

Management as a Profession: A Business Lawyer's Critique

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As debates about the purpose of business and business schools continue apace, one recurrent theme is that business management should be a profession like law and medicine in order to promote responsible conduct and trustworthy business leadership.

This thesis in its contemporary form, propounded by Rakesh Khurana, Nitin Nohria and Daniel Penrice in [a 2005 article](#), remains a subject of controversy. (See [Khurana's response to Professor Richard Baker's recent HBR critique](#).)

I have the highest admiration for Khurana and for his concerns about business schools. By invoking the idea of professionalism, he usefully highlights that businesspeople, like doctors and lawyers, play an important and distinctive role in society and therefore have a distinctive set of responsibilities.

But the analogy between key elements of legal professionalism and potential elements of business "professionalism" is imperfectly assessed, indeed significantly overstated, from the point of view of [this lawyer](#) who has served in big law, big government, and big business. It does not represent the realities (and failings) of the legal profession nor the ferment in law schools. As set out by Khurana et al, the analogy is, thus, not much of a guide for reshaping business and business education.

Let me illustrate this problem by briefly examining the four criteria that Khurana et al use in calling an occupation, like law, a bona fide profession:

- 1. A common body of knowledge resting on a well-developed, widely accepted theoretical base.** The domain of law — legislation, regulation, decisional-law, private ordering — is vast and ever changing. There is no common body of knowledge or widely accepted theoretical base. Instead, the great law schools teach critical thinking and, to a lesser extent, problem solving, using a few legal subjects as a first year core (torts, contracts, civil procedure, constitutional law, criminal law, property). But their emphasis is on a broad range of skills (from understanding factual ambiguity, to analyzing how law actually operates in society, to assessing theories behind rules), not on a broad range of knowledge. Indeed, law schools today are asking themselves just

what are contemporary concepts of legal professionalism. They are looking far beyond traditional legal reasoning to corollary competencies, so that lawyers cannot just be acute technicians but also wise counselors and visionary leaders drawing on many disciplines and experiences, with materials ranging far beyond traditional appellate cases or structures of rules. (I have written a lengthy critique of the law schools and the profession along this line: "[Law and Leadership](#)", [Journal of Legal Education](#) [December, 2006].)

2. A system for certifying that individuals possess such knowledge before being licensed. Because major law schools teach critical thinking and problem-solving, they would disdain, and reject, any role in preparing students for the bar exam which primarily (and superficially) tests knowledge of various areas of the law. That job is left to expensive bar review courses after students graduate. Students cram, take a several-day bar exam on multiple subjects, desperately hope to pass so they can get a job and promptly forget the myriad "rules" they "learned." The real learning about how to be a lawyer comes from actual practice, hopefully with strong mentors. Most lawyers view the bar exam as a necessary evil, and not as a very meaningful credentialing activity — and continuing education, where required, often as a box-checking exercise. Formal certification is, in short, of far less importance than Khurana et al maintain.

3. A commitment to use of specialized knowledge for the public good, and a renunciation of the goal of profit maximization in return for professional autonomy and monopoly. In fact, law firms for more than a generation have been moving from loosely managed associations of professionals to disciplined business organizations. This shift has caused an erosion of professional values (e.g., a traditional commitment to enhancing society) and has increased the focus on maximizing profit (the firm's relentless quest for escalating profits per partner). The "attributes" of professionalism have not slowed this race to transform law firms. To a lawyer looking at modern law practice, it is quaint (to say the least) to read the words "renunciation of the goal of profit maximization." [I have argued](#) that there should be a better balance between law-firm-as-professional-association and law-firm-as-business-organization in order to increase associate and partner loyalty and morale, improve productivity, create new win-win alliances with business clients, better serve society and enhance the firm's reputation. But, this is a subject of great dispute, and, once again, Khurana et al are not reflecting the conflicting (and contentious) realities of a significant part of modern law practice.

4. A code of ethics, with provisions for monitoring individual compliance with the code and a system of sanctions for enforcing it. The codes of professional responsibility enforced by state bar associations are constraints on an important but limited subset of lawyer behavior. Many of the subjects of bar disciplinary proceedings

are also violations of law (and, in egregious cases, are treated as such): abusing a client, stealing from them, suborning perjury, intentionally lying in legal proceedings, especially to government officials. The much more difficult question which the codes of ethics do not address is whether lawyers should go beyond answering clients' initial question of "what is legal" and helping the clients to address the ultimate question of "what is right?" Obviously, the latter question will often turn on the enlightened self-interest of the client and involves, among other things, assessments of ethics, public policy, societal expectations, the public's view of proposed action. Answering such questions requires that the "acute" technical lawyer become a "wise counselor" to the business (or other) client. But that wise counseling function for clients is not addressed in any operative way by the legal ethical codes which narrowly focus on egregious wrong-doing by lawyers themselves. Like the codes themselves, Khurana et al do not really address this much more complex "ethical" dimension of lawyering.

Khurana et al use the question of professionalism in order to raise important issues about business schools in a global era. These include: a rethinking of the mission of business other than maximization of shareholder value; the related question of comparing and contrasting "investor" capitalism with "stakeholder" capitalism (and reducing the dominant influence of the finance faculty); emphasizing the role of "integrity" (law, **ethics**, and values) in business decision-making; understanding the role of business in shaping society/government and society/government in shaping business; and, ultimately, defining and ensuring greater accountability and responsibility among business leaders beyond legal and regulatory structures.

But these significant questions for business schools can be addressed without putting them in a context of the imperfect and potentially misleading analogy to legal professionalism, indeed without reference to Khurana's criteria for professionalism at all.

This, in fact, is what is done in the best current summary of the business education debate: **Rethinking the MBA: Business Education at the Crossroads**, by Sikrant M. Datar, David A. Garvin and Patrick G. Cullen (Harvard Business Press 2010). It lays out strands of thought on types of business school issues; new areas of concern, curricular changes and new teaching methods. Importantly, it describes developments at **Chicago Booth**, **INSEAD**, the **Center for Creative Leadership**, **Harvard Business School**, **Yale School of Management**, and **Stanford Graduate School of Business**. The concept of "professionalizing" business and business school education is not mentioned in the index (nor, at least to my imperfect eyes, in the text). Khurana is cited in the notes, not for his views on "management as a profession," but instead for his highly regarded work on business schools seeking legitimacy in the broader university and the creation of two business school cultures — one focused on practice and the other focused on research purity.

To be sure, *Rethinking the MBA* does raise some of the important issues identified by Khurana such as the need for all MBA programs to "focus more attention on issues of accountability, ethics and social responsibility." But, because it bypasses the "professionalism" frame, it also differs with Khurana et al in important ways. For example, rather than talking about a "professional body of knowledge," it focuses on the importance of "doing and being" rather than "knowing" — of teaching reasoning and thinking skills that "serve as the foundation for reaching better judgments and making more effective decisions." Although in a different context to be sure, this is more akin to law schools' emphasis on skills (broadly defined) rather than knowledge.

The richness and texture of *Rethinking the MBA* is thus a better guide to where business education will — and should — go than professional criteria drawn from a mistaken understanding of the legal profession's realities.

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