

Lawyers and Leadership* Deborah L. Rhode Deborah L. Rhode is the Director, Center on the Legal Profession, E.W. McFarland Professor of Law, Stanford University.

Most lawyers come to the subject of leadership with well-founded skepticism. On first glance, the field seems a backwater of vacuous rhetoric and slick marketing. Retired CEOs peddle complacent memoirs, and consultants churn out endless variations of “management by fad.”¹ “Leadership lite” includes classics such as *If Aristotle Ran General Motors*, and *Leadership Secrets* from sources as varied as Attila the Hun, *The Toys You Loved as a Child*, and *Star Trek*.² Why should lawyers squander time on that? An equally interesting and possibly more important question is why we generally don’t. Why don’t we address the topic of leadership and in a more serious way than pop publications provide? After all, no other occupation accounts for such a large proportion of leaders. The legal profession has supplied a majority of American presidents, and in recent decades, almost half of Congress, and 10 percent of S&P 500 companies’ CEOs.³ Lawyers occupy leadership roles as governors, state legislators, judges, prosecutors, general counsel, law firm managing partners, and heads of government and nonprofit organizations. In advising influential clients, or chairing community and charitable boards, lawyers are also “leaders of leaders.”⁴ Even members of the bar who do not land in top positions frequently play leadership roles in teams, committees, campaigns, and other group efforts. Moreover, many of the decision making, organizational, interpersonal, and ethical skills that are critical for leadership positions are important for professionals at all levels. Yet most lawyers never receive formal education in such leadership skills. Nor do they generally perceive that to be a problem, which is itself problematic, particularly considering the leadership deficit facing our profession and our world.

I. The Importance of Leaders and Leadership Development

The Leadership Deficit Today’s leaders face challenges of unprecedented scale and complexity. In representing clients, shaping public policy, and leading corporate, government, and non-profit organizations, lawyers confront society’s most urgent unsolved issues. On many of these issues, effective leadership is lacking. Corporate governance, environmental protection, human rights, national security, civil liberties, and entrenched poverty all demand leaders with broad skills and deep ethical commitments. So too, lawyers who head law firms, bar associations, and other legal organizations must cope with increased pressure, including intense competition and growing needs for legal assistance among those who cannot afford it. Public confidence in many of these leaders is distressingly low. For example, only about a fifth of Americans have a great deal of confidence in the integrity of lawyers; only 11 percent have “a great deal of confidence . . . in people in charge of running law firms” and almost a third have “hardly any.”⁵ Trust in business leaders is at its lowest ebb since polls started measuring it a half century ago, and they are now the least trusted group in American society.⁶ Less than a quarter of surveyed Americans trust the government in Washington “almost always” or even “most of the time,” one of the lowest measures in the last fifty years.⁷

The Educational Deficit At the heart of the problem are issues of ethics, which makes this topic of special relevance for teachers of ethics. Our profession’s need for leaders with inspiring visions and values has never been greater. Yet our current educational system does little to produce them. Law schools and continuing legal education programs have lagged behind other institutions in developing leadership skills. The recent recession has caused cutbacks in most of the few law firms that offer such training. By

contrast, corporate spending on leadership development totals forty-five-billion dollars annually and at least seven hundred academic institutions have leadership programs, largely at the undergraduate level.⁹ As Gregory Williams noted while president of the Association of American Law Schools, schools are happy to take credit for launching the careers of their prominent graduates, but have “not generally focused attention on fostering leadership . . . curricula.”¹⁰ Lawyers’ leadership responsibilities are a dominant theme in extracurricular programs, commencement speeches, and alumni awards, but the topic is missing in action in day-to-day teaching. Ironically, of the mission statements available on law school websites, 38 include fostering leadership, but only two of these schools are actually offering a leadership course.¹¹ Explanations for this neglect mirror those traditionally given for the marginalization of professional ethics. Legal education’s still inadequate treatment of the moral dimensions of professional life parallels and reinforces its devaluation of leadership development. Many of the urgent challenges facing lawyers as leaders involve ethical concerns that law schools have not effectively addressed elsewhere in the curricula. Let me begin by reviewing some of the shared obstacles to education in both leadership and professional responsibility, and conclude with some promising responses.

II. Education in Ethics and Education in Leadership : Obstacles and Overlap

Legal Ethics in Legal Education

Ethics in legal education was traditionally notable for its absence. Most faculty treated the subject as “beneath our notice or . . . [beyond] our capacities.”¹² Early courses amounted to little more than “platitudinous exhortation;” “general piffle” was the general assessment.¹³ The prevailing assumption was that the “right kind of law student already knows what constitutes moral and ethical conduct and . . . a formal course in Legal Ethics will not supply the proper sort of character training for students who are not the right kind.”¹⁴ American bar examiners took a similar view. Questions were infrequent and typically invited undemanding reflection on topics like “what the [state’s] Code of Professional Responsibility mean[s] to me.” It is not clear anyone read the answers.¹⁵ Over the last several decades, much has changed but too much has remained the same. In the United States, law schools must offer instruction in the legal profession and its responsibilities as a condition of accreditation, and state bars generally include a separate examination on the rules of professional conduct.¹⁶ In other countries, the subject is often relegated to post-graduate practical training, and is still fighting for an academic toehold.¹⁷ But even where legal ethics is required, it generally remains at the curricular periphery, confined to a single required course and discounted by many as “mushy pap.”¹⁸ Some of these courses offer little more than preparation for the law of lawyering on the bar exam; they are, in effect, legal ethics without the ethics. Like most research in the field, a recent influential report by the Carnegie Foundation indicted legal education for its inadequate attention to the moral dimensions of professional life.¹⁹ Although ethical questions arise in every substantive area of law, faculty tend to treat professional responsibility as someone else’s responsibility. Many remain skeptical about the mission. Federal judge and law professor Richard Posner put still common views with uncommon candor: “as for the task of instilling ethics in law students . . . I can think of few things more futile than teaching people to be good.”²⁰ I doubt that many of us in the field see that as our mission, or labor under the illusion that we could do much to advance it. Rather, our goals are more modest and have been defended with sufficient regularity that they don’t need extensive treatment here. One is to build students’ understanding of the rules of conduct before they are at risk of inadvertently violating one. A second is to encourage future leaders of the profession to consider where the lines should be and whether bar governance structures effectively serve the public’s interest. It makes sense to address

those issues in law school before individuals have a vested interest in coming out one way or another. From that perspective, the task of ethics education looks far less hopeless. Most research suggests that significant changes occur during early adulthood in people's strategies for dealing with moral issues, and that well-designed curricula can assist the developmental process.²¹ Leadership Education Similar points are applicable to leadership education. Although most academic institutions consider preparing leaders as central to their mission, the creation of leadership curricula and texts has lagged behind.²² The traditional assumption has been, as management expert Peter Drucker once famously put it, that "leadership cannot be taught or learned."²³ Yet contemporary research is to the contrary, and Drucker ultimately revised his view.²⁴ Studies of twins suggest that about 70 percent of leadership skills are acquired, not genetically based, and decades of experience with leadership development indicates that its major capabilities can be learned.²⁵ Indeed, as a prominent expert notes, "it would be strange if leadership were the one skill that could not be enhanced through understanding and practice."²⁶ It is, of course, true that for thousands of years, leaders have developed without formal education in the qualities that made them effective. But informal methods of learning have been common, and many leaders have learned from history, Lawyers and Leadership (Continued from page 1) Published in The Professional Lawyer, Volume 20, Number 3. © 2010 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. example, and experts in related fields. Martin Luther King, Jr. studied communication and nonviolent techniques of conflict resolution.²⁷ John F. Kennedy worked hard on developing the personal magnetism he observed among Hollywood actors.²⁸ Barack Obama looked for guidance in historical accounts of Franklin Roosevelt's first 100 days as president.²⁹ Yet for many lawyers, informal education often falls short. Large law firms, in-house counsel offices, government agencies, and public interest organizations are run by individuals who generally have had no management training, and whose skills as lawyers do not necessarily meet the demands of leadership. As one managing partner summed it up: "the historical model for law firms is to put [people] in a leadership position . . . often not because of leadership skills but because of [rainmaking] . . . and hope they don't drive into a ditch."³⁰ This inattention to leadership development raises particular concern in light of a recent statistical study finding that the most powerful predictor of large firm profitability is "the quality of partners' leadership skills."³¹ Similar points apply to leaders in the nonprofit sector. In my recent survey of the nation's most prominent public interest organizations, one director put it rhetorically: "Why didn't I go to business school."³² In fact, that would not necessarily have solved his problem. Harvard Professors Nitin Nohria and Rakesh Khurana note that despite significant improvements over the last decade, the subject still "is at the periphery rather than the center of most [business] schools that profess to educate the leaders of the future."³³ Attention to ethical issues in leadership is in particularly short supply. In surveys by the Aspen Institute, graduates of MBA programs report that confidence in their ability to manage value conflicts actually falls during their time as students.³⁴ Only about two fifths of surveyed students believed that business schools were doing enough to enable them to address such ethical issues.³⁵ Law schools cannot afford to replicate this neglect, yet most give leadership even less attention. Society, as well as the profession, has a large stake in addressing that oversight. As Robert Gordon has noted, in any democracy, the legal profession plays pivotal roles both in amplifying and constraining authority.³⁶ In the public sector, lawyers shape

and enforce law. In the private sector, they orchestrate responses to law through compliance, evasion, resistance, and reform. Moreover, because law is to large extent a self-regulating occupation, its leaders have special responsibility to act for the public, not just the profession, when its own governance is at issue. If, as experts have long argued, the organized bar has not always lived up to that responsibility, then legal education is part of both the problem and the solution.

III. Learning Leadership Defining Leadership

How then can we teach lawyers to lead? A threshold question is what we mean by leadership, and what core competencies are central to its exercise. This issue has generated a cottage industry of commentary, and by some researchers' accounts, over 1,500 definitions and forty distinctive theories.³⁷ Although popular usage sometime equates leadership with power or position, most experts draw a distinction. They view leadership in terms of traits, processes, skills, and relationships. John Gardner, founder of Common Cause, famously noted that heads of public and private organizations often mistakenly assume that their status "has given them a body of followers. And of course it has not. They have been given subordinates. Whether the subordinates become followers depends on whether the executives act like leaders."³⁸ Moreover, just as many high officials are not leaders, many leaders do not hold formal offices. Mahatma Gandhi and Martin Luther King, Jr. led from the outside. In essence, "leadership requires a relationship, not simply a title. Leaders must be able to inspire, not just compel or direct their followers."³⁹ What enables leaders to inspire commitment? Do they share identifiable personal characteristics and styles that are effective across varying situations? The traditional assumption was that they did. Early Greek, Roman, and Chinese philosophers generally assumed that leadership required exceptional personal qualities. A 10th-century Persian theorist distilled from these philosophical accounts a list of traits that looks remarkably similar to those generated by contemporary surveys.⁴⁰ Historian Thomas Carlyle famously argued that behind every great institution and social movement was the shadow of a "great man," and Max Weber elaborated the charismatic styles that he believed enabled their success.⁴¹ Yet most recent research casts doubt on whether effective leaders are cut from the same mold. Over the last half century, leadership scholars have conducted more than 1,000 studies in an attempt to define the ideal leaders. Summarizing this work, a Harvard Business Review overview concludes that it has produced no clear profile. ⁴² Nor is the much celebrated quality of charisma necessarily related to effective performance. Indeed, some studies find that the leaders of the most continuously profitable corporations have tended to be self-effacing and lacking in the qualities commonly considered charismatic.⁴³ In Drucker's view, it is a mistake for organizations to look for some "boardroom Elvis Presley." Genuine leadership, he argued, has little to do with charisma. It is "mundane . . . and boring. Its essence is performance."⁴⁴ Building on such research, many contemporary experts advance some version of a contingency theory of leadership. This framework places the key to effectiveness in a match between what the circumstances demand and what an individual has to offer. Situations vary in terms of the Attention to ethical issues in leadership is in particularly short supply. Published in *The Professional Lawyer*, Volume 20, Number 3. © 2010 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. 13 capabilities and expectations of followers and the power and resources of leaders. This is not, however, to deny all possibility of generalization. It is, as Nohria and Khurana note, "hard to imagine what leadership is if there isn't a core set of functions or behaviors that cut across different

situations and persons.” Certain attributes consistently emerge in research on effective leadership. Most characteristics cluster in five categories: • values (integrity, honesty, trust, an ethic of service); • personal skills (self-awareness, self-control, self-direction); • interpersonal skills (social awareness, empathy, persuasion, conflict management); • vision (forward looking, inspirational); • technical competence (knowledge, preparation, judgment). • Although legal education can only do so much to develop or reinforce these qualities, it should do what it can, which is far more than it currently attempts. Learning to Lead How then can individuals learn to lead? Theories about learning abound, but on one point there is virtual agreement. Leaders need the capacity to learn from experience—both their own and others’. As Mark Twain famously observed, a cat that sits on a hot stove will not sit on a hot stove again, but it won’t sit on a cold one either. What distinguishes effective leaders is the ability to draw appropriate lessons from the successes and failures that they experience and observe. In an apt, if possibly apocryphal exchange, a young lawyer asked a leader in his field how he came to acquire such a reputation. “People respect my judgment” was the response. “Why?” the associate wanted to know. “Well I guess I’ve made the right decisions.” “How did you know what decisions were right?” the associate asked. “Experience” said the partner. The associate wouldn’t give up. He was probably in training as a law professor. “What was the experience based on?” The answer: “Wrong decisions.” That is, no doubt, how most lawyers acquire leadership skills. But other ways are available through legal education. An effective curriculum should begin from the premise that individuals vary in how they learn best, and the ideal strategy is to incorporate multiple approaches such as interdisciplinary research and theory, problems, case studies, role simulations, group interaction, literature, and film. Three goals should be paramount. One is to enhance students’ capacities to achieve and exercise leadership, and to understand the cognitive biases, interpersonal responses, and organizational dynamics that can sabotage effectiveness. A second objective is to help students become lifetime learners, and to manage their own leadership development. A third objective, and the one most relevant to legal ethics, is to reinforce a sense of responsibility to use leadership for the public good. Ben Heineman, former General Counsel of General Electric, now a lecturer at Harvard, puts it this way: the decisions of “the lawyer as leader” should seek “to make our national or global society a ‘better place’ however difficult that goal is to define, much less achieve.” The point is not, of course, for faculty to use the podium as a pulpit to advance their own personal conceptions of the public good. It is rather to encourage students to develop their own views, and to see leadership not only as a way station to power and status, but also as an exercise of social responsibility. With those objectives in view, law schools should both offer a course focused on leadership and integrate leadership issues throughout the curricula. Not all students will be comfortable self-selecting for a course labeled “leadership,” so it is important to ensure some basic coverage of its core competencies in other offerings. For example, the leadership failures underpinning the recent financial crisis could become topics in corporate law and securities regulation. Lawyers’ role in the forefront of social change movements could figure in courses on civil rights, human rights, sex discrimination, poverty, environmental law, and public interest practice. Clinical courses could provide skills training in conflict management, team work, and problem solving. Professional responsibility classes could address a wide range of leadership issues, such as the importance of diversity, the relationship between supervisory and subordinate lawyers, the role of moral counseling, the management of law firms, the special obligations of government attorneys, and the structure of pro bono programs. Leadership can be an ideal lens for exploring how the “good go bad” in circumstances

where it matters most. A key determinant of ethical behavior in organizations is the “tone at the top.” Students who will someday occupy those positions can benefit from analyzing the personal and institutional dynamics that sabotage moral judgment. Among those dynamics is the disconnect between the qualities that often enable individuals to achieve leadership positions and the qualities that are necessary to perform effectively once they get there. What makes individuals willing to accept the pressure, hours, scrutiny, and risks that accompany leadership? For many lawyers, it is not only commitment to a cause, an organization, or a client. It is also power, prestige, and money. Successful leadership requires subordinating these personal interests to a greater good. The result is what some psychologists label the “leadership paradox.” Individuals reach top positions because of their high needs for personal achievement. Yet to perform effectively once there, they need to focus on creating the conditions for achievement by others. One mission of leadership education is to help future lawyers anticipate and avoid the consequences of unchecked A second objective is to help students become lifetime learners. Case histories of failed law firms and failed causes can illustrate how the self-centeredness that may propel individuals to leadership positions may sabotage their subsequent performance. The risk is exacerbated by leaders’ reluctance to learn about their weaknesses. James Kouzes and Barry Posner put it bluntly: “most leaders don’t want honest feedback, don’t ask for honest feedback, and don’t get much of it unless it’s forced on them.” Only about 40 percent of law firms offer associates opportunities to evaluate supervisors, and of those who engage in the process, only about 5 percent report changes for the better. Of course, lawyer leaders are scarcely unique in their tendency towards self-protection. But the understandable human aversion to criticism is particularly problematic for leaders, because of both the power they hold and the understandable unwillingness of many subordinates to volunteer unwelcome messages. In Kouzes and Posner’s survey of some 70,000 individuals, the statement that ranked the lowest in a list of thirty leadership behaviors was that the leader “asks for feedback on how his/her actions affect others’ performance.” Yet without such information, lawyers may fail to identify problems in their own performance. Harvard economist John Kenneth Galbraith once noted that “[f]aced with the alternatives between changing one’s mind and proving it unnecessary, just about everybody gets busy on the proof.” Defensiveness and denial are particularly apparent when individuals’ own self-evaluations are at issue. Leadership education can explore the cognitive biases that compromise not only performance but also learning from performance failures. One such bias is the “fundamental attribution error:” a tendency to attribute personal successes to competence and character, and failures to external circumstances. A related problem stems from confirmation and assimilation biases. People tend to seek out evidence that confirms their preexisting, typically favorable vision of themselves, and to avoid evidence that contradicts it. They also assimilate evidence in ways that favor their preexisting beliefs and self-image. In one random sample of adult men, 70 percent rated themselves in the top quarter of the population in leadership capabilities; 98 percent rated themselves above average. The problem is compounded by the power and perks of position, which can inflate leaders’ sense of self-importance and self-confidence. Being constantly surrounded by those with less ability or less opportunity to display their ability can foster what psychologists label the “uniqueness bias:” people’s sense that they are special and superior. The result is to reinforce narcissism and a sense of entitlement; leaders may feel free to disregard legal or ethical rules, and standards of respect that are applicable to others. Yet by thinking that they are “better than those . . . little people,” leaders “cut themselves off from [followers’] good ideas and good graces” and

run the risk of scandal. Perceptions of entitlement concerning sex and money have marred the careers of many prominent lawyer leaders; students can benefit from exploring these cautionary tales. One final pathology worth flagging in leadership education arises from leaders' high needs for approval and disdain for "soft" skills that may be essential to obtaining it. As one consultant notes, leaders' desire "to look good [often] displaces the intention to be good" and to pay attention to others' needs that don't translate into immediate payoffs. A related problem is the assumption that education in interpersonal dynamics and conflict management is a "touchy feely process," unworthy of attention from intellectually sophisticated individuals. Yet research makes clear that for many professionals, "the soft stuff is the hard stuff." Effective leadership requires more than analytic skills, and high achievers in intellectual domains may not have developed corresponding emotional intelligence. * * * Almost two decades ago, John Gardner noted that "we have barely scratched the surface in our feeble efforts toward leadership development." For lawyers, that remains true today. Legal education prides itself on teaching future practitioners to think like lawyers but does little to teach them to think like leaders. Many challenges they will face involve questions of values, so those of us who specialize in professional responsibility have a special opportunity and obligation to address them. We are, in effect, leaders of those who will become leaders. We owe it to our students, to our profession, and to our world to prepare them for that role.