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Review Essay

**Saints and Sinners: On Gandhi's Lawyers
and Touts**

John A. Flood

J. S. GANDHI, *Lawyers and Touts: A Study in the Sociology of the Legal Profession*. New Delhi: Hindustan Publishing, 1982 (U.S. distributor, Humanities Press, Atlantic Highlands, N.J.). Pp. 174. \$14.50.

Law and medicine are two things we Indians have always shone at
—Paul Scott, *The Jewel in the Crown*

Background

We know from work on early county courts that by the twelfth and thirteenth centuries there was a solidly established class of professional lawyers in England,¹ although they were pleaders and attorneys rather than barristers and solicitors.² By the fifteenth century there were at least six categories of lawyers that, by the eighteenth century, were consolidated into two.³ It is these two groups—barristers and solicitors—who were exported to the colonies to provide the backbone not only of their legal professions, but also of their judicial and administrative personnel.⁴ Except in India, most emigrant lawyers were barristers.

During the eighteenth and nineteenth centuries the condition of the English bar was at best precarious, for the bar had grown dramatically in this

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1. To assist the reader who might find the multiplicity of terms for the category *lawyer* somewhat perplexing, I include a glossary in the appendix that should prevent the historical and cultural patterns from unraveling and becoming tangled.

2. See Robert C. Palmer, *The Origins of the Legal Profession in England*, 11 *Irish Jurist* 129 (1976); *id.*, *The County Courts of Medieval England, 1150–1350* (Princeton, N.J.: Princeton University Press, 1982). Palmer notes that although there was a division of function between pleader and attorney, no one was precluded from occupying both roles simultaneously.

3. See J. H. Baker, *The English Legal Profession, 1450–1550*, in Wilfrid Prest, ed., *Lawyers in Early Modern Europe and America* 16 (New York: Holmes & Meier Publishers, 1981); C. W. Brooks, *The Common Lawyers in England, c. 1558–1642*, in *id.* at 42; Wilfrid Prest, *The English Bar, 1550–1700*, in *id.* at 65.

4. See Daniel Duman, *The English and Colonial Bars in the Nineteenth Century* (London: Croom Helm, 1983).

period. As barristers came to rely more and more on solicitors to supply them with business and less on contacting lay clients directly, establishing a practice without the aid of family, business, or solicitor connections became increasingly risky. Hence, setting up a practice in the colonies, while certainly not the ideal career direction, was a lucrative alternative that held the prospect of fairly rapid judicial advancement. Generally, the colonies provided a means of both siphoning off the excess lawyers in Great Britain and exporting the basic elements of a legal system to alien cultures. The most avidly sought after colony was India. India was different from the others; it was the "Jewel in the Crown of the British Empire." It promised tremendous rewards—one barrister in the early nineteenth century retired with £60,000 after four years of practice⁵—to those prepared to withstand the heat, the monsoon, and the diseases. Consequently, India was the first colony to reach saturation point in its lawyer population.

The present legal profession in India is an amalgam of domestic and imported elements. Gandhi's *Lawyers and Touts* examines one segment of the bar—that practicing in the district courts of Gobindgarh in the Punjab.⁶ However, in order to evaluate Gandhi's study fully, I will cover some aspects of the legal profession's history in India.

Although India had an indigenous legal culture before the English arrived, the present system stems from that initial colonization by the East India Company. The Company was at first averse to lawyers' practicing in India; it saw them as "stirring up . . . strife and contention."⁷ This attitude reflected the nadir to which the legal profession had sunk in England during the seventeenth century. Indeed in the third quarter of that century most "lawyers" in India were not trained in law; they were businessmen, clerics, or Company servants. With the establishment of the mayor's courts in Calcutta and Madras in 1726, the legal profession began to grow and to assert some independence from the Company. The first cohort of lawyers were mainly attorneys rather than barristers, but this complexion changed when the first supreme court was established in Calcutta in 1774.⁸

The first barristers came to India as judges rather than as advocates. As the prestige of the legal profession rose in line with that of the supreme court, more barristers arrived from Great Britain, and the attorneys stopped practicing as advocates in favor of practicing as solicitors. In 1793 William Hickey reported that there were 9 barristers, including the attorney general, in Calcutta.⁹ For the period 1790 to 1809, there were 17 barristers and 15 at-

5. Samuel Schmitthener, A Sketch of the Development of the Legal Profession in India, 3 *Law & Soc'y Rev.* 337, 345 (1968-69).

6. Gobindgarh is a fictitious name (at 1 n.1). See also *infra* note 48.

7. P. B. Vachha, Famous Judges, Lawyers, and Cases of Bombay 8, *quoted in* Schmitthener, *supra* note 5, at 339.

8. Schmitthener, *supra* note 5, at 343.

9. 3 A. Spencer, *Memoirs of William Hickey* 149, *cited in* Schmitthener, *supra* note 5, at 345.

torneys and solicitors.¹⁰ By 1861 Calcutta had 32 barristers and 60 attorneys, or solicitors; 4 of the attorneys were Indian.¹¹ The courts in the presidency towns of Bombay, Madras, and Calcutta were for many years the preserves of the British lawyer;¹² Indian lawyers instead concentrated their practices in the *mofussil* courts (countryside courts run by the Company).

The fees earned by the new bar were enormous. Schmitthener quotes the 1844 Indian Law Commissioners' Report as saying "the rate of bar fees [is] two, three-five times what it is in England."¹³ But then trade and investment were also vigorous at this time; the cost of law merely followed suit.

By 1858 the British government controlled India directly. The morass of courts was unified into a single coherent system in each of the presidency towns. For the first time Indian and British practitioners were put on an ostensibly equal footing. The composition of the high court bench was one-third British barristers, one-third judicial members of the Indian Civil Service, and the final third lower judiciary and Indian lawyers practicing before the high court.¹⁴ The high courts were given authority to make rules regarding qualifications of advocates, *vakils* (Indian-trained advocates), and attorneys.

Vakils faced opposition from advocates in the high courts of the presidency towns. Since *vakils* were on ostensibly equal footing with barristers, they could practice on both the original and appellate sides of the high courts. The jurisdiction of the original side encompassed major civil and criminal matters, and practice on it granted large rewards. The appellate side was not nearly so lucrative; hence the English advocates never objected to Indians' appearing there. Even those Indians who had traveled to England to read for the bar and become barristers (as opposed to *vakils*) met considerable prejudice from English and Indian solicitors alike. Indian advocates, whether barristers or *vakils*, were considered too great a risk for the lucrative commercial cases of the original side, for surely, lawyers and litigants reasoned, the English barrister would always win.¹⁵ Eventually *vakils* won the right to practice without hindrance on both sides in all high courts and were gradually absorbed into the bar.¹⁶ It was not until the postindependence period that legislation was enacted to merge the plethora of practitioner grades into one—namely advocate, with no division of functions as between barristers and solicitors.¹⁷

10. *Id.*

11. Misra, *The Indian Middle Classes: Their Growth in Modern Times* 327, *quoted in* Schmitthener, *supra* note 5, at 345.

12. The presidency towns were the key administrative areas of the Company. See V. D. Kulshreshtha, *Landmarks in Indian Legal and Constitutional History* ch. 2 (4th ed. Lucknow, India: Eastern Book Co., 1977).

13. Schmitthener, *supra* note 5, at 346, *quoting from* 6 Calcutta Rev. 530 (1846).

14. *Id.* at 356.

15. *Id.* at 367.

16. Kulshreshtha, *supra* note 12, at 417.

17. The Advocates Act of 1961, see Schmitthener, *supra* note 5, at 360.

The choice of the term *advocate* tells us something most important about Indian lawyers. As Galanter notes, “Public and profession in India concur in visualizing the lawyer in the role of courtroom advocate, rather than business adviser or negotiator, much less social planner.”¹⁸ The studies we have of Indian lawyers by Gandhi and others (e.g., Kidder and Morrison)¹⁹ reinforce this perspective. We do not, for example, have research on the role of Indian lawyers in corporate planning; but indeed data on the Indian legal profession as a whole are skimpy. The 1971 Indian Census provides figures on the lawyer population,²⁰ but there is some confusion with the terminology involved. Lawyers as a discrete category number 90,906; if we add the group termed *jurists* (i.e., court officials), the figure rises to 238,658. However counted, the Indian legal profession is a large one, second in size only to that of the United States.

Gobindgarh District Courts

The setting for Gandhi’s study is a district near the Indo-Pakistani border in the Punjab. The Punjab—before the 1947 independence divided it into Indian and Pakistani territories—embraced a mixture of Hindus (including Sikhs) and Muslims. Currently the Punjab is the stronghold of Sikhism, with its center in Amritsar, a holy city for Sikhs.²¹ They are considered among the most industrious and sophisticated members of the Indian labor force.

The district court represents the bottom tier of the courts’ hierarchy. The middle level is occupied by the high court, the court of appeal for the state, and the top, by the Supreme Court of India. Gandhi selected the district court for his study because he believed that he could better “identify some of the more basic and fundamental processes of professional practice at the level of district courts than at either of the other two higher levels” (at 3). He was also acquainted with some of the lawyers practicing there.

In chapters 5 and 6 Gandhi describes and analyzes, in some detail, the social structure and types of practice of the Gobindgarh district court bar. Of 203 lawyers, Gandhi identified 154 as regularly practicing advocates (at 61). His sample is predominantly young, 42% are between 21 and 35 years of age (at 62). Here once again, students of the Indian legal profession will be frustrated by the sheer lack of data. There is no way of telling whether the Gobindgarh district court bar is typical. Obviously the New Delhi bar would be larger, if not the largest; but what of other provincial centers, such as Madras or Bangalore or Calcutta? No data exist. Thus it is difficult to extrapolate from Gandhi’s findings.

18. Marc Galanter, Introduction: The Study of the Indian Legal Profession, 3 *Law & Soc’y Rev.* 201, 207 (1968-69).

19. Robert L. Kidder, Formal Litigation and Professional Insecurity: Legal Entrepreneurship in South India, 9 *Law & Soc’y Rev.* 11 (1974); Charles Morrison, Munshis and Their Masters: The Organization of an Occupational Relationship in the Indian Legal System, 31 *J. Asian Stud.* 309 (1972); *id.*, Clerks and Clients: Paraprofessional Roles and Cultural Identities in Indian Litigation, 9 *Law & Soc’y Rev.* 39 (1974).

20. Central Statistical Office, 1 *Census of India* 12-13, series 1, pt. 26(4) (New Delhi, 1971).

21. Sikhism is a noncaste religion founded in the fifteenth century in a schism from Hinduism. See Gopal Singh, *A History of the Sikh People, 1469-1978* (New Delhi: World Sikh University Press, 1979).

Particular to India, of course, is the concept of caste, and Gandhi breaks down the bar according to caste membership.²² Two-thirds of the bar is composed of the three castes that effectively control the financial and business affairs of the Punjab (at 63). The Jat Sikhs, a subgroup of the Sikhs, form 20% of the bar; they are the main landowning contingent in the state. In all, the Sikhs constitute about 30% of the district bar (at 64). With the exception of the Jat Sikhs, who are a rural-based group, the other castes have urban backgrounds. It is interesting to compare Indian lawyers' backgrounds with those of their closest analogue, the British bar. Roughly 70% of the Indian district lawyers had fathers in business, farming, or law-related occupations (at 70). The Royal Commission on Legal Services Final Report found that more than half of those entering the legal profession also had fathers in professional or managerial occupations.²³

In the nineteenth century an Indian wishing to compete with an English barrister on near equal terms had to travel to England and join one of the Inns of Court to qualify. Law colleges granting LL.B. degrees were established in India by the mid-nineteenth century, but their graduates were held in lower esteem than barristers even though the Indian LL.B. examinations were often more difficult than the English equivalent examinations. In modern times all advocates must have law degrees. The law department of Punjab University at Chandigarh, the state capital of the Punjab, is one of the more prestigious institutions of its kind.²⁴ Gandhi found that 86 (56%) members of his sample obtained their law degrees there (at 66).²⁵ Broadly speaking, then, the Gobindgarh bar is an urban-based, well-educated, bourgeois institution. In these respects it does not differ from its erstwhile stepmother, the English bar.

In actual practice, too, the Gobindgarh bar has borrowed from the English system. Though Gandhi does not address the issue directly, as barristers in the British system, all Indian lawyers work as solo practitioners. This has an immense impact on the development of a career. Indian lawyers do not even have the buttress of the chambers system to help them in their early stages.²⁶

22. See, e.g., Max Weber, *Caste Taboo, Vocational Caste Ethics, and Capitalism*, in 2 *id.*, *Economy and Society*, ed. Guenther Roth & Claus Wittich, and trans. Ephraim Fischoff et al. 435 (Berkeley: University of California Press, 1978); also Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Berkeley: University of California Press, 1984).

23. The Royal Commission on Legal Services, Final Report: Surveys and Studies, Cmnd. No. 7648-1, at 59 (London: Her Majesty's Stationery Office, 1979).

24. Preface to N. R. Madhava Menon, *Legal Education in India: Status and Problems* 13 (New Delhi: Bar Council of India Trust, 1983).

25. The LL.B. degree runs the usual gamut of courses, e.g., torts, procedure, business law, and legal ethics. See Paras Diwan, *State of Legal Education in Punjab and Chandigarh*, in Menon, *supra* note 24, at 64-65. But as Gandhi notes, the ethical standards of the Gobindgarh bar are abysmally low. I will return to this topic below.

26. Chambers are suites of offices shared by barristers who come together to share expenses but not fees. See 1 The Royal Commission on Legal Services, Final Report, Cmnd. 7648, at 446 (London: Her Majesty's Stationery Office, 1979); John A. Flood, *Barristers' Clerks: The Law's Middlemen* (Manchester: Manchester University Press, 1983).

Gandhi separates a total of 155 advocates into four groups: 12 exclusive lawyers, 111 semiexclusive lawyers, 23 nonexclusive lawyers, and 9 satellite lawyers. The continuum of exclusivity refers to the lawyers' areas of specialization, or lack thereof, and the level of success they have attained. Gandhi distinguishes three areas of specialization, namely, criminal, civil, and revenue. To Western eyes the odd category is revenue; it includes "such litigation as relates to any one or more of the juridical aspects of agricultural land or such land as is charged land revenue" (at 75). It is part of civil practice and is governed by the Indian Civil Procedure Code, but it deals exclusively with rural matters. The exclusive lawyers, therefore, concentrate mainly in one area of practice—to what extent we do not know.²⁷ The semiexclusives have a major field (e.g., criminal) combined with a minor (e.g., revenue). The nonexclusive group takes whatever work it can find.

Many of the differences among the three groups can be explained by age. The most successful group, the exclusive lawyers, have generally been in practice longer than the others—a minimum of three decades. All but one were over 60 years of age (at 83). Sixty-six percent of the semiexclusive group were between 33 and 48 years of age (at 91). And the great majority of the nonexclusives (74%) were below 31 years of age (at 94).²⁸

A short digression on Gandhi's figures is in order here. His sample is 154 lawyers; about this he is quite specific (at 4). In chapter 6, however, his figures are completely awry. From his tables, the inescapable conclusion is that there are 155 lawyers in his sample, and I can find no explanation for this discrepancy. This is further confounded because in the text (at 93), he refers to 31 lawyers in the nonexclusive category but in table 33 (at 94), he refers to 23. If 31 were the correct number, Gandhi's grand total should be 163. While these errors do not, I believe, affect the substantive conclusions of his study, they are unfortunate examples of slipshod scholarship and poor editing.²⁹

Lawyers and Clients

Perhaps the most interesting issue, and certainly one that enlivens Gandhi's study, is his discussion of lawyer-client relations and the dynamics of practice. Despite the litigious complexion of practice in India,³⁰ relationships with clients do not appear enduring, rather they are ephemeral, one-

27. Cf. John P. Heinz & Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 43-53 (New York: Russell Sage Foundation, and Chicago: American Bar Foundation, 1983). They explored the amounts of time practitioners devoted to particular fields of law (25 fields identified) by placing them in three categories: those that spent 5% to 25% of their time in their field, those that spent 25% to 50% of their time, and those that devoted over 50% of their time to a field.

28. No data are supplied for the satellites.

29. The monograph contains more defects of a similar nature. Gandhi has a tendency to quote or to cite writers, then not list them in his bibliography. I counted at least 13 such lapses, besides sundry misspellings of authors' names or absences of references where they are needed.

30. For example, Gandhi notes that although the Punjab has only 2.4% of the country's total population, it has 4.5% of the country's civil litigation (at 55).

shot affairs, unlike much of American legal practice.³¹ Kidder, in his study of courts in Bangalore, South India, argued that the lawyer-client relationship is marked by an unusually high degree of mutual mistrust.³² Each side attempts to exploit the other to its personal advantage. For Gandhi the equation is not so balanced; it is the lawyers (and the more practiced lawyers at that) who plunder clients and younger lawyers (at 156). He uses strong language. For example: "An awareness has been generated about the imperative necessity of inserting some remedial measures to stem the 'rot' and stench besetting the Bar" (at 156).

The relationship between lawyer and client can often only begin with an intermediary, especially a tout, whose task it is to solicit clients for lawyers. First, much of a lawyer's clientele is fragmented, spread throughout rural areas. All revenue cases derive from rural clients, as do a large number of criminal cases. Second, virtually the only way a novice lawyer can generate a practice is by using a tout. On this topic there is some disagreement among Gandhi, Kidder, and Morrison. According to Gandhi, a tout's only reward is monetary. A tout receives up to 30% of the lawyer's fee (at 113).³³ No commission is paid by the client. The commission, or *touty*, is paid whether the tout is a kinsman, former colleague, or stranger. Morrison, in his research on a district legal profession in Haryana (the state next to Punjab) argues that there are other rewards for touts, such as receiving political patronage or stacking up favors for the future.³⁴ Touts must be understood in the context, Morrison says, of "intermediation [as] an important element in Indian social life, where direct confrontation other than among kinsmen is felt to be inappropriate or inauspicious—even where it is otherwise quite possible."³⁵

Whatever the reward the tout receives from the lawyers, the client is often unaware of being part of a bargain. Touts present themselves as friends and helpers and strike an empathetic chord with potential clients. At no time during the transaction should the client be aware of being manipulated. Whereas Gandhi poses the client as an innocent dupe in a devious game,³⁶ Morrison disputes his view. To him, although village life may appear closed (and it is on matters of rights and status) it is not as to knowledge of the external world. Villagers are not gullible innocents in the context of the courts; they accept litigation as a naturally occurring aspect of everyday life.³⁷ Kidder articulates a similar view of clients as knowledgeable.³⁸

31. Cf. the lists of clients of law firms in *The American Lawyer Guide to Law Firms, 1983-84* (New York: Am-Law Publishing, 1983); and see James B. Stewart, *The Partners: Inside America's Most Powerful Law Firms* (New York: Simon & Schuster, 1983).

32. Kidder, *supra* note 19, at 22.

33. Cf. Jerome E. Carlin, *Lawyers on Their Own: A Study of Individual Practitioners in Chicago* (New Brunswick, N.J.: Rutgers University Press, 1962), and Kenneth J. Reichstein, *Ambulance Chasing: A Case Study of Deviation and Control Within the Legal Profession*, 13 *Soc. Probs.* 3 (1965).

34. Morrison, *Clerks and Clients*, *supra* note 19, at 47.

35. *Id.*

36. Cf., e.g., Pat Carlen, *Magistrates' Courts: A Game Theoretic Analysis*, 23 *Soc. Rev.* (n.s.) 347 (1975); *id.*, *Magistrates' Justice* (London: Martin Robertson, 1976).

37. Morrison, *Clerks and Clients*, *supra* note 19, at 50-51.

38. Kidder, *supra* note 19, at 23.

Despite the prominent role of touts, Gandhi argues strongly that kinship networks are the primary structural feature in developing a lawyer's career. Most successful lawyers in his sample depended on this type of connection (at 129 table 38). Those who failed to build viable careers at the bar had no kinship networks to exploit (at 130-134).

One other actor in the unfolding drama of legal practice is the *munshi*, who occupies a cluster of roles; among them are clerking, bookkeeping, tutoring clients and witnesses, and generating business. Frequently, according to both Gandhi and Morrison, the same person is both a tout and a *munshi*. One of Gandhi's exclusive lawyers puts it thus:

I make no secret of the fact that I have rarely employed a *munshi* without considering his utility in bringing business. . . All of them have mattered so much for my success. At the same time, they have always had their due from me. 'H' had been very useful to me as a *munshi*. He has been with me for the last eighteen years. He is an important man in and around his native village and has brought me scores of cases from his friends and acquaintances. . . They all trust him. (At 141).

Again, this relationship between lawyer and *munshi* is often characterized by mutual mistrust.³⁹ *Munshis* like to attach themselves to rising or well-established lawyers; a lawyer in a decline is likely to be without a *munshi*. *Munshis* can receive between 10 and 33% of a lawyer's earnings, depending on whether they are touting, which leads to the higher commission, or doing their other tasks, which leads to lower rates (at 145). The best have long experience and are preferably aged between 50 and 70 years (at 143).

The closest analogues in the West to the *munshi* are barristers' and solicitors' clerks.⁴⁰ In England and Wales no barrister may practice without a clerk, and few barristers can start careers without the active support of their clerks. Clerks schedule cases, negotiate fees, nursemaid barristers, and generate business. As lay clients do not come to barristers directly, clerks have to find ways of persuading, or touting, solicitors to send business to their chambers. They must display a combination of management and entrepreneurial skills, for which they receive up to 10% of their barristers' fees. In the field of litigation it is generally the solicitors' clerks, or legal executives, who deal directly with the lay clients. And it is generally they who choose the barrister for the case. Normally, solicitors' clerks are on a salary and, unlike either barristers' clerks or *munshis*, they have some legal training. Both barristers' and solicitors' clerks are indispensable to the development of their principals' careers.

39. Morrison articles, *supra* note 19.

40. See 1 The Royal Commission on Legal Services, *supra* note 26, at 406, 482; Quintin Johnstone & John A. Flood, Paralegals in English and American Law Offices, 2 Windsor Y.B. Access to Just. 152 (1982); and Flood, *supra* note 26.

Legal Ethics

In the context of the recent adoption of the Model Rules of Professional Conduct by the American Bar Association,⁴¹ Gandhi's study raises interesting problems of ethics and professional responsibility. One can ask if, given the circumstances of practice for Indian lawyers, it is possible for them to be ethical. None of the studies referred to in this essay addresses the question of the lawyer's role in the legal system; they all focus on the battleground between lawyer and client. But what of the lawyer's duty to the court and to the world at large?

Part of the blame for the apparent lack of discussion about ethical standards among lawyers must be placed on the deplorable state of legal education in India. There are approximately 350 centers of legal education throughout the country.⁴² These can be broken down into three categories: (a) university departments of law, (b) state government-managed or -aided colleges, and (c) proprietary colleges.⁴³ While there is no official accreditation system, as there is in the United States under the aegis of the American Bar Association, the Bar Council of India has tried to lay down standards defining the minimum criteria. It unfortunately does not have much power to enforce them under the Advocates Act of 1961.

Many of the colleges, especially the proprietary ones, have little in the way of facilities: Some have no buildings, no libraries, no full-time faculty, poorly structured syllabi, and inadequate monitoring of student standards. One example will illustrate the difficulties. The southern state of Karnataka has many privately run law colleges where there are no requirements for admission, and attendance at lectures is sparse. The neighboring states of Kerala, Tamil Nadu, and Andhra Pradesh have competitive admission and a restricted number of student places. As a result many would-be lawyers flock to the law colleges of Karnataka.⁴⁴ In other areas the instruction is carried out in a mixture of English, Hindi, and local languages. Since the lingua franca of the legal system is English, the likely problems can be easily imagined. Of the 350 legal education centers in India, Menon estimates that 150 may be able to meet the Bar Council's standards, while the remaining 200 are decidedly below par.⁴⁵

In the shadow of the poor state of legal education, the law colleges in the Punjab shine brightly. Legal education there is highly regarded by the Bar Council. All three law colleges in the Punjab are university departments.⁴⁶

41. Adopted by the House of Delegates, American Bar Association, Aug. 1983. See James Lindgren, ed., *Review Symposium: Model Rules of Professional Conduct*, 1980 A.B.F. Res. J. 921.

42. Menon, *The Structure and Distribution of Law Colleges in India*, in *id.*, *supra* note 24, at 329.

43. *Id.* In (a) there are 50 centers, in (b) about 65, and in (c), 230.

44. Menon, *Legal Education for Professional Responsibility*, in *id.*, *supra* note 24, at 307.

45. Menon, *supra* note 42, at 329. In (a) all would qualify, in (b) most would, and in (c) only 10% would pass.

46. *Id.* at 330.

About half of Gandhi's sample read law at Punjab University in Chandigarh, and almost a third graduated from Punjab University in Lahore (now in Pakistan). The remainder attended other universities (at 66). Yet despite the prestige of these centers and the legal ethics courses taught there, Gandhi calls the Gobindgarh bar unprofessional.

It is difficult to select a theory to explain Gandhi's results; he simply does not give us enough information to determine why the bar is lacking in professionalism.⁴⁷ But, in a speculative vein, it does appear that the structural determinants of Indian life have a significant impact on the bar's professionalism. A largely rural-based society, riven by caste, only tenuously connected with the cities, must exert a powerful influence, probably greater than that of any ethical training.

Ethnography and Methodology

As a final note to this essay I will discuss some of the problems encountered in the ethnographic study of lawyers. Gandhi is clear about how he tackled his research: he knew the area, he knew some lawyers, and he "hung out" at the courts.⁴⁸ He interviewed, he observed, and he eavesdropped. Gandhi is also clear about his obstacles; for example, the *munshis* would not let him look at their records, which were jealously guarded.

If researchers are to study the dynamics of legal practice and lawyering, they must be able to observe all aspects of both the legal and quasi-legal dramas unfolding around them. Invariably this raises the question of breaching the confidentiality of the lawyer-client privilege. The invocation of this shibboleth is frequently used to justify refusals to researchers.⁴⁹ But such obstacles are not indefeasible: Hosticka and Katz have studied poor people's lawyers and their clients;⁵⁰ and Cain and I have analyzed English solicitor-client relations.⁵¹ Moreover, Heinz has argued persuasively that research into lawyer-client relations can be carried out without breaching the lawyer-client privilege.⁵² If the researcher can be incorporated within that privilege by, for

47. Cf. Ronald M. Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 A.B.F. Res. J. 247.

48. There is one very serious error that gallops, rather than creeps, into his text. Gandhi chose the name Gobindgarh to protect the anonymity of the town and its lawyers. Unfortunately, he then provides us with sufficient geographical information that anyone with an atlas open to India can easily identify Gobindgarh. If promises of confidentiality or anonymity are given, they must, for the sake of the subjects and other researchers, be honored and kept.

49. See Douglas E. Rosenthal, *Lawyer and Client: Who's in Charge?* (New York: Russell Sage Foundation, 1974); Brenda Danet, Kenneth B. Hoffman, & Nicole C. Kermish, *Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure*, 14 *Law & Soc'y Rev.* 905 (1980).

50. Carl J. Hosticka, *We Don't Care About What Happened, We Only Care About What Is Going To Happen: Lawyer-Client Negotiations of Reality*, 26 *Soc. Probs.* 599 (1979); and Jack Katz, *Poor People's Lawyers in Transition* (New Brunswick, N.J.: Rutgers University Press, 1982).

51. Maureen Cain, *The General Practice Lawyer and the Client: Towards a Radical Conception*, in Robert Dingwall & Phillip Lewis, eds., *The Sociology of the Professions: Lawyers, Doctors and Others* (New York: St. Martin's Press, 1983); John A. Flood, *Provincial Solicitors and Their Clients* (typescript 1984).

52. John P. Heinz, *The Power of Lawyers*, 17 *Ga. L. Rev.* 891 (1983).

example, working as a part-time associate for a law firm, then the sufficiently sensitive researcher should be able to produce findings without identifying particular clients.⁵³ Thus far, however, we are still in the realm of speculation.

Related to method is the matter of theory. Gandhi's study is permeated with the theories of Talcott Parsons, especially when he writes about the degree of professionalism of Gobindgarh lawyers (at ch. 2). Ethnographic research, by its very nature, demands that researchers be acutely aware of all that happens around them. Any kind of blinders are regrettable because they will distort or restrict the view. So, how are researchers to analyze and present their findings? One school of thought advocates the application of "grounded theory"; that is, the framework will emerge from the data over time.⁵⁴ The circumstances and context will determine the choice of theory. Those who prematurely start with a theory in mind can find themselves in the awkward position of having to abandon it, or they may force their data into an incompatible theoretical framework.⁵⁵ This last point is graphically demonstrated by Robin Luckham's experience in his research on Ghanaian lawyers. He, too, adopted Parson's model of professionalism as his working theory. As he pursued his studies, that theory became increasingly irrelevant, for he could make no sense of his data. Ultimately, Luckham realized that the structure of the Ghanaian legal profession was largely determined by the levels of cocoa production and exports. As a result, he discovered a Marxist model explained more than the theories of Parsons.⁵⁶

Unfortunately, Gandhi does not indicate that he undertook such a process of self-inquiry as to the relevance and validity of his chosen theories.⁵⁷ This is strange considering the extensive historical background he gives his subject. With that kind of background I would think Gandhi would have wanted to explain his data in relation to *his* cultural milieu, not that of Parsons. (The alternative would have been to make his study explicitly comparative.) No one,

53. This process, by the very nature of the enterprise, will be an interesting one to study as the final product—article or book—will emerge out of the collaborative efforts between law firm and researcher.

54. See Barney Glaser & Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Chicago: Aldine Publishing, 1967); Howard S. Becker, *Problems of Inference and Proof in Participant Observation*, 23 *Am. Soc. Rev.* 652 (1958).

55. See Robin Luckham, *The Ghana Legal Profession: The Natural History of a Research Project*, in *id.*, ed., *Law and Social Enquiry: Case Studies of Research* (New York: International Center for Law in Development, and Uppsala, Sweden: Scandinavian Institute of African Studies, 1981); and John A. Flood, *Middlemen of the Law: An Ethnographic Inquiry into the English Legal Profession*, 1981 *A.B.F. Res. J.* 377.

56. Luckham, *supra* note 55, at 127.

57. Gandhi could have discussed Terence Johnson's work on Third World professions. See, e.g., Terence J. Johnson, *Imperialism and the Professions: Notes on the Development of Professional Occupations in Britain's Colonies and the New States*, in Paul Halmos, ed., *Professionalisation and Social Change* 287, Monograph no. 20 (Keele, England: Sociological Review, 1973); also Robin Luckham, *The Political Economy of Legal Professions: Towards a Framework for Comparison*, in C. J. Dias et al., eds., *Lawyers in the Third World: Comparative and Developmental Perspectives* 287 (Uppsala, Sweden: Scandinavian Institute of African Studies, and New York: International Center for Law in Development, 1981).

at least to my knowledge, in the sociology of law has produced a theory that transcends both history and culture. Gandhi's problem is that he has many parts of the jigsaw puzzle, but he is unsure how to piece them together and thereby detect what is lacking. And so we see this lopsided picture of an occupation that once had strong ties to the British bar, but now has only tenuous ones at best. If Gandhi had seriously wanted to incorporate his study into the theory-of-professions corpus, it would have been useful to show the relationship of lawyers to other occupations and to the state. For example, how significant is the role of the lawyer in Indian society? Is it central or peripheral? Since India can be counted as a developing country, what is the role of lawyers in the development? Let me be clear: I am not suggesting that Gandhi wrote the wrong book. We need detailed ethnographies like his but, taking note of his theoretical and comparative historical context spelled out in the early part of the book, he did not adumbrate the steps between the different levels of abstraction he was trying to achieve.

Coda

At the time of writing this essay, I considered the topic of Indian lawyers a remote and peripheral one to American lawyers' interests. Recent events have changed my view. With the catastrophe caused by the massive emission of methyl isocyanate gas from the Union Carbide plant in Bhopal, India, in early December 1984, the activities of American and Indian lawyers have catapulted the topic from the periphery to the center.

I lamented the lack of ethical standards among Gandhi's Gobindgarh lawyers, but the unsavory sight of American ambulance chasers scrabbling around the disaster dramatically outweighs the Indians' attempts at touting. That the American *laissez-faire* attitude toward the prosecution of tort claims might not be the most efficacious method of providing relief for the victims does not appear to have deterred the American lawyers from signing up thousands of potential clients to years of litigation in the American courts.⁵⁸ The converse is that if the victims had to depend solely on the Indian legal system, they would probably fare much worse, as the plaintiffs have to pay significant court filing fees and no contingent fees are allowed to Indian lawyers. The solution, of course, would be some form of social insurance.

Nevertheless, the Bhopal catastrophe has spawned an interesting collaboration between Indian and American lawyers. The role of the Indian lawyers has largely been to act as touts for the Americans. A case in point is that of John Coale, a Washington, D.C., solo practitioner who arrived in Bhopal four days after the pesticide leak.⁵⁹ Coale was brought into contact with the

58. This view is evocatively epitomized by two books: Gerry Spence & Anthony Polk, *Gunning for Justice* (Garden City, N.Y.: Doubleday, 1982), and Stuart M. Speiser, *Lawsuit* (New York: Horizon Press, 1980). Both authors see themselves as the saviors of the oppressed, without worrying that the price of entry to the lawyers' chambers might be prohibitively high for most people.

59. See Stephen J. Adler, *Bhopal Journal: The Voiceless Victims*, *Am. Law.*, Apr. 1985, at 133.

victims by a series of intermediaries starting with S. C. Godha, a Bhopal lawyer. The two lawyers, Coale and Godha, devised a retainer form in Hindi and English and then sent out scouts to collect signatures. Coale gathered up to 68,000 signatures—other lawyers have collected anywhere from 1,200 to 60,000 clients. There are now approximately 60 American lawyers representing Bhopal plaintiffs.⁶⁰

One conclusion drawn from research on the Indian legal profession is that the participation of the tout is both normal and routine. And Gandhi's study shows that lawyers themselves often adopt this role, with junior lawyers acting as touts for more senior ones (at 116–18). What is presented here in the context of the Bhopal disaster is an instance of cross-national touting where the American lawyers are playing the role of senior counsel.

What does this say for the lawyer-client relationship? Probably not much. Whereas the lawyer-client relationship is mediated by touts and *munshis* in India, this mediation occurs in a social context that does not entirely isolate the clients from the lawyer. The context is understood within the culture; it has its own set of rationales for the actors. Touting across continents, however, between mutually inconsistent social systems renders the meaning of a lawyer-client relationship vacuous. The idea of a relationship being called into existence is meaningless where lawyers are dealing with thousands of clients in this fashion.

Moreover, the American lawyers are in flagrant breach of the ABA Model Rules of Professional Conduct.⁶¹ The comment to Rule 7.2 on advertising explicitly forbids lawyers' paying others "for channeling professional work." Rule 7.3 on personal contact with prospective clients further circumscribes the extent to which lawyers can attempt to solicit clients. And Rule 8.4 on misconduct decries lawyers' violations, attempts at violation, or their condoning the misconduct of others. Even the law firm representing the Indian government—Robins, Zelle, Larson and Kaplan of Minneapolis—has a possible conflict of interest because it has counseled one of Union Carbide's insurance companies.⁶² A partial solution to the spreading morass has been found by Judge John F. Keenan of the Southern District of New York, who has appointed a committee of three plaintiffs' lawyers, including one representing the Indian government, to coordinate the pending litigation.⁶³

For the sociology of law, then, the Bhopal disaster has the potential for generating studies in a variety of areas (e.g., lawyers' networks, legal ethics, corporate behavior) and for developing comparative theories and methodologies that take account of an increasingly interdependent world.

60. *Id.* at 135.

61. See *supra* note 41.

62. See Kings of Catastrophe, *Time*, Apr. 22, 1985, at 80.

63. See Tamar Lewin, Three Lawyers to Oversee India Suits, *N.Y. Times*, Apr. 26, 1985, at 28, col. 3.

APPENDIX

Glossary of Terms

Readers may refer to the following glossary for definitions of the various terms used to describe the category *lawyer*.

Attorney: a legally qualified person who conducted all legal matters for clients except the pleading and argument in court. The title *attorney* was abolished in England by the Judicature Acts of 1873–75, and attorneys were incorporated into the group called *solicitors* (q.v.); also the term for a lawyer in the United States.

Advocate: a generic term for one who pleads the cause of another in court. More particularly, in India it has been the standard term for a lawyer since the Advocates Act of 1961; and it is also the title of the Scottish equivalent of an English barrister (q.v.).

Barrister: the English name for a lawyer who argues the cause of another in court. Barristers do not receive their instructions from the client directly (which is in most part forbidden), but from the solicitor (q.v.) hired by the client.

Inns of Court: the four unincorporated associations—Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn—responsible for calling students to the bar and maintaining chambers (suites of offices) for barristers (q.v.). They were founded approximately at the beginning of the fourteenth century.

Solicitor: the current term for an attorney (q.v.). *Solicitors* originated as agents within the chancery courts parallel to attorneys in the common law courts. Today they are supervised by the Law Society, the solicitors' equivalent of the Inns of Court (q.v.).

Vakil: the Indian term for a native pleader (until 1961)—one who had not trained in Great Britain and therefore could not be a barrister (q.v.) or an advocate (q.v.).