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Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society

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THE FUTURES OF AMERICAN LAWYERS: A DEMOGRAPHIC PROFILE OF A CHANGING PROFESSION IN A CHANGING SOCIETY

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IN the last two decades there has been a veritable explosion in both the number of lawyers and the size of the legal services industry Between 1977 and 1989, revenues devoted to legal services increased by some 480%, to a total of $75 billion. Thus legal services grew almost twice as fast as the gross national product (which expanded by some 260%), and substantially faster than health services (which grew by some 370% in the same period, to a total of $250 billion).[1] The rapid expansion brought a new crescendo in the criticism of American lawyers. Academics and politicians blamed the legal profession for the lagging competitiveness of the American economy.[2] While lawyers, legal

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1. Robert E. Litan & Steven Salop, More Value for the Legal Dollar: A New Look at Attorney-Client Fees and Relationships 2 (August 1992) (unpublished paper presented at Annual Meeting of the American Bar Association, San Francisco, Cal., on file with *Case Western Reserve Law Review*).

2. *See* Stephen P. Magee et al., *The Invisible Foot and the Waste of Nations: Lawyers as Negative Externalities, in* BLACK HOLE TARIFFS AND ENDOGENOUS POLICY THEORY: POLITICAL ECONOMY IN GENERAL EQUILIBRIUM 111, 119 (1989); *see also* Marc Galanter, *Predators and Parasites: Lawyer-Bashing and Civil Justice*, 28 GA. L. REV. (forthcoming spring 1994). David Margolick, *At the Bar: As the Quayle-ABA Debate Heats Up, Lawyers Fear They May Be Campaign Targets*, N.Y. TIMES, Feb. 7, 1992, at B6.

scholars, and policymakers should not uncritically accept the validity of these attacks, as we approach the next century we should critically examine the role that law and lawyers play in American society.

An analysis of the social structure of the American legal profession is an essential part of such an evaluation. The character of justice in American society is related fundamentally to the social organization of American lawyers. The legal profession is itself a very substantial occupational system. It is made up of highly differentiated roles that command very different levels of income and prestige and, that until recently, recruited from very different social groups. Numerous scholars have suggested that the nature of inequality within the profession is a mirror of inequality in the broader society and the tendency of the legal profession to reinforce or reshape societal patterns.[3] Perhaps more importantly, lawyers are very often key players in designing and activating the institutional mechanisms through which property is transferred, economic exchange is planned and enforced, injuries are compensated, crime is punished, marriages are dissolved, and disputes are resolved. The ideologies and incentives of the lawyers engaged in these functions directly influence the lived experience of Americans, including whether they feel fairly treated by legal institutions.

Despite the political uproar and considerable volume of recent scholarship on the American legal profession, we still do not possess a clear understanding of the forces behind the growth in the number of lawyers or its implications for the American system of justice. The purpose of this paper is to contribute to such an understanding in two ways: first, by examining the demographics of the client base of the profession and how it is likely to change in the near future; and second, by analyzing the demographic profile of the legal profession as it enters the next century. It is possible to describe with clarity changes in the economy and the social composition of society. And we also have relatively good data on changes in the social organization of the legal profession. But what is much less analyzed and much less certain is how these

3. *See* JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE (1976) (criticizing the distribution of legal services on the basis of wealth rather than need); *see also* JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982); RICHARD ABEL, AMERICAN LAWYERS 203-07 (1989) (discussing professional and economic stratification in the legal profession).

social and professional structures are connected. What institutional mechanisms translate economic and social change into demands for particular types of legal services? And how do changes in the social composition of the legal profession influence the provision of different kinds of legal services? This paper can offer only brief speculation on these latter issues, although these questions are crucial to the future of the legal profession and its role in society.

I begin by summarizing data on broad changes in the economic and social characteristics of American society. These patterns may directly alter the nature of demand for legal work. At the very least these trends portend future challenges for American lawyers. I then examine changes in the social structure of the legal profession, both to assess the extent to which traditional professional hierarchies have begun to change and to probe for evidence of how the profession responds to changes in society more broadly.

I. CHANGES IN SOCIETY, CHANGES IN THE LEGAL PROFESSION

In their landmark study of stratification in the Chicago bar, Heinz and Laumann presented compelling empirical evidence for the existence of two relatively separate spheres within the profession: the corporate sector and the personal client/small business sector.[4] I build on their insight here. The discussion of changes in the economy is oriented towards the impact on corporate legal practice. The discussion of demographic changes is oriented towards the effects on personal client practice.

A. The Changing Economy

In recent decades the United States has undergone a dramatic transformation from a manufacturing-based economy in which international trade plays a relatively small part, to a service economy that is heavily involved in international transactions. In 1960, the production of goods made up 51.5% of gross national product, while services contributed 37.2%.[5] By 1980, services surpassed goods in their share of GNP, 46% vs. 45%. In 1989, services con-

4. HEINZ & LAUMANN, *supra* note 3, at 31-134.

5. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, pt 1, at 228 (1976) [hereinafter HISTORICAL STATISTICS]; *see* U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1991, at 443 (111th ed. 1991) [hereinafter BUREAU OF THE CENSUS, 1991].

stituted a majority of the national product (51%), while goods accounted for only 40% of GNP.[6] In 1960 imports and exports amounted to 9% of gross domestic product. In 1970 the figure rose slightly to some 11%. By 1980 the figure had jumped to 21% of GDP, where it remains today.[7]

This shift is reflected in the strategies and structures of leading U.S. corporations. Fligstein's analysis of changes in the composition and character of the 100 leading corporations from 1919 to 1979 found that in 1948, some 62 of the top 100 firms concentrated on a single product market, 36 produced a set of related products, and only two were comprised of unrelated product divisions.[8] The percentage of single product firms in the top 100 declined to 24 in 1969, while 56 leading companies pursued a set of related product markets, and 20 maintained unrelated product lines. By 1979, 25 firms consisted of unrelated divisions, while single market firms dropped to 22.[9] The same period saw virtually all leading firms achieve the status of a multinational corporation. Already in 1948 some 67 of the largest 100 firms were multinationals.[10] By 1979 some 93 of the top 100 were multinationals.[11]

The ranks of the largest American corporations have experienced about as much change in the last decade as they did earlier in the century. About 80 of the top 100 firms in 1990 were also present in 1979.[12] The same number of firms persisted in the top 100 in the decade 1969-1979, as did 75 firms in the 1959-69 period and 79 firms in the 1948-59 period.[13] These data surprised me, for I expected to find substantially more instability in the top ranks of business during the last decade. We all are familiar, for example, with the recent record of two of the top four corporations, General Motors and IBM. Both companies have announced massive layoffs and plant closings in recent months, and the top management of both companies have been replaced as the result of rancor-

6. BUREAU OF THE CENSUS, 1991, *supra* note 5.

7. U.S. BUREAU OF ECONOMIC ANALYSIS, U.S. DEP'T OF COMMERCE, BUSINESS STATISTICS, 1963-91, at A-90, A-92, A-93 (1992).

8. NEIL FLIGSTEIN, THE TRANSFORMATION OF CORPORATE CONTROL 336 (1990).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Compare The Fortune 500*, FORTUNE, Apr. 1991, at 286-89 (listing the top 100 U.S. companies of 1990) *with* FLIGSTEIN, *supra* note 8, at 330-32 (listing the top 100 U.S. companies of 1979).

13. FLIGSTEIN, *supra* note 8, at 335.

ous debates among their boards of directors.[14] Events in General Motors and IBM are dramatic illustrations of a general phenomenon. Even though most large companies continue to succeed, they confront a more uncertain external environment and have experienced significant changes in internal governance.

Changes in the competitive environment damaged these two giants. Competition from foreign carmakers cut deeply into GM's market share. IBM has had difficulty coping with technological innovations and shifting markets in the computer industry. To varying degrees other major companies face similar kinds of uncertainties. The internationalization of economic exchange and the heightened pace of technological change may make for qualitatively higher levels of uncertainty than in the past. But in recent decades major transformations in the institutional mechanisms that regulate corporate actors have added to the uncertainty. Four of significance, all of which have implications for the demand for corporate legal services, are: the emergence of broad-based government regulation of business in the 1970s; the expansion in the last two decades of corporate liability for injuries to workers, consumers, and other third parties; the rise of the financial conception of the corporation; and the deregulation of corporate finance and merger activity in the 1980s.[15]

1) Government regulation of business. By almost any measure, the federal government plays a vastly larger regulatory role vis-a-vis business than it did twenty-five years ago. The size of the Federal Register, a rough measure of the degree of regulatory change, almost tripled from about 30,000 pages in 1970 to just under 90,000 in 1980, though the Reagan presidency reduced the output to 50,000 pages by 1985.[16] More importantly, there has been a qualitative change in the nature of government regulation of business, from the regulation of specific industries, such as transportation and communications, toward cross-industry regulation.[17] Rules governing occupational safety and health, environ-

14. Barbara Koepepel, *America's Labor Lost: For Airline Workers the Crash Can Be Fatal*, WASH. POST, Sep. 5, 1993, at C1 (stating both companies will layoff over 80,000 employees each); Warren Brown & Frank Swoboda, *At GM, New Team Shakes Up Culture from Top Down*, WASH. POST, Jan. 31, 1993, at H1 (discussing changes in each company's management).

15. *See generally* Murray Weidenbaum, *The Changing Nature of Government Regulation of Business*, 2 POST-KEYNESIAN ECON. 345 (1980).

16. *Id.*

17. *Id.*

mental protection, pension benefit programs, equal employment opportunity, energy conservation, product safety, and truth in lending apply to a broad array of organizational sectors. As a result many businesses must deal with regulatory bodies with whom they have no close political-economic links, as was the case in the "old" paradigm of regulated industries.

2) Expansion of corporate liability. Over the last twenty years, as a result of changes in substantive and procedural law, the increased willingness of victims to sue, and the increasing tendency of judges and juries to award large damage amounts, large corporations potentially face greater liability than in earlier years.[18] Much of the growing exposure is related to technology and is concentrated in the products field, such as in the agent orange, toxic shock, and asbestos cases. But corporations, corporate officers, and board members more frequently find themselves as defendants in securities and derivative action lawsuits, in employment discrimination and wrongful discharge cases, and in contract disputes with other businesses.[19]

3) The rise in the financial conception of the corporation. While corporations in earlier periods were viewed as entities engaged in making a particular product or providing a particular service, the dominant conception of the corporation today is as a set of assets whose value is determined through the tools of financial analysis.[20] This managerial paradigm has led to fundamental changes in ways of doing business and in patterns of internal governance. One manifestation of this approach is the trend toward the diversification of corporate holdings noted above. Many corporations now consist of highly disparate subsidiaries engaged in totally unrelated activities. The top executives of such corporations are likely to have a background in corporate finance, which reinforces an approach to management that emphasizes innovation and restructuring through financial transactions.[21]

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18. LAWRENCE M. FRIEDMAN, TOTAL JUSTICE (1985); TERENCE DUNGWORTH, RAND CORP., PRODUCT LIABILITY AND THE BUSINESS SECTOR: LITIGATION TRENDS IN FEDERAL COURTS I (1988).

19. *See* ARTHUR FLEISCHER ET AL., BOARD GAMES: THE CHANGING SHAPE OF CORPORATE POWER (1988); Marc Galanter, *The Life and Times of the Big Six: On the Federal Courts Since the Good Old Days*, 6 WIS. L. REV. 921 (1988); MARC GALANTER ET AL., BUSINESS DISPUTING GROUP, THE CORPORATION IN COURT: TRENDS IN AMERICAN BUSINESS LITIGATION (1988) (report prepared for Arthur Anderson & Company).

20. *See* FLIGSTEIN, *supra* note 8, at 226-58.

21. *See id.* at 259-94.

The consequences of the shift in managerial philosophy is readily apparent. During the decade of the 1980s, unprecedented numbers of corporations were affected by transactions that resulted in change of ownership. While some 1560 mergers and acquisitions valued at over $1 million were conducted in 1980, by 1984 that number doubled to more than 3164. Such transactions peaked at 4381 in 1986, and declined to 3487 in 1988.[22] Some 17% of the 1988 deals involved foreign corporations, either as acquiring or acquired companies.[23] The Business Disputing Group estimates that the ratio of external to internal financing used by nonfinancial corporations increased from 1.5:1 in 1960 to 4.6:1 by 1986.[24]

The explosion in external financing was related to the sharp increase in hostile merger and acquisition activity that swept through corporate America from the mid- to late-eighties. The revolution in junk bond financing led by Michael Milken and his associates played a major role in stimulating the wave of acquisitions. The specter of corporate raiders prompted corporate management to take a number of defensive actions to prevent unwelcome takeover attempts.[25] One defense was to take on sufficient debt to bring stock values in line with corporate assets. Another was to adopt a set of governance mechanisms—poison pills and golden parachutes—that would discourage acquirers or at least soften the fall of incumbent management.[26] Davis reports that a very large percentage of leading companies adopted such defenses, after they were validated by judicial opinions.[27]

The advent of an active market for corporate control also created new potential conflicts between corporate management,

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22. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1990, at 534 (110th ed. 1990) [hereinafter BUREAU OF THE CENSUS, 1990].

23. *Id.*

24. GALANTER ET AL., *supra* note 19, at 38.

25. *Id.*

26. *See generally* CONNIE BRUCK, THE PREDATORS' BALL: THE INSIDE STORY OF DREXEL BURNHAM AND THE RISE OF THE JUNK BOND RAIDERS (1989); BRYAN BURROUGH & JOHN HELLYAR, BARBARIANS AT THE GATE: THE FALL OF RJR NABISCO (1990).

27. *See* Gerald E. Davis & Suzanne K. Stout, *Organization Theory and the Market for Corporate Control: A Dynamic Analysis of the Characteristics of Large Takeover Targets, 1980-1990*, 37 ADMIN. SCI. Q. 605 (1992); *see also* Gerald F. Davis, *Agents Without Principles? The Spread of the Poison Pill Through the Intercorporate Network*, 36 ADMIN. SCI. Q. 583, 587 (1991); Michael J. Powell, *Professional Innovation: Corporate Lawyers and Private Lawmaking*, 18 LAW & SOC. INQUIRY 423 (1993) (suggesting that the use of these new legal devices contributes to the creation of legal knowledge).

boards of directors, and stockholders. As incumbent management took steps to retain control, it frequently posed questions about whether management was acting in the best interests of stockholders and whether the board of directors had an obligation to oppose managerial tactics that might damage the positions of stockholders.[28] Existing management sometimes responded to external threats by organizing their own financing package and attempting to acquire control of the corporation which they previously worked for. While the pace of mergers and acquisitions has slowed during the recession of the last few years, the nature of corporate governance has been permanently altered, leaving a changed set of actors, with a changed conception of the corporation and their role in it.[29] The new governance regimes are more volatile and more legalistic than their predecessors.

4) The deregulation of corporate finance and corporate transactions. The 1970s put in place new regimes of regulation aimed at particular social problems. At the same time, the seventies gave rise to the deregulation of certain industries, a trend which gained momentum in the 1980s.[30] In international arenas, nation states relaxed monetary policies, creating new fluidity in international financial markets. National governments became self-consciously entrepreneurial, revising tax codes and financing regulations to encourage investment by foreign business.[31] The movement toward trading blocs, in Europe, North America, and the Far East, has accelerated the movement toward free trade among neighboring countries and thus facilitates capital flows previously limited by trading barriers. In the United States, the government removed or sharply reduced limitations on the commercial and lending activities of banks and savings and loans. Moreover, the government took no actions to inhibit the rapid profusion of new financing schemes developed by investment banks and other financial entrepreneurs. The Reagan Administration also installed a virtually lais-

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28. *See, e.g.*, FLEISCHER ET AL., *supra* note 19.

29. *See* Davis & Stout, *supra* note 27, at 605.

30. *See* Sol Picciotto, *The Control of Transnational Capital and the Democratization of the International State*, 15 J.L. & SOC'Y 1, 5-8, 64, 65 (1988).

31. David Charny, *Competition Among Jurisdictions in Formulating Corporate Law Rules: An American Perspective on the 'Race to the Bottom' in the European Community*, 32 HARV. INT'L L.J. 423-56 (1991); Klaus P. Berger, *Introduction: Legislative Competition for International Economic Arbitrations*, *in* INTERNATIONAL ECONOMIC ARBITRATION 1-7 (1993). *See generally* RICHARD BARNET & JOHN CAVANAGH, GLOBAL DREAMS: IMPERIAL CORPORATIONS AND THE NEW WORLD ORDER (1994).

sez faire approach to anti-trust policies concerning mergers and market domination.[32]

The availability of new financial resources, coupled with the elimination of government control of mergers, ushered in a new era of intercorporate alliances.[33] These trends make corporations more permeable than before, but also increase the number of transactions among corporate actors. With more money circulating in more complex ways, demand for experts in various aspects of corporate transactions, including investment bankers, accountants, and corporate lawyers, has increased.

While it is difficult to find systematic data that address these trends among corporate clients, a recent survey of the legal officers of major corporations supports the theory of increasing demand for corporate legal services. Harris and Hensler report that more than 80% of the corporate counsel who responded indicated that their legal costs had increased in the last five years.[34] Three-quarters of these said the increase had been significant. The average rate of increase reported was 74%. Given the relatively low rate of response to their survey (28%) and the danger of self-selection bias by corporate counsel facing especially high legal costs, the results must be interpreted cautiously. Still, the findings are suggestive.

When asked what factors were very important in contributing to growing costs, 46% of respondents cited changes in the amount of legal needs, 39% cited changes in the character of the corporation's legal needs, and 32% cited changes in fees paid to outside counsel.[35] The leading answers to the question about the causes of rising costs were demand factors. The increase in the fees of outside counsel was a major factor for many corporations, but this response did not necessarily indicate that outside fees were artificially inflated. The rise in law firm fees may also have been a product of underlying demand. In response to a question about the most important sources of current legal demands, 45% mentioned general litigation; 35% said environmental matters; 27% included

32. *See* FLIGSTEIN, *supra* note 8, at 222 (stating that the Reagan administration adopted "performance" as a justification by which companies could avoid antitrust laws).

33. Connie Bruck, *The World of Business: Strategic Alliances*, NEW YORKER, July 6, 1992, at 34.

34. Louis Harris & Deborah Hensler, Talking to Each Other or Past Each Other? Corporate Legal Officers' and Outside Counsels' Views on Strategies for Controlling Legal Costs 5 (Aug. 1992) (unpublished paper presented at the annual meeting of the American Bar Association at San Francisco, Cal., on file with author).

35. *Id.* at 7

compliance with governmental regulations; 22% listed corporate governance; 20% noted mergers, acquisitions, and divestitures; labor relations and corporate employment and personnel matters each were mentioned by 13% of respondents.[36] The responses track closely the sources of increased demand that were suggested by overall trends in the legal environment of corporations.

B. The Effect on Corporate Legal Services

These changes have resulted in two related developments in the corporate sphere of the legal profession: 1) substantially increased rates of growth by corporate law firms and corporate legal departments, and 2) the significant restructuring of the market for corporate legal services. Both patterns have been analyzed in some detail in recent scholarship, including some of my own work,[37] as well as important efforts by Galanter and Palay,[38] and Gilson and Mnookin.[39] Extensive discussion is not required here, for the indications of these shifts are quite apparent. On the issue of sheer growth, Sander and Williams estimate that receipts from business legal services grew at an annual rate of 15% between 1967 and 1982, while receipts from individual clients grew at a vigorous, but lower rate of 11.7%.[40] Between 1980 and 1988 the number of law firms with more than 100 lawyers grew by 196%, the number of firms with 51-100 lawyers grew by 91%, and the number of firms with 21-50 lawyers grew by 68%.[41] In contrast the number of law firms overall increased by 11%.[42]

The restructuring of the market for corporate legal services cannot be summarized as readily by numbers alone, but most ob-

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36. *Id.*

37. *See* ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988); *see also* Robert L. Nelson, *Of Tournaments and Transformation: Explaining the Growth of Large Law Firms*, 3 WIS. L. REV. 733 (1992) (book review).

38. MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991).

39. Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in the Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567 (1989); Robert J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985).

40. Richard Sander & Douglas Williams, *Why Are There So Many Lawyers: Perspectives on a Turbulent Market*, 14 LAW & SOC. INQUIRY 431 (1989).

41. BARBARA A. CURRAN & CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 1988, at 12 (supp. 1991).

42. *Id.*

servers agree on the contours of the changes, if not on their causes.[43] Given the rising demand for sophisticated corporate services, and the associated rise in corporate legal costs, inside counsel assumed a pivotal role in supervising the relationships between corporate clients and external law firms. The general service relationships that had existed between many clients and law firms were displaced by transaction-specific or field-specific relationships monitored by inside counsel. The impact of corporate counsel on the corporate market was demonstrated in the phase of the Harris and Hensler survey that targeted the managing partners of the largest 500 law firms. They found that some 18% of the partners surveyed had themselves lost a major client or a substantial portion of a major client's business within the last five years as a result of the expansion by the client's internal legal staff.[44]

As a result of such changes, the market became much more competitive and law firms became far more entrepreneurial and efficiency-oriented. Firms added new specialties, employed more associates and paralegals, and sought expansion into new geographical and specialty markets by opening branch offices in other cities and countries. They implemented earlier and more intensive specialization. They raised expectations about hours billed. Many cut back on the proportion of associates promoted to partner and many removed or demoted unproductive partners. These strategic moves have been devised and supervised by a new stratum of firm leaders who self-consciously work as a management team, and who deploy far more sophisticated systems for accounting and information retrieval than did their predecessors.[45]

The expansion and transformation of corporate law practice is related to many of the general economic trends noted above. As economic exchange shifts from domestic manufacturing to global financial transactions, it increases demand for corporate lawyers. There are more deals to put together. The deals involve more legal contingencies and correspondingly require more legal work to initiate. If and when the deals fall apart, there is a greater chance for

43. *See* NELSON, *supra* note 37, at 37-85 (analyzing the relationship between changes in the market for corporate legal services, changes in the internal structure of firms, and changes in the functions law firms serve in the legal system); GALANTER & PALAY, *supra* note 38, at 37-76 (arguing the transformation of law firms in the 1980's reflects changes in the surrounding economy, society and legal world itself).

44. Harris & Hensler, *supra* note 34, at 9.

45. NELSON, *supra* note 37; GALANTER & PALAY, *supra* note 38.

legal conflict due to the absence of the kind of longstanding, continuous relationships among business actors that previously dampened potential conflict.[46] In economist's language, if we think of corporate lawyers as "transaction cost engineers,"[47] in a world of increasing transaction costs, there will be increasing demand for corporate legal services. Yves Dezalay argues in more colorful language, that in times such as these, which are characterized by economic warfare among newly emerging and realigned economic actors, the corporate law firm is the ultimate weapon. What we are witnessing in the expansion of corporate law firms is, then, a kind of legal arms race among contending economic parties.[48]

Yet it is crucial to understand that corporate lawyers are themselves part of the business legal culture that gives rise to the growing demand for corporate law. We can find several indications of the accentuation of strategic lawyering by corporations and their legal representatives in recent decades. The multiplication of lawsuits between businesses since 1970 is one aggregate measure of the increasing willingness of businesses to sue others.[49] William Nelson attributed the sharp rise in breach of contract litigation in the Southern District of New York in the 1970s to the increasing bureaucratization of business (which undermined the capacity of managers to resolve conflicts informally) and to changes in the organization and attitudes of large law firms.[50] Kevin Delaney traced the emergence and eventual legitimation of strategic bankruptcy by such firms as Johns-Manville and Continental Airlines to a new cynicism among some corporate leaders about the law. Rather than viewing bankruptcy as dishonorable, a public admission of failure, these innovators treated the bankruptcy law as a device to be used in a broader set of legal and economic contests.[51] The business pages contain reports that hint at the pervasiveness of this

46. This is the thrust of the research by the Business Disputing Group, see *supra* note 19; Stewart Macaulay, *Non-contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55, 55 (1963).

47. Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239, 255 (1984).

48. Yves Dezalay, *The Big Bang and the Law: The Internationalization and Restructuration of the Legal Field*, THEORY, CULTURE, & SOC'Y, June 1990, at 279, 281, 285.

49. GALANTER ET AL., *supra* note 19.

50. William E. Nelson, *Contract Litigation and the Elite Bar in New York City, 1960-1980*, 39 EMORY L.J. 413, 417 (1990).

51. KEVIN J. DELANEY, STRATEGIC BANKRUPTCY 60-125 (1992).

new attitude. For example, it was reported that one credit card company had provided advice from lawyers to establishments that had a potential legal conflict with a competing credit card company. This does indeed look like a new use of law as an economic weapon, one which goes beyond traditional inter-business conflicts over allegations of anti-competitive behavior or claims of infringement on intellectual property. Powell's analysis of the development and diffusion of the poison pill defense in the mergers and acquisitions field exemplifies the role that innovative corporate lawyers have played in creating new legal strategies that generate increased demand for their services.[52]

Thus, corporate lawyers are not merely passive subjects of growing demand. They and the corporate clients they advise are deeply implicated in ways of doing business and using law, which can independently affect the demand for their work. This implies that corporate lawyers still have significant cultural authority: they can persuade sophisticated users that they have something valuable to offer. Yet what can be done based on cultural appeals, can be undone as well. There is no guarantee that corporations will continue on a legalistic trajectory. Indeed, there are some suggestions of countertrends that appear to be reactions to the high cost of using the law. Within the sphere of litigation, judges have begun to punish lawyers for excessive delay and cost.[53] Sweeping attempts to simplify the discovery process in federal civil litigation are under consideration. With increasing frequency corporations are attempting to avoid courts altogether by inserting commercial arbitration clauses into the contracts they execute.[54]

It may be instructive as we speculate about the future structure of corporate legal services, to consider how much has changed in the size and profitability of some of the largest firms over the last few decades, decades which have been extremely turbulent for

52. Powell, *supra* note 27.

53. *See* National Ass'n of Gov't Employees v. National Fed'n of Fed. Employees, 844 F.2d 216, 224 (5th Cir. 1988) (stating that sanctions may be appropriate where a party files "excessive" motions).

54. *See* THOMAS CARBONNEAU, ALTERNATIVE DISPUTE RESOLUTION 105 (1989) (stating that Americans are gaining a greater acceptance of arbitral adjudication as the legal world evolves transnationally); W. LAURENCE CRAIG ET AL., INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION 50 (2d ed. 1990) (incorporating arbitration clauses into principal agreements is a common practice); GALANTER & PALAY, *supra* note 38, at 44 (utilizing commercial arbitration and other alternative dispute resolution techniques increasingly common in 1980's to resolve legal disputes).

corporate law firms in some respects. Table 1 contains some relevant information. If we look at the fifty largest law firms in 1979, we can see that some 72% of the initial group remained in the top fifty ten years later. And if we go down the ranks of firms to the top 75 firms in 1989, 92% of the initial fifty are present. Indeed, three more of the top fifty firms in 1979 opted to grow more slowly than other firms, resulting in their disappearance from the top group. But these firms were among the twenty most lucrative firms nationally in 1991.

The results for New York and Chicago, which go back to the fifties and sixties, also demonstrate remarkable continuity at the top. Of the 20 biggest firms in New York City in 1957 according to Erwin Smigel, 10 remained in the top twenty and 17 were present in the top 30 firms in 1989. Twelve of the early top twenty were among the twenty most profitable firms in 1989; 17 of the early twenty were among the 30 most profitable firms in the city more than 30 years later. Of the 10 largest firms in Chicago, six were still in the top 10 almost 25 years later; all 10 were among the 20 largest firms in the city in 1989; and nine of the 1965 top 10 were among the 10 most profitable firms in Chicago in 1989.

These data indicate considerable stability in the top ranks of corporate law firms during a period of very significant change within the corporate sector of the profession. Whatever resources leading firms had in the fifties and sixties—client relationships, reputation, incumbent attorneys from high status law schools, and organizational regimes for insuring the delivery of high quality legal services—they formed the basis for continued success. Sander and Williams estimate leading corporate law firms have enlarged their share of receipts for legal services. In 1972 the top 50 firms received an estimated 5.1% of receipts for all law firms; by 1987 their share had increased to 7.8%, a fifty percent increment.[55] The strong implication of these findings is that top corporate firms will continue to grow and prosper in the foreseeable future. The shakeout in the corporate sector, if one is coming, is likely to be among smaller corporate firms, who must struggle to achieve sufficient size and a reputation for specialized competence to compete with larger firms within their region and nationwide.

Just as one could not have readily predicted the rapid expansion and restructuring of corporate law firms in the seventies or

55. Sander & Williams, *supra* note 40, at 439.

eighties in response to fundamental changes in government regulation of business, in the global economy, or in the governance structures and managerial strategies of American corporations, we cannot now predict the future of corporate law firms in the next century. If present political and economic trends continue, so that our society experiences more trade with distant partners, and if we continue to follow relatively legalistic approaches to commerce, finance, and corporate governance, we can expect the continued expansion of the corporate legal sector. Within that sector, we can expect that traditional status hierarchies among firms will persist.

II. DEMOGRAPHIC CHANGES

Demographic trends will shape the supply and demand of legal services in the next century. Changes in the social and economic characteristics of the population will affect the composition of the legal profession, a topic I turn to in the next section. Because the incidence of legal problems and the propensity to call on lawyers for assistance are correlated with age, income, race, and gender, demographic shifts will influence demand. The trends also are significant because they measure broader changes within American society that should be of concern to the legal system and legal professionals.

The American population is getting older in a statistical sense. The median age of Americans in 1970 was 28, in 1991 it was 33.[56] In 1990 some 21% of Americans were 55 years of age or older, by 2010 an estimated 26% will be 55 or older.[57] The aging phenomenon will continue as "the baby boom" generation continues on its life course. There has been a steady rise in the educational levels of Americans, which has only recently begun to slow. The proportion of the population 17 years or older who graduated high school grew from 70% in 1960 to 77% in 1970, but it has declined slightly since then to 74% in 1988.[58] The percentage of high school graduates enrolling in college has risen steadily from 24% in 1960 to 38% in 1988.[59] Seventeen percent of the population 25 years or older had four or more years of college in 1980.

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56. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 16, tbl. 14 (112th ed. 1992) [hereinafter BUREAU OF THE CENSUS, 1992].

57. BUREAU OF THE CENSUS, 1990, *supra* note 22, at 16, tbl. 18.

58. *Id.* at 151, tbl. 251.

59. *Id.* tbl. 252.

In 1991, some 21% were college educated.[60] College enrollment increased from some 8.6 million in 1970 to 12.8 million in 1988. It is estimated to rise only slightly by 1995 to 13.2 million.[61] Education has become an increasingly important determinant of income over the last decade. In 1981 husbands in married couple families who had four years of college made some 44% more than their high school educated male counterparts. By 1987 college educated husbands earned 59% more than high school educated husbands.[62]

Median family income remained roughly the same throughout the eighties, about $35,000 in constant 1990 dollars.[63] The largest growth in income categories was at the bottom and top of the income distribution. An additional 830,000 families had incomes less than $5000 in 1991 compared to 1980, while an additional 3.8 million families reported incomes exceeding $50,000 at the end of the period than at the beginning. Thus while 9.1% of families were in poverty in 1980, the percent grew to 10.7% by 1991.[64] Income levels vary significantly by race and family situation. In 1988 the median family income of whites was $32,000. For blacks it was $18,000, and for hispanics, it was $20,000.[65] About 10% of whites were below the poverty level in 1988 compared to 32% of African-Americans and 27% of Hispanic persons.[66] Almost one-third of all households headed by women in 1989 were below the poverty line; some 42% of female headed households with children under 18 years of age were in poverty; and 57% of female headed households with children under 5 years of age were impoverished.[67] Given the increasing proportion of female headed households with children, these statistics are especially disturbing. Some 25% of families with children have single parents; 85% of these are headed by women. Among African-Americans, over half (52%) of families with children are female headed households.[68]

The United States is becoming more diverse racially and ethnically. Whites still make up about 80% of the population, but that

60. BUREAU OF THE CENSUS, 1992, *supra* note 56, at 39, tbl. 41.
61. BUREAU OF THE CENSUS, 1990, *supra* note 22, at 151, tbl. 253.
62. *Id.* at 455, tbl. 736.
63. *Id.* at 455m, tbl. 730.
64. BUREAU OF THE CENSUS, 1992, *supra* note 56, at 39, tbl. 41.
65. BUREAU OF THE CENSUS, 1990, *supra* note 22, at 452, tbl. 730.
66. *Id.* at 458, tbl. 743.
67. BUREAU OF THE CENSUS, 1992, *supra* note 56, at xiii, tbl. 90-3.
68. *Id.* at 39, tbl. 41.

has declined from 83% in 1980.[69] The white segment of the population grew at an 8% pace in the last decade and is projected to increase at a three to five percent rate in the next two decades. The number of African-Americans grew at twice the rate of whites from 1980 to 1990 and is estimated to increase at twice the rate of white Americans between 1990 and 2010. Other racial groups, predominantly Asians, grew at a 67% rate in the last ten years and are projected to increase at a rate of 27% to 35% over the next twenty years. Persons of Hispanic origins increased at a rate of 53% from 1980 to 1990 and will continue to make up a larger proportion of the population over the next 20 years.

One of the most significant trends in the workforce over the last two decades has been the growing proportion of women in the labor force. Female participation rates have increased from 49% overall, and 61% among college educated women, in 1970 to 67% overall, and 81% among college educated women in 1988.[70] There is still considerable variation in female employment based on family situation. Married women have lower participation rates than divorced women (57% vs. 76% in 1988). But even a majority (57%) of married women living with children under six years of age now participate in the labor force. The figure rises to 70% for divorced women with young children.[71]

Another workforce trend of potential significance is the declining proportion of American workers who are represented by unions. Union membership has decreased for several decades. From 1983 to 1988 alone union membership fell from 20.1% to 16.8%, and the proportion of workers represented by unions slipped from 23.3% in 1983 to 19% in 1988.[72] The erosion of union jobs results in part from the shift from a manufacturing to a service economy noted earlier. Only about 6% of workers in service industries are union members, compared with 22% of the manufacturing workforce. A related factor is the movement of population and jobs from the rustbelt to the sunbelt. Some of the larger states that experienced population growth over 10% during both the seventies and eighties are right-to-work states with relatively low proportions of union members.[73]

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69. *Id.* at 17, tbl. 16.
70. BUREAU OF THE CENSUS, 1990, *supra* note 22, at 379, tbl. 627.
71. *Id.* at 385, tbl. 636.
72. *Id.* at 419, tbl. 689.
73. For example, North Carolina, South Carolina, Georgia, Florida, Texas, and Arizona

To summarize these trends, American society is becoming older. It is becoming more socially diverse, as nonwhites and hispanics come to make up a larger proportion of the population. It is diverging economically, with growing numbers of individuals in poverty and relative affluence. The division between the advantaged and disadvantaged is quite strongly correlated with race, family situation, and education. An increasingly large proportion of women work. A declining fraction of the workforce belongs to unions, as employment in the service sector has outstripped growth in manufacturing and as more jobs and people relocate to sunbelt states with low levels of unionization.

B. The Effects of Recent Demographic Trends on Demand in the Personal Client Sector

Barbara Curran's study of legal needs based on a national survey conducted in 1973-74 remains the most comprehensive set of data collected on the propensities of demographic subgroups to experience various kinds of legal problems and seek the assistance of legal counsel.[74] Curran found that the most common legal problems concerned real estate acquisition, consumer matters, estate planning (wills), torts (either damage to property or personal injury), and marital difficulties (mostly divorce).[75] Certain groups were far more likely to encounter particular problems. For example, older women confronted estate matters related to the death of a spouse at roughly three times the rate for older men.[76] Significantly more young blacks and latinos reported incidents of job discrimination than did whites.[77] The probability of seeking legal counsel varied by specific problem. Individuals were very likely to consult lawyers if they needed a divorce (77%) or a will (79%), and were quite likely (40%) to do so for real estate transactions. If they faced eviction, only 27% sought legal counsel. In only one percent

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are right-to-work states. Only about 10% of manufacturing workers in Colorado and New Mexico are union members. California and Washington are the only two relatively populous states that had high population growth rates with over 20% of their manufacturing employment in union shops. BUREAU OF THE CENSUS, 1991, *supra* note 5, at 19, tbl. 25 (discussing the mobility status of the population); BUREAU OF THE CENSUS, 1990, *supra* note 22, at 418, tbl. 688 (discussing union membership in manufacturing, by State, 1984-1988).

74. BARBARA A. CURRAN, THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY (1977).

75. *Id.* at 103-04.

76. *Id.* at 113.

77. *Id.* at 108.

of the instances of job discrimination had respondents gone to a lawyer.[78]

Beyond these particulars, Curran's data indicate consistent differences in the number of legal problems encountered by various social groups. Not surprisingly, age was systematically related to the number of legal problems experienced throughout one's life. The two youngest age groups reported fewer problems than older respondents. But the 35-44 and the 45-54 age groups reported the highest number of problems (six on average), surpassing the 55-64 and 65 and over groups (who reported an average of 5.2 and 4.6 problems, respectively).[79] For all age groups, whites reported more legal problems than blacks and latinos. As income and education levels increased, so too did the number of legal needs enumerated by respondents. The results clearly indicated that individuals with more economic resources, and from privileged and high status social groups, were more inclined to perceive that they had a legal problem. With some exceptions, these same groups were more inclined to consult lawyers on the problems they faced.[80]

Curran effectively summarized these demand patterns in a table, reproduced here as Table 2. The table presents conditional probabilities, for an extensive list of legal needs, for which a lawyer would be used if a specific problem arose, as well as, the yearly incidence of the problem and the net result of the number of times per 1000 population, per year, that a lawyer would be consulted. Curran's table might be a useful point of reference for discussing how client demands have changed between the early 1970s and now, as well as what future trends will hold.[81]

We can deduce four immediate sources of change in legal demand patterns: 1) changes in the frequency of underlying legal problems (e.g., more divorces, more real estate acquisitions, more personal injuries); 2) changes in the degree to which these are perceived as legal problems, potentially involving recourse to the legal system or lawyers; 3) changes in the propensity to seek legal counsel for these problems; and 4) changes in access to legal ser-

78. *Id.* at 161.

79. *Id.* at 100.

80. One departure from the general pattern appeared with regard to higher income groups in tort cases. They were less likely to employ lawyers in most types of torts than were lower income groups. *Id.* at 156-57. This pattern was explained, however, by the greater likelihood that high income groups would seek recovery from their insurer rather than through the legal system. *Id.*

81. *Id.*

vices, including the relative price of legal services compared to other consumption alternatives. It might be possible to develop measures of these phenomenon, but that is beyond the scope of this paper. I will settle, therefore, for speculative commentary on how these four dimensions underlying legal need may have changed in response to institutional changes in the legal system and to the demographic trends described above.

Since Curran's study there have been significant changes in the institutional environment of the personal client sector of the legal profession. In 1977, limits on lawyer advertising and bar association regulation of lawyers' fees were sharply curtailed.[82] One result of these changes has been a change in the nature of competition among lawyers in the personal client sphere. New forms of legal services organizations have been created, which rely on mass advertising or on prepaid client groups.[83] Moreover, many traditionally organized small-firm practices now employ some kind of advertising, either in the Yellow Pages of the phone book or through other advertising channels.[84] Advertising and the entry of additional firms should have a salutary effect on prices for some of the basic services listed in Table 2. Yet the research on the effect of these phenomenon on price competition is mixed. Van Hoy discovered that even franchise law firms skip over the basic, low cost versions of the services they provide during the initial consultations with clients.[85] According to one study, only some 7% of individual clients select lawyers based on advertising.[86] This suggests that advertised prices do not play a major role in the personal client market. Despite some indications that the price of routine services like wills, personal bankruptcy, and uncontested divorces vary inversely with the amount of advertising,[87] Abel concludes that "the survival of restrictions on advertising, together

82. Carroll Seron, *Managing Entrepreneurial Legal Services: The Transformation of Small-Firm Practice, in* LAWYERS' IDEALS AND LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 63, 68-79 (Robert L. Nelson et al. eds., 1992).

83. *Id.*

84. *See* ABEL, *supra* note 3, at 120-21; *see also* Jerry Van Hoy, Prepackaged Law: The Political Economy and Organization of Routine Work at Multi-branch Legal Services Firms (1993) (unpublished Ph.D. dissertation, Northwestern University) (stating that most of the attorneys surveyed have listings in the yellow pages).

85. Van Hoy, *supra* note 84, at 35.

86. ABEL, *supra* note 3, at 121 (citing Jim Miskiewicz, *Ad Debate Lingers But Its Focus Shifts*, NAT'L L.J. 1, 50 (1986)).

87. ABEL, *supra* note 3, at 121.

with the reluctance of lawyers . . . to engage in price competition, has meant the perpetuation of uniform (and high) prices."[88] Sander and Williams offer a similar assessment. "Most legal products are not purchased for their own sake but rather because they facilitate something else . . . . In the consumer world, it seems equally unlikely that a young couple will decide to buy a house simply because of small declines in legal closing costs."[89]

Although it is doubtful that the price of routine services has declined, there is a wide perception in some quarters of the legal profession that lawyer advertising has encouraged litigation.[90] Whether attributable to advertising, excessive numbers of lawyers, or to the deterioration of community, "litigiousness" is perceived as a problem by many Americans. There is substantial controversy among scholars about whether there has in fact been a litigation explosion. Most commentators acknowledge there has been an increase in court filings. But state court filings, which make up the largest part of the American judicial system, reflect increments roughly commensurate with population growth.[91] If the general population has become more rights conscious, as the debate over trends in civil litigation imply, we might find that both the incidence rates and conditional probability of lawyer use have increased since the date of Curran's study. The rise in incidence rates would be related to the growing awareness of individuals that they have rights that may have been violated. The same factors that heighten the perception of legal problems in the first instance might also lead to the perception that the situation requires legal counsel.

The demographic trends described above should result in some additional incidence of legal problems. The increasing labor force participation of women will generate legal needs in the areas of employment, occupational safety, tax, and property. Although the divorce rate rose steadily from 1950 to 1981, it has dropped to a

88. *Id.* at 121-22.

89. Sander & Williams, *supra* note 40, at 452.

90. *See* Seron, *supra* note 82, at 63, 80 (arguing that advertising is "'good for the industry' because it raises the level of consciousness of one's right to sue").

91. Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) about Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4, 36-42 (1983) [hereinafter Galanter, *Landscape of Disputes*]; Marc Galanter, *The Day After the Litigation Explosion*, 46 MD. L. REV. 3, 6-7 (1986); *see also* Sander & Williams, *supra* note 40, at 468-70.

steady rate in the last decade and, consequently[92] divorce practice should grow more slowly than in the past two decades. Changes in the age distribution of the population and rising education levels should, according to Curran's results, support increased legal demand. The baby boom generation is still moving through the two age groups that traditionally produce the highest level of legal demand, the 35-44 and 45-54 age groups.[93] After the year 2010, however, the bulge in the population will be in the oldest age group, which has used fewer lawyers in the past. The substantial increases in the college educated which we have seen in the last two decades may well have contributed to expanded expenditures on personal legal services. But the fact that the growth of higher education has slowed, and that the income levels of those with less a than college education have been relatively stagnant in recent years, will have an opposite effect. Just as there have not been across the board improvements in the incomes of lower and middle class Americans, we should not expect across the board increases in the consumption of legal services by these groups. (Litigation that rests on a contingent fee may defy this trend. But the argument that these groups are more litigious than in the past is not clearly supported by empirical data.)

The demographic data also suggest increased stratification in American society. So too can we anticipate increased tiering in the market for personal legal services. Group legal plans have not grown at a substantial rate and do not make up a significant portion of the personal client market. Labor unions may provide the most promising financial base for these programs. Given the decline in union membership and bargaining power, however, unions are not likely to have the resources required to expand group legal plans. Government legal services receive roughly the same level of support now as they did at the beginning the of 1980s, which represents a decline in real support. Thus the poor and low income groups have reduced access to legal services.

Those groups who benefited economically during the 1980s, the well educated and wealthy, have consumed more legal services and are likely to do so in the future. For these groups, legal services are one of many kinds of professional services they deem necessary. As they engage in increasingly expensive real estate

92. BUREAU OF THE CENSUS, 1990, *supra* note 22, at 62, tbl. 80.
93. *Id.*

transactions, as they attempt to provide for the transfer of their estate in ways that minimize delay and taxes, and as they confront the contingencies of divorce or the death of a spouse, they spend substantial sums of money on legal advice and representation.[94] Their ability to afford necessary, but quite substantial legal fees is an increasingly distinctive feature of their position in society.

III. THE SOCIAL STRUCTURE OF THE LEGAL PROFESSION

I now move from questions about the changing demands of clients and their effects on the corporate and personal client spheres of the profession to a discussion of the social structure of the American legal profession itself. The American legal profession is formally unified. Virtually all lawyers are products of the same postgraduate education. In contrast to the legal professions of other western countries, there are few formal distinctions among types of lawyers.[95] Yet scholars of the American legal profession have long recognized that it is a diverse, segmented, highly stratified occupational system. Like American society generally, there is a history of discrimination within the profession against immigrants, African-Americans, Jews, and women.[96] Social class has been a powerful determinant of who will gain entry into the profession and the kind of professional position they will obtain.[97]

Patterns of stratification within the legal profession are important in their own right, as part of the American stratification system, but they are of particular concern to legal scholars and legal educators because principles of inequality among lawyers may suggest much about whether access to justice in our society is fairly distributed. If race, gender, and social class are determinants

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94. *See* Galanter, *Landscape of Disputes*, *supra* note 91, at 20 (stating that as the stakes increase, parties are more likely to rely on third parties such as lawyers).

95. *See generally* LAWYERS IN SOCIETY, vols. I-III (Richard L. Abel & Philip S.C. Lewis eds., 1988, 1989) (discussing comparative theories with regard to distinctions among types of lawyers).

96. *See generally* AUERBACH, *supra* note 3, at 123-24, 99-101, 293-95 (discussing patterns of discrimination against Jews, immigrants, women, African-Americans); CYNTHIA F. EPSTEIN, WOMEN IN LAW (1981) (discussing the entry of women into the legal profession and patterns of discrimination that women have encountered); GERALDINE R. SEGAL, BLACKS IN THE LAW: PHILADELPHIA AND THE NATION (1983) (discussing the obstacles facing African-Americans entering the legal profession); ERWIN O. SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? 44-47 (1969) (discussing pattern of discrimination against Jewish, African-American, and women lawyers).

97. *See* ABEL, *supra* note 3, at 87-90; *see also* HEINZ & LAUMANN, *supra* note 3, at 186-91.

for entry into the profession and for the attainment of certain positions within the profession, it may imply that these same attributes affect the sorts of treatment individuals will receive by legal institutions, in part because they do not have access to lawyers who share a similar social background. While there are many indications that racial, ethnic, and gender distinctions have become less important in the social organization of the legal profession, it is well to review some of the recent evidence in light of basic data on how the profession has changed in recent years.

A. The Number and Distribution of Lawyers Across Practice Settings

I begin with some familiar statistics on the size of the profession and its distribution by type of practice. The growth in the number of lawyers is in part a product of population growth and the rise of professionalism generally. Table 3 reports the pattern of change in the number of lawyers, doctors, government employees, and the total population from 1900 to 1990 by 10 year intervals. The population of the United States has more than tripled over the period, but lawyers, doctors, and government employees have exceeded the general rate of population growth. The increase in new lawyers may result in part from the increased number of college graduates produced by the "baby boom." The proportion of the population aged 20-29 years, which makes up the vast majority of law school applicants, increased from 15.7% in 1950 to 18% in 1980. From 1970 to 1980 the total number in this age group increased 50%, less than half the rate of increase in the number of lawyers.[98] Although the number of doctors exceeded the number of lawyers in the period before 1930, the two groups have similar patterns of sustained growth through 1970 and a take-off in the period 1970-1980. However, the number of lawyers grew twice as quickly as doctors in the seventies, and fifty percent higher in the eighties. Nevertheless health services still command a substantially greater proportion of GNP, in part because of the number of allied health professionals who are not doctors. From 1960 to 1980, health services received a proportion of the GNP that was roughly five times greater than that received by legal services.[99] Since

98. U.S. BUREAU OF THE CENSUS, 1970 CENSUS OF THE POPULATION: CHARACTERISTICS OF THE POPULATION, vol. I, pt. 1, § 1, at 1-263, tbl. 49 (1973); U.S. BUREAU OF THE CENSUS, 1980 CENSUS OF THE POPULATION: CHARACTERISTICS OF THE POPULATION, vol. 1, ch. D, pt. 1, § A, at 1-7, tbl. 253 (1984).

99. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES:

1980, however, legal services have begun to close the gap, until by 1987 health expenditures were only approximately four times greater than legal expenditures.[100]

Government employment also has increased during this period. Since 1940 the number of civilian government employees has quadrupled. Most government employment is at the state and local level. It grew from 3.3 million in 1940 to over 14 million in 1990. Federal employment increased from 1.1 million in 1940 to 3.1 million in 1990. As I argued above, the expansion of government should create work for lawyers, both inside government and for lawyers representing clients before government. But the percent increase in government employment in the two decades, 1970-80 and 1980-90, is much lower than the percent increase in lawyers. While there may be lagged effects of some kind, and although the trends move in the same direction, we cannot explain the proliferation of lawyers by direct reference to the expansion of government employment.

The growth of government legal staffs may be particularly relevant. The total number of government lawyers more than doubled from 19,614 in 1948 to 44,167 in 1970. By 1980 it reached 70,512, a 60% rise. From 1980 to 1988, government lawyers increased by 19% to some 84,182. Thus the rate of increase is lower than for the profession as a whole.[101] Yet if the number of government lawyers has a multiplicative effect on legal demand, the growing number of government lawyers may have contributed to the higher overall rate of expansion in the number of lawyers.

The proliferation of lawyers can be seen in part as an aspect of the growth of the professions and of government in American society. But the spurt in growth rates in the last two decades are somewhat unique to the legal profession. The explanation, must, therefore, be found in factors distinctive to law as a profession that have made it relatively more attractive to recent college graduates than other opportunities. Sander and Williams point out that median lawyers' incomes were sufficiently high until the mid-70s to attract new recruits on financial grounds.[102] Median earnings have since declined somewhat, but the profession continues to draw

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1982-83, at 424, tbl. 701 (103d ed. 1982-83).

100. BUREAU OF THE CENSUS, 1990, *supra* note 22, at 426, tbl. 691.

101. THE 1977 LAWYER STATISTICAL REPORT 12, tbl. 14 (Bette H. Sikes et al. eds. 1971); CURRAN & CARSON, *supra* note 41, at 4.

102. Sander & Williams, *supra* note 40, at 458.

many new entrants. Sander and Williams suggest that prospective law students are attracted by the high starting salaries of Wall Street law firms, even though most do not have a realistic chance of participating in that segment of the legal labor market. Legal education has become a common credential of postgraduate study. No doubt many law graduates pursue legal careers. But, as Deborah Schleef has found in her study of law students and management school students, part of the attraction of a law degree is that it affords the opportunity to pursue various legal or nonlegal careers.[103] These studies are promising beginnings in the effort to understand the expansion of the profession, but more comprehensive work is needed to better address the career choices that have led so many college graduates to pursue law rather than another professional career.

American lawyers are still overwhelmingly engaged in private law practice, in contrast to many continental legal systems where larger proportions are in the judiciary and private employment.[104] Table 4 displays the distribution of lawyers across practice settings nationally from 1948 to 1988. Almost nine out of 10 lawyers in 1948 were private practitioners, and two-thirds of these were solo practitioners. The proportion in private practice has declined by about 20%, to a little more than seven out of ten lawyers nationally. The presence of solo practitioners in the profession has declined much more substantially, from 61% in 1948 to 46% in 1960 to 33% nationally in 1980 and 1988.

It is the organizational practice settings of law firms, private industry, nonprofit institutions, and government, therefore, that have come to occupy an increasing proportion of legal positions. About ten percent of the profession works in private business or nonprofit organizations. These sectors outgrew the profession's overall rate of increase until the 1970-1980 period, but did not keep pace in the eighties, resulting in a slight decline in their proportion among lawyers. Lawyers working for the government follow a very similar pattern. Due to problems of doublecounting lawyers who worked

103. Deborah Schleef, I Didn't Think It Would Be Like the 'Paper Chase': Understandings of Law and Lawyers Among First Year Law Students (May 1993) (unpublished paper presented at the Law and Society Association meeting, Chicago, Ill., on file with author).

104. DIETRICH RUESCHEMEYER, LAWYERS AND THEIR SOCIETY: A COMPARATIVE STUDY OF THE LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES 31-32 (1973); LAWYERS IN SOCIETY, vol. III, *supra* note 95, at 294.

part-time for government, the statistics for government lawyers are probably inflated for the years 1948 to 1970. With that in mind, government lawyers probably grew as a proportion of the profession throughout the 1948 to 1980 period, and only in the 1980s have their numbers decreased as a percentage of the total profession.

Table 5 shows that the most dramatic organizational change in the profession in the last decade has been the growth of large law firms. Among private practitioners, solos and small firms still make up a large majority of the profession—some 63% of private practitioners were in firms of one to five lawyers in 1988—but very large firms now make up a much greater share of the private bar than ten years ago. Only a little more than 13% of private lawyers in 1980 were in firms of more than twenty attorneys and only seven percent were in firms over 50 lawyers. By 1988 the percent in firms over twenty had increased to 22% of private practitioners. The percentage of lawyers in firms of fifty or more had doubled, so that about one in seven private attorneys worked in firms of 50 or more. Almost one in ten lawyers practiced in firms of 100 or more.

B. Income and Employment Rates

The data on income by firm size demonstrate clearly the economic benefits of gaining a large firm position. The relative earnings of lawyers in different practice settings has become substantially more dispersed in recent years. Table 7 presents income data from a variety of sources. In the early 1960s, partners in firms of any size made about 2.5 times the incomes of sole proprietors or beginning associates in Wall Street firms or beginning corporate counsel. By 1975, partners were averaging 3 times what solo practitioners made and twice what Wall Street associates made. By 1980, the earnings ratio was 3.25 between partners and solos and only 1.5 between partners and Wall Street associates. The relative earnings of partners and sole practitioners stay about the same through 1986, but by this time partners as a group average earnings that are only 1.38 times more than what Wall Street associates make. The decline in the partner/Wall Street associate ratio is due in part to compositional effects. That is, we are comparing partners in small firms with associates in the very biggest firms. Indeed the average profits per partner in the top 100 law firms in 1986 were $305,000, which was 4.7 times more than the starting salary for Wall Street associates. Those beginning Wall Street associates, in

turn, were making 2.3 times more than solo practitioners as a group, twice as much as the median salary for all starting associates, almost 3 times the starting salaries of small firm associates, and twice the mean starting salary of corporate counsel. And, as the table shows, average profits per partner at these top firms rose very rapidly to $424,000 in 1990, until they receded somewhat to $400,000 in 1991.

Data from a survey of members of the California bar, Table 6, tell a similar story.[105] While a majority of all other categories of practitioners earned less than $100,000 from the practice of law, a majority of partners earn more than $125,000. One-third received incomes over $200,000 from their law practice, compared to 11% of solos, six percent of corporate counsel, and virtually no associates or government attorneys.

The escalation of the salaries of Wall Street associates can in part be traced to supply and demand considerations. The large corporate law firms that require graduates from elite law schools have grown much faster than the graduating classes from preferred law schools. If we rely on the categories of "elite" and "prestige" schools employed by Heinz and Laumann,[106] we can readily demonstrate the problem faced by rapidly expanding corporate law firms. Table 8 reports that elite law school enrollments made up 10% of total ABA approved enrollments in the period from 1941 to 1960, and prestige schools contributed between 14% and 17% during the period. Between 1970 to 1990, the percentage of elite and prestige students among the total began to decline. The most recent percentages are 4.3% elite and 9.8% prestige. In absolute numbers there has been almost no change in the number of elite law school students from 1970 to present. The law schools in the prestige category grew by some 1400 students, a 12% increase from 1970 to 1990. From the period 1980 to 1988 alone, the num-

105. In 1991, the California bar surveyed a random sample of some 14,300 active members and achieved a response rate of 73%. *See* SRI, Demographic Survey of the State Bar of California, August 1991, at S-1 [hereinafter SRI, 1991]. The distribution of lawyers by practice setting is quite similar to that reported in Curran and Carson's tabulations from Martindale-Hubbell. *Compare id.* at 13 *with* CURRAN & CARSON, *supra* note 41, at 42. Given the size of the California bar, the additional variables included in the bar survey and the apparent representativeness of results, the California survey results merit serious consideration. I therefore refer to some of the California data here.

106. HEINZ & LAUMANN, *supra* note 3, at 15-16 (detailing Chicago, Columbia, Harvard, Michigan, Stanford, and Yale as 'elite' and Northwestern, Illinois, Georgetown, Wisconsin, Virginia, Pennsylvania, and New York University as 'prestige').

ber of lawyers in law firms with more than fifty attorneys more than doubled, from some 27,018 to some 75,912.[107]

Sander and Williams characterize the logical response of large firms to the relative shortage of students with preferred credentials.[108] The leading firms raised starting salaries, they began to recruit more broadly (both in terms of the schools they recruited from and class rank), and to recoup some of their cost, they asked associates to bill more hours. They also point out, however, that the LSAT scores and undergraduate grade point averages of many of the students enrolled in less prestigious schools are as high as those of students in elite schools in the earlier period in which corporate firms recruited exclusively from top schools.[109] By these measures, the quality of graduates from less prestigious schools today compares favorably to that of earlier cohorts from elite schools.

The legal profession historically has had the highest levels of income inequality among the leading professions. Sander and Williams cite a 1944 study showing that the top five percent of lawyers commanded 28% of lawyer income. The second most unequal profession was physicians, the top 5% of whom received 18% of total physician income.[110] Not only have the earnings of full-time attorneys become more disparate in the last two decades, there are indications of increased levels of underemployment, unemployment, and exit from the profession that paint an even gloomier portrait of economic decline in some precincts of the profession. Sander and Williams find suggestive evidence that in the 1984 to 1987 period, more lawyers were exiting the profession than would be expected based on exit rates in earlier periods.[111] The National Association for Law Placement (NALP) reported that 85.9% of the Class of 1991 were employed six months after graduation, compared to 90% the previous year and a range of 89% to 92% that prevailed throughout most of the 1980s.[112] The proportion of graduates in full-time legal positions declined to 76.2%, compared to 82% in 1990. Graduates in part-time positions increased from two percent

107. CURRAN & CARSON, *supra* note 41, at 6, 21 (listing statistics for practice settings from 1980 and 1988).

108. Sander & Williams, *supra* note 40, at 475-477.

109. *Id.* at 476-77.

110. *Id.* at 440 n.20.

111. *Id.* at 467-68.

112. NATIONAL ASSOCIATION OF LAW PLACEMENT, EMPLOYMENT REPORT AND SALARY SURVEY 7 (1992).

in 1990 to 3.3% in 1991.[113] We cannot say definitively that more of the unemployed and underemployed are graduates from lower status law schools. Placement statistics are not released by individual school. It may be that the economic downturn of recent years has had an across-the-board effect on the various segments of legal labor market. But given the relative scarcity of graduates from top law schools in the last decade, I suspect the effects of decline are felt most at lower status schools.

The dispersion of lawyers' salaries should give pause to college students and others contemplating legal careers. Potential law students may not comprehend such complexities. The NALP 1991 survey reported that the median starting salary for private practitioners was $51,000, and that the interquartile range (between the 25th and 75th percentile) was $35,000 to $65,000.[114] The NALP estimate may be high. NALP probably receives a larger proportion of salary data from higher status schools and higher paying employers, than other schools and employers. Yet the NALP data present encouragement to potential law school applicants. Mean earnings for 25-34 year old males with four years of college in 1987 were $31,596; for women, they were $23,307. The prospects for economically rewarding work in the law appears to remain high, even if there is more uncertainty today than in the 80s.[115] On the strength of these sorts of indicators, we can expect interest in legal careers to remain high.

The NALP salary data also suggest significant differences in the economic benefits of choosing government employment or public interest employment compared to positions in private practice or in business. Starting salaries for public interest positions (which do not include public defenders) were $25,500 (median) in 1991.[116] For government jobs (including public defenders), the median starting pay was $30,000. Thus public interest jobs begin at one-half the median for positions in private practice, and some $18,000 below the median starting salary for positions in business or private industry. Individuals pursuing legal jobs in government or in public interest organizations must be willing to take positions that pay less than the median incomes of college educated males, and less than one-half of what many of their peers will earn.

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113. *Id.*
114. *Id.* at 19.
115. *Id.*
116. *Id.*

C. Women and Minorities

Heinz and Laumann's study of Chicago lawyers, conducted in 1974, found striking differences in the social characteristics of practitioners in various fields of law.[117] It is widely assumed, but not empirically demonstrated, that such distinctions have become largely irrelevant to the channeling of lawyers into different types of practice, and, correspondingly, different levels of status and earnings. Galanter and Palay, in their book on large law firms, can be taken as representative of the contemporary view. "Barriers against Catholics, Jews, women, and Blacks have been swept away. The social exclusiveness in hiring that was still a feature of the world of elite law practice in 1960 has receded into insignificance. Performance in law school and in the office counts for more and social connections for less."[118] Galanter and Palay themselves go on to suggest that the picture may be considerably more complex, at least with respect to race.

In this section I examine data on gender and racial inequality in the legal profession. Many of the more subtle aspects of social differentiation of lawyers by religion, ethnicity, and class background cannot be readily assessed by aggregate statistics. Additional systematic survey data will be necessary to address whether Heinz and Laumann's findings would hold today. But a considerable amount of published data exists on trends concerning the positions of women and minorities in the profession.

Perhaps the most dramatic demographic change in the legal profession in the last two decades has been the increasing numbers of women. Table 9 gives the percent female in the population of law students from 1940 to 1990.[119] As late as 1971 women represented less than 10% of law students. This proportion grew rapidly throughout the 1970s until some 34% of legal enrollments were women. The presence of women continued to increase until 1989, when it reached some 42.7%, and remained roughly unchanged in 1990. Given their recent entry, women are concentrated among the younger half of the profession. The median age of male lawyers is 42 years old, compared to 34 for female lawyers. (See Table 10). Some 41% of males are under 40 years old compared to 75% of women.

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117. HEINZ & LAUMANN, *supra* note 3, at 15-16.
118. GALANTER & PALAY, *supra* note 38, at 57.
119. NATIONAL ASSOCIATION OF LAW PLACEMENT, *supra* note 112, at 8.

Women tend to be distributed differently among types of legal employment than their male counterparts. As Table 11 demonstrates, even when we control for age, women are less likely to work in private practice and more likely to work in government and legal aid/public defender positions than are men. The 1991 NALP data also reveal this pattern. One-third of the women, but one-quarter of the men, in the class of 1991 took positions in government, judicial clerkships, or with public interest groups.[120] The California bar survey results agree. Table 14 reports that women are far more likely than men to be associates, rather than partners in private firms. This difference can be attributed largely to age. But note that an appreciably greater proportion of women hold positions as government attorneys.

Women also are distributed somewhat distinctively among private law firms of different size. (See Table 12). Women tend to be overrepresented among the smallest and the biggest firms. A higher percentage of women are solo practitioners compared to men, a difference that is especially striking for lawyers over 40. Women over 40 may either be "returning students" who are just starting their careers, or may have been among the earlier cohorts of women entering the profession. These women may be more likely to hang out their own shingle, either because they have tried practicing in organizational settings and left, because they do not perceive themselves as having adequate opportunities in law firms, or because independent practice fits best with their life circumstances, such as childcare. For some reason, women are somewhat less likely than men to practice in small partnerships of two to twenty lawyers. A greater proportion of women than men practice in firms larger than twenty lawyers. This is most pronounced, although hardly dramatic, for younger lawyers in firms with more than 100 attorneys.

Taken together, these tendencies suggest that women are more inclined than men to go it alone, and that if they do choose to practice in law firms or organizations, they select public sector/public interest organizations or very large firms. That women are more likely to pursue public interest careers than are men is consistent with the greater altruism displayed by American women in choosing jobs generally.[121] If women choose private practice,

120. *Id.*

121. *See, e.g.*, Lloyd B. Lueptow, *Social Change and Sex-Role Changes in Adolescent*

they may find larger, bureaucratic law firms a more congenial environment in some respects. Larger firms tend to have other women lawyers. Formalized recruitment and evaluation processes may give women a measure of procedural protection. In small firms, the odds are greater that a woman will be the only woman. Unless the partnership is a family affair, joining fathers and daughters or husbands and wives, such a situation may seem to be more of a risk. In a large firm, if personal relationships with partners do not work out, there may be other options within the firm. In a small firm, if relationships break down, the only option is to leave.

While women clearly have gained in law school enrollments and in entry level positions in large law firms, a critical issue is whether they are as successful as their male counterparts in achieving partnership and rising to positions of client responsibility and managerial authority within firms. Yet another issue is whether successful women must give up more in terms of their personal lives (such as marrying and having children) than men. The early data, based on the small number of cohorts of women with sufficient seniority to achieve partnership, indicated that, as of 1983, women in large law firms had much higher rates of turnover than their male colleagues.[122] Recent surveys indicate more progress. A National Law Journal survey of the 250 largest law firms in 1989 found that 9.2% of partners were women, compared to 2.8% in 1981.[123] My own estimates from the California bar survey suggest that a significant proportion of women are making partner, but at a lower rate than men. Among lawyers in private practice who have 10 or more years of experience, and who thus have sufficient seniority to be partners, I calculated that 33% of women were partners, compared to 42% of men. Such aggregate statistics must be interpreted cautiously. We do not know other variables of interest, such as size of firm, seniority with particular firms, etc. Nor do we know the relative proportions of men and women who left firm practice because they did not make partner. Yet, the broad statistics imply that, while men continue to enjoy higher rates of promotion,

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Orientations Toward Life, Work, and Achievement: 1964-1975, 43 SOC. PSYCHOL. Q. 48, 49 (1980) (arguing that increases in female employment have been limited to employment roles that emphasize social and support factors); A. Regula Herzog, *High School Seniors Occupational Plans and Values: Trends in Sex Differences 1976 Through 1980*, 55 SOC. OF EDUC. 1, 1 (1982) (arguing that many of the jobs predominately held by women involve giving help to others).

122. NELSON, *supra* note 37, at 136-40.

123. Rita H. Jensen, *Minorities Didn't Share in Firm Growth*, NAT'L L.J. 1, 28 (1990).

a substantial number of women are gaining partnership positions.

Minorities also have entered the legal profession in unprecedented numbers in the last two decades, yet they present a very different pattern than do women. Table 13 lays out the historical statistics on law school enrollment. Minority enrollment has climbed relatively steadily throughout the period, from 4.3% in 1969 to 13.1% in 1990. This contrasts with the far more explosive growth of women. And if we examine the composition of minority law students, we can see that a substantial proportion of the increase is due to the two minority groups who have the highest median family earnings among minorities: Asians and other Hispano Americans. In the last five years African-Americans increased their presence in law schools from 4.8% to 5.1%. Mexican-Americans gained 0.2% and Puerto Ricans gained 0.1% from 1986 to 1990. Other Hispano-Americans moved from 1.5% to 1.9% of the enrollment. Asian-Americans grew from 1.9% to 3.3% in the same period. This last group alone represents 42% of the total growth in minorities in law schools over the last five years.

The sharp difference between the rate of expansion by women compared to minorities reflects the class differences among these groups. Once gender-based barriers to the pursuit of professional careers began to change, a large reservoir of middle and upper class women were available to apply to law schools. Minorities continued to suffer from limited educational preparation and financial resources. They have made some gains. But much of their improved success comes from more advantaged subgroups, whose presence in American society is substantially smaller than other minority groups. And the rate of integration by minorities has been slower and less complete than that achieved by women.

Minorities pursue different careers than white lawyers, either out of choice or to avoid discrimination. According to the NALP survey of the Class of 1991, only 44% of blacks took jobs in law firms, compared to 62% of Whites and Asians.[124] Four of 10 black graduates took jobs in government or judicial clerkships, compared to 25% of all graduates. Hispanics, African-Americans, and Native Americans were all more likely to take public interest jobs (4.2%, 5.5%, and 7.2%, respectively) than were Whites or Asians, of whom 1.6% took public interest positions.[125] According

124. NATIONAL ASSOCIATION OF LAW PLACEMENT, *supra* note 112.
125. *Id.*

to the California bar survey, a majority of these minority lawyers are either sole practitioners or government attorneys. As Table 14 shows, this tendency is most pronounced for African-Americans. All three minority groups are more than twice as likely as whites to work for government.

The most notable difference between black attorneys and white attorneys is in law firms. In the California survey, nine percent of blacks, but 28% of whites were law firm partners. Among the 250 largest firms, only 2.2% of associates and 0.9% of partners were Black.[126] In Chambliss's sample of elite law firms in New York, Chicago, Los Angeles, and Washington, D.C., she found that in 1990, 6.5% of associates were minorities, and 1.7% of partners were minorities.[127] Thus, while there has been some increase in the proportion of minorities in the upper precincts of the profession, it has come very slowly and blacks in particular have not gained substantially. Although black partners have increased their presence in the biggest firms since 1981, the percentage of black associates declined slightly between 1981 and 1989.[128]

Women and minorities have become a substantial presence in the legal profession, but are far more likely to work in less remunerative, if not lower, status positions. The NALP survey reported that among 1991 graduates, the median starting salaries for males increase with age.[129] The 20-25 age group of men have a median starting salary of $38,000, and older males receive more than the national median of $40,000. Women graduates received starting salaries that were below the national median, and women over 40 received the lowest median salary of these groups. Table 15 demonstrates that for the California bar, white males consistently receive higher incomes from practice than do white women or minorities, even after accounting for years in practice. If we treat $100,000 as the definition of high earnings, there are relatively few differences in the least senior group of attorneys. But in the group with five to nine years of experience, some 26% of white males are high earners compared to 16% of white females and 19% of minorities. The group in practice 10 to 19 years shows more in-

126. Jensen, *supra* note 123, at 28.

127. Elizabeth Chambliss, New Partners with Power? Organizational Determinants of Law Firm Integration (1992) (unpublished Ph.D. dissertation, University of Wisconsin (Madison)).

128. Jensen, *supra* note 123, at 28.

129. NATIONAL ASSOCIATION OF LAW PLACEMENT, *supra* note 112.

equality. A majority of white males (53%) attract a high income, while only about one-third of white women and minorities (35% and 31%, respectively) do so.

The aggregate data make clear that gender and race continue to matter for patterns of stratification among lawyers. Qualitative studies reveal that women attorneys still experience complex and risky career choices as they attempt to juggle domestic responsibilities and professional work. Numerous studies report that female attorneys who are married and have children bear primary responsibility for childcare.[130] Women in high pressure, corporate practices report being penalized for taking maternity leave. Many women have withdrawn from corporate firms to avoid such tensions. Others have foregone marriage and motherhood, in part because they saw the demands as irreconcilable. Minorities face different challenges in reconciling their identities (as members of historically disadvantaged communities) with their professional identities. This scholarship is only beginning to emerge.[131] It too implies that minorities feel considerable strain in many traditionally high status segments of the legal profession. These conditions, as well as remnants of overt discrimination, steer women and minorities to pursue career paths in the more congenial professional environments of public interest or public sector law. The role that these groups play in these contexts is enormously valuable, but it is not highly valued in terms of income, status, or resources for effective practice.

IV. CONCLUSION

The economic, demographic, and professional changes I have described do not provide a compass for predicting the future of the American legal profession in the next century. The dramatic shifts

130. *See, e.g.*, EPSTEIN, *supra* note 96, at 358-79; Chambliss, *supra* note 127, at 100; DEBORAH HOLMES, INSTITUTE FOR LEGAL STUDIES, STRUCTURAL CAUSES OF DISSATISFICATION AMONG LARGE-FIRM ATTORNEYS: A FEMINIST PERSPECTIVE 34 (1988); Marjorie B. Schaafsma, Beyond Assimilation: New Experiences for Women in the Legal Profession (1990) (unpublished manuscript, on file with the *Case Western Reserve Law Review*); Kerry Ferris & Carroll Seron, Juggling Work and Home: Rethinking Professional Autonomy Among Middle-Class Lawyers, (June 17, 1992) (unpublished paper presented at the European Conference on the Legal Profession, Aix-En-Provence France, on file with author); Project, *Law Firms and Lawyers With Children: An Empirical Analysis of Family/Work Conflict*, 34 STAN. L. REV. 1263, 1274-75 (1981-1982) (arguing that childcare often means women attorneys must sacrifice childbearing, family life, or career).

131. *See, e.g.*, Aaron Porter, Study of the J. Austin Norris Law Firm (1992) (unpublished Ph.D. dissertation, University of Pennsylvania).

we have observed in the profession in recent decades are the product of fundamental changes in international economic conditions, the regulatory regimes imposed (and removed) by governments, patterns of governance and management in corporations, in the rate of divorce, and in the labor force participation of women, to name but a few. Trends of such magnitude defy forecasting. Moreover, it is essential to recognize that the legal profession consists of distinct segments that are affected by very different processes. There is not one future for American lawyers, but many futures. The future of the mega-law firms that inhabit major cities depends on events in the corporate environment. The future of the small law firm engaged in personal injury litigation depends on trends in the propensities of Americans to sue, on statutory limits that may be imposed on various forms of recovery, and on the policies and practices of the insurance companies who are repeat players in such litigation. The futures of solo practitioners depend on the nature of services they offer, the networks through which they obtain clients, the kind of competition they face from other lawyers, and, increasingly, from the efforts of other institutional service providers, such as banks and real estate companies, to make inroads into the market for legal services to the middle class.

The intensified rhetoric against the legal profession and the turbulent changes that are taking place in corporate law firms and other sectors of practice may have raised the level of anxiety that many lawyers feel about their profession and their own future within it. Higher unemployment and underemployment for recent graduates reflects something of a slowdown in the legal services market. Yet most of the economic data indicate that lawyers in various contexts continue to find financially rewarding work. Judged in these terms, the professional project of American lawyers continues to be relatively successful.

But these are not the standards that most people, even most lawyers, would choose to evaluate the contribution of the profession to society. We might, in a Rawlsian way, agree in advance that there are three goals that the legal profession should be organized in pursuing: access, efficiency, and justice. The question is, when we survey the various elements that make up the legal profession, how does the social structure of the legal profession and its constituent institutions affect the prospects for the realization of these ideals?

1) Access. As the sheer growth in the number of lawyers suggests, the legal profession appears to be relatively open at the

point of entry. To be sure, class, gender, and minority status affect the prospects for becoming a lawyer and continue to influence what kind of professional opportunities are available to individuals. Yet the legal profession has become increasingly diverse in its social composition. One of the encouraging features of this year's statistics on the number of applications to law schools was that while the total number of applicants was down quite substantially from last year (by some 8.6%), the number of minority applicants increased.[132] There is some hope, then, that the legal profession will be a path of upward mobility for traditionally disadvantaged groups. Of more concern is what will happen to minorities and women within the profession. They still tend to be concentrated in the lesser paid, lower status precincts of practice. It bears watching to see whether they will rise to the top strata of the traditional hierarchies of power within the profession, such as the leading partners in corporate law firms, the general counsel of corporations, and leaders of the organized bar.

Access is a much greater problem on the client side. Given the relatively fixed amounts of government expenditures on legal services for the poor and the modest investments in pro bono services made by private practitioners, there has been relatively little growth in the provision of civil legal services to the poor in recent years. At the same time, the number of Americans living in poverty or on the edge of poverty has increased quite substantially. The inevitable result has been a widening gap between the legal needs of the poor and the availability of legal services for them. While legal services may not be as high a priority for the poor as employment, medical care, food, or shelter, to the extent that the less privileged need legal representation, lawyers should do more to provide it. The growing number of lawyers and the increasing economic receipts of the legal services industry could be seen as a resource for expanding legal services to the poor. The profession should consider a variety of mechanisms for accomplishing this goal.

2) Efficiency. One of the announced goals of the legal profession is the efficient administration of justice. As the total cost of legal services increases, lawyers must begin to evaluate the costs and benefits of traditional institutions and practices. One place to

132. Interview with Jana Cardoza, Law School Admissions Council, Law Services Report (1993).

begin is in research and teaching about the law. Despite the rise of law and economics within legal education, we possess relatively little systematic empirical research on how specific legal regimes operate and how they can be improved. That is, concretely, what kinds of incentives drive the behavior of lawyers and clients confronting various legal problems and legal contexts? Much of the teaching and scholarship that takes place within law schools takes the form of existing institutional arrangements for granted, rather than critically examining the desirable and undesirable features of those arrangements and proposing new institutional models. If law schools self-consciously pursued a broad analytic agenda for assessing legal institutions, and sought to give students some of the analytic tools to do the same, it might improve the understanding of how law operates in our society and produce new theories about how to bring about constructive change.

The search for more efficient solutions to legal problems may require a new willingness to change the definition of the law and the definition of a lawyer. As some theorists of the professions have begun to argue,[133] if the monopoly of lawyers over the problems they work on is not justified by a need for professional expertise and self-regulation, lawyers will eventually lose jurisdiction over that work. It is in the interest of society, and probably in the long run interest of the profession, for lawyers to confront these realities. Rather than rely on market closure, lawyers should take the lead in developing innovative forms of service and delivery that can compete in the marketplace with alternative forms of service and delivery Legal educators have long debated the role of clinical training within law school. Perhaps law schools should begin to rethink legal education even more fundamentally to recognize that they are training students for careers in rapidly changing organizational environments that rely on rapidly changing information technologies. The legal curriculum could be substantively enriched by training in basic principles of management, accounting, and information technology.

Again it is important to note that the legal profession has

133. ANDREW ABBOTT, THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR (1988) (arguing that all of the professions are interdependent and have certain jurisdictions into which their expertise falls); Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869 (1990) (arguing that the threat to legal professionalism comes from the demand side and that legal professionalism is shaped in large degree by what clients will allow attorneys to do on their behalf).

enormous resources for such efforts. Law schools continue to attract among the most promising of college graduates. Law school already does much to develop the skills of analysis, writing, and oral communication. Small wonder that law graduates have many opportunities throughout their careers, in legal and nonlegal positions. Perhaps law schools and the legal profession should recognize this human resource and begin to think how it can be better prepared for a broader array of functions.

3) Justice. Finally it is critical to think about the fate within the legal profession of the core value around which the legal system should be organized: justice. It is conventional to distinguish between the fairness of the procedures by which decisions are made (procedural justice) and the fairness of outcomes (distributive justice).[134] The broad question is: do lawyers treat clients, opposing counsel, and associates in practice in ways that affirm values of procedural fairness? The official canons of the profession reach some aspects of lawyer behavior, but much of the day-to-day activity of lawyers is governed by more diffuse professional norms or not at all. The internal governance of law partnerships, for example, is virtually unregulated, even though it very significantly affects the lives and work of many lawyers. It is valuable for lawyers to consider the implications of professional ideals in organizing such aspects of their professional existence. The definition of fairness in the professional work organization cannot help but influence how fair dealing is defined in other legal and nonlegal contexts.[135]

As the market for professional services has become more competitive, it appears that many law firms and law departments are confronting heightened difficulties balancing traditional professional norms and economic considerations. Some scholars suggest that these tensions are inherent in the very form of professional organization adopted by law firms.[136] Thus the profession may face serious challenges in devising new practice arrangements that accommodate professional ideals and economic imperatives.

There also are grounds for concern about the allocation of rewards in the legal profession. It is widely recognized that the

134. For a general discussion, see E. ALLAN LIND & TOM TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988).

135. *See generally* Robert W. Gordon & William H. Simon, *The Redemption of Professionalism? in* LAWYER'S IDEALS/LAWYER'S PRACTICES 230, 234-35 (Robert L. Nelson et al. eds., 1992).

136. GALANTER & PALAY, *supra* note 38, at 2, 3.

earnings of the top strata of corporate law firms grew dramatically in the 1980s. The rapid acceleration of profits can be explained in economic terms: there was a sudden increase in demand for relatively scarce professional expertise. While we can explain this phenomenon economically, the analysis of its social consequences should not end there. The concentration of great wealth and resources in a small segment of the profession may have undesirable effects. The widening gulf between the economic rewards that derive from elite law firm practice and other fields of practice, including the representation of less resourceful private parties and various kinds of public interest law work, increases the economic penalty for choosing types of professional work that are crucial to the operation of a fair system of justice. The best graduates of the best law schools, often saddled with very significant debt upon graduation, will go where the money is.

The presence of highly skewed income distributions may result in an allocation of talent and effort within the profession that produces less social benefit overall than would be produced by a more equitable pattern of economic rewards. In a provocative new work, economists Robert Frank and Philip Cook analyze the disadvantages produced by "winner-take-all" markets—markets in which a handful of top participants reap a disproportionate share of the total rewards.[137] Frank and Cook suggest that private markets often allocate too many resources to winner-take-all markets and too few resources to traditional production or service markets. The market for sophisticated corporate legal services has many of the features that define winner-take-all markets, in that only a distinctive set of firms are realistic possibilities for certain kinds of transactions or litigated matters. The plaintiffs personal injury field may be another example of such a market within the profession, in that a small number of well known practitioners tend to command a dominant position for picking and choosing cases. In both instances, legal matters that pay very well attract the attentions of lawyers that might produce a greater net social good if they were spread over a greater variety of legal problems.

The complexity and segmentation of the American legal profession presents a daunting challenge to those who would try to improve it on such fundamental dimensions as access, efficiency,

137. Robert H. Frank & Philip J. Cook, Winner-Take-All Markets 2 (Oct. 1992) (unpublished manuscript, on file with *Case Western Reserve Law Review*).

and justice. The collective institutions of the profession—the organized bar, law schools, and the courts—do not possess the kind of unified power that could administer broad-based reforms, even if there was consensus about what such reforms would be. But these groups, working in concert with legal scholars and social scientists, could take a constructive step by attempting to develop a better understanding of how the various parts of the profession fit into the whole of a system of justice. It is only through a conception that relates the professional parts to the professional whole that American lawyers can begin to develop realistic programs for change.

APPENDIX

Table 1
Size and Profitability of Largest Law Firms in Earlier and Later Years

A. Nationwide				
	Biggest 50 in 1984	Biggest 50 in 1989	Biggest 75 in 1989	
Biggest 50 in 1979	84%	72%	92%	
B. New York City				
	Biggest 20 in 1989	Biggest 30 in 1989	20 Most Profit/Pr	30 Most Profit/Pr
Biggest 20 in 1957	10 (50%)	17 (85%)	12 (60%)	17 (85%)
C. Chicago				
	Biggest 10 in 1989	Biggest 20 in 1989	10 Most Profit/Pr	
Biggest 10 in 1965	6 (60%)	10 (100%)	9 (90%)	

Sources: *The Am Law 100*, AM. LAW. July/August 1989, 1991, SMIGEL, *supra* note 96; NELSON, *supra* note 37.

Table 2
Yearly Lawyer Use Rate by Problem Type

Problem Type	Conditional Probability of Lawyer Use	Yearly Incidence Rate[a]	Yearly Lawyer Use Rate[b]
Real Property			
Acquisition	40	65	26
Interference with ownership	.27	9	2-3
Serious dispute with home builder	.25	2	<1
Serious dispute on home repair contract	.19	6	1
Serious dispute with mortgage	.26	3	<1
Employment Matters			
Serious difficulty collecting pay (excl. garnishment)	.08	10	<1
Job discrimination	.01	12	<1
Consumer Matters			
Eviction	.27	3	<1
Serious dispute with landlord	.09	12	1
Serious dispute on major purchase	.07	22	1-2
Serious dispute with creditor	.07	8	<1
Repossession	.14	2	<1
Garnishment	.26	2	<1
Estate Planning			
Wills	.79	34	27
Trusts	42	7	3
Estate Settlement			
Death of spouse	.35	5	2

Table 2 Continued

Problem Type	Conditional Probability of Lawyer Use	Yearly Incidence Rate[a]	Yearly Lawyer Use Rate[b]
Marital			
Divorce	.77	9	7
Separation (custody/support)	.55	2	1
Alimony/support	.70	3	2
Governmental			
Serious difficulty with municipal service	.04	17	<1
Serious difficulty with municipal/ county agency	.19	8	1-2
Serious difficulty with state agency	.18	8	1-2
Serious difficulty with federal agency	.15	7	1
Torts			
Serious personal injury to respondent	.39	9	3-4
Serious property damage to respondent	.05	68	3-4
Serious personal injury or property damage by respondent	.16	6	1
Serious injury to child of respondent	.26	8	2
Constitutional Rights			
Infringement of constitutional rights	.10	12	1
Juvenile Matters			
Child of respondent had serious problem with juvenile authorities	.21	9	2

a Number of problems per year per 1000 adult population
b Number of lawyer users per year per 1000 adult population

Table 3
Lawyers, Doctors, Government Employees, and
Total Population (Thousands) 1900-1990

	Number in 1900	Number in 1910	% Change	Number in 1920	% Change	Number in 1930	% Change	Number in 1940	% Change
Lawyers and Judges	106	115	+6.5	123	+7 0	161	+30 9	182	+13 4
Physicians, Surgeons and Osteopaths	131	152	+16 0	151	0 7	163	+7 9	174	+6 7
Civilian Government Employees	N/A	N/A	-	N/A	-	N/A	-	4 474	-
Total Population	75 994	91,972	+21 0	105 710	+14 9	122,775	+16 1	131,669	+7 2

	Number in 1950	% Change	Number in 1960	% Change	Number in 1970	% Change	Number in 1980	% Change	Number in 1990	% Change
Lawyers and Judges	184	+1 1	213	+15 8	274	+28 6	581	+112 0	723[a]	+24 4
Physicians, Surgeons and Osteopaths	200	+14 9	234	+17 0	282	+20 5	454	+61 0	535[b]	17 8
Civilian Government Employees	6 402	+43 1	8,808	+37 6	13,028	+47.9	15,968	+22 6	17,567	+10 0
Total Population	150 697	+14 4	179,323	+19 0	203,211	+13 3	226,500	+11.5	249,924	+10 3

1. This figure includes all medical persons (for 1900 only).

Sources: HISTORICAL STATISTICS, *supra* note 5, at 140; 1980 and 1990: BUREAU OF THE CENSUS, 1991, *supra* note 5.

a From CURRAN & CARSON, *supra* note 41, at 1. (figure for 1988).
b Physicians only, 1988.

Table 4
Distribution of Lawyers in Practice Settings (percent): Nationwide, Martindale-Hubbell, 1948-88

	1948	1951	1954	1957	1960	1963	1966	1970	1980	1988
Private Practice										
total	89 2	86 8	85 5	80 1	76 2	74 7	73 5	72 7	68 3	71 9
solo practice	61 2	59 0	57 5	51 9	46 3	42 1	39 1	36 6	33.2	33 2
partners	23 6	23 2	23 3	23 3	24 1	26.1	27 1	28.5	26 3	27 0[b]
associates	4.4	4 6	4 7	4 9	5 8	6 5	7 2	7 6	8 8	11 7
Private Employment (excluding education)	3 2[a]	5 7	6 9	8 3	9 2	10 2	10 6	11 3	10 9	9 8
Education/Nonprofit		0 6	0 6	0 6	0 7	0 8	0 9	1 1	1 2	1 0
Government (excluding judiciary)										
total	8 3	9 8	9 6	10 3	10 2	10 9	10 8	11 1	10 8	9 0
local	4 7	3 9	3 9	3.3	3 3	2 9	2 6	2.4	5 6	5 3
state		1 8	1 6	1.7	1 7	2 4	2 6	2 9	3 7	5 3
federal		4 1	4 1	5 3	5 2	5 6	5 6	5 8	1 5	3 7
Judicial	4 2	3 6	3 6	3 3	3 2	3 3	3.4	3 2	3 6	2.7
Retired or Inactive	3 5	3.4	3 0	3.2	4 3	4.5	5 1	5 2	5 3	5 6
Total[c]	108 4	109 9	108	105 8	103 8	104 4	104 3	104 6	100 1	100

Sources: ABEL, *supra* note 3, at 300 (citing THE 1971 LAWYER STATISTICAL REPORT 10-12 (Bette H. Sikes et al. eds., 1972); THE 1984 LAWYER STATISTICAL REPORT (Barbara A. Curran et al. eds., 1985)); for 1988: CURRAN & CARSON, *supra* note 41, at 20.

[a] Includes education.

[b] Legal aid-public defender treated as half state/local and half federal.

[c] Total is based on original source. It exceeds 100% in 1948-70 due to the lawyers who both held public office and were listed in private practice.

Table 5
Distribution of Private Practitioners by Size of Law Firm
(Nationwide 1980; 1988)

Year	Firm Size (Lawyers)								
	Solo	2	3	4	5	6-10	11-20	21-50	>50
1980	48.6	8.8	6.1	4.4	3.1	9.0	6.5	6.1	7.3
1988	46.2	6.7	4.6	3.4	2.6	7.8	7.1	7.0	14.6

Sources: THE 1984 LAWYER STATISTICAL REPORT: A PROFILE OF THE LEGAL PROFESSION IN THE 1980S (Barbara A. Curran et al. eds., 1985); CURRAN & CARSON, *supra* note 41, at 21.

Table 6
Income Derived From the Practice of Law By Legal Position*
(California 1991)

	Legal Position				
Income Derived from the Practice of Law	Sole Practitioner	Partner	Associate	Corporate In-House	Government Attorney
Less than $50,000	26	4	26	6	23
$50,000 to $74,999	17	8	42	28	46
$75,000 to $99,999	16	12	22	28	27
$100,000 to $124,999	11	15	6	18	4
$125,000 to $199,999	19	26	4	15	<1
$200,000 or more	11	34	<1	6	<1
Total	100	100	100	100	100
Number of respondents	1,633	2,206	2,105	560	1,087

* Percentage distribution of State Bar members who worked full-time as lawyers.

Source: SRI, 1991, *supra* note 105, at 15.

Table 7
Selected Data on Lawyer Income 1960-1975

	Sole Proprietors (1)	Partners (2)	Average Profits Per Partner Top 100 Law Firms (3)	Starting Elite N Y Associates (Mean) (4)	Large Firm Starting Associates (Median) (5)	All Starting Associates (Median) (6)	Small Firm Starting Associates (Median) (7)	Starting Corporate Counsel (Mean) (8)
1960	$ 7,257	$ 17,090						
1961	7,867	18,500						
1962	8,144	19,000						
1963	8,763	20,660		$ 7,000				
1964	9,270	21,690						
1965	10,357	23,390						
1966	10,747	24,220						$ 7,668
1967	10 834	26,850		10,000				
1968	11,216	27,820		15,000				9,338
1969	12,012	28,990						11,020
1970	12,751	31,320						11,859
1971	14,168	33,380						
1972	15,127	36,842				$13,908		13,498
1973	14,612	37,944			$ 14,000	14,350	$11,000	13,476
1974	14,675	41,092			15,500	14,500	11,700	14,223
1975	14,735	44,808		22,000				15,220

Sources: Cols. (1), (2): Sander & Williams, *supra* note 40, at 450 (citing INTERNAL REVENUE SERVICE, U.S. DEPT. OF THE TREASURY, STATISTICS OF INCOME, annual reports; SOLE PROPRIETOR RETURNS, various issues).

Col. (3): AM. LAW., July/August 1992.

Table 7 continued
Selected Data on Lawyer Income 1976-1991

	Sole Proprietors (1)	Partners (2)	Average Profits Per Partner Top 100 Law Firms (3)	Starting Elite N Y Associates (Mean) (4)	Large Firm Starting Associates (Median) (5)	All Starting Associates (Median) (6)	Small Firm Starting Associates (Median) (7)	Starting Corporate Counsel (Mean) (8)
1976	$ 15,830	$ 46,702		$23,000		$16,000		$ 15,413
1977	16,957	49,642		28,000	$ 18,000	17,500	$13,000	16,033
1978	16,878	51,354		31,500	20,000	18,000	14,000	17,693
1979	16,922	58,362		33,000		20,000		18,925
1980	18,119	58,917		38,000		23,000		20,911
1981	16,825	63,443		44,500	28,000	26,000	17,000	22,477
1982	17,401	68,013		45,000		30,000		25,162
1983	19,305	77,320		49,000	33,000	30,500	19,600	28,119
1984	22,592	88,653		50,000	35,000	32,000	24,000	28,918
1985	24,990	85,640		54,000	35,000	32,500	22,500	29,004
1986	28,096	89,430	$305,000	65,000	38,000	36,000	23,500	31,014
1987	31,481	90,931	341,000	66,000	52,000	37,500		31,000
1988	36,453	110,201	398,000	72,000	57,500	40,000		35,000
1989	32,873	129,341	433,000	79,000	62,000	46,000		38,500
1990	35,730	123,756	424,000	85,000	65,000	48,000		39,500
1991			400,000	81,000	66,000	47,500		37,500

Col. (4): 1963-69: GALANTER & PALAY, *supra* note 38, at 56; 1975-81: *Annual Salary Survey*, STUDENT LAW., November issue; 1984-86: news accounts from legal press; 1987-1991: *Annual Salary Survey*, STUDENT LAW., November issue ("high" New York City average).

Col. (5), (6), (7): 1972-1986: ALTMAN & WEIL, INC., THE SURVEY OF LAW FIRM ECONOMICS, various editions; 1987-1991. *Annual Salary Survey*, STUDENT LAW., November issue.

Col. (8): 1966-1986: BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, NATIONAL SURVEY OF PROFESSIONAL, ADMINISTRATIVE AND CLERICAL PAY, various years; 1987-1991. *Annual Salary Survey*, STUDENT LAW., November issue.

Note: "Large firms" as defined in col. (5) are those firms in the Altman & Weil survey with more than 40 lawyers before 1982 and with more than 75 lawyers between 1982 and 1986. "Small firms" as defined in col. (7) are those firms with 2-6 lawyers before 1982 and with 2-8 lawyers after 1982; and col. (8) from 1966 to 1986 is the BLS series "Attorney 1," which averages the salaries received by the more junior attorneys working for private corporations.

The following applies to 1987-1991. For col. 5, used midpoint of "high" range outside New York City; for col. 6, used midpoint of range for associate averages, for col. 8, used midpoint of range for corporate counsel averages after dropping Baltimore, the city with the lowest salary for corporate counsel.

Table 8
Elite and Prestige Schools—Enrollment Figures 1941-90

Elite Schools	1941	1950	1960	1970	1980	1990
Chicago	183	266	370	495	511	582
Columbia	415	650	833	1078	963	1103
Harvard	820	1518	1607	1784	1792	1797
Michigan	408	970	921	1201	1174	1186
Stanford	98	395	376	575	519	554
Yale	308	548	585	611	602	606
Elite Subtotal	2232	4347	4692	5744	5561	5828
Elite % of Total	10.1%	8.2%	10.7%	6.7%	4.3%	4.4%
Prestige Schools						
Berkeley	164	297	573	872	958	907
Cornell	163	460	289	475	526	606
Duke	66	205	196	391	579	633
Georgetown	490	888	976	1631	2694	2634
Northwestern	161	377	369	550	532	631
Pennsylvania	235	465	44	617	697	818
NYU	601	1771	1770	2298	2314	1514
Texas	500	762	836	1588	1559	1572
UCLA	–	120	432	949	1103	971
USC	151	424	690	471	559	629
Virginia	234	513	578	919	1150	1200
Wisconsin	283	759	462	821	907	904
Prestige Subtotal	3048	7041	7215	11,582	13,578	13,019
Prestige % of Total	13.8%	13.3%	16.5%	13.5%	10.5%	9.8%
Enrollment—All Law Schools[a]	22,033	53,025	43,695	86,028	128,983	132,433[a]
Combined Elite-Prestige % of Total	23.9%	21.5%	27.2%	20.2%	14.8%	14.2%

[a] Enrollment in ABA-approved schools.

Sources: REVIEW OF LEGAL EDUCATION, various years; for total enrollment 1941 to 1980: ABEL, *supra* note 3, at 278-79.
Note: Enrollment figures include part-time and graduate students.

Table 9
Women Students As Percentage of Enrollments in ABA-Approved Law Schools, 1940-90

Year	% of Total	Year	% of Total	Year	% of Total	Year	% of Total	Year	% of Total
1940	4.3	1951	3.6	1961	3.6	1971	9.4	1981	35.8
		1952	4.2	1962	4.0	1972	11.9	1982	37.4
1942	11.7	1953	4.2	1963	3.8	1973	15.8	1983	38.3
1943	21.9	1954	4.0	1964	4.0	1974	19.7	1984	39.1
1944	21.8	1955	3.8	1965	4.2	1975	22.9	1985	40.0
		1956	3.1	1966	4.2	1976	25.5	1986	40.6
1947	3.3	1957	3.4	1967	4.5	1977	27.4	1987	41.5
1948	2.9	1958	3.3	1968	5.9	1978	30.3	1988	42.2
1949	2.7	1959	3.6	1969	6.8	1979	31.4	1989	42.7
1950	3.1	1960	3.5	1970	8.5	1980	34.2	1990	42.5

Sources: 1940-1979: ABEL, *supra* note 3, at 285; 1980-1990: REVIEW OF LEGAL EDUCATION, 1991, at 66.

Table 10
Lawyers by Age and Sex
(1988)

	Males		Females		Both sexes	
	No.	%	No.	%	No.	%
29 years or less	50,554	8.4	23,984	21.1	74,538	10.4
30-34 years	90,627	15.0	33,232	29.2	123,859	17.2
35-39 years	108,109	17.9	27,155	23.9	135,264	18.8
40-44 years	99,336	16.4	14,453	12.7	113,788	15.8
45-54 years	101,835	16.8	8,655	7.6	110,489	15.4
55-64 years	74,525	12.3	3,199	2.8	77,724	10.8
65 years or more	79,920	13.2	3,052	2.7	82,972	11.5
Total	604,906	100.0	113,729	100.0	718,635	100.0
Median Age	42 Years		34 Years		40 Years	

Source: CURRAN & CARSON, *supra* note 41, at 19.

Table 11
Lawyers by Employment, Sex, and Age
(1988)

A. All Ages	Males		Females		Both sexes	
	No.	%	No.	%	No.	%
Private practice	442,654	73.0	77,287	66.4	519,941	71.9
Federal judiciary	1,992	0.3	559	0.5	2,551	0.4
Federal government	17,426	2.9	5,616	4.8	23,042	3.2
State/local judiciary	14,627	2.4	1,893	1.6	16,520	2.3
State/local government	25,232	4.2	9,469	8.1	34,700	4.8
Private industry	55,734	9.2	10,894	9.4	66,627	9.2
Private association	2,777	0.5	1,323	1.1	4,100	0.6
Legal aid/public defender	4,682	0.8	2,687	2.3	7,369	1.0
Education	5,872	1.0	1,703	1.5	7,575	1.0
Retired/inactive	35,771	5.9	4,991	4.3	40,762	5.6
Total	606,768	100.0	116,421	100.0	723,189	100.0
B. 39 Years of Age or Younger	Males		Females		Both Sexes	
	No.	%	No.	%	No.	%
Private practice	195,053	78.2	57,103	67.7	252,156	75.6
Federal judiciary	507	0.2	369	0.4	875	0.3
Federal government	8,047	3.2	4,071	4.8	12,119	3.6
State/local judiciary	1,717	0.7	961	1.1	2,678	0.8
State/local government	13,044	5.2	7,083	8.4	20,127	6.0
Private industry	21,463	8.6	8,241	9.8	29,704	8.9
Private association	1,285	0.5	975	1.2	2,260	0.7
Legal aid/public defender	2,950	1.2	2,126	2.5	5,076	1.5
Education	1,443	0.6	961	1.1	2,404	0.7
Retired/inactive	3,781	1.5	2,481	2.9	6,263	1.9
Total	249,291	100.0	84,371	100.0	333,662	100.0

Table 11 continued

C. 40 Years of Age or Older	Males		Females		Both Sexes	
	No.	%	No.	%	No.	%
Private practice	246,270	69.3	18,448	62.8	264,718	68.8
Federal judiciary	1,479	0.4	182	0.6	1,662	0.4
Federal government	9,296	2.6	1,418	4.8	10,713	2.8
State/local judiciary	12,892	3.6	877	3.0	13,769	3.6
State/local government	12,085	3.4	2,093	7.1	14,179	3.7
Private industry	34,141	9.6	2,449	8.3	36,591	9.5
Private association	1,481	0.4	320	1.1	1,801	0.5
Legal aid/public defender	1,712	0.5	502	1.7	2,215	0.6
Education	4,424	1.2	705	2.4	5,129	1.3
Retired/inactive	31,834	9.0	2,362	8.0	34,197	8.9
Total	355,615	100.0	29,358	100.0	384,973	100.0

Source: CURRAN & CARSON, *supra* note 41, at 21.

Table 12
Private Practitioners by Practice Setting, Sex, and Age (1988)

A. All Ages	Males		Females		Both sexes	
	No.	%	No.	%	No.	%
Solo	203,214	45.9	36,927	47.8	240,141	46.2
2 lawyer firm	31,426	7.1	3,254	4.2	34,680	6.7
3 lawyer firm	21,868	4.9	2,022	2.6	23,890	4.6
4 lawyer firm	15,916	3.6	1,771	2.3	17,687	3.4
5 lawyer firm	12,128	2.7	1,470	1.9	13,598	2.6
6-10 lawyer firm	35,681	8.1	4,931	6.4	40,612	7.8
11-20 lawyer firm	31,572	7.1	5,286	6.8	36,859	7.1
21-50 lawyer firm	30,559	6.9	6,003	7.8	36,563	7.0
51-100 lawyer firm	21,486	4.9	4,786	6.2	26,273	5.1
100 or more lawyer firm	38,804	8.8	10,834	14.0	49,639	9.5
Total	42,654	100.0	77,287	100.0	519,941	100.0
B. 39 Years of Age or Younger	Males		Females		Both Sexes	
	No.	%	No.	%	No.	%
Solo	74,254	38.1	24,427	42.8	98,680	39.1
2 lawyer firm	11,184	5.7	1,943	3.4	13,128	5.2
3 lawyer firm	8,732	4.5	1,392	2.4	10,124	4.0
4 lawyer firm	6,952	3.6	1,291	2.3	8,244	3.3
5 lawyer firm	5,486	2.8	1,161	2.0	6,647	2.6
6-10 lawyer firm	17,739	9.1	3,954	6.9	21,693	8.6
11-20 lawyer firm	17,156	8.8	4,444	7.8	21,600	8.6
21-50 lawyer firm	17,574	9.0	5,040	8.8	22,614	9.0
51-100 lawyer firm	12,555	6.4	4,102	7.2	16,657	6.6
100 or more lawyer firm	23,422	12.0	9,347	16.4	32,769	13.0
Total	195,053	100.0	57,103	100.0	252,156	100.0

Table 12 continued

C. 40 Years of Age or Older	Males		Females		Both Sexes	
	No.	%	No.	%	No.	%
Solo	128,119	52.0	11,381	61.7	139,500	52.7
2 lawyer firm	20,183	8.2	1,247	6.8	21,430	8.1
3 lawyer firm	13,104	5.3	595	3.2	13,698	5.2
4 lawyer firm	8,934	3.6	446	2.4	9,380	3.5
5 lawyer firm	6,629	2.7	296	1.6	6,926	2.6
6-10 lawyer firm	17,902	7.3	921	5.0	18,823	7.1
11-20 lawyer firm	14,372	5.8	779	4.2	15,151	5.7
21-50 lawyer firm	12,908	5.2	873	4.7	13,781	5.2
51-100 lawyer firm	8,891	3.6	622	3.4	9,513	3.6
100 or more lawyer firm	15,226	6.2	1,289	7.0	16,515	6.2
Total	246,270	100.0	18,448	100.0	264,718	100.0

Source: CURRAN & CARSON, *supra* note 41, at 21.

Table 13
Minority Students in ABA-Approved Law Schools,
1969-70 to 1990-91

Year	Black	Mexican American	Puerto Rican[a]	Other Hispanic American	Asian/Pacific Islander	American Indian	Total Minority[b]	Minority as % of Total Enrollment
1969 70	2,128	412	61	75		72	2,933	4.3
1971-72	3 744	883	94	179	480	140	5.568	5 9
1972 73	4 423	1 072	143	231	681	173	6 730	6 6
1973 74	4 817	1,259	180	261	850	222	7 601	7 2
1974-75	4,995	1.362	272	392	1 063	265	8 372	7 5
1975-76	5 127	1,443	333	406	1,099	295	8 712	7 4
1976-77	5.503	1.588	335	538	1,324	301	9.589	8 1
1977-78	5.305	1 564	350	617	1,382	363	9.580	8 1
1978-79	5 350	1 649	423	716	1,424	390	9 952	8 2
1979 80	5.257	1 670	441	706	1 547	392	10 013	8 1
1980-81	5.506	1 690	442	882	1 641	414	10 575	8 4
1981 82	5 789	1 756	396	1,037	1 755	402	11,134	8 7
1982 83	5 852	1 739	418	1,249	1,947	406	11 611	9 1
1983 84	5 967	1 744	450	1,302	1,962	441	11 866	9 3
1984 85	5 955	1 661	407	1 439	2,026	429	11,917	9 9
1985 86	6,052	1 635	412	1 632	2 153	462	12 357	10 4
1986-87	5,894	1 568	422	1 875	2,303	488	12,550	10 1
1987 88	6 028	1 641	459	1,971	2 656	492	13 250	10 8
1988 89	6,321	1 657	478	2,207	3,133	499	14 295	11 3
1989 90	6 791	1,663	483	2,580	3 676	527	15 720	12 1
1990-91	7 432	1 950	506	2,582	4,306	554	17,330	13 1

[a] Excludes ABA-approved law schools in Puerto Rico; 1,711 enrolled in 1980-81
[b] Includes other

Source: 1969-70 to 1985-86: ABEL, *supra* note 3, at 288; 1986-87 to 1990-91: REVIEW OF LEGAL EDUCATION, 1991, at 67-68.

Table 14
Percentage Distribution of California Bar by Legal Position and Selected Demographic Characteristics (1991)

Legal Position	Demographic Characteristics					
	Gender		Have a Disability		Member of Gay, Lesbian, or Bi-sexual Community	
	Female	Male	Yes	No	Yes	No
Sole practitioner	18	29	40	26	23	26
Partner	14	31	18	28	13	27
Associate	40	20	17	26	39	25
Corporate in-house counsel	9	8	7	8	11	8
Government attorney	18	12	18	13	14	13
Total	100	100	100	100	100	100
Number of Respondents	2,246	6,645	491	8,432	254	8,595

Legal Position	Ethnicity			
	Asian	Black	Hispanic	White
Sole practitioner	21	30	26	26
Partner	13	9	16	28
Associate	28	24	27	25
Corporate in-house counsel	10	8	5	8
Government attorney	28	28	26	12
Total	100	100	100	100
Number of respondents	225	166	280	8,066

Source: SRI, 1991, *supra* note 105, at 19.

Table 15
Income Derived From the Practice of Law
By Years Practicing Law and Ethnicity/Gender
(California 1991)

Years Practicing Law and Income from Practicing Law	Gender and Ethnicity		
	White Male	White Female	Minority
Less than 5 years			
Less than $50,000	43	50	49
$50,000 to $74,999	40	39	34
$75,000 to $99,999	13	10	14
$100,000 to $124,999	2	1	2
$125,000 to $199,999	1	<1	<1
$200,000 or more	<1	0	<1
Number of respondents	811	632	194
5 to 9 years			
Less than $50,000	15	21	16
$50,000 to $74,999	32	41	45
$75,000 to $99,999	25	23	20
$100,000 to $124,999	12	8	10
$125,000 to $199,999	11	7	8
$200,000 or more	3	1	1
Number of respondents	967	540	160
10 to 19 years			
Less than $50,000	8	14	15
$50,000 to $74,999	19	26	27
$75,000 to $99,999	19	25	27
$100,000 to $124,999	12	12	12
$125,000 to $199,999	21	14	11
$200,000 or more	20	9	8
Number of respondents	2,245	572	232

Source: SRI, 1991, *supra* note 105, at 51.