Private Practice for Public Consumption: Two Views of Corporate Law

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REVIEW ESSAY

PRIVATE PRACTICE FOR PUBLIC CONSUMPTION:
TWO VIEWS OF CORPORATE LAW

By Richard D. Kahlenberg.
Pp. xiv, 238. $22.00.

Tombstones: A Lawyer’s Tales from the Takeover Decades.
By Lawrence Lederman.
Pp. 358. $24.00.

Reviewed by Jayne W. Barnard*

Richard Kahlenberg, Harvard Law School class of 1989, recently published a memoir of his career in the law. His thesis is that law schools generally, and Harvard Law School in particular, admit promising young college graduates poised to seek justice for the poor. The schools then methodically extract the idealism from these students, ultimately transforming even the best of them into cookie-cutter graduates who want only to work for big-city law firms, "toiling for the richest of the rich." Somehow Kahlenberg escaped this fate, though he concedes his escape was a narrow one.

Kahlenberg is the product of a seven-year Harvard education financed, evidently, by his middle-class family. After rejecting a job offer from Covington & Burling and accepting instead a mid-level staff position with Sen. Chuck Robb (D-Va.), Kahlenberg apparently believes that he chose the moral high ground. It is a dubious proposition. Nevertheless, his hypothesis, that law schools offer an “implicit contract” to lead their students toward a career in public service and then breach that contract by stressing corporate-oriented coursework, may be worth exploring. I do not intend to...

* Professor of Law, The College of William & Mary. My thanks to Susan Korzick, class of 1993, for her research and technical assistance on this essay.


2 Id. at 233.

3 Id. at 237.
do so in this review. Rather, my purpose is to examine Kahlenberg's perceptions of life after law school and, in particular, his vision of the practice of corporate law.

Underlying Kahlenberg's thesis about law schools' "breaches of contract" are three premises one might expect from someone never exposed to a legal education: (1) corporations and other business enterprises are inherently immoral; (2) any lawyer who elects to represent the legal interests of a business enterprise is similarly immoral; and (3) any law school that emphasizes the intellectual tools a lawyer needs to represent the interests of any client, including a business enterprise, is likewise immoral.

The first premise is grounded in old-fashioned populism; the second in the common but mistaken belief that lawyers necessarily embrace the values of their clients; and the third in the apparent conviction that a deliberately ideological legal education, one favoring discussions of justice rather than "boring" legal rules, would be better than the current freedom-of-choice model.

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4 Note, however, the irony of Kahlenberg's focus on the "practicality" of his law school training. Most critics attack law schools because so much of today's training seems so useless. See, e.g., Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992) (decrying law schools' emphasis on abstract theory at the expense of practical scholarship and pedagogy).

5 Kahlenberg's mistrust of corporations is not an anomaly. Even today, many Americans believe that organizational wealth is inconsistent with democratic ideals. Recent manifestations of this anxiety include the Supreme Court's expression of concern about the "corrosive" influence of corporations over the political process, Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 658-60 (1990), and the decision by nine midwestern states to bar non-family corporations from farming within state boundaries because of the perceived "social and economic evils" that agribusiness corporations represent, MSM Farms, Inc. v. Spire, 927 F.2d 330, 332 (8th Cir.), cert. denied, 112 S. Ct. 65 (1991) (rejecting a corporation's challenge to the Nebraska prohibition and finding it consistent with both equal protection and due process guarantees).

6 Edward Bennett Williams described this phenomenon as "guilt by client." EVAN THOMAS, THE MAN TO SEE: EDWARD BENNETT WILLIAMS—ULTIMATE INSIDER, LEGENDARY TRIAL LAWYER 122 (1991). John W. Davis, founder of Davis, Polk & Wardwell, offered a spirited response to concerns expressed about guilt by client when he sought the Democratic nomination for president in 1924. Urged to resign from his firm to avoid any possibility of contamination by his corporate clients, Davis responded:

Since the law, however, is a profession and not a trade, I conceive it to be the duty of the lawyer, just as it is the duty of the priest, or the surgeon, to serve those who call upon him unless indeed there is some insuperable obstacle in the way. No one in all this list of clients has ever controlled, or fancied that he could control, my personal or my political conscience. I am vain enough to imagine that no one ever will.


7 BROKEN CONTRACT, supra note 1, at 131. In complaining about legal rules, Kahlenberg picks a particularly sensitive area. Recalling his poverty law course, for example, he notes "[i]t was not interesting to know that when a rule says you have ten days to file, you do or do not count the days at both ends." Id. Although it may not be
In this review, I will resist the temptation to challenge Kahlenberg’s pedagogical preferences, but will instead focus on his first and second points—and his obvious scorn for business enterprises and the lawyers who represent them.

Kahlenberg dismisses private practice as “amoral at best, immoral at worst,”⁸ “lucrative, prestigious, [and] challenging, [but] ultimately unsatisfying.”⁹ His opinion is based primarily on a series of job interviews while he was still a law student, and his three-month summer internship at Boston’s Ropes & Gray, where he specialized in trusts and estates “because it was reputed to have the best hours.”¹⁰

In considering Kahlenberg’s impressions of the legal profession, it may be useful to consider the views of a more experienced observer. Consequently, in this review I will also examine another recent legal memoir, this one written by mergers and acquisitions specialist Lawrence Lederman.¹¹

Though I will juxtapose the two writers’ stories, the books are in fact quite different. Kahlenberg’s is polemical; Lederman’s is simply autobiographical. Each, however, illustrates a carefully constructed personal vision of corporate law and the women and men who practice law. Taken together, the two books demonstrate how experience can color perception and how insight can overcome stereotype.

I. THE OUTSIDER AND THE INSIDER

In his application for admission to Harvard Law School, Rick Kahlenberg wrote: “Five years from now, I’d like to be pressing civil rights or liberties questions before the courts.”¹² Five years later, he was lobbying Senate colleagues for support of bills like the Metropolitan Washington, D.C. Waste Management Study Act¹³ and, during his free time, promoting his book on radio talk shows. Apparently, Kahlenberg was spending little time in the presence of, let alone defending the interests of, oppressed people. Meanwhile, young associates at Covington & Burling, the firm whose job offer Kahlenberg spurned, were serving six-month assignments at Neighborhood Legal Services offices at the firm’s expense,¹⁴ representing Salvadoran nation-

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³⁸ Broken Contract, supra note 1, at 180.
³⁹ Id. at 5.
⁴⁰ Id. at 145.
⁴¹ Lawrence Lederman, Tombstones: A Lawyer’s Tales from the Takeover Decades (1992) [hereinafter Tombstones].
⁴² Broken Contract, supra note 1, at 3.
als summarily fired from their suburban landscaping jobs, and advancing food stamp claims for local welfare recipients.

Like Rick Kahlenberg, Lawrence Lederman also changed direction early in his legal career. Setting out to become a law professor, he ended up during the 1980s as a corporate lawyer at powerful Wachtell, Lipton, Rosen & Katz. Ultimately, he became a key player in many of the decade’s most intensely contested takeovers, going toe-to-toe with Boone Pickens and Michael Milken, among others.

With this background, Lederman does not pretend that private practice is without its dark side. He recounts many all-nighters at the office, concedes that pro bono work must get done, if at all, after hours, and admits to his own occasional gamesmanship. If pressed, Lederman would surely concede that law firm practice is often bruising; many lawyers are arrogant and some are cheats.

Unlike Kahlenberg, however, Lederman can weigh these realities against some important countervailing considerations: law firm practice can be exhilarating; transactional lawyering, as well as litigation, can tap one’s most creative and generative talents; lawyers are often instrumental in the

17 TOMBSTONES, supra note 11, at 44-45, 144-46, 304-07.
18 Id. at 158.
19 E.g., id. at 32 (describing his canny invocation of an obscure contractual provision to force the renegotiation of an entire contract); id. at 51 (describing his refusal to go forward with a planned public offering until a corporate executive—who had earlier dismissed him as a low level peon—treated him with respect).
20 In a speech at Harvard Law School in 1920, lawyer Paul Cravath enthused about his corporate practice this way:

A busy lawyer in New York... works hard and is always meeting deadlines. But his life is never dull. He encounters human nature in all its manifold manifestations. He is in contact with fine minds. His work is spiced with action and variety. The practice of law itself becomes a mode of life. “I would rather work twelve hours a day as a lawyer,” he avowed, “and go to bed tired after a day full of interest than to work six dull hours as a stockbroker and have six hours left for bridge and society.”

LEVY, supra note 6, at 90-91.

Harrison Tweed, one of the founders of Milbank Tweed, was even more expansive. Commenting at a bar association function, Tweed uttered the lines that later became his epitaph: “[Lawyers] are better to work with or play with or drink with than most other varieties of mankind.” PAUL HOFFMAN, LIONS OF THE EIGHTIES 50 (1982).

21 Skadden, Arps lawyer James Freund notes the distinction between those lawyers who exercise their creative talents and those who do not:

For want of a better term, I consider myself an activist lawyer—I believe that what a lawyer does or doesn’t do, the initiative he takes or forsakes, can have a significant impact on the outcome of most matters and transactions; and that accordingly, the practitioner must at all times be alert, reach out and accomplish. There are also a
success of growing businesses; and most lawyers forge significant, enduring human connections with both their clients and co-workers.

Kahlenberg sees a much narrower vision. Replaying familiar attacks on contemporary lawyers, he seems to believe that corporate lawyers are nothing more than highly paid plumbers whose success is dependent on their ability to make connections and who spend their careers knee-deep in other peoples' shit.

In fact, however, most corporate lawyers engage in a far more complex and rewarding relationship with their work than Kahlenberg can even imagine. The most effective corporate lawyers do not confuse their identities with those of their corporate clients. They do not spend every waking hour conjuring ways to "[make] the world safe for Morgan Guaranty." Rather, the best corporate lawyers are polymorphic operators deploying a wide range of intellectual and social skills, coordinating complex movements of people and materials, and ministering to the emotional needs of their clients. Most corporate lawyers are not dissatisfied with their work, and most of them—properly—regard that work as socially valuable.

A. Kahlenberg's Story

Kahlenberg asks "how is it that so many students can enter law school determined to use law to promote liberal ideals and leave three years later to counsel the least socially progressive elements of our society?" He quickly

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great number of highly professional attorneys who take a less expansive, more reflective view of lawyering—and who nonetheless manage to accomplish much of value. The breed of lawyers, however, for whom I have little regard treat their practice as nothing more than reacting to external stimuli; ask me a specific question and I'll give you an even more specific answer . . . .

JAMES C. FREUND, LAWYERING: A REALISTIC APPROACH TO LEGAL PRACTICE 3 (1979).

22 See, e.g., Derek Bok, A Flawed System of Law Practice and Training, 33 J.L. EDUC. 570, 573 (1983) ("Far too many . . . individuals are becoming lawyers at a time when the country cries out for more talented business executives, more enlightened public servants, more inventive engineers, more able high school principals and teachers.").

23 See, e.g., ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 249 (1988) (reporting results of a study that suggests that corporate lawyers, by and large, are more "liberal" than the clients they represent).

24 BROKEN CONTRACT, supra note 1, at 201.

25 See infra note 91. In a poll sponsored by the National Law Journal in May of 1990, 79% of the respondents reported they were satisfied with their careers as lawyers. Margaret C. Fisk, Lawyers Give Thumbs Up, NAT'L L.J., May 28, 1990, at S2. In an informal "quality of life" poll conducted among Virginia lawyers in 1992, 68% of the respondents reported they were "totally" or "reasonably" satisfied with their careers. Donna Chilress, Fax Poll: Two-Thirds of Lawyers Satisfied, 6 VA. LAW. Wkly. 1061, 1061 (1992).

26 See, e.g., BROKEN CONTRACT, supra note 1, at 41 (reporting a study in which "sixty-seven percent of [Harvard Law graduates] believed they were contributing to the public good").

27 Id. at 5. For a thoughtful approach to answering this question, see ROBERT GRAN-
rejects the notion that social idealism is nothing more than a phase through which most college students pass on their way to a more opportunistic view of the world.\textsuperscript{28} He also discounts explanations based solely on economics, observing—as if it were an adequate response—that Harvard (unlike most law schools) has a loan forgiveness program for graduates entering public interest practice.\textsuperscript{29} In the end, Kahlenberg concludes that “the most important reasons that liberal law students [go] into corporate law [are] power, prestige, and convention.”\textsuperscript{30}

Unfortunately, Kahlenberg minimizes other common reasons law students reject an exclusively public service practice, even though he admits they were important considerations in his own career choice. For example, Kahlenberg quit Harvard’s Legal Aid Bureau before even starting because “[h]e wasn’t very good at the public speaking which litigation requires. Nor did [he] enjoy it. In addition, [he] had come to realize that poverty law was essentially social work and, as such, couldn’t change the world . . . .”\textsuperscript{31} He also rejected a career as a prosecutor because, rather than addressing underlying social ills, he “could only try one case at a time.”\textsuperscript{32}

More importantly, Kahlenberg found that he lacked the “level of professional dedication” required of a full-time public interest lawyer.\textsuperscript{33} “[D]oing anonymous legal-services work in the ghetto while swimming in debt”\textsuperscript{34} did not appeal to him, nor did the prospect of working for Ralph Nader at $18,000 a year.\textsuperscript{35} In addition, “public interest jobs just didn’t distinguish you the way the high-salaried firms did.”\textsuperscript{36} Indeed, Kahlenberg’s choices

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\textsuperscript{28} Broken Contract, supra note 1, at 6.
\textsuperscript{29} Id.
\textsuperscript{30} Id. at 7. This conclusion is not original. See Chris Goodrich, Anarchy and Elegance: Confessions of a Journalist at Yale Law School 232 (1991) (recognizing that most law students choose private practice for its “high pay, considerable prestige, and great expectations”). By disparaging the motivations of young lawyers who select private practice, Kahlenberg seems to imply that “power, prestige, and convention” play no role in a public interest job search. He later acknowledges, however, that, “even in the egalitarian world of public-interest law, there [are] widely acknowledged pecking orders.” Broken Contract, supra note 1, at 37. Kahlenberg, himself, accepted a summer job in the Manhattan U.S. Attorney’s office after he was advised that it was a “resume builder.” Id.
\textsuperscript{31} Broken Contract, supra note 1, at 73-74.
\textsuperscript{32} Id. at 68.
\textsuperscript{33} Id. at 74.
\textsuperscript{34} Id. at 233.
\textsuperscript{35} Id. at 101.
\textsuperscript{36} Id. at 4.
were limited, especially considering his stated unwillingness to put in long hours\textsuperscript{37} coupled with his desire to own waterfront property.\textsuperscript{38}

In his third year, Kahlenberg mercifully recognized what is quickly obvious to his readers: he should not have gone to law school. "[M]ore interested in policy than law,"\textsuperscript{39} Kahlenberg should probably have attended the Kennedy School of Government with his wife or sought meaningful work instead. In any event, Kahlenberg's decision to skip the bar exam to finish his book, pillorying his classmates who had more carefully chosen their graduate education, now seems largely gratuitous. It is, at the very least, evidence of his immaturity.

When Kahlenberg is fifty, this book will probably embarrass him, not because it is poorly written—it is, in fact, quite lively\textsuperscript{40}—but because it will so painfully remind him of a time in his life when everything seemed so simple, and everyone wore only one hat, black or white.\textsuperscript{41}

B. Lederman's Story

Lederman's book, unlike Kahlenberg's, does not claim to carry the weight of a thesis. Instead, Lederman merely traces his professional development from law school at New York University through his successful years at Wachtell, Lipton.\textsuperscript{42}

Following a clerkship with California Chief Justice Roger Traynor, Lederman joined Cravath, Swaine & Moore in November 1967. The product of a middle-class background, an admitted "stranger to corporate America,"\textsuperscript{43} Lederman nevertheless joined Cravath's well-manicured corporate department. Upon his arrival, he was assigned first to senior partner Frank Ran-
dolph and then, after two years, to another partner, William Marshall. Lederman learned important lessons from both men. 44

Ultimately satisfied that he could handle corporate transactions on his own—and perhaps convinced that partnership was unlikely—Lederman left Cravath in 1975 for upstart, and then unchic, Wachtell, Lipton. His career at the firm began with conventional buy-and-sell transactions, but Lederman quickly progressed to the heart of the emerging takeover market. In the early years, Lederman represented raiders as well as targets. Eventually, however, he found himself primarily acting on the defense side of the takeover equation.

Given the choice, Lederman says, he would have preferred representing raiders, 45 whom he regards as "creative people pursuing personal visions." 46 However, Marty Lipton increasingly marketed his firm as a defense boutique, and Lederman came to recognize a less attractive side of the raider mentality:

[T]he game aspect of the raider’s side sometimes elevated keeping score and beating your opponent above thinking about what the fighting was over. Among corporate executives making or contemplating their first hostile acquisition there was often a locker-room mentality. I found that all the mystery and excitement of sex, of breaking down resistance, of scoring and conquest, were associated with a takeover. Manliness was at stake, and measured. 47

He also came to empathize with the very real pain of his management clients: "I have never seen so many businessmen touch each other as in the

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44 Exposed to two quite different personalities, Lederman quickly discovered that style didn’t always equate with success.

[Randolph], in mid-life, was everything a Cravath partner shouldn’t be. He was undisciplined, eccentric, and often bored with what he was doing. Recently divorced and courting the woman who would become his wife, he was unavailable for evening work. Moreover, after his father’s demise he was unquestionably rich and, by Cravath standards, a playboy.

Id. at 22-23. Marshall, on the other hand, was Randolph’s “polar opposite: . . . the most disciplined, careful, precise, and hardworking lawyer in the firm.” Id. at 34. “He was an indefatigable worker, and worked as late as he had to, often without eating, to get the work done. He would regularly stay at the office until two or three in the morning . . . . Many days he would work around the clock . . . .” Id. at 41. Marshall was also uncompromising and often tyrannical. At times, these qualities prevented Marshall from serving as an effective advocate for his clients. See id. at 44-45.

45 Id. at 108.

46 Id. at 78. One critic of takeovers takes a somewhat different view. See JEFF MADRICK, TAKING AMERICA: HOW WE GOT FROM THE FIRST HOSTILE TAKEOVER TO MEGAMERGERS, CORPORATE RAIDING AND SCANDAL 4 (1987) (“Most of those who drove mergers in the 1970s and 1980s were money men. They were rarely dreamers, or builders, or even men who could run a business. They were men who wanted, and knew how to make, money.”).

47 TOMBSTONES, supra note 11, at 109.
beginning of a tender offer, radiating warmth, camaraderie, and reassurance. Taboos about expressing feelings were set aside, overcome by the threat of loss of position, the imminent collapse of an ordered world."48

Ultimately, Lederman became a skilled defense tactician, structuring successful management buyouts, developing unorthodox recapitalization techniques, and perfecting, as a last resort, the auction process in which incumbent managers sold their companies to the highest bidder. He also logged pro bono time, serving as special counsel to Phoenix House, a New York City drug rehabilitation project.49

While at Wachtell, Lipton, Lederman came to appreciate the intimacy of a small, cohesive practice group. Describing the relationship much as one might describe a successful marriage, Lederman recalls that the "members of the firm trusted each other's judgment in all working matters" and used an abbreviated language, "a shorthand that was almost a code."50 However, Lederman also encountered betrayal in this familial setting. When Ilan Reich, a young partner Lederman had befriended, was caught in an insider trading scheme with investment banker Dennis Levine,51 Lederman was devastated.52 Thereafter, Lederman often considered whether Wachtell, Lipton's emphasis on wealth and success had hastened Reich's—and others'—moral derailment.53

In the end, Lederman left Wachtell, Lipton, apparently because his partners disapproved of the disclosures in this book.54 There is little in his book, however, to find objectionable. Although Lederman's writing is uneven—some chapters are fluid and filled with human energy while others read like factual summaries in a legal brief—overall the book is both engaging and instructive. Lederman clearly found meaning and satisfaction in his decades of corporate practice. He hardly considers himself just a "drone[] to wealthy clients,"55 driven by ambition and greed.

II. TWO WRITERS' PERCEPTIONS OF A LIFE IN CORPORATE LAW

Kahlenberg and Lederman understandably take very different views of the practice of law, both as they describe representative clients and as they describe representative lawyers. The differences are more than generational. For example, Kahlenberg portrays corporate clients as faceless banks and drug companies. Lederman, by contrast, savors the complexities of the

48 Id. at 124.
49 Id. at 156-66.
50 Id. at 249.
51 DENNIS B. LEVINE, INSIDE OUT: AN INSIDER'S ACCOUNT OF WALL STREET (1991) (recounting the role of Ilan Reich as one source of Levine's inside information).
52 TOMBSTONES, supra note 11, at 245.
53 Id. at 249.
55 BROKEN CONTRACT, supra note 1, at 44.
human beings who are his real clients. Consider these portraits of two of Lederman's favorites:

[Thomas Mellon Evans, CEO of H.K. Porter] was restless and mercurial, often scowling, engaged in projects that made him too busy on some days to get a haircut, and willing to eat sawdust-tasting sandwiches on his plane in order to pack two days of work into one.\textsuperscript{56}

Bill Stokley III [CEO of Stokley-Van Camp] was short and compact, built to last. . . . [In researching ways to sell the company's Gatorade product, he] became knowledgeable about dieting and exercise trends. . . . Being sensitive to youthful aspirations, he shared them, which dispelled the stodginess that often seems to come with middle age and running a large business.\textsuperscript{57}

More interesting, perhaps, than their differing perceptions of corporate clients are the two writers' very different perceptions of corporate lawyers. Listen as Kahlenberg describes his job interview with a Skadden, Arps partner, one of the many "Neanderthal corporate slaves"\textsuperscript{58} he encountered during his job-seeking marathon:

His pep talk was all about "can-do," "hustle," "doing deals," and legal "entrepreneurship." He bragged that Skadden was the first American firm in Tokyo and that his work enabled him to travel at least two days a week. He said the leisurely three-hour lunch would be the downfall of the old-line firms and generally reveled in the crazy, unpredictable hours, trying to turn what might, to the untutored ear, be a fatal drawback into a convincing reason to practice at Skadden. I feigned interest, even though part of what I wanted from a law firm was a relaxed, genteel, pipe-smoking atmosphere. If you were going to be a rich lawyer, you wanted to have more dignity than a traveling salesman.\textsuperscript{59}

In contrast, consider Lederman's description of the way Frank Randolph, his first mentor at Cravath, approached the documentation of a complex corporate deal and shared his strategic thinking with Lederman, then an impressionable young associate:

Frank was clever in handling the documentation. All lawyers are eager to prepare the papers, but Frank would usually let the other side do the first draft, which freed him to work on more than one or two deals at a time. That reversed the conventional wisdom that it's better to be the draftsman, for it is often thought that the hand that wields the pen controls the nuances of the transaction. Frank would comment, counterpunch as it were, telling me that you have to learn how to read closely as well as write closely.

\textsuperscript{56} \textit{Tombsones}, \textit{supra} note 11, at 77.

\textsuperscript{57} \textit{Id.} at 189.

\textsuperscript{58} \textit{Broken Contract}, \textit{supra} note 1, at 101.

\textsuperscript{59} \textit{Id.} at 105.
There were two elements to look for in any draft: one was its accuracy in reflecting the deal, and the other, its omissions. The difficult part was to find what had been left out. Frank would start with "what if" and then go through the structure of the draft and see how it worked. For example, he would ask if United Fruit [Cravath's client] had to sell its subsidiary under [a sales] contract with RCA if it didn't get satisfactory regulatory approval. It might be possible to have to pay damages for failing to sell even though United Fruit wasn't permitted legally to sell. That would not be a happy result. The process of asking questions was like playing pinball. He'd run the ball through the maze and see what lit up and what didn't. He would spin ten or fifteen balls through with me, and the agreement would start to take on shape, then three dimensions and life. When its inadequacies showed, he asked the inevitable question: Could we layer on another level of complexity to account for the omissions? Of course.  

Kahlenberg might regard this passage as supportive of his claim that a corporate law practice is "intellectually challenging, but in the same way as a crossword puzzle, with no greater social importance." If so, he would confuse metaphor with meaning. As Lederman recognizes, deal making involves far more than mere gamesmanship. Most corporate transactions have important and foreseeable human consequences.

Frank Randolph knew, for example, that United Fruit had to sell its telecommunications subsidiary before the company's licenses to operate expired. Because of the intense governmental hostility toward United Fruit at the time, without the sale, the licenses would likely not have been renewed and the operation would have been closed down. Hundreds of jobs would be lost.

Years later, in another transaction, both Lederman and his clients understood that launching a management buyout bid for Stokley-Van Camp presented risks for its CEO. Once Bill Stokley, whose great-grandmother had founded the business in 1898, offered $55 per share, outside counterbidders could buy the company simply by besting his offer. In fact, Quaker Oats eventually bought the company at $77 per share, extinguishing Stokley's birthright. Unlike problems posed in law school, neither of these transactions was a hypothetical exercise. Indeed, both transactions involved the classic dramatic values—hubris, tension, and resolution.

Kahlenberg is also mistaken when he assumes a corporate legal practice deals exclusively with "the battle between (mostly) rich stockholders and rich managers." The practice of corporate law impacts every corporate

60 Tombstones, supra note 11, at 28.
61 Broken Contract, supra note 1, at 220.
62 Tombstones, supra note 11, at 24.
63 Id. at 201.
64 Broken Contract, supra note 1, at 130. Many shareholders are by no means
constituency. Moreover, law firms often have a direct impact on people who have no relationship with the firms’ corporate clients, not only through the pro bono efforts of their litigation departments but also through the efforts of their transactional lawyers. Many corporate transactions produce unexpected social benefits. Lederman recounts, for example, one unintended consequence of his 1985 recapitalization of Multimedia, Inc., in which a $350 million disbursement to Multimedia shareholders generated the funding for the establishment of a fine arts center in Greenville, South Carolina, by a group of the founder’s heirs.

Although Multimedia involved an extraordinary transaction, every time corporate lawyers complete even the simplest deal, people's lives may be affected. Taking a company public, for example, may generate new jobs and products. Corporate mergers may also result in new jobs. Establishing a pension plan enhances workers’ retirements while indirectly accomplishing other corporate goals. Even selling moribund operating units may infuse them with new life and energy.

Clearly, however, not every corporate deal has such positive or even rich. In fact, one in four adult Americans now own equity securities, either directly or through a mutual fund. N.Y.S.E. FACT BOOK 71 (1991). Of these owners, 15% have an annual household income of $25,000 or less. Id. at 72.

See, e.g., ANTHONY LEWIS, GIDEON'S TRUMPET (1966) (recounting Abe Fortas's representation of Clarence Earl Gideon that culminated in the Supreme Court's reversal of a long-standing precedent concerning an indigent's right to counsel in criminal cases); GERALD M. STERN, THE BUFFALO MINE CREEK DISASTER (1976) (describing the effort by a team of lawyers at Arnold & Porter to help survivors of a ruinous flood to recover $13.5 million in damages from the mining company that had caused the flood).

See Daniel Wise, New York Lawyers for Public Interest: 15 Years of Obtaining Counsel, N.Y. L.J., Nov. 1, 1991, at 1 (describing the pro bono activities of several law firm corporate departments, including counseling non-profit organizations on corporate, tax, real estate, and, occasionally, bankruptcy issues). "One new initiative on the non-litigation side has been to link three firms—Paul, Weiss, Rifkind, Wharton & Garrison; Cleary, Gottlieb, Steen & Hamilton; and Weil Gotshal & Manges—with parent groups in East Harlem, the Bronx and Williamsburg seeking to better conditions in their children's schools." Id.


See, e.g., GEORGE ANDERS, MERCHANTS OF DEBT 175 (1992) (describing the success of Duracell after Kraft sold the company: "Duracell's sales soared; its market share climbed; it was a success story by any yardstick.").
benign social consequences. Corporate mergers, acquisitions, and buyouts may also eliminate jobs and even destroy companies. What Kahlenberg and others misunderstand, however, is that in the end it is clients, not their lawyers, who create the deals and it is clients, not their lawyers, who alone are accountable for the consequences. This lesson, equally applicable to deals that fail as it is to deals that succeed, is illustrated by Lederman's account of his efforts to negotiate the sale to IBM of a corporate client, Neotec, a small, high-tech start-up firm. Although IBM's infusion of cash was essential to Neotec's survival and the negotiations had been successfully concluded, IBM aborted the deal at the eleventh hour. IBM's lawyer—a corner-office partner at Cravath—was mortified. Only after this experience could Lederman fully appreciate "that no matter how powerful a lawyer may be, he cannot commit to deliver his client. The lawyer advises and the client decides."  

Finally, like many writers before him, Kahlenberg focuses on lawyerly greed. Throughout history, critics have often castigated lawyers for their desire and ability to make money from the woes of others. In recent years, fictional best-sellers have frequently turned on the characterization of lawyers as money-crazed yuppies. Apparently, readers enjoy seeing lawyers

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72 See, e.g., Anthony F. Buono & James L. Bowditch, The Human Side of Mergers and Acquisitions 3-6, 12 (1989) (estimating that 10% of the American workforce was affected in some way by the mergers and acquisitions activity of the 1980s: tens of thousands of employees lost their jobs, and even those who did not lose their jobs experienced increased stress, anxiety, and resentment); Dwight Harshbarger, Mergers, Acquisitions, and the Reformatting of American Business, in The Human Side of Corporate Competitiveness 108 (Daniel Fishman & Cary Cherniss eds., 1990) ("Following acquisitions during the period from 1981 to 1986, 500,000 executives lost jobs they had held for more than three years. 30% of them were still unemployed two years later. Among blue-collar workers approximately 34% were unemployed two years after the acquisition.").

73 Tombstones, supra note 11, at 71.

74 Lawyers are plants that will grow in any soil that is cultivated by the hands of others, and when once they have taken root they will extinguish every vegetable that grows around them. The most ignorant, the most bungling member of that profession will, if placed in the most obscure part of the country, promote litigiousness and amass more wealth than the most opulent farmer with all his toil . . . . What a pity that our forefathers, who happily extinguished so many fatal customs and expunged from their new government so many errors and abuses both religious and civil, did not prevent the introduction of a set of men so dangerous.


75 See, e.g., John Grisham, The Firm 9 (Dell Paperback 1991) (describing how a promising young law school graduate—Harvard, of course—is unwittingly lured into the Mafia simply because its "front," an attractive Memphis law firm, offers "[a] base salary of eighty thousand the first year, plus bonuses. Eighty-five the second year, plus bonuses. A low-interest mortgage so you can buy a home. Two country club memberships. And a new BMW. You pick the color, of course.' ")
portrayed as avaricious cynics. The public does not buy and seldom reads serious chronicles like Lederman’s, or those of James Stewart or Steven Brill—men who write with obvious affection for the honorable, yet fallible, people who practice corporate law.

Unlike Kahlenberg, these men focus on the reality, rather than the mythology, of private practice. Writing as cultural historians, as well as journalists, they explore the increasingly complex challenges faced by the legal profession rather than fixating on some undergraduate notion of how lawyers might better behave in a market-free, stress-free world.

III. Private Practice in a Market-Driven, Stress-Laden World

It is unfortunate that Rick Kahlenberg chose the late 1980s to take his peek into the legal profession because during this period some lawyers, like many other professionals, often found themselves sacrificing both decorum and professional ethics in their quest for increased wealth. Not surprisingly, complaints of professional misconduct increased during this period as did the number of disputes over fees. Most lawyers, however, struggled

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76 Currently enjoying enormous success, The Firm offers a remarkably dark depiction of the legal profession: “When you were in law school you had some noble idea of what a lawyer should be. A champion of individual rights, a defender of the Constitution; a guardian of the oppressed; an advocate for your client’s principles. Then after you practice for six months you realize we’re nothing but hired guns. Mouthpieces for sale to the highest bidder, available to anybody, any crook, any sleazebag with enough money to pay our outrageous fees. Nothing shocks you. It’s supposed to be an honorable profession, but you’ll meet so many crooked lawyers you’ll want to quit and find an honest job. Yeah, Mitch, you’ll get cynical. And it’s sad, really.” Id. at 68-69.

77 JAMES B. STEWART, THE PARTNERS—INSIDE AMERICA’S MOST POWERFUL LAW FIRMS (1983) (chronicling the role of lawyers in high-profile lawsuits and other major matters occurring in 1980, including the Chrysler bail out, Genentech’s initial public offering, and the resolution of claims by Iran against American banks, which was a condition precedent for the release of American hostages).

78 STEVEN BRILL, TRIAL BY JURY (1989) (reprinting the best stories and profiles from The American Lawyer for the period 1983 to 1988).


to reposition themselves during the 1980s—trying to compete in a contracting marketplace while continuing to uphold the ethical traditions of their profession. They did so, for the most part, by working harder than ever.\textsuperscript{82}

Today, as a consequence, many lawyers find themselves stretched to their emotional limits. Associates complain of inhumane working conditions;\textsuperscript{83} partners lament a decline in civility.\textsuperscript{84} Recent graduates often regret their career choice\textsuperscript{85} and many more experienced lawyers are fleeing the profession altogether.\textsuperscript{86} Reflecting a widespread sense of malaise among lawyers, a recent Johns Hopkins study showed lawyers topping the list of professionals most likely to suffer from depression.\textsuperscript{87}

The fact is, the private practice of law has become as grueling a business as electoral politics—not, as Kahlenberg believes, because it is morally suspect, but because it has become economically inefficient. In a 1990 survey of members of the American Bar Association, about half of the lawyers in private practice said they no longer have enough time for themselves or their families.\textsuperscript{88} Nearly three-quarters said they regularly felt exhausted and "worn out" by the end of the workday.\textsuperscript{89}

The human cost of this transformation has been substantial:

\begin{itemize}
\item \textsuperscript{83} See \textit{At the Breaking Point: A National Conference on the Emerging Crisis in the Quality of Lawyers’ Health and Lives—Its Impact on Law Firms and Client Services, 1991 A.B.A. Young Law. Division 1} (reporting a survey that demonstrates the negative effect that the deteriorating work environment has on associates’ mental and physical well-being).
\item \textsuperscript{85} See Alex M. Johnson, Jr., \textit{Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice}, 64 S. Cal. L. Rev. 1231, 1231 (1991) (discussing the disillusioning difference between law school and legal practice and observing that former law students who return to their law schools and chat with professors “would rather discuss the prospect of leaving their large firms for academia or smaller firms than discuss the current students they are trying to recruit”).
\item \textsuperscript{86} See generally Deborah L. Arron, \textit{Running from the Law: Why Good Lawyers Are Getting out of the Legal Profession} (2d ed. 1991) (featuring interviews with attorneys who have quit practicing law and offering career tips for lawyers seeking to leave the legal profession).
\item \textsuperscript{87} William W. Eaton et al., \textit{Occupations and the Prevalence of Major Depressive Disorder}, 32 J. Occupational Med. 1079, 1081 (1990) (finding that lawyers “have decidedly higher levels of depression than the 3% to 5% found . . . among the general population”).
\item \textsuperscript{88} \textit{The State of the Legal Profession}, supra note 82, at 17.
\item \textsuperscript{89} \textit{Id.} at 24.
\end{itemize}
A 1990 survey of New Jersey lawyers revealed that 23 percent [of respondents] plan to leave the practice before they retire; in Maryland, nearly one-third of lawyers surveyed by the state bar association in 1988 said they were not sure whether they wanted to continue practicing law; and 23 percent of North Carolina lawyers responding to a 1990 survey told their bar association they would not become attorneys again.90

In short, although private practice retains many attractive features,91 it has become an increasingly punishing way to make a living. It is understandable that a student like Rick Kahlenberg chose not to pursue this career path; what is less forgivable is that he has no compassion for those who, for motives as legitimate as his, chose otherwise.

CONCLUSION

Rick Kahlenberg has a keen sense for other peoples' weaknesses; unfortunately, however, he is less insightful into his own. He is utterly oblivious to the irony of a career choice that regards backroom politics for an ambitious first-term Senator as morally superior to any work that a well-trained corporate lawyer might perform.

Kahlenberg's narrow vision of the practice of law is what one might expect from a person with his limited perspective. Lawrence Lederman once shared a similar view when, during his first day at Cravath, he worried that "everything at the firm seemed more routine and less challenging than [he] thought it would be."92 Lederman now recognizes the error of his early judgment: "I should have understood that the reality of the institution is

90 Nancy D. Holt, Are Longer Hours Here To Stay? Quality Time Losing Out, A.B.A. J., Feb. 1993, at 62, 62. It should be noted, however, that escapist attitudes are not unique to lawyers. See, e.g., Working Conditions: Survey of Texas Teachers Shows Higher Level of Dissatisfaction, 28 Gov't Empl. Rel. Rep. (BNA) No. 1366, at 679 (May 28, 1990) (discussing a survey of teachers in Texas showing that 45.1% are considering leaving the profession); Ethan Bronner, Survey Finds Lawyers Are Generally Happy with Their Careers, BOSTON GLOBE, May 21, 1990, at 3 (presenting results of recent poll indicating that 40% of surveyed physicians would probably or definitely not enter medical school if they had to do it all over again); Amy Goldstein, Veteran Teachers Give Rookies Lesson in Reality, WASH. POST, Nov. 13, 1990, at B1 ("Nationally, half of all new teachers quit within five years."). In addition, although some observers have predicted that "so many lawyers [are] disgruntled that a mass exodus from the profession [is] imminent," only nine percent of the attorneys participating in a recent survey indicated a clear intent to leave the profession. Fisk, supra note 25, at 52.

91 In the 1990 ABA survey, 91% of the respondents agreed with the statement that "I am respected and treated as a colleague by my superiors," 90% agreed that "the intellectual challenge of my work is great;" 88% agreed that their work atmosphere was "warm and personal;" 82% that "the opportunity for professional development is very good;" 74% that "I have considerable control over the selection of cases/matters that I handle;" and 72% that "political intrigue and backbiting is almost nonexistent" in the law firm setting. The State of the Legal Profession, supra note 82, at 17-20.

92 TOMBSTONES, supra note 11, at 21.
often not the image that it projects for itself and that it couldn't be understood in a short time.\textsuperscript{93} That lesson applies to firms like Cravath even today.

A corporate law practice is seldom the contentious battleground, the cathedral of greed, or even the paperwork wasteland it often appears to be to the uninitiated. It is hardly, as Kahlenberg suggests, the evil empire. Instead, corporate practice is an evolving, and very human, phenomenon.

Just as Lawrence Lederman no longer defends against many hostile takeovers these days, corporate law firms no longer dominate docile clients, suppress inter-firm competition for rainmakers, or attempt to influence judges the way they did just a few years ago. Instead, firms are struggling to find ways to make their lawyers' lives more liveable while still serving the needs of equally stressed clients in a complex, electronically interconnected, global marketplace. These efforts deserve some credit, especially from self-styled liberals.

Today's corporate lawyers need thoughtful discussion about integrating personal and professional obligations into their everyday practice. They don't need more sermons from sanctimonious bystanders about the moral depravity of their profession.

\textsuperscript{93} Id.