuperscript{34}

The wage gap also varies depending on where a woman resides. For example, women in the state of Louisiana make only 67.2% of men’s salaries.\textsuperscript{35} Compare this figure to women residing in Louisiana’s sister states—Mississippi, 74.8%; Arkansas, 74.6%; and Texas, 80.1%.\textsuperscript{36} The lowest wage gap for women is in the District of Columbia, where they earn 91.4% of men’s salaries.\textsuperscript{37} And in Puerto Rico, women actually make more than men, at 103.3%.\textsuperscript{38}

\textsuperscript{30} See \textit{Datebook 2013}, supra note 17, at Table 17.
\textsuperscript{31} \textit{Id.} The following is a list of women’s salary as a percentage of men’s for various levels of degrees: Doctoral, 79.07%; Professional, 77.07%; Master’s, 74.26%; Bachelor’s, 77.56%; Associate’s, 77.50%; high school graduate with no college, 76.94%. \textit{Id.}
\textsuperscript{32} \textit{Table 39. Median weekly earnings of full-time wage and salary workers by detailed occupation and sex, U.S. Census Bureau, Current Population Surv., Household Data, Ann. Averages (2012)} [hereinafter ‘\textit{Table 39}’]. Women in the field of education administrators had one of the lowest percentages of men’s salaries, at 67.18%. \textit{Id.}
\textsuperscript{33} \textit{Highlights of Earnings 2011}, supra note 28, at Chart 3.
\textsuperscript{34} \textbf{Richard Fry} & \textbf{D’Vera Cohn}, \textit{Women, Men and the New Economics of Marriage}, Pew Research Ctr. 3 (Jan. 2010).
\textsuperscript{35} \textit{Median Earnings for Full-Time, Year-Round Workers by State and Sex}, \textit{Nat’l Women’s Law Ctr.} (2010) (NWLC based its calculations on 2010 American Community Survey data) [hereinafter ‘\textit{Median Earnings by State and Sex}’]. Note that the data from American Community Survey is for 2009, and thus, it is a bit different than the data from NWLC. \textit{Men’s and Women’s Earnings for States and Metropolitan Statistical Areas: 2009}, Am. Cmty. Survey Briefs, 4, Table 1 (Sept. 2010) [hereinafter ‘\textit{Statistical Areas}’]. Louisiana has the second highest wage gap, the only other state that is larger is Wyoming, where women make 63.8% of men’s salaries. \textit{Median Earnings by State and Sex}.
\textsuperscript{36} \textit{Median Earnings by State and Sex}, supra note 35.
\textsuperscript{37} \textit{Id.}
\textsuperscript{38} \textit{Statistical Areas}, supra note 35, at 4, Table 1.
Interestingly, for both genders, marriage has a positive impact on earnings. In 2011, women who were married and had a spouse present had median weekly earnings of $741 compared to single women, at $595, and women of other marital status, at $662.\textsuperscript{39} Men who were married and had a spouse present had median weekly earnings of $955 compared to single men, at $614, and men of other marital status, at $804.\textsuperscript{40} Moreover, the beneficial impact of marriage was also observed in a study of lawyers.\textsuperscript{41} It found that marriage, for both genders, was positively associated with attaining partnership in a law firm.\textsuperscript{42}

2. Women’s Presence in Higher Education

Women have been attaining degrees at high rates and “now outnumber men in every group among college students who are U.S. citizens.”\textsuperscript{43} For example, in the 1899-1900 academic year, women received only: 19% of Bachelor’s degrees; 19% of Master’s degrees; and 6% of Doctor’s degrees.\textsuperscript{44} Compared to the 2011-12 academic year, where women received: 56.9% of Bachelor’s degrees; 59.6% of Master’s degrees; and 52.1% of Doctor’s degrees.\textsuperscript{45} Throughout all these categories, the number of women attaining degrees is going to decline slightly for a few years.\textsuperscript{46} However, even with this decline, women are still projected to earn more degrees than men in every category.\textsuperscript{47} Then after this period of decline, the number of women earning degrees is expected to continue increasing.\textsuperscript{48}
III. WOMEN AMONG FACULTY IN HIGHER EDUCATION, THE LAW, AND CORPORATIONS IN THE U.S.

1. Women’s Presence among Faculty in Higher Education

Even today, there is a lack of diversity amongst faculty in higher education. For instance, “[b]etween 1979 and 2000, only fifty-two out of an estimated 2,100 predominately white institutions were headed by African Americans.” The typical president of a university is still an aging white man. The first national census of Chief Academic Officers (CAOs), published by the American Council on Education in 2009, revealed fairly limited diversity among current CAOs; reporting that: 85% of all CAOs are white; 6% are African American; 4% are Hispanic; 2% are Asian American; and approximately 1% are American Indian. Women were underrepresented as well—less than half of CAOs are women (40%). Also, “[o]nly 30 percent of CAOs intend to seek a presidency, despite ACE data that show the most common path to the president’s office is through the CAO position.”

49 For example, minorities comprise the following percentages of faculty and administrators in higher education: 18.0% of total faculty members (with African Americans representing the largest portion of faculty, at 7.0%; followed closely by Asians, at 6.3%; and then Latinos, at 4.2%); 12.6% of college and university presidents; 22.9% of total staff members; and 18.8% of executive, managerial, and administrative staff. CHRONICLE OF HIGHER EDUCATION 2012 [hereinafter ‘CHRONICLE OF HIGHER EDUCATION 2012’]. And the percentage of minority professors is 14.1. CHRONICLE OF HIGHER EDUCATION 2011, supra note 43, at 28.


51 CHRONICLE OF HIGHER EDUCATION 2012, supra note 49, at 19. Men comprise 73.6% of college presidents and women comprise 26.4%. The percentage of college presidents who are white is 87.4%. Id.


54 Chief Academic Officers, supra note 52.
In the 1974-75 academic year, women comprised 23% of full-time faculty.\textsuperscript{55} This number has risen to 42% in the 2010-11 academic year.\textsuperscript{56} Thus, although progress is being made, male faculty still outnumber female faculty.\textsuperscript{57} The largest discrepancy is in the rank of professorship; with men numbering 126,526 thousand, and women numbering a mere 49,132 thousand.\textsuperscript{58} Additionally, “women are less likely . . . to be promoted to full professor than men, and their promotions take longer.”\textsuperscript{59} There are also more women (44\%) in full-time non-tenure track positions than men (33\%).\textsuperscript{60} This difference between the genders in full-time non-tenure track positions has remained relatively constant since 1976.\textsuperscript{61} At least one commentator has called this difference between men and women an unstated “mommy track.”\textsuperscript{62}

In the realm of academia, parallel to the general workforce, women’s salaries lag behind that of men’s across all types of institutions and at each faculty rank.\textsuperscript{63} This salary gap is especially great at the rank of full professor.\textsuperscript{64} Also, women spend more time mentoring and teaching than do men.\textsuperscript{65} One study found:

\begin{itemize}
  \item \textit{Id.}
  \item \textit{Id.} This means women comprise roughly 34\% of full professors. \textit{Id.}
  \item Curtis, supra note 55, at Figure 4.
  \item \textit{Id.}
  \item \textit{Id.} In 1976, the number of women full-time faculty in non-tenure track positions was 26\% and the number of men was 16\%. \textit{Id.}
  \item \textit{Id.} at 8.
  \item \textit{Id.} at 43, 22. Women’s salary as a percentage of men’s salary for the following types of faculty: Professor, 87.6\%; Associate Professor, 93.3\%; Assistant Professor, 93.1\%; Instructor, 96.1\%; and Lecturer, 90.5\%. \textit{Id.}
  \item Curtis, supra note 55, at 5.
\end{itemize}
Although associate professors of both sexes worked similar amounts of time overall—about sixty-four hours a week—the distribution of work time varied considerably. Men spent seven and a half hours more a week on their research than did women. Even if these differences in research time occurred only during semesters, not during summer or holiday breaks, this would mean that men spent in excess of two hundred more hours on their research each year than women. On the other hand, women associate professors taught an hour more each week than men, mentored an additional two hours a week, and spent nearly five hours more a week on service. This translates to women spending roughly 220 more hours on teaching, mentoring, and service over two semesters than men at that rank.66

Data indicates that faculty who spend more time researching rather than teaching have higher basic salaries.67 Again, as mentioned previously, this variance in salaries between the sexes can have significant consequences. For example, “initial inequities in the salaries of women and men faculty are very difficult to resolve through the annual process of awarding merit or across-the-board salary increases.”68

Paralleling higher education in general, gender segregation persists in almost all areas of legal education—the more prestigious positions are overwhelming male, and the less prestigious positions are overwhelming female.69 A thirteen year longitudinal study of courses listed by the Association of American Law Schools (AALS) showed that this occupational segregation by gender was widespread and growing.70 For instance, top positions at law schools, like deans and library directors, are generally stereotyped as male, while less prominent positions are

66 Misra et al., supra note 59.
68 Id. at 3.
69 Richard K. Neumann Jr., Women in Legal Education: What the Statistics Show, 50 J. LEGAL EDUC. 313, 314, 323 (2000) [hereinafter ‘Neumann, What the Statistics Show’]; Richard K. Neumann Jr., Women in Legal Education: A Statistical Update, 73 UMKC L. REV. 419, 425 (2004) [hereinafter ‘Neumann, A Statistical Update’]. See also Kornhauser, supra note 12, at 295 (finding women are congregated in less prestigious and/or more traditionally feminine subjects and males teach more prestigious harder male courses); Deborah Jones Merritt & Barbara F. Reskin, Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring, 97 COLUM. L. REV. 199, 199-200 (1997) (finding men were more likely to teach high status courses, such as constitutional law, while women were more likely to teach low status courses, like skills).
70 Kornhauser, supra note 12, at 295.
stereotyped as female, like assistant deans and non-director librarians.\(^{71}\) In addition to these positions being associated with a male/female stereotype, most law deans and tenured full professors are men while assistant deans and off-tenure track skills teachers are usually female.\(^{72}\)

Furthermore, men receive a higher percentage of the associate professor appointments and women tend to be appointed at the assistant professor rank.\(^{73}\) Also, women obtain tenure at lower rates than men.\(^{74}\) Additionally, women are hired into positions off the conventional tenure track at high rates “and at those same schools proportionately fewer women are being hired onto the conventional tenure track.”\(^{75}\) Those who teach in the off tenure track usually teach skills in clinics, simulation courses, and legal writing programs, and are paid much less (often less than half) than conventionally tenure-tracked teachers.\(^{76}\) Within the fields of clinicians and legal writing, women are paid less than men, even when controlling for employment status and experience.\(^{77}\) Evidence indicates that this trend persists in other academic positions, whereby “women are paid less than similarly qualified men within the same status (tenured, tenure-track, etc.).”\(^{78}\)

There is an extremely small number of law deans who are women, and of those, an even smaller portion are minorities.\(^{79}\) “[W]omen deans are a relatively

\(^{71}\) Neumann, *What the Statistics Show*, supra note 69, at 346.

\(^{72}\) Neumann, *A Statistical Update*, supra note 69 at 442.

\(^{73}\) Neumann, *What the Statistics Show*, supra note 69, at 313, 340-41. See also Merritt & Reskin, *supra* note 69, at 199 (noting “men were more likely than women to begin teaching at a higher professorial rank”); Neumann, *A Statistical Update, supra* note 69, at 435 (men are more likely to be hired as associate professors than women).


\(^{75}\) Neumann, *What the Statistics Show*, supra note 69, at 346. See also Neumann, *A Statistical Update, supra* note 69, at 431 (finding “that the least secure, least compensated, and lowest status teaching jobs in law schools are predominantly female”).

\(^{76}\) Neumann, *What the Statistics Show*, supra note 69, at 323. See also Neumann, *A Statistical Update, supra* note 69, at 441 (in the sectors of legal education that are surveyed for salary and gender—librarians and legal writing—men tend to be paid more than women).


\(^{78}\) Id. at 347.

new phenomenon.” From 1951 to 1981 the number of women law deans varied, with the highest number serving simultaneously in 1975. For approximately the next twenty years, the number of women law deans rose fairly steadily. In the 2008-2009 academic year, there were forty-one women law deans; making the percentage of women deans 20.6%. Interestingly, female law deans tend to serve longer terms than male law deans. However, minority women deans serve shorter terms than both men and women generally.

From 1950 to 2003 there have been five minority women who have served as deans at ABA accredited law schools. Of these five, only one led a school that was not part of the Historically Black Colleges and Universities (HBCU). Since 2003 through the 2005-06 academic year, three women of color served as deans; two at traditional universities and one at a HBCU. In the 2008-2009 academic year, there were five minority women law deans.

2. Women in the Law

In 1988, a report issued by the American Bar Association’s Commission on Women in the Profession observed that there was a great deal of gender

80 Id. at 224.
81 Id. In 1975, there were five women law school deans. Id.
83 Padilla, supra note 1, at 474-75. Women served an average of 6.62 years, while men served an average of four years. Id.
84 Id. at 474-76. Women deans of color served an average of 3.83 years. Id. at 475.
85 Wolff, supra note 50, at 783; Padilla, supra note 1, at 461-62.
86 Padilla, supra note 1, at 462. A HBCU is defined as “any historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association.” Integrated Postsecondary Education Data System, Glossary, Historically black colleges and universities, Nat’l Ctr. for Educ. Stat., available at http://nces.ed.gov/ipeds/glossary/?charindex=H (last visited Apr. 25, 2013).
87 Padilla, supra note 1, at 462.
88 AALS Statistical Report on Law Faculty, supra note 82. There was one Latina dean and four African American deans. Id. Unfortunately the authors were unable to find more current statistics from a reputable source. By 2012, the number has increased by at least one, since Dean López is Latina.
discrimination in the legal profession.\textsuperscript{89} It noted that “higher” positions in the law were overwhelming held by men and women were “overrepresented in the least lucrative segments of the profession.”\textsuperscript{90} Additionally, it commented on the fact that women were failing to reach partnership in private practice.\textsuperscript{91} It concluded its statistical introduction by stating “time alone is unlikely to alter significantly the underrepresentation of women” in higher legal positions and “[e]ntry of women into these positions at a rate proportional to their numbers out of law school requires serious examination of the structures, practices and attitudes of the profession.”\textsuperscript{92}

Have things improved in the past twenty-five years? Many believe they have and think that women have “arrived” in the law profession.\textsuperscript{93} Women have pervaded all levels of law practice—they have gone “from exclusion to full integration.”\textsuperscript{94} They make up about half of law school classes\textsuperscript{95} and are awarded almost half of all law degrees.\textsuperscript{96} For instance, in the 2011-12 class, women made up 47\% of J.D. students.\textsuperscript{97} And in 2011, 47.3\% of law degrees went to females.\textsuperscript{98} Furthermore, approximately one-third of those practicing law are women.\textsuperscript{99} Yet, “growth in . . . numbers alone does not equal progress.”\textsuperscript{100}

\begin{itemize}
  \item \textsuperscript{89} ABA Comm’n on Women in the Profession, Report to the House of Delegates 5 (1988).
  \item \textsuperscript{90} \textit{Id.}
  \item \textsuperscript{91} \textit{Id.}
  \item \textsuperscript{92} \textit{Id.}
  \item \textsuperscript{93} López, supra note 3, at 53.
  \item \textsuperscript{94} \textit{Id.}
  \item \textsuperscript{95} See ABA, Enrollment and Degrees Awarded 1963-2011 Academic Years (2012), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.pdf [hereinafter ‘ABA, Enrollment and Degrees’].
  \item \textsuperscript{96} See ABA, JD. and LL.B Degrees Awarded 1981-2011 (2012), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_llb_degrees_awarded.pdf [hereinafter ‘ABA, JD. and LL.B Degrees’].
  \item \textsuperscript{97} ABA, Enrollment and Degrees, supra note 95.
  \item \textsuperscript{98} ABA, JD. and LL.B Degrees supra note 96.
  \item \textsuperscript{100} López, supra note 3, at 55.
\end{itemize}
Empirical evidence illustrates that although, as previously mentioned, women are entering law schools, receiving degrees, and going into the practice of law at high rates; “they are failing to reach the higher levels within the profession.” Thus, to borrow a term from economics, the glass ceiling that had pervaded the law profession back in 1988 is still present in 2013. The remainder of this section examines various statistics on women in the legal profession.

Today, women comprise 31.1% of all lawyers. At law firms in 2011, 45.4% of associates and 47.7% of summer associates were women. However, women are glaringly underrepresented as partners in law firms. Within law firms, women comprise 19.5% of partners and a mere 2.0% of partners are women of color. Furthermore, women make up only 15% of equity partners. Among the 200 largest firms, women comprise 4.0% of managing partners, and 11% of the largest firms have no women on their respective governing committees. A survey of graduates from the University of Michigan Law School found that women were less likely than men to “become partners, even after controlling for a number of individual characteristics”—race, experience, GPA, family status (marriage and children), working part-time, satisfaction, and having a mentor.

101 Id. at 54.
102 See also id. at 59.
103 Table 11, supra note 12.
104 Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline, NAPL 1 (Nov. 2011) [hereinafter ‘Law Firm Diversity Wobbles’]. The number of women associates has declined for the second year in a row. Id. Percentages of women associates: in 2009, 45.66%; in 2010, 45.41%; and in 2011, 45.35%. Id.
105 Id. In 1995, the percentage was 13.4% and in 2010 it was 19.4%. Women in the Law in the U.S., CATALYST 2 (2012). Thus, the rate of change is extremely small. Id. “Given the same rate of change, Catalyst estimates that it will take more than a woman lawyer’s (born in 2010) lifetime to achieve equality.” Id.
109 Barbara M. Flom & Stephanie A. Schart, REPORT OF THE SIXTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT’L ASS’N OF WOMEN LAWYERS AND THE NAWL FOUND. 4 (Oct. 2011). And 35% of firms have only one woman on their governing committee. Id.
110 Noonan & Corcoran, supra note 41, at 140.
Evaluated against law firms, statistics show fairly similar numbers of women who serve as general counsel in Fortune 500 and 1000 companies. At Fortune 500 Companies, women comprised 21.6% of general counsel,\(^ {111}\) and among these women, seventeen were minorities.\(^ {112}\) At Fortune 1000 Companies, women made up 15.6% of general counsel,\(^ {113}\) and among these women, five were minorities.\(^ {114}\)

Comparable to the low number of women at law firms and serving as general counsel at Fortune Companies, women are underrepresented among both federal and state judgeships.\(^ {115}\) In 2012, women held only 24.1% of federal judgeships and 27.5% of state judgeships.\(^ {116}\) Critical mass is “the threshold where women’s presence and perspectives make a difference.”\(^ {117}\) This is reached when women make up one-third of the membership in a group.\(^ {118}\) Today, critical mass has been achieved in three states for federal judgeships\(^ {119}\) and eight states and the District of Columbia for state judgeships.\(^ {120}\)

Historically, women’s salaries have been lower than men’s in the law profession. Unfortunately, this trend continues. See table below for the median weekly salaries of men compared to women in the legal field.\(^ {121}\)

\(^ {111}\) ABA, A Current Glance at Women in the Law, supra note 99, at 3.
\(^ {112}\) MCCA Survey: Women General Counsel At Fortune 500 Companies Reaches New High, MINORITY CORPORATE COUNSEL ASS’N (Aug. 2012) [hereinafter ‘MCCA Survey’].
\(^ {113}\) ABA, A Current Glance at Women in the Law, supra note 99, at 3.
\(^ {114}\) MCCA Survey, supra note 112.
\(^ {115}\) “No state has achieved equal representation of women (50% of all seats)” on the bench. Women in Federal and State-level Judgeships, CTR. FOR WOMEN IN GOV’T AND CIVIL SOC’Y, Highlights (2011) [hereinafter ‘Women in Judgeships 2011’].
\(^ {116}\) Dina Refki et al., Women in Federal and State-level Judgeships, CTR. FOR WOMEN IN GOV’T AND CIVIL SOC’Y 1 (2012).
\(^ {117}\) Women in Judgeships 2011, supra note 115, at 8.
\(^ {118}\) Id.
\(^ {119}\) Those states are New Jersey, Vermont and Connecticut. Refki et al., supra note 116, at 3-5.
\(^ {120}\) Those states are Vermont, Maryland, Massachusetts, Montana, Minnesota, Rhode Island, Oregon and Washington. Id.
\(^ {121}\) Table comprised of statistics from Table 39 of the Labor Force Statistics from the years 2003 through 2012. See Table 39, supra note 32.
Men $1,610 $1,710 $1,748 $1,891 $1,783 $1,875 $1,934 $1,895 $1,884 $2,055
Women $1,237 $1,255 $1,354 $1,333 $1,381 $1,509 $1,499 $1,461 $1,631 $1,636
Women’s Salaries as a Percentage of Men’s

76.8% 73.4% 77.5% 70.5% 77.5% 80.5% 74.9% 77.1% 86.6% 79.6%

Interestingly, the salary of women lawyers as a percentage of men’s showed a substantial increase (of 9.5%) between 2010 and 2011. Unfortunately this trend did not continue between the years 2011 and 2012, where the number decreased by 7%.

3. Women’s Presence on Corporate Boards

Corporate boards are discussing diversity at greater lengths than ever. For instance, in 2009, the SEC:

[A]dopted a rule to assess a company’s commitment to developing and maintaining a diverse board. In summary, public companies are now required to disclose whether diversity is a factor in considering candidates for nomination to the board of directors, and how the company assesses how effective the policy has been.¹²²

However frequent these discussions have been, it does not change the fact that the number of women on corporate boards still remains dismally small, especially the number of minority women. An interesting statistic was reported in 2007, that corporations with more women board directors outperform those with the least representation of women by over 50%.¹²³ A brief highlight of the composition of Fortune 500 and 1000 corporate boards follows.


In 2012, a mere 16.6% of women were directors at Fortune 500 Companies; and women comprised 15.6% of directors at Fortune 1000 Companies. Thus, approximately 85% of directors at the largest corporations in the United States are men. Furthermore, in 2012, only 14.3% of executive officers were women at the Fortune 500 Companies. Among the top earners at Fortune 500 Companies, women comprised a scant 8.1%. Women of color fare even worse than white women on corporate boards. In 2012, 15% of Fortune 500 corporate boards had no minorities, and a mere 3% of minority women were directors.

Additionally, many corporations have few women, or none, serving on their boards. At Fortune 500 Companies in both 2011 and 2012, less than 20% of company’s boards had 25% or more women directors and approximately 25% of companies had no women serving on their boards. At Fortune 1000 Companies: 16% have no women; 36% have one woman; 33% have two women; 11% have three women; 4% have four women; and none have five or six women. Moreover, in both 2011 and 2012, more than 69.8% of Fortune 500 Companies had no minority women directors and no companies had three or more women of color directors serving together.


127 Fortune 500 Women Executive Officers and Top Earners 2012, supra note 126, at 1. In 2011, the percentage was 7.5. Id. And in 2010, the percentage was 7.6. Fortune 500 Women Executive Officers and Top Earners 2011, supra note 126, at 1.

128 2012 Spencer Stuart Board Index, 21 (2012).


130 Fortune 500 Women Executive Officers and Top Earners 2012, supra note 126, at 2.


132 Fortune 500 Women Board Directors 2012, supra note 124, at 3.
IV. Barriers that Women Face—Generally and Those Specific to Higher Education, the Law, and Corporations in the U.S.

1. Barriers that Women Face—Generally

Articles and commentary that discuss why women are underrepresented today in the areas of faculty in higher education, the law, and corporations all have recurring themes. Therefore, this section examines the barriers that women face in general; and thus, these impediments can be generalized to all women.

In the past, it was easy to spot gender discrimination—a woman, after returning from maternity leave would be demoted or passed over for a promotion or partnership; or a promotion would go to a less experienced male colleague. However, this type of overt discrimination is rarely seen today. Instead, “discrimination against women lingers in a plethora of work practices and cultural norms that only appear unbiased.” Consequently, this type of discrimination frequently goes unnoticed and is rarely questioned. Nevertheless, these work practices and cultural norms “create a subtle pattern of systemic disadvantage, which blocks all but a few women from career advancement.”

A barrier to women’s progress is gender stereotypes. Stereotypes still persist that men are better fit to be leaders. For example, qualities traditionally associated with leaders are masculine; such as forcefulness, assertiveness, and being authoritative. However, when women exhibit these “masculine” behaviors they are often punished. For instance, men who are perceived as autocratic leaders receive positive evaluations and women receive negative evaluations for exhibiting

135 Meyerson & Fletcher, supra note 133, at 128.
136 Id. (emphasis in original).
137 Padilla, supra note 1, at 485.
the same behavior.139 Thus, it is true that “[a]ggressive and hard-charging women violate unwritten rules about acceptable social conduct.”140 Moreover, the same type of action can be perceived as strength in the man and weakness in a woman.141 For instance, compare “he speaks too fast—it’s hard for him to come down to our level” with “she speaks too quickly. She must be nervous.”142

Aside from the gender stereotype that men are better leaders, there are still traditional notions that women should do more house work than men.143 For example, a study that surveyed female scientists from some of the most prestigious research institutions found:

> Despite women’s considerable gains in science in recent decades, female scientists do nearly twice as much housework as their male counterparts. Partnered women scientists...do 54 percent of the cooking, cleaning, and laundry in their households; partnered men scientists do just 28 percent. This translates to more than ten hours a week for women—in addition to the nearly sixty hours a week they are already working as scientists—and to just five hours for men.144

Stereotypes may also have a profound effect on minority women. This is evidenced by a study that examined the issue of race through leadership categorization theory.145 This theory espouses that leaders are viewed as “most effective when they are perceived to possess prototypical characteristics of leadership.”146 Interestingly, the study found that “being White” was an attribute of the leader prototype.147 Whites were judged to be “more effective leaders”

139 Karin Klenke, Women and Leadership: A Contextual Perspective 166 (1996); Padilla, supra note 1, at 507.
141 Neumann, What the Statistics Show, supra note 69, at 349.
142 Id. at 340 (citing Christine Haight Farley, Confronting Expectations: Women in the Legal Academy, 8 Yale J.L. & Feminism 333, 340 (1996)).
143 Curtis, supra note 55, at 8.
146 Id. at 758.
147 Id.
and to possess “more leadership potential.”\textsuperscript{148} Thus, whites “may be more likely to be promoted to leadership positions more frequently than racial minorities.”\textsuperscript{149}

Another barrier for women is that work performed by men is usually seen as competent, no matter how well done or whether done at all.\textsuperscript{150} Conversely, work performed by women, no matter how effective or to what result, frequently goes unrecognized.\textsuperscript{151} For example, when the Modern Language Associate adopted an anonymity rule, there was an extreme increase in the submission/acceptance ratios of papers authored by women.\textsuperscript{152} This acute increase “was considered such clear evidence of prior sex discrimination that the anonymity rule was extended to all MLA Journals.”\textsuperscript{153} Similarly, another journal had the same result when it introduced a double-blind review.\textsuperscript{154} The Journal of Behavioral Ecology had “a significant increase in female first-authored papers, a pattern not observed in a very similar journal that provides reviewers with author information.”\textsuperscript{155}

Another example of women being perceived as less competent than men occurred “[w]hen resumes, identical except for name and sex, were given to chairmen of psychology departments, more men were considered suitable for tenure-track positions than women. Male candidates also were offered the hypothetical positions at higher ranks.”\textsuperscript{156} The above examples demonstrate that work is devalued or seen as less competent by the mere fact it bears a woman’s name. However, this is not to say this is deliberate or intentional; rather, it is more likely that some type of unconscious bias is taking place.

\textsuperscript{148} Id.
\textsuperscript{149} Id. at 773.
\textsuperscript{150} Padilla, \textit{supra} note 1, at 508; Neumann, \textit{A Statistical Update, supra} note 69, at 442.
\textsuperscript{151} Padilla, \textit{supra} note 1, at 508; Neumann, \textit{A Statistical Update, supra} note 69, at 442. “[I]n academia, as elsewhere in life, people who are in a position to make or influence decisions about others tend, at least unconsciously, to credit what men do and discredit what women do, even if men and women are doing the same thing, because of a tendency to consider males and male traits the ‘norm’ in all situations other than those in which women predominate.” \textit{Id. See also} SANDBERG \& SCOVELL, \textit{supra} note 140, at 43.
\textsuperscript{152} Elyce H. Zenoff \& Kathryn V. Lorio, \textit{What We Know, What We Think We Know, and What We Don’t Know about Women Law Professors}, 25 Ariz. L. Rev. 869, 884-85 (1983).
\textsuperscript{153} Id. at 885.
\textsuperscript{155} Id. at 4.
\textsuperscript{156} Zenoff \& Lorio, \textit{supra} note 152, at 885.
The lack of mentors is another barrier for women. Until a short time ago, women had few role models, while men have had them for many years. Also, networking appears to give men an advantage. The “[o]ld boys’ networks persist not because of pernicious intent, but rather because they already exist and provide recognizable benefits to in-group members.” When making recommendations or when mentoring colleagues for leadership positions, men who are already in leadership positions are more likely to think of other in-group members. “It is very natural for people with decision-making power over leadership promotions to choose people who resemble themselves.” It is also interesting that “people who have white male mentors often do better than those who are mentored by women and minorities, precisely because the former have more power than the latter.” Within the legal profession women lawyers, particularly minority women, tend to be dissatisfied with the availability of mentors. For example, a study reported that 43% of white women and 31% of women of color were satisfied with the availability of mentors.

Many women in positions of power are seen as “token” leaders. This means that all their actions are closely scrutinized and often “they must exceed standards to be considered acceptable.” This is especially true for women of color. An ABA report on multicultural women noted “[a]s a result of stereotypes and assumptions, multicultural women find themselves over scrutinized and expected to conform to incompatible work styles. In addition, multicultural women contend with isolation, hostility, and disrespect.” Thus, it appears many women “are not willing to sacrifice their personal lives, their personal styles, or their sanity” to move into leadership positions. Moreover, occasionally diversity is seen as a

157 Padilla, supra note 1, at 500; Sandberg & Scovell, supra note 140, at 8, 67.
158 Id. at 511.
159 Id. at 511-12.
160 Id. at 512.
161 Cristina González, Leadership, Diversity and Succession Planning in Academia, CTR. FOR STUDIES IN HIGHER EDUC. 8 (May 2010).
163 Padilla, supra note 1, at 517.
164 Id. See also Sandberg & Nell, supra note 140, at 161.
166 Padilla, supra note 1, at 529.
“one-time commitment.” Examples include, once a woman is hired, no more women are sought; or when a woman is hired to a position of power, when she leaves, a white male will be hired to fill that vacancy.

Another barrier for women is a lack of mobility. “Few women have the luxury of relocating in order to attain job advancement. Ninety percent of women reported they would relocate only if their husbands secured employment. [However, only] seventy-five percent of men would relocate for a better job with or without the spouse’s employment.”

Statistics also show that women leaders are more likely to be single and to never have had children. “From an early age, girls get the message that they will have to choose between succeeding at work and being a good mother.” For instance, 52% of executive women have never had children; 26% of executive women are single; 16% of executive women are divorced or separated; and only 46% of the top corporate women are married. These statistics are all higher than the national norm. Contrast the statistics of leading women to those of men: 94.6% of executive men are married compared to 81.6% of men in the general population.

Today, as it has been historically, the path to a successful career in most disciplines is through a linear sequence of vertical steps. This type of linear climb is problematic for women due to inflexible work schedules. As one woman noted, “[h]aving control over your schedule is the only way that women

167 González, supra note 163, at 8.
168 Id.
170 Sandberg & Nell, supra note 140, at 92.
172 Id.
173 Id.
175 Padilla, supra note 1, at 514; Slaughter, supra note 176.
who want to have a career and a family can make it work.” Furthermore, it is not just inflexible workplaces that hinder women; oftentimes this climb necessitates excessive travel and working long hours at the office. During this linear climb, women frequently take time off from work or work part-time in order to have and care for young children. In addition, women may have other dependent care responsibilities, such as the care of elderly relations.

“The women who have managed to be both mothers and top professionals are superhuman, rich, or self-employed.” Women who have reached top positions of power tend to espouse to the younger generation “that ‘having it all’ is, more than anything, a function of personal determination.” However, some powerful women of today have a problem with that way of thinking. One notes that the coining of the phrase “[h]aving it all” is “[p]erhaps the greatest trap ever set for women.” Another noted these types of statements were really “half-truths.” And these “half-truths” purport it is possible to reach the top if women: are committed enough; marry a supportive spouse; and sequence their lives to have both career and family.

When women take time off, work part-time, or accept non-tenured positions in order to assume a care giving role, they “are still more often than not restricted from mainstream access to leadership positions.” For instance, a survey of lawyers found that taking time off or working part-time significantly decreased a woman’s probability of partnership. Moreover, there are a number of women who have made it to the top in their respective fields by sacrificing the work/

176 Slaughter, supra note 174 (quoting Mary Matalin).
177 Id.; Lee, supra note 134, at 483-84.
178 Padilla, supra note 1, at 520.
179 Id. at 514.
180 Slaughter, supra note 174.
181 Id.
182 Sandberg & Neil, supra note 140, at 119.
183 Slaughter, supra note 174.
184 Id.
185 Padilla, supra note 1, at 514; see also Curtis, supra note 55, at 6-7.
186 Noonan & Corcoran, supra note 41, at 130, 135-37, 141.
family balance. For example, look at a small sample of women in top positions who have children compared with men:

Every male Supreme Court justice has a family. Two of the three female justices are single with no children. And the third, Ruth Bader Ginsburg, began her career as a judge only when her younger child was almost grown. The pattern is the same at the National Security Council: Condoleezza Rice, the first and only woman national-security advisor, is also the only national-security adviser since the 1950s not to have a family.  

It is often argued that women “choose” to opt out of the more traditional demanding jobs, especially when they decide to work part-time or enter the non-tenured faculty track. However, is this really the case? The assumption that women “choose” less demanding jobs in order to be able to provide care giving is really no more than that—an assumption. If the workplace was more forgiving to all workers, not just to women, when they take time off or work part-time—this would enable more women to reach the top echelons in various fields. As mentioned previously, the women of today struggle against barriers that push them into less prestigious positions due to the fact they must devote time away from their careers to care for others.

Another assumption seen today is that the role of parenting should be done mainly by women. Of course, more men than ever are stepping up and becoming more involved in their children’s lives; however, the belief still persists that the caretaking of children is a woman’s task. For instance:

Famous and high-powered men who have children are rarely feted for their ability to be both dads and career-driven movers and shakers. Men are expected to be out in the world while someone else cares for their kids. However, well-known women who have children are frequently promoted on magazine covers as both career successes and (‘devoted’) moms. The message is simultaneously encouraging (“She can do it, so can you!”) and demeaning (“She can do it, why can’t you?”).  

187 Slaughter, supra note 174.
188 Id.
189 Curtis, supra note 55, at 6-7.
Thus, if the assumption persists that women should care for children, “the workplace norm will continue to be male-oriented, with work-family policies considered a female-need accommodation.”

2. **Barriers that are Specific to Women among Faculty in Higher Education, the Law, and Corporations in the U.S.**

In the preceding section, barriers women are confronted with in general were explored. This section attempts to highlight various obstacles that are more particular to women among faculty in higher education, the law and corporations.

i. **Reasons Women are Underrepresented among Faculty Generally in Higher Education Institutions**

There are several barriers for minorities, including women, to reach the top echelon in the field of academia. These include: “hostile campus environments, salary inequities, isolation, and overwhelming personal and professional duties.” Minority women are often confronted with more barriers than either white women or minority men. These women frequently cite “being treated as outsiders by white colleagues and as potential competitors by minority men.”

One problem, faced by all women, is that male faculty outnumber female faculty; the largest discrepancy being among full professors. In addition, women are promoted to full professor at a lower rate than men. Thus, because the majority of faculty is white men, it is easy to presume much of faculty hiring is effected by that segment of the population. Due to these barriers, it is not

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191 Id.
193 Padilla, *supra* note 1, at 462.
196 Misra et al., *supra* note 59. A study done by the Modern Language Association found it took women on average “from 1 to 3.5 years longer than men to attain the rank of professor.” *Standing Still*, *supra* note 59, at 5.
surprising that women, especially minority women, are underrepresented among faculty in higher education.198

Securing a diverse faculty is extremely important for institutions of higher education. This is so, because there is a large presence of minority students in these institutes; therefore, leadership of these institutes should reflect the student population.199 Furthermore, the minority population is projected to rapidly expand in the next fifty years; especially the Latino and Asian populations, which are expected to more than double in size by the year 2060.200 Moreover, while minority populations are projected to grow, the white population is projected to slowly decline.201

Women are underrepresented at the level of presidency in higher education for a number of reasons. Presidents usually stem from the pool of academic officers, an area of academia that has traditionally been comprised of white males.202 This process of mainly looking only to academic officers in order to locate future presidents puts women at a disadvantage.203 It also stymies “access to new ideas, new viewpoints, and innovative ways of addressing new challenges.”204 Furthermore, when seeking chief academic officers, colleges and universities often

198 For example, African American women hold fewer positions in higher education than African American men. Lena Wright Myers, A Broken Silence: Voices of African American Women in the Academy 12 (2002).
200 U.S. Census Projections, supra note 199. The Latino population will grow from 53.4 million in 2012 to 128.8 million (a 41.5% increase) in 2060 and the Asian population from 15.9 million in 2012 to 34.4 million (a 46.4% increase) in 2060. Id.
201 Id. The population projections for whites show that the population is going to peak “in 2024, at 199.6 million, up from 197.8 million in 2012.” But then it is expected to “slowly decrease, falling by nearly 20.6 million from 2024 to 2060.” Id.
204 Id.
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hire outside the institution; thereby overlooking potentially qualified candidates who are currently present at that institute.\textsuperscript{205}

The academic field of law mirrors the field of higher education generally; thus it is no surprise that women are underrepresented. At the beginning of a professoriate career, males receive more associate professorship appointments than females.\textsuperscript{206} Also, women are tenured at lower rates than men.\textsuperscript{207} One commentator noted “[t]he statistics create the impression that women are welcome in legal education in subservient roles but otherwise are greeted, at best, with ambivalence.”\textsuperscript{208}

Many of the reasons behind the low representation of female deans parallel the reasons behind the underrepresentation of women at the level of president in colleges and universities. Most deans have the academic rank of a full professor; thus, this is the pool from which the majority of deans are drawn.\textsuperscript{209} In the 2008-2009 academic year, women held merely 29.9\% of full professorships.\textsuperscript{210} Of the 13.5\% minority professors, only 5.5\% were women.\textsuperscript{211} Thus, because the pool from which law deans are drawn is so small for women, especially for minority women, it is not surprising there are a low number of women deans. However, the relative lack of women holding the rank of professor does not tell the entire story. As one researcher noted, “[i]f the female percentage of law school deans in 1999-2000 had been equal to the female percentage of full professors, 40 law schools would have had female deans. That is exactly twice the number of schools that actually did have female deans at the time.”\textsuperscript{212} An additional explanation for

\textsuperscript{205} González, supra note 161, at 2.
\textsuperscript{206} Neumann, \textit{What the Statistics Show}, supra note 69, at 313, 340-41. \textit{See also} Merritt & Reskin, supra note 69, at 199 (finding “men were more likely than women to begin teaching at a higher professorial rank”); Neumann, \textit{A Statistical Update}, supra note 69, at 435 (men are more likely to be hired as associate professors than women).
\textsuperscript{207} Neumann, \textit{What the Statistics Show}, supra note 69, at 313. \textit{See also} \textit{Annual Report in \textit{Academe} 2000}, supra note 63, at 26 (noting women achieve tenure at lesser rates than men).
\textsuperscript{208} Neumann, \textit{What the Statistics Show}, supra note 69, at 352.
\textsuperscript{209} Id. at 346.
\textsuperscript{210} \textit{AALS Statistical Report on Law Faculty}, supra note 82.
\textsuperscript{211} Id.
\textsuperscript{212} Neumann, \textit{What the Statistics Show}, supra note 69, at 323-24.
the low representation of minority women deans could be because deans of color are less likely to be reappointed to a deanship than whites.\textsuperscript{213} As of 2007, there were only two law school deans of color who served as deans of more than one of the majority law schools while there were thirty-two white law school deans who served at more than one decanal appointment.\textsuperscript{214}

On a positive note, there are more female law deans than ever before.\textsuperscript{215} What does this increase stem from? Some explanations include: more mentors; large numbers of recent women graduates from law school; the Women Dean’s Databank, maintained by the AALS; and the fact that recent articles have illustrated how few women actually serve as law school deans.\textsuperscript{216}

ii. \textit{Explanations as to why Women are Underrepresented in the Law}

Minority women lawyers face many barriers to reaching the top of their fields. One Catalyst study examined barriers specific to women of color at law firms.\textsuperscript{217} The study found that minority women: observed and experienced exclusion and stereotyping more than other demographics; felt overlooked by diversity efforts; were most likely to feel a need to make adjustments to fit in; experienced a lack of candid and constructive feedback as a barrier to advancement; perceived a lack of commitment from senior leadership toward promoting diverse candidates; were less likely to speak to men in the firm; and were also less likely to aspire to partnership.\textsuperscript{218} In addition, minority women associates leave firms at extremely high rates—75% leave by their fifth practice year and almost 86% leave before their seventh practice year.\textsuperscript{219}

As seen in the section which explored barriers that women generally encounter, females have difficulties balancing the demands of work with those difficulties.

\textsuperscript{214} Wolff, \textit{supra} note 50, at 773.
\textsuperscript{215} Neumann, \textit{A Statistical Update, supra} note 69, at 441.
\textsuperscript{216} Padilla, \textit{supra} note 1, at 474-79.
\textsuperscript{217} \textit{See Making the Case, supra} note 162, at 15.
\textsuperscript{218} Id. at 5, 7.
of family life. However, among lawyers, both genders espouse difficulties with this task. For example, over 70% of men and women, including partners and associates, note that balancing the demands of work with those of personal life is difficult. 220 Over half of attorneys have children (57% of female lawyers, 65% of male lawyers). 221 Interestingly, the number of law school deans who have children is higher than that of attorneys in general. One study found that 70% of women law deans have children and over 90% of male law deans have children. 222 Nearly twice as many female lawyers (84%) as male lawyers (44%) have a spouse who is employed full-time. 223 Furthermore, women are more likely to be single. 224 Thus, although more men continue to take an active role in parenting, “female lawyers continue to carry the majority of the load in this area.” 225

Frequently attorneys who struggle to balance the demands of their professional lives with the demands of their personal lives, particularly those rearing children, seek alternative work schedules. 226 To balance the needs of their families, lawyers regularly turn to part-time work. 227 One study found that “almost one in two women and one in five men want a reduced work schedule.” 228

In 2012, nearly all of the firms (98%) listed in the National Directory of Legal Employers have either formal or informal flexible work policies; however, only 6.2% of lawyers in those firms work on a part-time basis. 229 More women work part-time than men, of the 6.2% of attorneys who work part-time, over 70% were women. 230 “Among women lawyers overall, 13.5% work part-time; among female partners, 11.7% are working part-time; and among women associates the figure

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220 Making the Case, supra note 162, at 40.
221 Id. at 12.
222 Padilla, supra note 1, at 527.
223 Making the Case, supra note 162, at 12.
224 Padilla, supra note 1, at 520. See also Rhode, supra note 138, at 15.
225 López, supra note 3, at 94.
226 Id.
227 Id.
228 Making the Case, supra note 162, at 42.
230 Id.
was 10.1%. This contrasts with a rate of just 2.7% among all male lawyers.\textsuperscript{231}

Most associates who work part-time are women (89.4%) and among partners working part time, 64.1% were women.\textsuperscript{232} During the six years the NALP has compiled this information, the distribution of part-time associates has changed very little between the genders; however, the distribution of part-time partners among men and women has changed to some extent.\textsuperscript{233} “[I]n 2006 almost 72% of part-time partners were women; in 2012 that figure was about 65%.”\textsuperscript{234} Interestingly, attorneys employed at large firms, as a group, work part-time less than the general workforce and also less than other specialized segments of the workforce population.\textsuperscript{235} For example, 6.2% of lawyers at major firms work part-time compared to approximately 13.7% of the workforce as a whole and 13.1% of specialized segments of the population, such as engineers, architects, and physicians.\textsuperscript{236}

Thus, although a greater number of firms than ever make part-time work available, lawyers are not taking advantage of this type of work schedule.\textsuperscript{237} Why? One reason may be the negative perception that is associated with working part-time.\textsuperscript{238} Lawyers may be concerned that their superiors and peers will perceive working part-time as the work of an unmotivated, lazy, or uncommitted individual. In addition, “the ever-increasing billable hour requirements at firms” tends to reinforce the negative perceptions associated with working part-time as well as being a major contributor to the difficulties attorneys have at balancing the demands of work and family.\textsuperscript{239} Moreover, “[t]hese [billable] requirements show the change in the legal profession from a profession to a business, and the concomitant increased competition at the large law firms which are trend-setters in the profession.”\textsuperscript{240}

\begin{thebibliography}{99}
\bibitem{231} Id.
\bibitem{232} Id.
\bibitem{233} Id.
\bibitem{234} Id.
\bibitem{235} Id.
\bibitem{236} Id.
\bibitem{237} López, supra note 3, at 95.
\bibitem{238} Id.
\bibitem{239} Id. at 97.
\bibitem{240} Id.
\end{thebibliography}
The fifty best law firms for women have all made improvements in work-life policies. For example: 100% have reduced hour policies; 44% of have written full-time flex policies; 78% offer full-time telecommuting; 94% of firms allow their reduced-hour lawyers to be eligible for equity partnership; and 78% provide backup childcare at a facility.

iii. Causes behind Women being Underrepresented in the Corporate Arena

Most corporate boards are looking for prior CEO experience, industry experience and prior directorship experience when seeking a director. Thus, one reason women may not fare well in the corporate board selection is because they may not possess the necessary experience. Common pathways to corporate board rooms include the executive suite, the government, the law, and financial careers.

Furthermore, most employers use surface or marginal diversity. Surface diversity is when an organization hires diverse employees but then once they are hired, “disregards any differences among its employees and expects them to act in identical ways.” Marginal diversity is when an organization applies employees’ cultural differences in a restrictive way by assigning them to “certain projects, functions, or client and constituent groups based on workers’ particular demographic and cultural characteristics.”


242 Id. at 13, 15, 19.


245 Trautman, supra note 243, at 49.

246 Lee, supra note 134, at 489.

247 Id. at 491.
V. RECOMMENDATIONS/SOLUTIONS

1. In General

U.S. society today is structured around the notion of “time macho,” the need for workers to work longer hours, travel extensively, and be constantly available.248 A prime example of this is the requirement of high billable hours at law firms.249 However, even other industries promote the above notion by rewarding those who work long hours and are available twenty-four-seven. One potential solution is for organizations, be they corporations or law offices, to allow for more remote work from home “where the office is a base of operations more than the required locus of work.”250 This would help members of both genders balance the demands of work with those of family life.

Regarding the climb up the linear ladder, women should view the climb instead as “irregular stair steps,” where they can pass on job opportunities in order to spend more time with family.251 However, this may be easier said than done. Although more companies are allowing flex-time and leave to tend to sick relatives, this type of “irregular stair step” may be frowned upon.252 For instance, the United States is the only industrialized nation “without a paid maternity leave policy.”253 Thus, perception is important and companies should take steps to encourage more flexible career paths.254 It is important that companies offer flex-time and leave to partake in care giving to both men and women. By doing so, this will help alleviate the negative perceptions people have regarding working part-time or taking time off from work.

People also need to change some of their assumptions regarding women; such as the undervaluation of childcare or that women “choose” to work in less

248 Slaughter, supra note 174.
249 Id.
250 Id.
251 Id. See also Sandberg & Nell, supra note 140, at 53.
252 Slaughter, supra note 174.
253 Sandberg & Nell, supra note 140, at 23.
254 Slaughter, supra note 174.
demanding jobs.255 “If women are ever to achieve equality as leaders, then we [,women,] have to stop accepting male behaviour and male choices as the default and the ideal. We must insist on changing social policies and bending career tracks to accommodate our choices, too.”256

2. For Higher Education

In the next few years, there will be a number of vacant presidencies at colleges and universities.257 Therefore, this is the perfect opportunity to increase diversity at this level in those institutes.258 In order to bring more women and minorities into the college presidency, institutions should build on prior advancements in diversity.259 This can be accomplished by striving to promote underrepresented groups through the ranks;260 especially to department chairs, an area from which presidents are often selected.261 This, in turn, would give women and minorities the needed access to academic leadership positions.262

In addition, institutes should consider novel ways to fill vacant presidencies; for example, looking to nontraditional candidates from outside the realm of academic officers.263 An institution could also develop training programs for academic leaders.264 For instance, it could select a handful of young administrators and prepare all of them for a future presidency.265 Then, it would select the president from that group of administrators.266 The individuals not selected would then be well trained upper level academic officers.267

255 See id.; Curtis, supra note 55, at 6-7.
256 Slaughter, supra note 174 (emphasis in original).
257 Beverly Daniel Tatum, Engaging the Restless Professor: Building the Pipeline to the Presidency with Campus Talent, THE PRESIDENCY, AM. COUNCIL ON EDUC. 11 (2008); Renick, supra note 202, at 1.
258 Tatum, supra note 257, at 11.
259 Kirwan, supra note 203, at 6.
260 Id.
261 González, supra note 161, at 4.
262 Id.
263 Kirwan, supra note 203, at 8; Walda, supra note 199, at 9.
264 González, supra note 161, at 2.
265 Id. at 3.
266 Id.
267 Id.
Building on a topic from a previous section, mentorship is crucial for both students and new faculty. It is important to encourage students to pursue doctoral degrees, which in turn would help to diversify the faculty at institutes of higher education.\textsuperscript{268} By mentoring new faculty, mentors can encourage and assist them to become future leaders.\textsuperscript{269} This can be accomplished by current presidents forming support networks, imparting their knowledge and experiences, and making the effort to answer questions.\textsuperscript{270} Moreover, simply asking minorities to move from the professoriate to the realm of administration can help increase diversity.\textsuperscript{271}

3. For the Legal Profession

Legal institutions could use a board paradigm shift to effectuate change in the structure of the institution itself rather than asking women to change to fit the existing structure.\textsuperscript{272} One way to accomplish this is to switch to a per-project basis.\textsuperscript{273} Today, “[b]ecause of the heavily billable hour requirements, the organizational structure of law firms only evaluates and promotes lawyers based on the number of hours they bill yearly and in comparison to their co-workers. This system promotes inefficiency.”\textsuperscript{274} Adopting a per-project basis allows attorneys to “complete their projects in an efficient number of hours, leaving more time to take on additional projects or to work reduced schedules.”\textsuperscript{275}

A project-based structure would alleviate the need for lawyers to be constantly available while giving schedules more predictability.\textsuperscript{276} This type of system would allow attorneys to more easily balance the demands of work and family life.\textsuperscript{277} “The ultimate aim of a per-project system would be to redefine the ideal lawyer,

\textsuperscript{269} Cowen, supra note 268, at 17.
\textsuperscript{270} Id. at 18.
\textsuperscript{271} Renick, supra note 202, at 12.
\textsuperscript{272} Padilla, supra note 1, at 530.
\textsuperscript{273} López, supra note 3, at 97-98.
\textsuperscript{274} Id.
\textsuperscript{275} Id.
\textsuperscript{276} Id. at 98.
\textsuperscript{277} Id.
from a constantly available and inefficient one to one who produces the highest quality work and has a balance of work and life.”278

Law schools, along with teaching substantive courses and ethics, should strive to educate future lawyers regarding the demands of the legal profession.279 It is vital that this education include discussions on ways to balance the demands of work and family life.280 Potential lawyers, especially women, should know the demands of their profession.281 Understanding the demands of the profession would enable students to “alter their future course of employment (e.g., by choosing a particular area of practice or legal employment) or at the very least, enter the profession with open eyes.”282

One way to educate law students about the demands of the profession would be a state sponsored apprenticeship program.283 This type of program enables students to spend time in the legal workforce under the supervision of senior lawyers.284 This experience in the legal workforce would give students important perspectives on the demands of the profession. It would also allow students to impart their experiences to fellow classmates.285 As it is crucial for students to have mentors during their undergraduate studies, it is important to continue this process for students in law school.286 Models whereby students are mentored by the attorneys with whom they are apprenticed should be encouraged and considered.287

Additionally, law schools could themselves implement a type of apprenticeship course. For example, Georgia State University College of Law

278 Id.
279 Id. at 99.
280 Id.
281 Id.
282 Id.
283 Id.
284 Id.
285 Id.
286 Id.
287 Id.
implemented an experimental course, titled the “Fundamentals of Law Practice.”\textsuperscript{288} The course began with fieldwork which partnered students with an attorney in solo practice or in a small firm.\textsuperscript{289} This fieldwork component lasted seven weeks.\textsuperscript{290} During this aspect of the course, students observed lawyers in various aspects of their practices, such as initial intake interviews, court hearings, depositions, mediations, file review sessions, lawyers at work in their offices, billing practices, and accompanied the attorneys to bar association events.\textsuperscript{291} Students then had to prepare a paper on their experiences during the fieldwork component.\textsuperscript{292} After the fieldwork, the remainder of the course was structured around “topics drawn from students’ own assessments of the skills, practice management tools, and ethical decision making abilities they would need in practice.”\textsuperscript{293} These topics were what the students themselves deemed important during their fieldwork study.\textsuperscript{294}

Another solution which could assist students in becoming prepared for the practice of law involves a complete overhaul of law school curriculum. One article proposed the idea of a “legal rotations model,”\textsuperscript{295} which is similar to what is done in medical school, where the first two years are spent more in the classroom and the second two years are spent in clinical environments rotating through various specialties.\textsuperscript{296} This legal rotations model seeks to combine “early exposure to practical lawyering, traditional study and analysis of law, and meaningful skills-based preparation for a career in the law.”\textsuperscript{297} The model also promotes the use of mentors by suggesting that law students have three mentors—an upper-class student, a member of the faculty, and a practicing attorney.\textsuperscript{298}

\begin{itemize}
\item \textsuperscript{289} Id. at 468.
\item \textsuperscript{290} Id. at 469.
\item \textsuperscript{291} Id.
\item \textsuperscript{292} Id. at 470.
\item \textsuperscript{293} Id. at 472.
\item \textsuperscript{294} See id.
\item \textsuperscript{295} Drew Coursin, \textit{Acting Like Lawyers}, 2010 Wis. L. REV. 1461, 1467.
\item \textsuperscript{296} Id. at 1466, 1478-80, 1490.
\item \textsuperscript{297} Id. at 1481.
\item \textsuperscript{298} Id. at 1482-83.
\end{itemize}
Because traditional case study method is an important aspect of legal education, especially in the first year of law school, this model seeks to incorporate exposure of the practice of law in real and simulated settings into the first year curriculum.\textsuperscript{299} In each first year course, some hands-on activity should be implemented; such as drafting agreements in Contracts or pleadings in Civil Procedure.\textsuperscript{300} Furthermore, students should receive more feedback throughout the course in the form of frequent skill-based assignments rather than one traditional final exam at the end of the semester.\textsuperscript{301}

In the second year students enter a rotations model, which is part simulation and part clinical.\textsuperscript{302} Once students enter these rotations, they do not return to traditional classroom settings.\textsuperscript{303} Instead, they attend check-in sessions with fellow students and administrators to discuss their experiences.\textsuperscript{304} Simulation rotations are more in-class skill set learning workshops where students do not interact with live clients.\textsuperscript{305} Clinical legal rotations are similar to traditional law school clinics, where students work with live clients.\textsuperscript{306}

In the third year, students either enter a legal residency or an advanced rotation.\textsuperscript{307} In legal residencies third year students work full time for a law firm and perform the work of a first year associate, but do not receive compensation.\textsuperscript{308} They are called “apprentice associates.”\textsuperscript{309} An advantage of this system is that by the end of the apprenticeship these law students are ready to enter the legal field as practicing attorneys.\textsuperscript{310} For advanced rotations, the students “would delve deeply into complex skills development” and receive more “individualized feedback than” in their second year.\textsuperscript{311}

\begin{footnotesize}
\begin{enumerate}
\item Id. at 1483-84.
\item Id. at 1486.
\item Id. at 1489.
\item Id. at 1488.
\item Id. at 1488-89.
\item Id. at 1499-93.
\item Id. at 1491-92.
\item Id. at 1495.
\item Id. at 1496-97.
\item Id. at 1497.
\item Id. at 1498.
\item Id.
\end{enumerate}
\end{footnotesize}
Implementing this type of curriculum at a law school has two major benefits. First, it provides students with the necessary tools to be practice ready upon graduation from law school. Second, it helps impart knowledge to students regarding the demands of the legal profession by giving them an understanding of the potential challenges involved in balancing the demands of work with those of family life.

Over the past fifteen years task forces have been created through the joint efforts of bar associations and state supreme courts. These task forces have focused on many issues, including diversity and gender equality. However, additional efforts should be made concerning “the experiences in the legal profession of other underrepresented groups, such as racial, religious, ethnic and sexual-orientation minorities.” Moreover, it is imperative that gender inequality be scrutinized further. “[T]wo specific areas that need more attention and further analysis: The disparity in financial compensation between the genders and the elevation of more female judges to the bench.”

Also, research into gender equality in the legal profession in other countries may help to highlight solutions that could be implemented here in the United States. Moreover, as this article seeks to accomplish, a comparison of women in the legal field to women in other professions is important. Disciplines such as the medical profession and business may help illustrate similar barriers with which women are confronted and may also offer potential solutions to the legal profession.

Although women are entering the legal profession at high rates, they are failing to reach the most prestigious positions—partner, judge, and tenured faculty. Thus, “[n]either the passage of time nor the slowly trickling pipeline” has led to women
gaining access to the aforementioned positions.\textsuperscript{320} Therefore, “[f]emale lawyers continue to be ensconced in the ‘50/15/15 conundrum’ where it has been 15 years since women comprised 50\% of law students but only constituted 15\% of law firm partners.”\textsuperscript{321} However, “this should not be cause for pessimism; rather, it should usher in an era of renewed commitment to addressing the concerns” raised in this article.\textsuperscript{322}

4. For the Corporate Arena

As mentioned previously, most corporate boards are seeking prior experience when looking for directors, and common pathways to corporate boardrooms include the executive suite, the government, the law, and financial careers.\textsuperscript{323} One commentator noted that in order to help women gain the experience which would make them more attractive candidates for boards, they should be encouraged to pursue law and financial degrees.\textsuperscript{324}

Instead of using surface or marginal diversity, which stymie diversity, employers should embrace the differences between employees and realize minorities have new viewpoints and experiences to contribute to the organization.\textsuperscript{325} In essence, organizations should use core diversity. They should “question the traditions and power dynamics that have exclusionary effects, and provide[] an antidote in the form of drawing out and incorporating diverse members’ various ideas concerning the organization’s central work.”\textsuperscript{326} Additionally, one commentator suggests activist investors should demand more women board members and that law schools should encourage women to take corporate law courses.\textsuperscript{327}

\textsuperscript{320} Id.
\textsuperscript{321} Id. (citing \textsc{Nawl’s First National Survey on Retention and Promotion of Women in Law Firms, Nat’l Ass’n of Women Lawyers and the NAWL Found.}, 1 (Oct. 2006), available at http://nawl.timberlakepublishing.com/files/NAWL%20FINAL%20PUBLICATION%202010-25-06%20SURVEY%20REPORT.pdf).
\textsuperscript{322} Id.
\textsuperscript{323} Trautman, \textit{supra} note 243, at 25, 49.
\textsuperscript{324} Id. at 49; \textit{see also} Nowicki, \textit{supra} note 244, at 559-60.
\textsuperscript{325} Lee, \textit{supra} note 134, at 495.
\textsuperscript{326} Id. at 494.
\textsuperscript{327} Nowicki, \textit{supra} note 244, at 558-60.
Looking to other countries may generate solutions as well. For example, Norway, France, Spain and Sweden all have laws requiring corporate boards to have a specific percentage of women. 328 In those countries, the quotas range from twenty-five to fifty percent. 329 These laws are deemed “hard quotas.” 330 There are clear benefits to having women on corporate boards. 331 The value of equality of opportunity for women leaders and the diversity of viewpoints they can bring to the table are only the beginning.

VI. CONCLUSION

In sum, the status of women leaders in the legal profession, higher education and the board room in the United States is faced with great challenges, while at the same time presents some opportunities for growth and experimentation. A continued spirit of creativity, equality and innovation will continue to afford women opportunities so they can succeed in any leadership endeavor they seek in these professional arenas. Let us all work towards this transcendent goal, for all women in the U.S. and worldwide.

329 *Id.*
330 *Id.*
331 *Bottom Line 2007*, supra note 123; *Bottom Line 2011*, supra note 123.
The introduction of the one-year Master of Laws (LLM) has been touted as a game changer for post-graduate legal education in India. This paper argues that, despite the unclear rationale for the course and the hastily put together course structure, the one-year LLM may transform post-graduate legal education if rigorous intellectual effort is invested in the process of translating the curriculum into active learning materials allowing for a critical pedagogy to emerge in the classroom. Using the Law and Social Transformation course in the two-year LLM as an example, the paper shows that despite a well designed curriculum, the syllabi and textbooks developed subsequently effectively neuter the objectives of the course. The new decentralized institutional environment for the development of the one-year LLM, with the emergence of new private Universities taking the lead with course development, offers hope that the promise of the one-year LLM will be realized.

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On 18 January 2013, the Universities Grants Commission (UGC) approved the Guidelines for the one-year Master of Laws (LLM) degree programme in India and initiated the most significant change in post-graduate legal education in India since the late 1970s. It is suggested that the constriction of the two-year to the one-year LLM may potentially do to post-graduate legal education what the expansion of the three-year LLB to the five-year BA, LLB did to undergraduate legal education in India. Notably, while the introduction of the five-year BA, LLB proved to be a game-changer for undergraduate legal education, the LLM did not substantially benefit from the establishment of the new National Law Universities. The ‘success’ of the five-year BA, LLB programme was possible because of a new course structure and curriculum for an integrated degree in the Arts and Law; the adoption of a new critical pedagogy; and by attracting a new constituency of eighteen-year-old school-leavers from middle and upper middle class homes across India, who anticipated and contributed to the development of the transactional lawyering bar. The National Law School of India University, Bangalore was the first to adopt the five-year model and introduced the Socratic Method and Case Method of teaching and learning which allowed for a new critical pedagogy to emerge in the law classroom. These teaching methods were neither institutionalized nor supported by casebook materials to ensure continuity. After two decades, the five-year BA, LLB programme displays only vestigial traces of the curricular and pedagogical reform that motivated its introduction, but exudes some vitality by continuously attracting talented students to the programme. To have any chance of success, the one-year LLM programme must at the very least have clarity of goals, integrate curricular and pedagogical reform, and attract a new constituency of students to post-graduate legal education in India. In this essay, we assess the prospects of such success and focus our attention on the curricular and pedagogical challenges that we need to contend with for any success to be possible. We begin by considering the articulated goals of post-graduate legal education in India.


3 Id. at 480-484.
I. GOALS OF THE LLM

In 2007 the National Knowledge Commission Working Group on Legal Education lamented the ‘steady decline in quality of LLM programmes’ and offered bald suggestions on future reform, none of which made it to the final Commission recommendations to the Prime Minister. However, the Round Table on Legal Education set up by the Ministry of Human Resources Development pushed for a one-year LLM to match the duration of LLM programmes in developed countries such as the USA and UK. The full report of the Round Table and the UGC Expert Committee Report in 2012 may articulate a fuller rationale for the one-year LLM, but these are unavailable in the public domain. Hence, the only publicly available justification referenced in the UGC announcement suggests that the commercial interests of Indian Universities to compete with foreign LLM degree providers drove this round of post-graduate legal education reform.

This is in stark contrast to the earlier efforts to recast the LLM in the 1970s and 1980s. Upendra Baxi, in a working paper titled ‘Notes Towards a Socially Relevant Legal Education’ prepared for the UGC Regional Workshops in Law (1975-77), laments that “the LLM curriculum primarily involves studying at an ‘advanced’ level what was studied at a ‘preliminary’ level in LLB”. He then goes on to propose a restructuring of the LLM programme by adopting as “the starting point for a debate on post-graduate legal education…the fact that LLM is the basic qualification for Indian law teachers.” Hence, he concludes: “the most immediate need is of recasting LLM curricula and pedagogy in terms of teaching the future law teachers.” The UGC and various law faculty invested considerable effort to develop an LLM degree curriculum for law teachers, which at its core was a research-focused

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6 Universities Grants Commission, supra note 1, Preamble.
8 Id. at 27.
inter-disciplinary engagement with law. Despite these extensive efforts at curricular reform of the LLM programme in the past, dour and unchanging classroom pedagogical practices and the lack of well put together teaching materials ensured that the LLM remained a backwater in Indian legal education.

While Dr. Madhava Menon and Vice Chancellor Faizan Mustafa\(^9\) may insist that the one-year LLM will remain focused on those who seek an academic career in the law, several others including the current Vice Chancellor of the National Law School of India, Bangalore, R. Venkata Rao acknowledge that the LLM will hereafter train students to tap manifold opportunities in a globalizing world.\(^10\) It may well be that clarity about the goals of the new one-year LLM will emerge from its enthusiastic and rapid adoption by various Universities.\(^11\) The absence of a pioneering National Law School and the emergence of a new institutional landscape with several private universities may lead to divergent goals and strategies being pursued by different Universities. It is possible that a large number of Universities will refocus the primary purpose of the one-year LLM away from the training of future law teachers to training for specialization with ‘advanced’ legal courses catering to demand in the commercial bar. However, the capacity of Universities to reshape this LLM to diverse goals will depend to a large extent on the curricular formats mandated by the UGC to which we now turn.

**II. CURRICULAR REFORM**

The UGC Guidelines for the one-year LLM provide very broad curricular guidance. The course has three components: three foundation/compulsory papers; six optional/specialization papers and a dissertation. The three prescribed foundation courses are titled: Research Methods and Legal Writing; Comparative Public Law/Systems of Governance; and Law and Justice in a Globalizing World. The two-year LLM mandated four compulsory courses: Law and Social

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\(^9\) *New Boost to Legal Education One year LLM gets UGCs seal of approval*, BAR AND BENCH (Oct. 10, 2012, 10:54AM), [http://barandbench.com/content/new-boost-legal-education-one-year-llm-gets-ugcs-seal-approval#].

\(^10\) *One year LLM Law honchos say yes*, BAR AND BENCH (Nov. 29, 2009, 7:30 PM), [http://barandbench.com/content/one-year-llm-law-honchos-say-yes#].

\(^11\) Apart from 5 National Law Universities, at least five private universities have offered the one-year LLM degree including Jindal Global Law School, Tata Institute of Social Sciences, Christ University, Indian Law Institute and Amity Law School.
Transformation; Indian Constitutional Law; Judicial Process and Legal Education; and Research Methodology. While the Research Methods and Legal Writing course may have much in common with the Legal Education and Research Methodology course, the two other mandatory courses in the one-year LLM have little resemblance to the other mandatory two-year LLM courses. If the stated goal of the one-year LLM is the same as the two-year LLM—to train legal academics—there are no reasons articulated in the Guidelines as to why the core courses have changed. Arguably, both the Comparative Public Law course in the one-year LLM and the Indian Constitutional Law course in the two-year LLM will expose students to advanced perspectives in public law. However, the third mandatory course titled ‘Law and Justice in a Globalizing World’ has no parallels in the two-year LLM, or for that matter in any course currently taught in most LLM programmes. Without careful development of the syllabus for these new mandatory courses it is unlikely that there will be a common core programme across the various Universities offering the programme.

The Annexure to the Guidelines provides that ‘[t]he six clusters of specialization subjects tentatively can be’ international and comparative law; corporate and commercial law; criminal and security law; family and social security law; constitutional and administrative law; and legal pedagogy and research. Under each of these specialization streams, the guidelines compile a laundry list of 12-13 potential courses, which are not always easy to integrate in a single intellectual or sub-disciplinary framework. For example, it is not clear how transportation law or housing and urban development should be an important course for a specialization in constitutional and administrative law! There are several such incongruities but as long as these specializations are understood to be merely illustrative and not binding, these lists may not do much harm. The two-year LLM course design provided for more than fifty courses organized around ten subject clusters. While almost all law schools followed the prescribed mandatory courses in the two-year LLM, no law school adopted the optional subject matter clusters in the manner set out in the guidelines and syllabus prepared by the UGC. Early evidence with the one-year LLM programmes announced so far suggests that the same pattern is likely. For example, the Tata Institute of Social Sciences has announced a one-year LLM programme on ‘Access to Justice’: a topic which is absent from the list of subject clusters in the Guidelines.
In any event, the primary challenge for post-graduate legal education is not curricular overhaul but the capacity to translate a curriculum into meaningful course syllabi, substantive learning materials and supportive teaching and learning practices. The two-year LLM process went through a substantive process of syllabus development and there was a flourishing textbook market which supported these courses. However, it is a mistake to assume that syllabus development and the presence of a textbook market will automatically lead to a rigorous LLM programme. In the rest of this essay we pay close attention to the development of a syllabus and the course materials for one compulsory course in the LLM programme, as this offers us sharp insights into the challenges that the one-year LLM programme faces today.

III. Developing the Course Syllabus

In this section of the essay, we examine the curricular design and pedagogy of one course titled ‘Law and Social Transformation in India’ for which detailed syllabi and learning materials have been prepared. While the Law and Social Transformation in India course has not been prescribed as a compulsory or foundation course in the one-year LLM, it is the course that best exemplifies the ambitions and challenges of the LLM programme—interdisciplinary and theoretical engagement with law as a social phenomenon and as an academic discipline. The best way to identify the challenges and potential for LLM pedagogy/curricular reform is to focus our attention on the translation of curriculum into syllabi and then into several textbooks for this course.

The UGC Panel in Law then went on to sketch a sample syllabus for a course titled ‘Law and Social Change Problem with Special Reference to India’ in Annexure B of the same Report. Two aspects of this sample course deserve attention: first, the course is not organized around legal doctrinal debates and hence compels a multi-disciplinary perspective, and second, the course avoids a mechanistic view of the relationship between law and social change, treats law as one element of social change, and does not elevate it to be a primary cause or catalyst. The core vision of the UGC Panel in Law is to create post-graduate law students who are grounded in social science methods and have the ability to approach legal problems nested in their social and cultural context.

12 Upendra Baxi, supra note 7, at 32-33.
In 2001, the Curriculum Development Committee for Law (hereafter ‘CDC’) of the UGC sought to revise and update the syllabus for the LLM programme. The CDC changed the Law and Social Transformation in India course in two significant ways: first, it combined two existing courses titled ‘Law and Social Transformation in Ancient India’ and ‘Law and Social Transformation in Contemporary India’. It’s puzzling why two courses of this description existed in the first place as there is no hint of such a division in the course design proposed by the UGC Panel in Law. Secondly, it developed a model syllabus for this course, which retained the course title suggested by the UGC Panel in Law but effectively replaced the multi-disciplinary social science approach with a more pedantic doctrinal approach. In the nine modules of the course, only the first and last module titled ‘Law and Social Change’ and ‘Alternative Approaches to Law’ respectively are grounded in social science theory. The rest of the module titles are varied prefixes to the phrase ‘… and the law.’ These prefixes include religion, language, community, regionalism, women, children and modernization. The syllabus effectively inverts a course designed as a social science enquiry into law, to a legal doctrinal enquiry into selected social issues. In the latter format, the law student is invited to deepen her understanding of the legal system and legal doctrine as it applies to pathological social problems. Though the bibliography annexed to the course refers to some high quality materials, these materials adopt a method orthogonal to that adopted in the syllabus.

So in a two-step process spread across three decades the design of syllabi for the Law and Social Transformation in India course effectively undoes the primary motivations for such a course. Moreover, UGC Model syllabi operate as standard guidance for a large majority of Universities offering the programme and to textbook writers who slavishly copy the syllabi as their table of contents. Hence, this activity of syllabus design decisively shapes the experience of the LLM student more significantly than the high minded principles that animate curricular design.

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IV. TEXTBOOKS FOR THE LLM CURRICULUM

A casual academic observer may on first impression be optimistic that ‘law and social transformation’ is a major field of enquiry in Indian legal academy. There are at least two recent books with the same title.\textsuperscript{15} A search for books with cognate terms such as law, justice and social change in their title suggests more depth to this field.\textsuperscript{16} If this is evidence of a serious and sustained engagement by the legal academy with problems of law and social change in India, then this optimism is justified. However, on closer scrutiny of the content of these books, one recognizes that this publishing trend is an attempt by textbook publishers to exploit a new market for books designed for a mandatory course with the same title in the LLM programme. So the proper approach to reviewing these books is to assess whether they satisfy the academic and professional motivations behind the inclusion of the ‘Law and Social Transformation in India’ course in the LLM programme. The two primary motivations for the course are to equip law students to use social science disciplinary methods to understand law as a social phenomenon and to critically assess the role of law in social transformation. In this essay, we critically assess the extent to which these books satisfy these goals.

We focus our attention on what is arguably the best and most used LLM textbook for this course - ‘Law and Social Transformation’ by Ishwara Bhat. Professor Ishwara Bhat’s ‘Law and Social Transformation’ adopts the model syllabus for the UGC LLM Foundation Course 001 titled ‘Law and Social Transformation in India’ in its entirety. This 1032-page tome is divided into four parts that accommodate twenty chapters. The chapters in Part I address theories of law and social transformation, history of social transformation in India, alternative accounts of social transformation (such as Gandhism, Sarvodaya, Marxism and Naxalism) and constitutional aspects of social transformation respectively. Part II titled ‘Multiculturalism and Social Transformation’ contains chapters on religion, language, regionalism and ethnicity. The next Part titled ‘Social Transformation by Empowerment’ contains chapters on social transformation of backward classes, women and children. The fourth

\textsuperscript{15} G.P. Tripathi, Law and Social Transformation (2012); K.P. Malik & Dr. K.C. Raaval, Law and Social Transformation in India (2011).
and final Part is titled ‘Modernization and Social Transformation’ and has individual chapters on family law, economic reforms, reforms of the justice delivery system and participative democracy. The book goes beyond the UGC prescribed syllabus by including a chapter on the use of English and regional languages as the official language of the High Courts and the Supreme Court.17

Any book that addresses such a wide range of topics is bound to be unwieldy and is unlikely to prosecute a coherent set of arguments. Each chapter and each section of the book is relatively self-contained and there is no effort to build an argument across the book. The sheer scale of the book and the patchwork of issues it addresses indicate why slavish adoption of the UGC Model syllabi makes the task of textbook writing unenviable. In this essay we focus on two key claims and thematic concerns in the book, and respond to them in a critical manner. First, that it develops a coherent social science method to the problem of law and social transformation. Secondly, that law in India has contributed positively to social transformation in India. We show that though the book fails to support either of these two claims fully, the substantive attempt to respond to these claims may well illustrate the complexity of the problems of textbook development and the intellectual challenges inherent in LLM pedagogy.

1. Social Science Method in the LLM Classroom

In the section above we briefly traced the institutional history and motivations for the Law and Social Transformation in India course in the LLM programme. While the author does not engage with this history at any length, he is aware that “law’s role cannot be looked at in isolation” and that “inter-disciplinary analysis” is necessary to understand “law-society interactions”.18 However, he then goes on to claim rather obtusely that the book adopts “a holistic analysis” and advocates “an activist role for state and society.”19 He suggests: “instead of lawyers’ law analysis [the book] has tried to look into the social dimensions of important facets of the legal system. Understanding law as a social phenomenon will not only elevate the role of law in social action and in its mission of social justice but also rectify its

18 PI Bhat, supra note 17, at XII (Preface).
19 PI Bhat, supra note 17, at XIII (Preface).
defects and sharpen its cutting edges.” This statement of method suggests that studying the social dimensions of the legal system is the same as understanding law as a social phenomenon. The failure to sharply distinguish between the two approaches is the core methodological and disciplinary weakness in this book.

In order to understand the social dimensions of the legal system we usually place the law, the legal system and legal doctrinal analysis at the core of the enquiry. Then we assess the social impact of the law and legal institutions. The internal perspective of law and legal analysis shapes the enquiry, and we engage with social science in so far as it illuminates the legal project. On the other hand to understand law as a social phenomenon, we begin with the contours of the social phenomenon that is the focus of the study. Then we deploy a range of social science disciplines and methods to analyze the social phenomenon. The presence or absence of law as a binding institutional normative system with its specialized form of practical reasoning is simply one more aspect of the social phenomenon. By decentering the law as the primary or sole object of study, the law student develops the intellectual ability to look at the law as an embedded social practice. This book at its best adopts the first method: a study of the social dimensions of the law.

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20 PI Bhat, supra note 17, at XIII (Preface).

21 For e.g. the books in the Law in Context series of the Cambridge University Press highlight the necessity for understanding law in its context. An explanatory note in the preliminary pages of one of the Law in Context books reads: “Since 1970 the Law in Context series has been in the forefront of the movement to broaden the study of law. It has been a vehicle for the publication of innovative scholarly books that treat law and legal phenomena critically in their social, political, and economic contexts from a variety of perspectives. The series particularly aims to publish scholarly legal writing that brings fresh perspectives to bear on new and existing areas of law taught in universities. A contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion. It is hoped that this orientation is at once more stimulating and more realistic than the bare exposition of legal rules. The series includes original books that have a different emphasis from traditional legal textbooks, while maintaining the same high standards of scholarship. They are written primarily for undergraduate and graduate students of law and of other disciplines, but most also appeal to a wider readership. In the past, most books in the series have focused on English law, but recent publications include books on European law, globalisation, transnational legal processes, and comparative law.”

The difference between the two approaches is best illustrated by reference to Chapter 5 on Secularism.\textsuperscript{23} We will carefully review this Chapter to reveal the limitations of the method adopted as well as the chaotic and incoherent manner in which the discussion in the book is organized. The Chapter begins impressively by paraphrasing Duncan Derrett’s views on the nature of religious membership. We are then acquainted with the views of Amartya Sen on the dangers of emphasizing a single identity; the NCRWC’s platitude on the plurality of India; and Durkheim, Weber and Marx’s views on the nature of religion. While each paragraph may be understood standing alone, there is no clarity how or why these paragraphs come together to advance an understanding of the social phenomenon or the place of law in it.\textsuperscript{24}

The Chapter then moves on to consider the concept of secularism in India. Even here, a similar pattern emerges. The Chapter begins with D.E. Smith’s expansive definition of secularism, and then we are acquainted with P.K. Tripathi’s views on the place of secularism in the Indian constitution. The author hints at the need to go beyond a full separation of the state and religion to a position where the state is neutral. However, there is no clear argument that this is the model adopted in the Constitution or the best model to resolve religious conflicts. In the next section we are led through a broad historical account from ancient to post-colonial India with impressive references to Akeel Bilgrami, T.N. Madan, Romila Thapar, Gurpreet Mahajan and Bipan Chandra. This excursion concludes with the claim that ‘secularism’ has evolved from “India’s own social experience and genius.”\textsuperscript{25} The footnote credits this claim to Jawaharlal Nehru though the provenance of this reference is unclear. Further we are unsure how this concludes the discussion as the section seeks to demonstrate the capacity of secularism to settle religious conflicts.

The Chapter now turns to consider legal and constitutional discourse on secularism. In some ways this part of the Chapter is most insightful, as the author suggests that the Indian model of secularism is as concerned with the

\textsuperscript{23} Id. at 225-266.
\textsuperscript{24} PI Bhat, supra note 17, at 225-232.
\textsuperscript{25} PI Bhat, supra note 17, at 237.
State-religion relationship as it is with achieving social justice in the spheres of religious practice. The author surveys various Supreme Court cases and legislative reform measures in a scattered manner to show that secularism has been applied in various contexts. The cases and the legislative efforts are interrupted by a brief discussion of a debate between T.N. Madan and Ashis Nandy on the one hand and Andre Beteille and Gurpreet Mahajan on the other, ostensibly representing a ‘separationist’ and ‘non-discrimination’ approach to secularism respectively. The Chapter concludes with an elaborate paraphrasing of the Sachar Committee Report and the role of Minority Commissions but fails to mention proposed legislation on the Communal Violence Bill. It concludes with pithy suggestions like: “Basic unity of approach in all religions does not leave them as crusading faiths. Harnessing of the common elements and lowering down of the harmful inferior practices amidst religions in the light of humanism and welfare constitute a sound strategy to escape from the opiating effect of religions.”

The elaborate survey of the Chapter on Secularism clearly demonstrates three aspects of the book. First, it brings together more references to non-legal materials than standard Indian law textbooks do. These sources are used prolifically but in an emblematic fashion: there is no careful engagement with the arguments in social theory or with their interaction with the legal materials.

Secondly, the organization of materials in this Chapter and elsewhere in the book does not come together to make an argument. At the end of the Chapter the reader is not persuaded to any end: is secularism desirable? What model of secularism does or should India adopt? There are undoubtedly insightful comments at some points in the Chapter: for example, the reference to the debate on the constitutional validity of Article 290A, which permits grants by State governments to maintain Hindu religious institutions, is one that deserves greater attention in the context of the recent Prafull Goradia v. Union of India case. However, these useful details are not wrapped up in an overall understanding of

26 PI Bhat, supra note 17, at 264.
27 PI Bhat, supra note 17, at 239.
the nature of Indian secularism or the place of law in it. Though the development of an overall structured argument may not be an essential function of a textbook, we can all agree that unless the material is presented in a coherent and predictable manner the readers are left to fend for themselves in a maze of ideas.

Thirdly, if we begin with the idea of secularism as a solution to the problem of inter-religious group co-existence, then a serious engagement with the theoretical literature would require us to parse different disciplinary and sub-disciplinary enquiries and explore the relationship between them. For example, we may ask whether the European origins of the idea of secularism make it unsuitable for other political societies (Nandy, Madan, Sanjay Subrahmaniam, Rajeev Bhargava). Then the enquiry may proceed to outline the history and content of the idea of secularism in European and other societies: anti-establishment, religious freedom and equal citizenship of different religious groups (Balgangadhara, Bhargava, Charles Taylor, Gurpreet Mahajan). Further, we must reassess the role that the idea of secularism plays in recent Indian political history and legal history.

The Indian legislative and judicial contributions to the evolution of the idea of secularism from *Shirur Mutt* to *Shab Bano* right up to the recent Gujarat communal massacres (not “Godhra riots” as the author describes it!) must be woven into the theoretical debates discussed above. We must be able to show how they have to often choose between various theoretical alternatives as they frame legal policy or advance a particular interpretation of the constitution or the legislation. By locating legal discourse within this wider understanding of a social and historical phenomenon, we slowly abandon a socially unrealistic and mechanistic view of

law as a tool of social transformation and change that operates autonomously of society to alter or shape our world. Hence, we are forced to conclude that while this book has more references to the social science academic literature than any other Indian law textbook with the same title, it does not develop an interdisciplinary “understanding of law as a social phenomenon”.

2. The Role of Law in Social Transformation

This book advances the general proposition that the “most dependable instrument to plan and bring orderly change even amidst critical situations is law, because of its ability to restructure the relations and its influential institutional framework.” While it does acknowledge that social transformation may take place for a variety of reasons independent of the law, including economic, cultural and technological factors, it is optimistic about the Indian legal system’s competence to contribute to social transformation through the pursuit of justice, multiculturalism and modernization of the economy. At other points, the author does acknowledge that law may have a complex relationship with social change and also presents non-legal alternatives to social transformation, such as Naxalism, Marxism, Gandhism and Sarvodaya. As pointed out earlier in this essay, the book does not highlight or synthesize the contradictory views expressed in various sections of the book. So the readers are left to work through these stark contradictions and arrive at their own conclusions. However, it is fair to say that the overall tenor of the book is to endorse the potential and performance of law and legal institutions.

In examining the role of law in social transformation, we have to be alert to the various legal instruments available – legislation, precedent, and custom – as


33 Id. at 17.

34 PIL Bhat, *supra* note 17, *in passim* Chapter 20 Conclusion 929-939.


well as the modes of operationalizing various legal institutions like the executive, legislature and the judiciary. Any book examining the interplay between law and social transformation must adopt an institutionally disaggregated view of the relationship between law and social transformation. While the role of the legislature, executive and constitutional courts in social transformation receive some attention, the book fails to develop a keen understanding of the capacity and limitations of these institutions to aid social transformation and social change. It may well be an unfair expectation for a book of this breadth and scope to offer a comprehensive account of the role of law in social transformation unassisted by substantial academic literature in each of these fields. However, the one field where primary materials already engage with these questions in considerable detail is the area of gender law reform. Hence, in this part of our review we will examine the approach to ‘gender justice’ in Chapters 12 and 13 to assess the author’s approach to an evaluation of law’s promise of delivering social transformation.

Chapter 12 begins with a broad excursion into the idea of gender justice, drawing on the works of Iris Marion Young, Hilaire Barnett, Catharine MacKinnon and Carol Gilligan, among others. We are then briefly acquainted with international human rights for women, before being immersed in a reconstructive account of Hindu philosophy where, despite literary evidence to the contrary, the author reassures us that the “core approach of Hindu philosophy… could hardly look down women as mere objects.” We then glide into the constitutional debates and cases on equality where the author does not criticize the less than remarkable performance of the Supreme Court. Next, we turn to consider a surprisingly brief section on maintenance followed by an insightful section on the use of habeas corpus orders to protect women against private detention. We rapidly course through small sections on constitutional decisions on political reservation, pornography, foeticide, sati and prostitution.

37 PI Bhat, supra note 17, at 208-213 (Chapter 4) and 891-898 (Chapter 19).
39 PI Bhat, supra note 17, at 528.
Two features of the discussion in these two Chapters about gender equity stand out and deserve careful attention. First is its emphasis on constitutional law. Unlike most of the Chapters in the book, there are references to legislative reform in the context of sati, domestic violence, rape and female foeticide in Chapter 12 and 13. However, it is nevertheless clear in these Chapters that the author is primarily concerned with the role of the Constitution and the Supreme Court in social transformation. As two of the first year LLM courses—Indian Constitutional Law and Judicial Process—already emphasize constitutional decision-making, there are pedagogical reasons for this course to emphasize non-constitutional law. Arguably, legislative efforts have had greater impact on social transformation than constitutional law decisions.40

Secondly, the book fails to refer or respond to the extensive Indian academic and activist debates on issues of law and social transformation. This is a puzzling and striking failure as one of the significant strengths of this book is the extensive reference to academic sources. On the practice of sati, the author relies on the work of P.V. Kane, Romila Thapar and A.L. Basham, but fails to engage with contemporary feminist debates on the origin and practice of sati41 or the contemporary popular account of the practice by Mala Sen.42 The enactment of domestic violence legislation is one of the most intensely debated legislative reform measures in recent Indian history. Indira Jaising,43 Flavia Agnes44 and Madhu Kishwar,45 among others, have engaged in a wide-ranging and heated debate on

42 Mala Sen, Death by Fire: Sati, Dowry Death, and Female Infanticide in Modern India (2002).
the value of legislation in this field. Similarly, dowry and sex work have been discussed at length in the women’s movement. The author’s optimism about the place of law in social transformation in the gender context is the subject of a book-length work by Nivedita Menon. None of these materials find any mention in the book. This failure to locate a discussion of the Supreme Court’s views on various gender issues in the intellectual context of the academic debates in this field ultimately defeats the primary enquiry in the book—to assess the capacity of the law to aid social transformation. Instead, we are left with an asocial and ahistorical anecdotal account of law’s attempts to secure social transformation.

In the sections above, we have suggested that the book fails to provide the reader with an understanding of law as a social phenomenon or to critically account for the role of law in social transformation. Despite these criticisms, the book’s value rests in its ability to reference a wide range of legal materials, which marks it out as one of the better Indian textbooks on this subject available today. Though the author’s treatment of the legal materials is lucid in most parts, the motivation for and the utility of the frequent invocation of Sanskrit shlokas is unclear. Nevertheless, the major weakness in the book is the absence of an overarching argument that pulls the wide-ranging enquiry together.

The book’s repeated invocation of the metaphor of “change and continuity” to explain social transformation leaves the reader no better informed about the mechanics and impact of law and does not offer an overall structure for the book. The author may have developed either of the two themes discussed briefly in the book—Law and Development or Courts and Social Change—as the fulcrum around which the book is organized. The Law and Development approach has reasonably well-developed analytical frameworks and substantial inter-disciplinary

48 See P. Bhat, supra note 17, at 663-700 (for a discussion on modernity and modernization that is difficult to untangle).
49 P. Bhat, supra note 17, at 514.
50 P. Bhat, supra note 17, at 125, 167 and 672-673.
51 P. Bhat, supra note 17, at 63-68.
and comparative literature. However, the author does not embrace the interdisciplinary method whole-heartedly and hence this may be an unlikely choice. The bulk of this book hints at but never fully develops an analysis of the courts and social change. There is an interesting discussion of Siri Gloppen’s work on the measuring of the transformative potential of court decisions, and this could potentially be the best framework for the entire book. Going beyond Gloppen’s work this perspective could benefit from the work of Gerald N. Rosenberg, Charles R. Epp, Daniel L. Horowitz or Roberto Gargarella. The diligent student will benefit immensely by reading the entire book as an extended enquiry into the relationship between courts and social change. Read in this way, the book escapes the self-imposed limitations of an Indian law textbook and allows students to develop a critical inter-disciplinary approach to law and social change. A careful review of Ishwara Bhat’s ‘Law and Social Transformation’ points to the central challenge to the one-year LLM programme: the availability of learning materials and textbooks that support a critical and rigorous pedagogy in the classroom.

V. CONCLUSION

The announcement of the one-year LLM programme has been enthusiastically welcomed as a significant break from the past and a critical inflection point in the history of Indian post-graduate legal education. As discussed earlier, the

53 PI Bhat, supra note 17, at 210-212.
54 Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? 7 (2008) (“Court decisions, particularly Supreme Court decisions, may be powerful symbols, resources for change. They may affect the intellectual climate, the kinds of ideas that are discussed. The mere bringing of legal claims and the hearing of cases may influence ideas. Courts may produce significant social reform by giving salience to issues, in effect placing them on the political agenda. Courts may bring issues to light and keep them in the public eye when other political institutions wish to bury them. Thus, courts may make it difficult for legislators to avoid deciding controversial issues”).
Guidelines issued by the UGC do not clearly articulate the goals of the new programme but develop a skeletal curricular framework for the programme. From this point, the one-year LLM programme may develop in two divergent institutional settings: first, by the decentralized development of curriculum, syllabi and learning materials by Universities, or secondly, by the UGC developing centralized syllabi through the Curriculum Development Committees or analogous institutions, as it has done in the past. Irrespective of the institutional environment for the academic development of the programme, the core challenge remains the capacity to translate the curricular vision of a rigorous academic engagement with law as an academic discipline into learning materials and pedagogic practices that transform the current insipid LLM programme into a dynamic and exciting new academic endeavour. In this essay we have argued that this challenge has to be met through the concerted efforts of legal academics to develop learning materials that appreciate the nature of law as an academic discipline that intricately draws on the social sciences and the humanities while retaining a distinctive and complex intellectual method.

In 1976, Upendra Baxi warned us that a banking concept of legal education dominates the law textbook market in India:

“No changes in curriculum or pedagogy will be really fruitful unless good quality text-books and other reading materials are made available to the teacher and the taught. Almost all available text-books in law are oriented to the ‘banking concept’ of legal education. They are by and large repositories of legal information and exegesis; they do not stimulate any critical thinking on the subject ... [T]n any case, it is worth repeating that almost 90% of law text-books in circulation today endeavour to ‘submerge’ the critical consciousness rather than to help it emerge.”

In 2013, the one-year LLM programme faces the same challenge. In this essay, we show that what is arguably the most inter-disciplinary and intellectually ambitious course designed for the two-year LLM is transformed by curricular

58 See also Hanoch Dagan, Law as an Academic Discipline, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2228433 for a recent defence of a conception of law as an academic discipline that balances the claims of legal theory with the insights of the social sciences and the humanities.

59 Upendra Baxi, supra note 7, at 11.

60 Upendra Baxi, supra note 7, at 21.
development processes and textbook writers into a collage of excerpts from cases and scholarly articles unaided by a central argument or a coherent perspective. Unless a dozen sustained efforts at developing quality learning materials and textbooks are seeded right away, the promise of a new dawn for post-graduate legal education in India will remain just that: a promise.
It’s All About the People: Hierarchy, Networks and Teaching Assistants in a Civil Procedure Classroom Community

Jennifer E. Spreng*

In Spring 2009, I embarked on a project to introduce the students in my first year, six-credit Civil Procedure sequence to the life of the lawyer in community, representing people, as most of them would ultimately live it.¹ My inspiration was my eight-year practice experience in Owensboro, Kentucky (pop. 50,000).² My tools were course design elements rooted in the lived experiences of individual litigants and prior students’ contributions, which would demonstrate that our classroom was a “community of memory” with a past, present, and future.³


² See Article I, supra note 1, at 189-90.

³ See Article I, supra note, 1, at 228 (quoting Robert N. Bellah, Habits of the Heart 153 (1996)), 232. A community of memory is one that “does not forget its past’ and is made up of people who ‘participate in the practices—ritual, aesthetic, ethical—that define the community as a way of life.” Robert N. Bellah, Habits of the Heart 153-54 (1996).
Result: My most engaged class yet; vibrant reforms of my course design and delivery; improvements in my own knowledge; and many students who have remained closely attached to me even after graduation. I did not expect that in creating community we would upend the classroom hierarchy and create dense, complicated interpersonal networks. The teaching assistants and prior students who participated in class activities demonstrated that the past and therefore the future were very real. They shortened the distance between the classroom organization’s status tiers and formed dynamic multiplex relationships with students. Our community became a living, breathing, evolving institution, just like the communities I had hoped to mimic.

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I. INTRODUCTION

Although he has explained to me that I am dead to him because I am not doing [Phoenix Law Review] next semester, dude is good people and I know will still help me if I ever need it.

– Daniel C. Quijano

Critics of traditional law school education bemoan the stratified professor-student status hierarchy, because it provides such an impoverished preparation for practice. Many believe the combination of extreme professor-student status disconnect and relentless grade competition produces students who are pathologically anxious, isolated, alienated and hostile, and who experience almost precisely the opposite of the “foundational human needs” of “self-esteem, relatedness to others, authenticity, competence and security.” Unsurprisingly, legal education reform literature pleads for shortening “social distance” between student and professor.

A classroom hierarchy with a more carefully negotiated social distance between professor and students can be a more communitarian classroom, positioning the professor for potentially transformative teaching. Modern


5 E.g., Duncan Kennedy, Legal Education as Training for Hierarchy, in POLITICS OF LAW 54, 66-72 (David Kairys ed., 3d ed. 1998).


7 Krieger, supra note 6, at 119-20.

8 E.g., Susan B. Apel, Principle 1: Good Practice Encourages Student-Faculty Contact, 49 J. LEGAL EDUC. 371 (1999). Social distance is “the hierarchical distance between the senior level managers and the rank-and-file memberships of an organization.” See Michael S. Cole et al., Social Distance as a Moderator of the Effects of Transformational Leadership: Both Neutralizer and Enhancer, 62 HUMAN RELATIONS 1697, 1699 (2009).

9 See, e.g., infra text and notes at notes 125-35; Cole et al., supra note 8, at 1721.
education theory emphasizes relationship. Greater relational stability and enhanced job performance are products of multiplex relationships, and they are replicable by tweaking classroom hierarchies. Members of multiplex groups understand each other’s strengths and weaknesses, so they work together more productively.

Teaching assistants have a dynamic, community-enhancing effect on the classroom hierarchy. They divide the hierarchical distance between the isolated, individual student and the font of all power, the professor. Teaching assistants are also “role models,” “mentors,” “mediators,” and sometimes “classmates.” Professors take their advice, exploit their expertise and may begin


14 See infra text and notes at notes 105-19.

15 See Feinman, supra note 13, at 271-72.


17 See Becker & Croskery-Roberts, supra note 13, at 280; Cheslik, supra note 17, at 400.

18 At Phoenix School of Law, a number of upperclass students will be taking first-year courses and may be classmates in one class with their teaching assistants in another class. See also Paul Goldstein, Students as Teachers: An Experiment, 23 J. LEGAL EDUC. 465, 465-66 (1970-1971); Joe C. Magee & Adam D. Galinsky, Social Hierarchy: the Self-Reinforcing Nature of Power and Status, 2 ACAD. OF MGMT. ANNALS 351 (2008).
to consider them “friends.”  

As heroes of classes gone by, teaching assistants add an intergenerational dimension characteristic of primary and secondary school “learning communities.” They connect students with a past and suggest the possibility of a collective future beyond the immediate semester. The shared experience of belonging is a profound contrast to law school’s isolating individualism. At minimum, a teaching assistant’s very existence proves that classroom hierarchy is not all about the vertical.

** ** ** ** **

**VOICE: DANIEL C. QUIJANO**

Jim [Plitz] set an example for leading students in our class and the classes coming in. Although I had a great interest in Civil Procedure, I had no idea how to assist in the teaching. Jim told me to just apply the knowledge I had acquired, and that really we were only a semester ahead of our students; we were not supposed to know everything. Jim has a way of bringing out what you know. If you know something, but are unsure about it, he instills a confidence in you by portraying his own confidence in the issue and highlighting your insight. He asserts the compassion for his students that as his own professor does for him, all the while ensuring the students that he has been there before. Although it all seems to come easy to him, I know that Jim’s work ethic and dedication to his work places Jim among those students excelling in law school. All the students were

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20 See infra text and notes at notes 125-29.
22 See Barbara Glesner, Impact of Expectations on Teaching and Learning, 38 Gonz. L. Rev. 89, 109-10, 121-22 (2002-2003); Paula Lustbader, Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice, 4 Seattle J. for Soc. Just. 613, 633-35 (2006); Mona Hajjar Halaby, Belonging: Creating Community in the Classroom 1-4 (2000) (describing the teacher’s experience, the same as that of her elementary school students, sharing three personal items from home in a class meeting).
23 See, e.g., infra text and notes at notes 99-103.
so amazed by how Jim wrote sample answers and explanations. Jim has worked to earn that.

**    **    **    **    **

In Spring 2009, I took a chance on a mere second-semester, first year student, Jim Plitz, as a teaching assistant. My Civil Procedure courses would not be what they are today without him, because Jim did form the relationships and play the roles that transcended the mere horizontal and vertical of hierarchy and infused the dimension of time. He was a gentle but very human authority figure to the enrolled students, and he illustrated how teaching assistants may contribute to each other’s’ personal and professional development. Jim’s contributions are a parallel narrative in this article. By living his humanity, he more vividly revealed mine.

This article shows ways teaching assistants contribute to building a classroom community by virtue of their residence in a hierarchical halfway house. Part II presents the dynamics of two law school classroom organization models: the “polar model” and the “multiplex model”. Part III explains how teaching assistants’ position on the classroom hierarchy enhances community, most importantly by shortening the social distance between student and professor. Part IV describes the established classroom community models and my own hybrid, a cross between a civic community and community of practice, to which teaching assistant.

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24 I rely primarily on literature from three sub-disciplines, in addition to education theory literature: general social psychology; organizational behavior; and transformational leadership. See Andy Hargreaves, Mixed Emotions: Teachers’ Perceptions of Their Interactions with Students, 16 TEACHING & TEACHER ED. 811, 812-13 (2000) (explaining methodology of drawing on numerous subfields for analytical context). The general social psychology literature provides insights into individual behavior within hierarchies and networks, particularly as to information transmission. See generally, e.g., Magee & Galinsky, supra note 18; Henrich & Gil-White, supra note 4; Ian McCulloh, IkeNet: Social Network Analysis of E-mail Traffic in the Eisenhower Leadership Development Program, U.S. Army Res. Inst. for the Behav. & Soc. Sci., tech rep. 1218 (2007). Organizational behavior literature is increasingly accepted as a “frame” for understanding and evaluating classroom management. See, e.g., Kelley-Jean Strong-Rhoads, Transformational Classroom Leadership: Adding a New Piece of Fabric to the Educational Leadership Quilt (2002) 5-7, 31-34 (unpublished dissertation). Transformational leadership is also an emerging model for a community oriented teacher’s role. See generally James S. Pounder, Transformational Classroom Leadership: The Fourth Wave of Teacher Leadership?, 34 ED. MGT ADMIN. & LEADERSHIP 533 (2006).
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assistants and other former students contribute the shared experience of a past that also exposes a future for the community and members’ sense of belonging. This article concludes that teaching assistants provide invaluable assistance for teachers reaping the full pedagogical fruits of a classroom community.

II. LAW SCHOOL CLASSROOM HIERARCHY

All social groups, including classrooms, have their peculiar hierarchies and methods of allocating prestige, power, and deference. Studies suggest people often prefer hierarchical organization, because they can increase contentment.

25 See Magee & Galinsky, supra note 18, at 351-52. A classroom is a specific type of organization and like all groups, it has an agreed hierarchy and gives rise to a locus of common behaviors and relationship dynamics. Mikko Erpestad, Culture and Perception of Power in Teacher-Student Communication 26-27 (2011) (Mast. thesis, Fac. Hums., U. of Jyväskylä). An “organization” is “goal directed and deliberately structured,” and management is “the attainment of organizational goals in an effective and efficient manner through planning, organizing, leading and controlling organizational resources.” Richard L. Daft & Dorothy Marcic, Understanding Management 9-10 (2012). “Classroom management” is an education-specific form of organization management and leadership. See, e.g., John R. Schermerhorn et al., Organizational Behavior: Experience, Grow, Contribute 18, 68 (2010); Dennis Wiseman & Gilbert H. Hunt, Best Practice in Motivation and Management in the Classroom 7-8 (2d ed. 2008).

26 A “status hierarchy” describes “a rank ordering of individuals or groups according to the amount of respect accorded by others” or “deference.” Magee & Galinsky, supra note 18, at 354.

27 “Prestige” is status that one achieves “by excelling in valued domains” and implies “influence” – not ‘authority,’ ‘power,’ or ‘dominance.’ Someone with prestige is listened to.” Henrich & Gil-White, supra note 4, at 167.

28 “Power” is “the capacity to guide others’ actions toward whatever goals are meaningful to the power-holder.” See Joe C. Magee et al., Leadership and the Psychology of Power, in The Psychology of Leadership: New Perspectives and Research (D.M. Messick & R. Kramer eds., 2004).


improve productivity, and spread important information efficiently. Everyone knows how to behave.

Law school classrooms betray many characteristics of other organizations: “social distance” between leaders and followers, and both the “density” and “direction” of the connections within a social network of relationships. Two classroom models exemplify the interplay of these features: the Kingsfieldian “polar” model and the humanizing “multiplex” model. The multiplex model best facilitates building “community” as a learning objective.

1. The “Polar Model” of Classroom Hierarchy and Networks

The “polar model” of the classroom hierarchy between law student and professor, presented at the extreme in The Paper Chase and One-L, is a profoundly stratified status and power hierarchy. The hierarchy contains only two tiers,

32 Halevy et al., supra note 30, at 37-39.
33 Henrich & Gil-White, supra note 4, at 173-80; Stephen Choi et al., The Rat Race as an Information Forcing Device (N.Y.U. L. & Econ. Working Paper No. 8, 2005); Catherine C. Eckel & Rick Wilson, Social Learning in a Social Hierarchy: An Experimental Study 16-17 (Mar. 20, 2006) (unpublished manuscript).
34 Halevy et al., supra note 30, at 38.
35 “Social distance” is “the degree of ‘understanding and intimacy which characterize[s] personal and social relations.’” Cole et al., supra note 8, at 1701 (quoting R.E. Park, The Concept of Social Distance, 8 J. App. Soc. 339 (1924)).
36 “Density” refers to “the overall level of interaction of various kinds” between the members of a network.” Raymond T. Sparrowe et al., Social Networks and the Performance of Individuals and Groups, 44 Acad. Mgt. J. 522, 527 (2001).
37 Relationships in a network may be horizontal or vertical, analogous to a military chain of command; or non-directional, analogous to those among family members. Family members may hold different ranks (generations), but it is rarely necessary for children to consult first with parents before approaching grandparents. See McCulloh et al., supra note 24, at 2-3.
38 A “social network” is a collection of individuals related through their connections. See McCulloh et al., supra note 24, at 1-2.
39 These are my own classifications, but they should ring true to law school professors. Cf., e.g., Simon Bell & Andy Lane, From Teaching to Learning: Technological Potential from Sustainable, Supported Open Learning, 11 Systemic Prac. & Action Res. 629, 630-31 (1998).
40 The Paper Chase (Twentieth Century Fox 1973).
42 A “power hierarchy” is a ranking of those by the amount of “control [they have] over valued resources in social relations” where “[t]he low-power party is dependent upon the high-power party to obtain rewards and avoid punishments.” Joe C. Magee & Adam
the “professor” status and the “enrolled student” status. Professors have the knowledge that counts and they dole it out to students who comply in return for grades.43

Student-professor relationships are marked by the professor’s extreme dominance44 and the student’s resulting fear and submission.45 Deference flows vertically from student to professor, who maintains a “command and control” relationship with students.46 The yawning social distance between the professor and students discourages multiplex relationships and denser networks.47 Like the high-status attorneys who systemically assign the “dirty work” of people practice to lower-status attorneys in order to pursue “purer” and more prestigious work,48 polar model professors risk objectifying students or treating them as interference with their primary research objectives.49 The situation is unhealthy for both.50

Yet the model is not without redeeming features. Hierarchy provides expectations about leadership and proper conduct,51 and in theory, many are more comfortable in relationships where some parties are dominant and others


43 See Barbara Rogoff, *Developing the Understanding of the Ideal of Communities of Learners*, 1 MIND, CULTURE & ACTIVITY, 209, 210-11(1994) [hereinafter Rogoff, Developing the Understanding].

44 “Dominance” implies control over another or situations. Magee & Galinsky, supra note 18, at 553-54; see generally, *The Paper Chase*, supra note 40; ONE-L, supra note 41.

45 See Henrich & Gil-White, supra note 4, at 168-69.


48 See URBAN LAWYERS, supra note 1, at 79-94.

49 See Deo & Griffin, supra note 47, at 322, 330; Magee et al., supra note 28, at 284, 286 (defining objectification as “the process of viewing other people instrumentally, in terms of the qualities that make them useful to the perceiver” instead of “allow[ing] them to be understood as unique human beings.”).

50 Magee et al., supra note 28, at 286-87; see also Apel, supra note 8, at 380 (noting benefits to professors of out-of-classroom contact with students).

51 See Halevy et al., supra note 30, at 44.
submissive. Polar model professors’ teaching methods are normally “aimed at the transmission of information to the students” cheaply and in large amounts and seems effective to that purpose. Competitive bar examinations make imparting doctrinal principles a priority.

The polar model classroom is not notable for facilitating group creativity, however. The polar model’s atmosphere of professorial dominance/power and resulting student submission/powerlessness also discourages students from contributing stimulating ideas and encourages passivity. Even if the professor nurtures a more humanitarian environment, two professorial powers rarely change: the professor controls who speaks—most of what occurs in the law school

52 Tiedens et al., supra note 31, at 413.


54 Cf. Norbert Michel et al., Active Versus Passive Teaching Styles: An Empirical Study of Student Learning Outcomes, 20 HUM. RES. DEV. QTY. 397, 415 (2009) (stating that because active learning requires more class time, base knowledge may have to be sacrificed).

55 See Gerald Choon-Huat Koh et al., The Effects of Problem-Based Learning During Medical School on Physician Competency: A Systematic Review, 178 CAN. MED. ASS’N. J. 34, 40 (2008) (observing that evaluations of knowledge of medical students’ educated with traditional methods versus problem-based methods were similar); Michel et al., supra note 54, at 3, 8, 10 (observing that student inattention, etc., associated with passive learning depresses total learning, but active behaviors may not produce more learning).


classroom – and the professor controls who succeeds. This dominance based transactional power relationship dampens creativity and non-conformity. The polar model offers few tools to mitigate this tendency. But at least everyone knows how to behave: subserviently.

Status hierarchies are by their nature consensual; students acquiesce or even agree with the professor’s position on the student-teacher status hierarchy. The power hierarchy leaves little choice: dominance tends to be met happily with submission, the day when letters of recommendation, research assistant positions, and other markers of prestige within the gift of the faculty needed being always uncomfortably near. Plus, the dirty secret is that law students like the passivity that the polar model fosters, perhaps because it is easy.

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61 Pounder, supra note 24, at 537-40.
62 See, e.g., infra text and notes, at 138-43.
65 Kennedy, supra note 46, at 604; Anderson & Berdahl, supra note 57, at 1362; cf. Paul V. Martorana, *From System Justification to System Condemnation: Antecedents of Attempts to Change Power Hierarchies*, 7 Res. on Managing Groups & Teams 285, 290 (2005) (“Since the powerful by definition have control over important resources, . . . [this] can lead the powerless to accept being demeaned in order to acquire these desired resources.”).
When Prof asked me to be her TA, I was honored. I thought it showed a great deal of respect for a professor to ask someone to help “teach their class.” I wanted to be a complement to Prof’s style. I thought that the students who would be coming to see me would be the ones who did not mesh with Prof’s style. And it seemed that I was right. I like structure and process, and Prof likes ideas and free-flowing conversation. So, a student who is lost coming into class will not get clarity from sitting in class (it is easier to give up and tune out, then try harder to follow and catch up). I would help clarify with process: help the student, step-by-step, walk through the analysis the Court was trying to provide in any given case or subject. The complimentary methods kept the students who “got it” challenged: Prof’s free-flowing style makes you think and challenges you to gain a deeper understanding of the topic; and it enabled those who didn’t “get it” to hear the topic in a different voice. There were several occasions when the student talking with me seemed to hit their “Ah ha” moment; and that made being a TA worth it!

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2. The “Multiplex Model” of Classroom Hierarchy and Networks

The “multiplex model” of the classroom organization is less stratified and more complex than the polar model. The number of hierarchical tiers is negotiable, as is the social distance between them, which tends to be shorter. The social network is also denser, with more non-directional connections. Criteria for prestige and flows of deference may be tailored to facilitate student learning and satisfaction.67 The classroom organization model is almost the same as the hierarchy and networks of the solo- and small-firm attorney community within a small geographic/political community.68

67 See infra Part III.B.

The structure itself is open to pedagogical benefits unavailable in the polar model. An egalitarian, student-centered classroom is better suited to a more learner-centered, conversational discourse-driven pedagogy compared to the traditional question-response-evaluation dialogue of stratified polar model Socratic teaching.69 The operational hierarchy may adjust for different activities, especially when the differential knowledge between student and professor shifts.70 Shifting knowledge hierarchies almost demand students actively engage to learn how to learn, a crucial skill for future law practice.71 The model also facilitates teaching methodologies that may stimulate student enthusiasm, study effort, leadership, collaboration, creativity, and ethical inquiry.72 To the extent these methodologies also increase group creativity, they in turn facilitate training in analysis and application of skills central to legal education.73

The multiplex model nods to the emerging reality of a modern, more humanized law school classroom hierarchy.74 Enrolled students’ ubiquitous relationships with the professor’s former students already mediate interaction with professors, such as when former students reveal the “inside skinny” and provide canned outlines.75 Team/substitute professors, LL.M and other graduate students,

69 See Rogoff, Developing the Understanding, supra note 42, at 214. A more student-centered approach would be more typical and effective for this learning outcome. See Richardson, supra note 53, at 677.


71 See Eckert et al., supra note 70, at 8 (describing teachers as “model learner[s]” in the egalitarian community-oriented classroom who provide an “apprenticeship in learning”).

72 See Shelley D. Dionne & Francis J. Yammarino, Transformational Leadership and Team Performance, 17 J. ORG. CHANGE MGT. 177, 188 (2004) (finding that flatter hierarchies led by transformational leaders are more likely to make leadership training available to lower status team members); Bielaczyc & Collins, supra note 21, at 277-80; Glesner Fines, Fundamental Principles, supra note 17, at 322 (ethics); Pounder, supra note 24, at 537, 540-41 (study effort); Wiltermuth, supra note 31, at 69-76 (creativity); Emily Zimmerman, An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm, 58 DePaul L. REV. 851, 907-10 (2009) (enthusiasm)


74 See Deo & Griffin, supra note 47, at 324-25, 328.

guest speakers, support personnel and others work into the network’s periphery. Teaching assistants turn a reality into a virtue when they provide mentoring, tutoring, and information the professor would prefer not to present herself.76

The teacher’s role morphs from knowledge transmitter to director of learning activity and perhaps eventually to manager of a dense, multi-dimensional, social network of learners77: in a fifty-person organization – small by first-year law school class standards – there are potentially 2450 friendship links!78 Inserting even one teaching assistant produces an explosion in the number, type and direction of possible social connections and obscures the actual social distance between the actors.79 The multiplex model is more than multiplex: it is also complex!

### III. Building Community in a Multiplex Model Classroom

Community-oriented philosophy and classroom organization are often inconsistent with student expectations based on traditional education, which creates tension.80 No one knows how to respond:81 how and when do we talk in class;82 how do we get graded;83 what do we do in these groups or with these hypotheticals;84 or who are “Rob” and “Kim” anyway, and what’s the purpose of all this excessive talk about their driving capabilities?85 In the storm of law school, a friendly port is reassuring; a community-oriented model may not seem so friendly at first.

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76 See generally Feinman, supra note 13.
77 See, e.g., Edwards, supra note 10, at 9-10 (describing “responsive community” model of dense social networks); Strong-Rhoads, supra note 24, at 25.
81 Gardner, supra note 59, at 7.
82 See Anderson & Berdahl, supra note 57, at 1364, 1373.
83 See, e.g., Cheslik, supra note 16, at 398.
84 See Donald R. Bacon et al., Lessons from the Best and Worst Student Team Experiences: How a Teacher Can Make the Difference, 23 J. MGT ED. 467, 479-81 (1999).
85 Many of my course materials star “Rob and Kim,” my former teaching assistants, who are forever suing each other for injuries sustained in car wrecks. See Article I, supra note*, at 258-66.
Adding a teaching assistant to a classroom group offers that friendly port while adjusting the class’s hierarchies and networks in ways that breathe life into a classroom community.\textsuperscript{86} Students may be uncertain at first about teaching assistants’ roles,\textsuperscript{87} but their access to the professor does give them apparent status.\textsuperscript{88} Therefore, enrolled students will defer initially and then extend continued deference based on evaluation of a teaching assistant’s merit.\textsuperscript{89} Therefore teaching assistants constitute a middle tier between the professor and student on the classroom status hierarchy\textsuperscript{90} like a family that lacks a threatening chain of command.\textsuperscript{91}

From that middle tier, teaching assistants mediate between professors and students pedagogically and socially.\textsuperscript{92} Their primary role is to support enrolled students’ learning of the doctrinal subject matter.\textsuperscript{93} My teaching assistants hold two “office hours” per week in a study room or other campus cubby hole to meet one on one with students and they schedule special meetings if needed.\textsuperscript{94} They also mark our weekly ungraded “admit slip” problems and hold review sessions toward the end of the term.\textsuperscript{95}

\begin{center}
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\textsuperscript{87} Colvin, \textit{supra} note 86, at 172.


\textsuperscript{89} Colvin, \textit{supra} note 86, at 173-78.

\textsuperscript{90} Colvin, \textit{supra} note 86, at 178; \textit{see also} Cheslik, \textit{supra} note 18, at 397-400 (observing student resistance to teaching assistant graders); Smith, \textit{supra} note 19, at 58.

\textsuperscript{91} See McCulloh, \textit{supra} note 24, at 2-3.

\textsuperscript{92} \textit{See e.g.}, Colvin, \textit{supra} note 86, at 178.

\textsuperscript{93} \textit{See, e.g.}, Cheslik, \textit{supra} note 16, at 395-400; Feinman, \textit{supra} note 13, at 270-71.

\textsuperscript{94} See Memorandum from James P. Plitz, former teaching assistant, to Wendy S. Velazquez-Copca, research assistant (Dec. 19, 2010, 7:44 a.m.) (on file with author).

\textsuperscript{95} \textit{Id.}
VOICE: EVAN P. SCHUBE

Plitz is a walking Encyclopedia/Wikipedia of Civil Procedure cases. He rattles off case names and rules like Obama spends money. Perhaps another analogy that is less controversial is in order. Plitz is like the Album Cover view option on iTunes. When you ask Plitz a question, he scans his memory for the correct rule and case name and then the analysis just starts playing. It’s insane and melodic.

There were a few of us in the study room one day discussing the intricacies of summary judgment. Plitz walked by and our study group decided to pounce on the opportunity. Plitz just started rattling off the Trilogy cases like he just prepped for an oral argument in front of the Supreme Court. Intimidating and motivating.

Some are more innovative or exert more leadership. Kimberly Garde and Daniel Thorup held “virtual office hours” in 2010. Jim posted class-wide feedback on our course management system.96 Michael Aurit held regular marathon group sessions that were “extremely interactive, energetic and fun” where he would “create controversial situations – close calls that would compel student involvement.”97 Several have written study guides for critical cases and concepts.98

The teaching assistants also play a socializing role by facilitating the flow of information about the professor and school culture.99 They hold a “TAs and Friends” session on study and test-taking skills for Civil Procedure I.100 They

96 Memorandum from James P. Plitz, supra note 109.
97 Email from Michael Aurit, former teaching assistant, to Wendy S. Valazquez-Copca (Dec. 19, 2010, 1:22 p.m.) (on file with author).
99 See Becker & Croskery-Roberts, supra note 13, at 280; Feinman, supra note 13, at 273.
100 See Article II, supra note *, at 56-57.
also become role models\textsuperscript{101}: when I asked Daniel Thorup to serve as a teaching assistant, he was excited that he would get to do the same job as Jim!\textsuperscript{102}

Teaching assistants create multiplex relationships with enrolled students more easily than a professor. During 2009, Jim was an enrolled student in a class with one of my Civil Procedure I students, Danny Mazza. Michael and Jim served together in the Student Bar Association leadership.\textsuperscript{103} Teaching assistants and enrolled students might also have out-of-school connections.

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**VOICE: AARON J. BERKLEY**

At one point during the semester, I was having a very difficult time understanding the basics of summary judgment. During my weekly study session with the SCAMPS,\textsuperscript{104} I explained to Michael Aurit that summary judgment was making my life miserable. The confusion (and panic) had set in. Michael then spent the next fifteen minutes breaking down the legal analysis of summary judgment for me. His explanation couldn’t have been any more clear and concise. Everything clicked. As we wrapped up our study session that day, I asked Michael how he was able to explain something so complex in a way that made sense to me. His response . . . Jim Plitz!

Michael spent quite a bit of time speaking with Jim about Civil Procedure II throughout the semester. The understanding that Michael reached through these conversations always trickled down to us SCAMPS during our study sessions. Jim would occasionally stop by during our sessions from time to time and clarify troublesome material as well. We were very fortunate to have a former student with so much ability and effectiveness to help us learn Civil Procedure II.

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\textsuperscript{101} See, e.g., Feinman, supra note 13, at 272.

\textsuperscript{102} Cf. Cole, supra note 8, at 1704 (“[E]ffective role modeling of behavior requires some similarity between leader and follower.”).

\textsuperscript{103} Cf. Deo & Griffin, supra note 47, at 320 (observing informal peer mentoring relationships similar to formal student-teaching assistant relationships).

\textsuperscript{104} See Article I, supra note 1, at 193 n.39.
Most importantly, teaching assistants create the illusion of shorter social distance between students and professors by dividing one apparently unbridgeable relational gap into two more manageable gaps.\textsuperscript{105} Traditional professors rely mostly on the exchange of grades and the charismatic effect of her scholarship or reputation for student compliance with pedagogical tactics.\textsuperscript{106} It is easier to project a positive image and inspiring vision in a socially more distant construct; shorter distance, however, facilitates an individually transformative effect on student learning and professional development.\textsuperscript{107}

The illusion of shorter distance helps the professor stimulate enthusiasm and guide students through transformative community building experiences while maintaining the authority needed to remain the fair evaluator and ultimate curricular decision maker.\textsuperscript{108} Community-oriented elements are not impossible in a polar-model context\textsuperscript{109}; the mere words, “‘let’s take a look at . . .’ suggest[s] a community working together toward a common goal.”\textsuperscript{110} For a deeper sense of community in the absence of a teaching assistant, however, the polar model professor must shorten the distance between her students and herself by actually “moving,”\textsuperscript{111} such as by suggesting students feel free to drop by the office.\textsuperscript{112}

\begin{itemize}
\item \textsuperscript{106} See, e.g., Donetta J. Cothran & Catherine D. Ennis, Students and Teachers’ Perceptions of Conflict and Power, 13 Teaching & Teacher Ed. 541, 549-50 (1997).
\item \textsuperscript{107} Cole, supra note 8, at 1721.
\item \textsuperscript{108} See Feinman, supra note 13, at 272 796. For example, a teacher adjusts social distance when she sits on the floor with her young students. See Alison Mary Sewell, Teachers and Children Learning Together: Developing a Community of Learners in a Primary Classroom, diss. Massey U. 121-22 (2006).
\item \textsuperscript{109} See, e.g., Bob Fecho et al., In Rehearsal: Complicating Authority in Undergraduate Critical-Inquiry Classrooms, 32 J. Literacy Res. 471, at 472; Edwards, supra note 10, at 5-6, 12 (moral community and community of inquiry).
\item \textsuperscript{110} Steven L. Vander Staay et al., Close to the Heart: Teacher Authority in a Classroom Community, 61 CCC W262, W269 (2009).
\item \textsuperscript{111} See Cole, supra note 8, at 1721.
\item \textsuperscript{112} Cf. infra text and notes at 115-19 (describing how teaching assistants may make students comfortable about visiting the professor in her office). A hybrid of a polar model class could have teaching assistants, of course.
\end{itemize}
Except that students do not just “drop by”; students are nervous, even when the professor makes the invitation.113 A teaching assistant is likely to be more effective delivering the message.114

In essence, the teaching assistant helps student and professor bridge the “structural hole” between them and form a direct connection.115 The teaching assistant partly replaces the polar model classroom organization structure as the source of information about “how to behave” and other expectations.116 A multiplex model teaching assistant may say “Oh, definitely go see the Prof. during office hours; she likes to chit-chat with students.”117 Students then visit and may enjoy a more meaningful learning or mentoring experience.118 When everyone knows each other better, students and professor will be more comfortable with non-traditional interaction.119

IV. WHAT WE TALK ABOUT WHEN WE TALK ABOUT COMMUNITY

Though some graduates of urban law schools may still join their Ivy League counterparts in silk stocking law firms, most will proceed to solo or small-firm practice and government employment,120 forms of less prestigious personal plight practice.121 “Community” – personal and professional – will shape their lives to come.122 A rich, fulfilling and academically productive classroom community experience can prepare students for its virtues and more satisfying career decisions.123 Unfortunately, the typical law school classroom’s rigid polar status

113 See Hess, Heads and Hearts, supra note 6, at 89-90.
114 See, e.g., Feinman, supra note 13, at 272.
115 A “structural hole” exists where one party in a network has a tie with two other parties who lack a direct tie between them. See Brass et al., supra note 105, at 799. The hub controls the information flow between the other two. Id.
116 See supra Part II.A.
117 See Feinman, supra note 13, at 271-72.
119 See Lewicki et al., supra note 12, at 442-43; see also Hinds & Mortensen, supra note 12, at 302.
120 Urban Lawyers, supra note 1, at 57-60.
121 Id.
122 See, e.g., SERON, supra note 1, at 23-25, 52-56, 65; see generally LANDON, supra note 2.
and power hierarchies are not conducive to community building.\(^\text{124}\) By helping to convert a typical classroom to one with the multiplex elements that create community, teaching assistants provide a foundation for a professor to pursue more ambitious pedagogical goals in a classroom community context.

Recognized classroom community models assign to professors the collaborator, facilitator, and learner roles,\(^\text{125}\) all of which require shorter social distance than the polar model permits. The “moral community” model focuses on cooperative rule- and decision-making between teachers and students.\(^\text{126}\) In a classroom “community of inquiry,” students and teachers construct answers to meaningful intellectual problems through supportive, egalitarian, collaborative dialogue.\(^\text{127}\) Moving even farther from the traditional polar classroom, the teacher in a “learning community” facilitates students’ self-directed collaborative activities and projects “with purposes connected explicitly with the history and current practices of the community.”\(^\text{128}\)

My classroom is a “civic community” with dynamics of a “community of practice.”\(^\text{129}\) My inspiration was my own solo practice experience in Owensboro,

\(^{124}\) Cf. Adler et al., supra note 68, at 360, 365-66.


\(^{126}\) See, e.g., Ruth Sidney Charney, Teaching Children to Care: Classroom Management for Ethical and Academic Growth, K-8, at 69-107 (2d ed. 2002); Halaby, supra note 29, at 3.

\(^{127}\) See Gordon Wells, Learning and Teaching for Understanding: The Key Role of Collaborative Knowledge Building, 9 Soc. Constructivist Teaching 1, 6-7, 32-35 (2002); Edwards, supra note 10, at 6-7.

\(^{128}\) Rogoff, Developing the Understanding, supra note 43, at 211; Barbara Rogoff et al., Models of Teaching and Learning: Participation in a Community of Learners, in Handbook of Education and Human Development 388, 397, 401 (1996); Bielaczyc & Collins, supra note 21, at 281.

\(^{129}\) See, e.g., Bellah et al., supra note 3, at 152-62; Robert D. Putnam, Making Democracy Work: Civic Traditions in Modern Italy 15 (1993) (“the civic community is marked by an active public-spirited citizenry, by egalitarian political relations, by a social fabric of trust and cooperation.”); Edwards, supra note 10, at 1-4 (describing “metaphor of education as relationship” where “the child is seen as interconnected with particular others in nested communities”).
Kentucky, population 50,000, a “community of memory” that “does not forget its past” and has members who “participate in the practices – ritual, aesthetic, ethical – that define the community as a way of life.” Those practices arise from a rich history, full of traditions and heroes: that you never add a table no matter how many lawyers are gather at Colby’s Fine Foods and Spirits; and legendary lawyers with unorthodox trial preparation techniques, but still won verdicts against the likes of Melvin Belli. My teaching assistants and other former students take the roles of those “legendary lawyers” in our classroom community.

This “civic” model of classroom community consists of “rich horizontal networks of engagement, reciprocity, and cooperation rather than vertical hierarchies of authority and dependency.” Teaching assistants obscure those hierarchies and can add a cooperative dimension to the normal classroom social network. “Trust,” “relatedness” and “belonging” form the core of our learning environment and hopefully sublimate into civic spirit. Such spirit fuels a cultural expectation that we are contributing to a shared knowledge base for the future. The teaching assistants personify that expectation.

At its best, these classes evolve into vibrant “communities of practice” as well. A community of practice defines competence for a particular domain and works together to help members improve, much like solo attorneys’ “advice networks.” Teaching assistants operate much as would more senior members of an advice network.

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130 See Article I, supra note 1, at 228 (quoting BELLAH ET AL., supra note 3, at 153-54).
132 See, e.g., Article II, supra note 1, at 228 n.255.
133 Edwards, supra note 10, at 9.
134 See, e.g., David Foster, Community and Cohesion in the Writing/Reading Classroom, 17 JAC: J. COMP. THEORY 325, 327 (1997); see also Balkundi & Kilduff, supra note 78, at 421.
135 Compare Bielaczyc & Collins, supra note 22, at 278, 282, with BELLAH ET AL., supra note 3, at 154.
Besides being a hard working individual, Jim is also a great person. I knew that if I ever needed help with anything, Jim would sit down with me and help me through it. It wasn’t just a quick answer; he would actually take the time to sit with me and explain the law and make sure that I understood it. This wasn’t just a product of the two of us being friends, because Jim would also help the first-semester Civ Pro students in the exact same manner. He would always have time available for the students and would ensure that they had a grasp of the material they needed help with.

Jim was also a great motivator. As usual, prior to every test, my nerves would shoot through the roof and I would develop butterflies the size of basketballs. Every test, Jim would tell me to relax and understand that I knew the material and that I was going to do fine.\[^{137}\] This may seem like a novel experience, but coming from Jim it meant a lot. It certainly helped me get through a few of those exams.

Civic communities and communities of practice share many characteristics: the civic community that is the early childhood school system of Reggio Emilia\[^{138}\] is located in an Italian province contiguous to the socially integrated, decentralized, guild-like small production units of Modena\[^{139}\] that resemble communities of practice. Members have varying levels of expertise\[^{140}\]: ours include students, professor, teaching assistants, and former students, then later, practicing attorneys and judges.\[^{141}\] Both civic and practice communities honor practices of commitment.\[^{142}\]

\[^{137}\] See supra text after note 23 (VOICE: Daniel J. Quijano).

\[^{138}\] See Edwards, supra note 10, at 9-11.

\[^{139}\] See Walter W. Powell, Neither Market Nor Hierarchy: Network Forms of Organization, 12 RES. IN ORG. BEHAV. 295, 310-11, 324 (1990) (observing large number of small firms resisting vertical integration and expansion that are neither hierarchical nor market-based in Reggio Emilia).

\[^{140}\] See Wenger, supra note 136, at 229.

\[^{141}\] See supra text and notes at 3-4 (teaching assistants); Article II, supra note*, at 29 (judges), 32 (litigants and lawyers from World-Wide Volkswagen v. Woodson), 40-43 (former students), 64-65 (former students); Article I, supra note *, at 192 (litigants and lawyers from Clark v. Jones).

\[^{142}\] See Bellah ET AL., supra note 3, at 153-54; Wenger, supra note 136, at 229, 232 (observing
As do my students. First semester students learn personal jurisdiction with the “Sedona hypotheticals,” inspired by the in-class questions of a former student who plays the lead role in each. Later, students reflect on the real world implications of the same concepts in the two-page essay we call “The Famous Admit Slip Nine,” an assignment a former teaching assistant originally prepared. A past student chooses her “favorite,” which we announce in class and post on my office door. The author of the “favorite” paper will choose next term’s “favorite,” which gives our community a past and reveals a future to which they will soon belong that has “heroes” to which I must sometimes defer.

“The Great Civil Procedure Shootout” is a grander practice of commitment. My Civil Procedure I students host this Saturday evening quiz-bowl style competition. Costumed teams of former students – often teaching assistants – named “Traditional Notions of Fair Play and Substantial Justice Deputies” and “Mottley Crue” play “Civ Pong” and “The Balancing Test” for the right to answer complex multiple-choice questions and points. Civil Procedure I students write and perfect the questions, judge the answers, and organize decorations, food, games, cheerleading and music. The winners earn “The Cahoon Trophy,” named for the student who donated and decorated it with a tennis shoe, Volkswagen logo, and motorcycle tire valve.

that communities of practice “share cultural practices to reflect their collective learning.”

143 In community-of-practice-speak, the equivalent of practices of commitment are the community’s shared “language, routines, sensibilities, artifacts, tools, stories, styles.” See Wenger, supra note 136, at 229; see also Sasha A. Barab & Thomas M. Duffy, From Practice Fields to Communities of Practice, in Theoretical Foundations of Learning Environments 25, 36-40 (David H. Jonassen & Susan M. Land, eds., 2000).

144 See Article II, supra note *, at 38-43.

145 See Article II, supra note *, at 241-54.

146 See BellaH et al., supra note 3, at 154.

147 See Goode, supra note 21, at 165.

148 Schools intend prizes to “create[e] student allegiance to the school and shape an alternate social system,” but “they may come to command more allegiance than the system they were created to support.” Goode, supra note 21, at 166.


By the second semester, the community expands from the “classroom” to the profession. Two procedurally convoluted cases from my home in rural Kentucky link our topics together, and students get to know the attorneys and parties through their depositions and motions. Later, we hold a teleconference with my close friend and former colleague, Owensboro, Kentucky attorney Evan Taylor, who represented the plaintiffs.

As a 2010 student explained later, the surfeit of sensation from Civil Procedure was “epic.” “It wasn’t really a class, it was more like an event,” he wrote. “It’s more difficult to forget an event.”

V. CONCLUSION

A two-tiered status hierarchy of students and teachers based on displays of extreme deference from students to professors is no longer adequate to describe a law school classroom. We routinely acknowledge that there are more actors on the classroom stage and certainly waiting in the wings. Among those are teaching assistants whose very job description upends the traditional polar model law school classroom and opens the door to a more humanizing, communitarian model that may be more conducive to fostering students’ creativity and analytical skills than traditional classroom models.

Teaching assistants play a crucial role in classroom community building. They increase the types, number and direction of classroom relationships; and also shorten the social distance and fill in the structural hole in the classroom network between students and the professor. They insert a sense of intergenerational shared experience of belonging to something bigger than one group of students in one academic term that is a defining characteristic of modern learning communities. Therefore, they tangibly facilitate the exposition and teaching the navigation of a fulfilling culture likely to be a hallmark of the students’ professional futures.

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154 See Article I, supra note 1, at 185-94.
You never know what effect you may have on someone’s life. Simple encounters may lead to dramatic changes. I always considered myself a hard worker, until the day I met Jim. And still, to this day, Jim continues to be a huge influence on my life. Prior to every exam I take, I try to know everything I can about that specific area of the law. Even if the professor says we don’t need to cite to cases, I learn the cases. Even if we are told not to read the dissent, I read every line of that dissent. I do this because I know that Jim would do it.

155 See Email from James P. Plitz, Associate, Morris, Hall & Kinghorn, to Wendy Velazquez-Copca, research assistant (Dec. 19, 2010, 7:37 a.m. MST ) (“I make sure I ‘cite’ to cases (Profs tends to tell you, ‘You don’t need to know cases,’ but that is only if you are ok with a ‘C’ - An 'A' essay cites to cases, so don’t listen to the professor’”).
TAKING POPULAR CULTURE SERIOUSLY: TOWARDS ALTERNATIVE LEGAL PEDAGOGY

Danish Sheikh*

The Law and Popular Culture course is one that holds great potential in transforming the law classroom into a more accessible, democratic, and vibrant space. With this in mind, how does one go about conducting such a course in the law school? This paper attempts to start answering that question. Based on the author’s experience of conducting such courses at the National Law School of India University, Bangalore (NLSIU) and National Academy NALSAR University of Law, Hyderabad, the paper surveys a range of sources that may be used to construct the course, along with sharing the actual experience of teaching it.

I. “AND...HERE WE GO” ................................................................. 147

II. “THIS IS HOW WE DO IT” .......................................................... 149

1. I would say life is pretty pointless, wouldn’t you, without the Movies? ................................................................. 151

2. What traitors books can be! You think they’re backing you up, and they turn on you. Others can use them, too, and there you are, lost in the middle of the moor, in a great welter of nouns and verbs and adjectives ................................. 152

3. Television! Teacher, Mother, Secret Lover .............................. 154

4. I count the songs that make the legal profession sing, I count the songs in most everything, I count the songs that make the young lawyers cry, I count the songs, I count the songs ................................................................. 155

5. Now, what is this we hear? That you have agreed to cancel the tax of the farmers in Champaner if they beat you in a game of cricket? ...................................................... 156

III. "PRACTICE WHAT YOU PREACH" ............................................. 157

IV. THIS IS THE END........................................................................... 160
I. "AND ... HERE WE GO"

What would you pick as the most important legal question of our times? Would it revolve around solving the quandary of judicial backlog or the fallacy of the Basic Structure Doctrine? Should the law be descriptive or constitutive? Have restrictions over-ridden rights? All well and good and important as these dilemmas may be, the legal question that often keeps me awake at night is of a different nature. I find myself wondering:

Why doesn't Batman kill the Joker?

Depending on what medium and canon of the story you're following, the Joker has left a trail of destruction in his wake that involves the cold blooded murders of people near and dear to Batman. Sure Batman keeps catching him and putting him behind Gotham City's prison walls, but the maniacal genius always finds a way to escape and wreak more havoc. Better, as a utilitarian would argue, to think of the greater good and finish off this criminal's life extra-judicially. Batman, unfortunately for the Joker's future victims, is not a utilitarian. He instead takes a deontological approach: for him, the means must justify the end. And if the means involve murdering a man in cold blood, no matter what good this might do to the world at large, well, he won't be partaking in such murder. It is for the State to decide how to prosecute the Joker; Batman limits his role to hauling him before its footsteps. Of course, all of this is complicated by the fact that Batman is himself a vigilante, operating in the shadow lines of the law, thus imparting to himself at least some amount of the law's sovereign authority, but stopping short at the question of execution.

It's a fine moral conundrum, and one that inspires some excellent debates from both sides of the moral fence. It certainly did when I used it to start the

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1 The Dark Knight (Warner Brothers 2008).

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Law and Popular Culture course at NLSIU, Bangalore in November, 2012. The discussion that followed, and my general experience with the course has convinced me of the merits of a law and popular culture based pedagogy. In a previous paper\(^2\), I have argued at length about these merits, which range from their larger challenge to deeply rooted notions of disciplinarity, right down to the way popular culture encourages and diversifies student participation. As Anthony Bradney puts it:

“Fiction offers a more accessible entry point to reality than reality itself – and a piece of fiction familiar to students provides possibly the most accessible entry point of all”\(^3\).

Further, law and popular culture becomes a particularly important area of study when we think of how popular culture informs people's ideas about the law based on how the law is represented in books, movies and television.

In this paper, I take my case forward to focus more on what a law and popular culture based curriculum should look like. First though, a clarification on what I mean when I talk about popular culture. Using the words of Lawrence Friedman\(^4\), “legal culture refers to the ideas, attitudes, values, and opinions about law held by people in a society”. Popular Culture, on the other hand is a reference to those works of imagination whose intended audience is the public as a whole. Exploring the linkages between the two forms the study of law and popular culture. The subject forms a subset of the discipline of cultural studies, a largely heterogeneous field in its own right. Joe Moran traces the evolution of cultural studies starting from adult education programmes in England over the 1930s - 1950s and the first institutional grounding for the subject with the founding of the Centre for Contemporary Cultural Studies at Birmingham University in 1964.\(^5\) Among the multiple pathways the field has taken since include Michel de Certeau's exploration of everyday cultural practices in expanding the interdisciplinary


\(^3\) Anthony Bradney, *The Case of Buffy the Vampire Slayer and the Politics of Legal Education*, in *Readings in Law and Popular Culture*, 22 (Steve Osborn and Anthony Greenfield eds., 2006).


possibilities of the field, to sociologist Pierre Bourdieu’s examination of the relationship between cultural value and class differentiation.6

II. "This is how we do it"7

I start with a disclaimer: a rigorous prescription of how this particular course should be structured is a self-defeating exercise: if we are on the one hand arguing for liberation from pure academic knowledge and the values and hierarchies it imposes, we cannot then be complicit in the same hierarchical regime by mandating a specific prescription of exactly what this course must look like.

Having made that disclaimer, I shall go on to disregard it - to an extent. In this segment of the paper I shall discuss the range of issues or media that a law and popular culture course could contain, keeping in mind a predominantly Indian audience. In the chapter that follows, I will let you in on the structure of my own law and pop culture course, which, besides NLSIU, has also been taught at NALSAR University of Law. In both these instances I have drawn on sources ranging from the NALSAR reading material on the course for law and literature – both from the present reading material, and from the time when I was taught the course,8 in conjunction with the course material from an NLSIU seminar offered in 2007 by Lawrence Liang and Mayur Suresh.9 Beyond that, I’ve looked at the course lists for various allied courses posted by U.S. law schools online.10 Finally, and most importantly for the teaching component, the sources are the books and movies and music that I have been exposed to myself.

7 Montell Jordan, This is How We Do It (This is How We Do It 1995).
8 English-II (Law and Literature) Reading Material, Compiled by Professor Amita Dhanda, January 2008. Professor Dhanda herself stopped teaching the course before I joined NALSAR; it was conducted for us by another lecturer who attempted to use her prescribed reading material, but couldn’t seem to bring himself to proceed much further from a highly detailed analysis of the Obscenity-themed Ranjit Udeshi case.
9 Mayur Suresh and Lawrence Liang, In a Field of Pain and Death: Syllabus of a course offered to final year students at National Law School of India University, Bangalore, 2007-08.
To start with, I think an essential component of the course should be the justification: readings which explore the importance of the study of pop culture in the law school,11 to avoid the course from languishing into irrelevance from the outset. From that point on, the course could tackle different subjects of popular culture – movies, music, books, sports, television – in reading the presented text as a legal one, in attempting to understand what it might teach both the law school classroom, and the general public, about law. To this end, I believe the course would benefit from having a mix of theoretical readings on the individual subjects, supplemented by exercises where a movie screening or a book reading is prescribed and analysis of the same by the class then worked into the syllabus. When dealing with direct examples of the operation of the legal system, questions may be raised on the accuracy of the subject’s portrayal of the system.

Looking back at the law and literature course, there are additions that could be made to the law of literature. While the aspect of looking at famous disputes centered on books is well and good, I think what should be added is a level of analysis which also takes into account a narrative theory of trials. As Friedman puts it, “a trial is also a narrative competition”.12 With competing sides presenting alternate visions of what is anyway going to remain a somewhat subjective truth at best, the “arguments presented in trials are often important clues to what stories count as good, or true, or compelling stories, within a particular culture”.13 Further, looking at legal texts with a literary eye remains a promising aspect of the law and literature course that I have not seen borne to fruition; a law and pop culture course should certainly take this on board.

I will now take up one example each from a pop cultural realm, and illustrate the different ways in which its study can be integrated into the law school curriculum. With every different realm of pop culture, I shall use a different kind of illustration: over these examples, you will see how pop culture can be used as a teaching methodology, an introduction to a larger discussion as well as a valid field of study in its own right.

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11 Lawrence Friedman’s piece for the Yale Law Journal cited at multiple points is a great example of such an article.
13 Ibid.
1. I would say life is pretty pointless, wouldn’t you, without the Movies?14

Lawyers are the guardians of society, the final moral bastion in an increasingly lawless world.15 Lawyers are vermin, they “encourage their clients to think with selfish defensiveness, to imagine and prepare for the worst from everyone else” and “they add suspicion and unnatural caution to all our relationships, whether personal or professional”.16 Both competing visions of black and white – with a couple of thousand shades of grey - play out when it comes to the image of the lawyer in the cinema. Both go a long way in influencing public perceptions about lawyers and the role of law in society, just as much as they are built from those perceptions.

For a portrait of the good lawyer, we have Rani Mukherji’s valorized novice, Saamiya Siddiqui in Veer Zaara. Saamiya takes on as her client a man who has been imprisoned for 22 years on false charges – and a Hindu and Indian national to boot. Veer reveals to her the story of his estranged love, Zaara, the reason for him coming to Pakistan in the first place. Over the course of the movie, the lawyer not only defends her client to an eventual acquittal, she also brings the lovers together, in the process bridging the national and religious divide. The movie thus envisages law as a force capable of surmounting national barriers and resolving personal and international disputes.17

There are quite a few instances of the bad lawyer, but the example I shall use is a little more oblique than the take on lawyers-as-sharks. Michael Hoffheimer has interesting insights on the lawyer presented as necessarily a bad lover in India cinema.18 He looks at the narratives of Devdas and Parineeta over time to

14 The Funeral (October Films 1996).
15 At least that would be the opinion you had if the only onscreen lawyer you witnessed was Atticus Finch in To Kill a Mockingbird (Universal Pictures 1962).
further this point. In Devdas’ 2002 incarnation helmed by Sanjay Leela Bhansali, the character is a lawyer – as is his father, for that matter. For Devdas to be with the love of his life, Paro, he needs to turn away from certain social norms, while defying his father. Instead, when the confrontation does come, when his father raises his stern objections to the union, all Devdas can do is protest weakly, three times uttering the words “I Object”. Not a great lawyer perhaps – and definitely not a good lover.

Then there is Parineeta, where the original Saratchandra novel and then the Bimal Roy movie portrayed the character Shekhar as a lawyer, and in furtherance of that a conformist. What keeps him from his love is his internal indecisiveness, not necessarily external forces. Again, legal identity provides a marker of the character of the character’s adherence to social convention, and erotic desire becomes incompatible with legal status.\textsuperscript{19} And then we come to the 2005 movie version of Parineeta, where the protagonist is now portrayed as a musician, so establishing his identity as a rebel against the norm. The factors that keep him from his love in this incarnation are much more external, a combination of misunderstandings more than anything else. The non-lawyer that he is otherwise, he clearly prefers love over social convention.

Beyond how these depictions of lawyers reflect or affect perceptions about them, they also clearly demonstrate a belief in the sterility of the law, of its divorce from emotion.

2. \textit{What traitors books can be! You think they're backing you up, and they turn on you. Others can use them, too, and there you are, lost in the middle of the moor, in a great welter of nouns and verbs and adjectives.}\textsuperscript{20}

Considering that I list a J.K. Rowling speech at the top of my justifications for the study of law and popular culture, it would be unfair if this paper did not use the example of the Harry Potter series. The Harry Potter novels are great texts to look at the ways in which law operates in a world removed from our own but

\begin{footnotesize}
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\item[19] Ibid.
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similar to the point of allegory in many ways. The books feature, on one obvious level, trials, statutes, regulations, school rules and international agreements. Harry’s world is administered, rather ineptly, by the Ministry of Magic. The lapses in the rule of law observed by the Ministry follow striking parallels to our own. Over the course of the novels, the Ministry is in the centre of an escalating conflict with the dark wizard Voldemort, with its actions mirroring the approach so many governments follow today in the war against terror: it imprisons people, and sometimes punishes them, without a trial. It keeps intrusively careful tabs on law-abiding citizens, but is unable to track down ‘terrorists’.

To make another example - Free will is privileged strongly in the wizard world. The Imperius curse is one of the 3 spells in the series to be labeled “unforgivable”, in that commission of the offence of casting the spell leads the accused to be sentenced to imprisonment for life. The curse subordinates the will of its victim to the will of the attacked. The Imperius curse is an offence against free will, it enslaves the victim, and enslavement itself has been universally recognized as a crime in many different contexts. At the same time, there is rampant hypocrisy in the wizarding world with the Ministry of Magic openly tolerating the enslavement of house elves who have been oppressed for centuries. Parallels abound: the United States has possibly amongst the strongest free speech protections in

21 See *The Law and Harry Potter*, (Jeffrey Thomas and Franklin Snyder eds., 2010).
22 The Ministry of Magic Trial Room is featured prominently through the series.
23 As mentioned in J.K. Rowling, *Harry Potter and the Chamber of Secrets* (1999), The Muggle Protection Act was a proposed Ministry of Magic bylaw that was presumably designed to protect Muggles from potentially harmful magical artifacts.
24 Magical Regulation 572 issued by the British Ministry of Magic states that the only ink to be used in examinations is Azul Marino ink.
26 The International Statute of Wizarding Secrecy we are told was first signed in 1689, and then established officially in 1692 – the wizarding world seems to mimic our process of signing and ratification it seems.
27 Aaron Schwabach, *Harry Potter and the Unforgivable Curses* in *The Law and Harry Potter*, p.1 (Jeffrey Thomas and Franklin Snyder eds., 2010).
29 Leading us to the SPEW (Society for Promotion of Elfish Welfare) plot point in *Harry Potter and the Goblet of Fire* (2000).
world: it is also the country infamous for the policy of extraordinary rendition which serves to ensure that those very protections (along with, of course, a range of others) are subverted for a particular group.

A final example in the light of stressing the importance of clinical legal education may be taken: theory at the expense of practice is considered downright evil in the Potter world: it is only the particularly bad teachers like Professor Umbridge or Professor Binns that go down one road to the exclusion of the other. In a memorable sequence, a great amount of umbrage is expressed at Umbridge by the students when she chalks down her course aims as being of a merely theoretical nature.

3. Television! Teacher, Mother, Secret Lover.

Before the Twilight films defanged vampires, we had Buffy the Vampire Slayer. For seven years, the adventures of an initially teenaged girl charged with saving the world from the scorges of an open Hellmouth while balancing the terrors of high school built up a cult following. What this stream of faithful viewers was also exposed to were the struggles of a society with its own unique set of laws. As Anthony Bradney notes, the first three seasons follow Buffy’s governance under the Watcher’s Council, an alternate system of power and control, in contrast to the state’s legal system. Questions about the nature of law and the duty to obey a set of mandates are presented constantly over these three seasons. With the start of the fourth season, Buffy resigns from the Council and rejects their law thus bringing to us another kind of analysis: how the characters are to

31 “…who is so boring, and his routine so set, that he actually dies but doesn’t notice or care and now teaches the class as a ghost” – See J.K. Rowling, *Harry Potter and the Philosopher’s Stone* (1997).
33 *Homer Simpson* in *The Simpsons* (20th Century Fox 1989-present).
arrive at rules that will serve them as law, how they will interact with state law, and how they will relate to the Watcher’s Council and its law. A distinction is thus drawn between external rules by a sovereign on the one hand, and a system of law arrived at by personal reflection, thus offering a rich text for the law school to comment on.

The term Buffy Studies has acquired its own meaning to encompass the wealth of literature discussing the teachings from the show in different contexts ranging from sociology, psychology, philosophy, theology, women’s studies – and of course, law. *Slayage: The Online Journal of Buffy Studies* has published quarterly essays since 2001; major conferences have been hosted on the show in universities across the world; there even exist entire college courses on the subject.

4. *I count the songs that make the legal profession sing, I count the songs in most everything, I count the songs that make the young lawyers cry, I count the songs, I count the songs.*

The seriousness that surrounds the academy to the degree of being an affliction often extends itself to academic writing. “If the music we listen to says something about us as individuals, then the music we, the legal profession as a whole, write about may say something about who we are as a profession.” In a delightfully written paper, Alex Long explores the usages of song lyrics in legal writing. The (somewhat haphazard) methodology he undertakes involves typing in a number of artists’ names in the LexisNexis database to scour through the writings of judges, academics and practicing attorneys.

Lyrics of popular music can be used to help establish a metaphor or analogy for a legal concept, as a case study of what a particular artist’s work says about the law or to simply restate or illustrate an idea in more colourful or humorous

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language. Sometimes, he finds, the invoking of music lyrics is haphazard, sometimes it’s done in satisfyingly creative ways: there are occasions where one perfectly resonant line reaches across to exemplify a legal rule better than any legal maxim would. In an extended act of meta-commentary, Long supplies all his own section titles with song titles/lyrics, giving the piece a gloriously light-hearted touch.41 A memorable instance of how this approach might be used with one particular artist comes through in another of Long’s articles that looks at Bob Dylan’s music in detail42 - I discuss this further in the following section.

5. Now, what is this we hear? That you have agreed to cancel the tax of the farmers in Champaner if they beat you in a game of cricket?43

Juridification is the process by which law, without directly invading a social field, can still reconstitute that field in its image.44 In a paper on The Juridification of Sport, Ken Foster sets up analogies of how the sports arena displays remarkable similarities to the legal arena. There is the internal regulatory regime which already contains elements of law; the constitutive document that a regulating sports body will have, along with a rulebook, a disciplinary regime to enforce the rules, and often, a private system of dispute resolution that is legalistic. Foster further refers to a study45 surveying the rulebooks of governing bodies in eight major sports against eight factors demanded by the principles of natural justice, namely: pre-hearing procedures, the nature of the hearing, cross-examination, admission of evidence, legal representation, giving reasons for decisions, rights of appeal, and satisfying the rule against bias by having independent adjudicators. Overall, the study concluded that most of the rule-books satisfied, and often exceeded, the legal criteria.

Coming to a more specific example - I do not share the national obsession with cricket. It continues to bewilder me how the average Indian sports fan will

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41 Yes, this is a conceit which I have plundered from in this paper.
44 Ken Foster, The Juridification of Sport in Readings in Law and Popular Culture, 155 (Steve Osborn and Anthony Greenfield eds., 2006).
manage to equate the latest India-Pakistan showdown to the Kargil war, and not
think twice. Of course, I remain in the minority when it comes to this, and yet,
a discussion of popular culture in India at the very least would be incomplete
without a cricket reference. An exemplary reference book in this regard is David
Fraser’s *Cricket and the Law: The Man in White is Always Right*: 46 400 pages of cricket
obsession filtered through the lens of the law. I can give it no higher praise than
state I didn’t find it boring. Law and cricket, says Fraser, are simply different
arenas in which struggles over meanings, interpretations, applications of rules
by adjudicators, judges and umpires in these instances, engage us politically,
ideologically and socially.

I’ll list two analogies that sprang out at me from the book for their sheer
simplicity. For one, debates about dissent on the field may be easily translated to
debates about contempt and respect for legal institutions in a democracy 47; for
another, debates about leg-before-wicket (LBW) decisions are really just debates
about causation in tort or criminal law. 48 The question in LBW decisions: “but
for” the intervention of the pads, would the ball have continued on to strike the
wicket is another way for us to look at the principle of *novus actus interveniens* –
“but for” this particular conduct would this result have occurred?

III. "**Practice what you Preach**" 49

The previous chapter gave you an insight into the myriad possibilities of
the law and popular culture course, be it in terms of genre, medium or subject
matter. This chapter will describe for you the specific choices that I made in going
about teaching this course. I will in particular draw upon my experience in taking
the course at NALSAR as opposed to NLSIU, simply because the former was
a two-credit course allowing me to draw on a broader range of course material,
while the latter was only a one-credit affair. In both instances, I had the good
fortune of co-teaching with my colleague Lawrence Liang, who took upon the
predominantly Bollywood component - his components of the course however,
I will not be dealing with.

47 Fraser, *supra* note 46, at 78.
48 Fraser, *supra* note 46, at 116.
The mark breakup for the course consisted of 5 marks for written assignments, another 20 for a pop-culture trial they would present (more on this later) and finally, a 75 mark essay. In terms of time allotment, the course was a bit peculiar. We had 20 hours to cover over a 5 day period, thus working out to 4-odd hours in the classroom every day. On top of that, I had planned a series of post class assignments that the students would be doing in small groups. Further, owing to other clashing course timings, the course could only start at 5 pm, and of course a dinner break would have to be given.

I do believe all of this worked out for the absolute best. In consultation with a professor there, we decided the best way to negotiate the long hours and cover the course materials would be to break up the lecture with a film screening. Even across an individual day, the breadth of time allotted meant that I'd be doing multiple topics. The first lecture then was more of a general introduction that began by posing the Batman-Joker question to the class. Always a reliable conversation starter, we segued into then looking at the relevance of studying law and popular culture, based on a pre-assigned reading by Lawrence Friedman. Then, we dove into the meat of the course.

Shakespeare might be an odd choice to open a law and popular course, but that's only if one hasn't been exposed to the revelatory writing of Kenji Yoshino. In "A Thousand Times More Fair", Yoshino locates themes of justice in the plays of William Shakespeare, whilst also finding their present-day echoes. I elected to look at the role of the lawyer in "The Merchant of Venice" as well as the question of delay of justice in "Hamlet". Both discussions were aided dramatically through pre-selected students reciting the relevant bits of verse. Finally, we capped off the day with a screening of a movie adaptation of another iconic Shakespeare play - "Macbeth". Their assignment for the day was to evaluate themes of justice in Macbeth, teaming up in groups of 5.

The next day, I wanted to focus on the question of Law, Sexuality and Popular Culture. Here, we began with a screening of The Celluloid Closet, the documentary based on Vito Russo's book of the same name. The documentary takes the viewer on a tour of a 100 years of Hollywood cinema, looking in
particular at the manner in which queerness was coded into the movies - and how queer audiences then decoded those signals. It's a moving tale of how difference had to be closeted, and it segues quite readily into a similar project with Bollywood. Here, I'd picked select clips from movies from the 70s down to Dostana to look at how the Mumbai cinema has negotiated queer identity over the years. With both the Hollywood and Bollywood narratives, I also wove in the story of the LGBT rights movement, noting how significant moments for the community intersected with the march of cinema.

The final lecture for the day then took a step back at looking at how different ideologies were reflected in, and viewed popular culture. How would a Marxist view of the cinema differ from a Feminist analysis, and how would these in turn be contrasted with the Queer theorists? Over the course of the different ideologies, we came to Psychoanalysis, where I used Little Red Riding Hood as an example to demonstrate a post-Oedipal story. The wave of enthusiasm that greeted this analysis made it easy for me to determine what their class assignment for the day would be. Each group was to analyze Little Red Riding Hood through the lens of any of the ideologies we'd discussed that day.

The results were remarkable. One group elected to psychoanalyze the tale, composing their findings in the form of a poem. Another decided to use feminist and queer theory to create a fairy tale narrative. Two groups used Gramscian hegemony to come to entirely different, perfectly logical conclusions.

On the third day, I focused their attention more directly on the film studies component of the course. The idea here was to take a step back and look at how one watches movies, and what it is that one should be looking for. My reference here was the fantastic "Closely Watched Films", a book that picks roughly one film per decade starting from the 1900s to analyze the various cinematic innovations it brings to the medium. Taking the book's lead, I selected iconic clips from each of these iconic films and discussed the ways in which editing, cinematography, sound, acting and directing had evolved. The screening for the day was the landmark film which took all the techniques that had come before it and reinvented them, in the process landing recognition as the greatest film of all time: Citizen Kane.
The next day we were going to look at music and the law, in particular the work of one Mr. Robert Zimmerman. We began with Martin Scorcese's documentary on Dylan's career, "No Direction Home". With the documentary establishing a certain amount of context for those unfamiliar with Bob Dylan, whilst simultaneously providing more fodder for the Dylan fans, we moved into a discussion on legal connections with his work. I looked at two kinds of connections here: First, the manner in which Dylan's songs became associated with popular protests at the time, leading him to be dubbed the "voice of a generation". Second, with reliance on the aforementioned Alex Long, was an analysis of the manner in which judges in the United States as well as legal academics had used Dylan's lyrics in their writing.

With the final day, I came to the 20 mark pop-culture trial. The idea here was to give students a set of two fact situations. The first involved the character V, of V for Vendetta fame, in a sedition trial. The second involved Buckbeak from Harry Potter and the Prisoner of Azkaban being put on trial for the death penalty. They had to take the facts and present them as a courtroom narrative. Instead of using judicial precedents however, their precedents would necessarily have to flow from popular culture. As promising as this idea might seem, it completely depended on their execution, and in this department they didn't disappoint. Where the V for Vendetta group used a wonderfully wide range of literary and cinematic precedents, the Potter group managed a deeply impressive textual analysis across the Harry Potter books woven into a dramatic narrative.

IV. THIS IS THE END

Of course, it can be somewhat daunting to construct a law and popular course from scratch - this is where the growing number of textbooks come in. Amongst the notable pedagogic texts one may find the Steven Greenfield and Guy Osborn edited Readings in Law and Popular Culture. The book curates a diverse set of texts in areas ranging from sports, film, literature and music, examining how the law affects pop-cultural texts on the one hand, and how these texts play out

50 The Doors, The End (The Doors 1967).
51 Readings in Law and Popular Culture (Steven Greenfield and Guy Osborn eds., 2006).
when it comes to the law on the other. Michael Asimow and Shannon Mader’s *Law and Popular Culture: A Course Book*, makes for another worthwhile endeavour, focusing primarily on law and cinema with each chapter taking a particular legally themed film, ranging from 12 Angry Men down to Philadelphia, examining it as both a cultural text and a legal text.\(^{52}\) Richard Sherwin’s *When Law Goes Pop* is an examination of law’s permeable boundaries and its interdisciplinary nature on courtroom practice, taking a highly critical approach to the intermixing of popular culture and the law.\(^{53}\) Finally, the University of Texas Law School’s Tarlton Library offers an extensive bibliography and selected texts of law and popular culture scholarship.\(^{54}\)

Within what framework might we locate the demands for innovative pedagogy? The National Knowledge Commission constituted a Working Group on Legal Education in the country chaired by Justice Jagannadha Rao, whose recommendations included a segment on curriculum development. The group stated that the curricula and syllabi needed to be based in a wider body of social science knowledge, and that curriculum development involved rethinking the syllabus of individual courses, and developing innovative pedagogic methods.\(^{55}\) Justice A. Lakshmanan of the Supreme Court has said in a speech on Indian legal education that the answer to the challenge of legal education reform requires significantly a revamp of the curriculum in tune with the needs and problems of society.\(^{56}\) I strongly believe that using popular culture as a pedagogic tool as well as having more full-fledged law and popular culture courses as part of the legal curriculum is an important step towards fulfilling this agenda.

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