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BUSINESS AS A PROPER PROFESSION

*Rollo Knight Memorial Lecture*¹

ROB ATKINSON²

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It is a great professional honor to have been asked to speak at a sibling department here at FSU. And it is a great personal honor to be asked to speak in remembrance of Rollo Knight, before an audience that includes both his parents, Roy and Caroline Knight, and his fiancée's father, John Thomas. I knew both Rollo and his brother Dacre when they rowed crew in high school with my own children, Edward and Jane. The three of us – Jane and Edward and I – used to camp out one weekend every November with John Thomas and his son Beau at the farm of a family friend and neighbor over in Gadsden County. My family and I have known both the Knight and the Thomas families long and well, and I've taken it as my task today to advance the values and the virtues and the vision that I know we all share.

With no trouble at all, I can trace my thoughts this morning to the very first time I met the Thomases, more than two decades ago. My wife Stephanie and John's wife Susan were members of some sort of sewing club back then, and Susan and I were seated beside one another at the club's annual Christmas dinner. After someone had said the blessing, Susan reminded me of the difference between the way Episcopalians and Presbyterians say the Lord's Prayer. She had the only good explanation of that difference that I've ever heard; it had the additional advantage of being very funny.

"We Episcopalians," Susan reminded me, say, "'Forgive us our trespasses, as we forgive those who trespass against us'; you Presbyterians, by contrast, say, 'Forgive us our debts, as we forgive our debtors.'" The difference is that we Episcopalians like

¹ Florida State University College of Business, September 27, 2011.

² Ruden McClosky Professor of Law, Florida State University. I am grateful to the faculty and staff of the F.S.U. School of Business for the opportunity to present this paper as the Rollo Knight Memorial Lecture and to Sara Hassler for her research assistance.

to think of ourselves as the descendants of the English landed gentry; you Presbyterians have to admit that your ancestors were Scottish tradesmen and merchants.”

What Susan joked about her ancestors and mine may or may not be true – although I still find it funny. But what I’m going to say about our descendants is most definitely true: We all want our children to be professionals. I’m proud my son is a lawyer and my daughter is studying to become a social worker. The Thomases are equally proud that, by my last count, Beau and at least one of his sisters is a doctor and that, as I learned just today, their sister is studying to become a minister. Rollo’s brother Dacre is also a doctor. But Mr. and Ms. Knight were every bit as proud that Rollo decided to follow his father into business. That is because business, as we understand it, is no less a profession than law or medicine or the ministry.

We have this from no less an authority on both professionalism and business than Louis D. Brandeis. He, of course, was neither Episcopalian nor Presbyterian, and he certainly was not a business-person. He was the first Jewish Justice of the U.S. Supreme Court, appointed by that most academic and Presbyterian of Presidents, Woodrow Wilson. We legal academics always remember Brandeis as a professor of law at Harvard. I want you business academics and your families to remember him today in another role, as one of the chief moving spirits behind the Harvard Business School.

As a reminder of that role, let me share with you a quote from the title essay of a little book Brandeis wrote called *Business – A Profession*.³ It was published almost a century ago, in the year when the First World War began. It was a world that we today can scarcely imagine; in its most recent presidential election, the candidates of both of the Democratic Party and the Republican Party vied valiantly with a third party, itself headed by a former President, for the title “Progressive.”⁴ The winner, Woodrow Wilson, formerly president of Princeton, appointed Brandeis to the High Court.⁵

Here is the basic thing Justice Brandeis had to say back then on our topic for today: *Business should be, and to some*

³ LOUIS D. BRANDEIS, *BUSINESS – A PROFESSION* (Small, Maynard & Co. 1914).

⁴ Bernard Bailyn, David Bryon Davis, David Herbert Donald, John L. Thomas, Robert H. Wiebe, and Gordon S. Wood, *The Great Republic: A History of the American People 938-48* (1977).

⁵ *Id.* at 942.

*extent already is, one of the professions.*⁶ Looking forward to a time when business was more fully a profession, a time that could still be our own time, he went on to say this:

*[T]he term “Big business” will lose its sinister meaning, and will take on a new significance. “Big business” will then mean business big not in bulk or power, but great in service and grand in manner. “Big business” will mean professionalized business, as distinguished from the occupation of petty trafficking or mere money-making. And as the profession of business develops, the great industrial and social problems expressed in the present social unrest will one by one find solution.*⁷

I believe Brandeis was entirely right about business being a profession. More than that, I believe that big business as he envisioned it, allied with corporate law as he practiced it, can be not only the solution of the present social unrest, but also the very salvation of both us as individuals and our world as a whole.

To show you how that might be so, I need to show you three basic models of business. The first is the antithesis of Brandeis’s vision; this is the anti-professional model. The second is a great distortion of his vision; this is the pseudo-professional model. The third *is* his vision, and mine; it is also, I can safely say, the vision of this lecture’s sponsors. This is the neo-classically professional model of business. I hope to show you that this last is also yours, or at least your mama’s.

Each model has its motto; its ideals, individual and social; and its problems. Let’s now take up each of these models in turn.

I. THE ANTI-PROFESSIONAL MODEL OF BUSINESS MANAGEMENT

This is the model of the robber barons of Brandeis’s day and the great investment bankers of our own. This is the model that gives big business a bad name; this is Brandeis’s “petty trafficking or mere money-making” grown big in both bulk and power but neither “great in service” nor “grand in manner.” Its motto is the

⁶ LOUIS D. BRANDEIS, *Business – A Profession*, in BUSINESS – A PROFESSION 12 (Small, Maynard & Co. 1914).

⁷ *Id.* at 12.

one Gordon Gecko immortalized in *Wall Street: Greed is good*.⁸ Its business ideal follows as a matter of elementary logic: Do all that you can within the law to make as large a profit as you can. It has its perfect complement in the law: “The client never wants to be told he can’t do what he wants to do; he wants to be told how to do it, and it is the lawyer’s business to tell him how.”⁹

Its measure of your individual success as a business manager is simple; its measure of your effect on society is shocking: Make yourself as rich as possible; make sure to leave nothing when you leave, and don’t bother to cut off the lights. This perspective on posterity was memorably articulately by Louis XV Bourbon, the last king of France before the Revolution: *Après moi, le deluge*.¹⁰ When John Maynard Keynes quipped, “In the long run we are all dead,”¹¹ he obviously meant that we shouldn’t be excessively far-sighted. The anti-professional model, by contrast, makes that extreme myopia the order of the day, urging us to live as if there were no tomorrow.

This suggests several problems. First, it turns both lawyers and business-folk against the public interest, even the law itself, as Brandeis clearly foresaw. In his day, powerful business elites were already lobbying for legislation and regulation heedless of anything but their own immediate gain, even as they bank-rolled the campaigns of pliant legislators and executives. The problem, as Brandeis explained it, was that in lobbying and electioneering, unlike the traditional lawyerly forum of litigation, lawyers and their business clients are not subject to a balanced presentation before a neutral tribunal.¹² In our day, those very tribunals are themselves subject to the same tactics. Business and other interest groups lobby for judicial candidates based on their prospective

⁸ “The point is, ladies and gentleman, that greed, for lack of a better word, is good. Greed is right, greed works. Greed clarifies, cuts through, and captures the essence of the evolutionary spirit. Greed, in all of its forms; greed for life, for money, for love, knowledge has marked the upward surge of mankind. And greed, you mark my words, will not only save Teldar Paper, but that other malfunctioning corporation called the USA. Thank you very much.” WALL STREET (Twentieth Century Fox Film Corp.1987).

⁹ 1 Robert T. Swaine, *The Cravath Firm 667* (1946) (quoting corporate lawyer Elihu Root).

¹⁰ Simon Schama, *Citizens: A Chronicle of the French Revolution* 80 (1989).

¹¹ Robert L. Heilbroner, *The Worldly Philosophers* 254 (4th ed. 1972).

¹² See L. Brandeis, *supra* note 7, at 323 (“They [coporate lawyers] have erroneously assumed that the rule of ethics to be applied to lawyer’s advocacy is the same where he acts for private interests against the public, as in litigation between private individuals.”).

rulings on anticipated cases, financing the partisan political campaigns of judges themselves.¹³

The second problem with the anti-professional model of business administration is that it turns producers against consumers, in ways that Brandeis could scarcely have imagined. To appreciate this problem, we must remember the basic premise of market capitalism and its necessary corollary: Market capitalism does not exist to enrich capitalists at the expense of us consumers; market capitalism enriches capitalists so that they will produce what we consumers want. The anti-professional model undermines both premise and corollary. Capitalists can create new demands by convincing consumers to want products that, but for advertising, they would never have wanted, much less needed. This, in turn, turns capitalism on its head: Capitalists are not seeking to enrich themselves by producing what consumers want at lower cost and higher quality. Instead, in order to enrich themselves, capitalists are seeking to produce consumers who want what capitalists produce.

The third problem with the anti-professional model is that it turns managers against entrepreneurs and investors, making a mockery of any coherent notion of fiduciary duty. This is what Adolf Berle described in the 1930s as the problem of separating ownership from control.¹⁴ This is, at bottom, the problem of executive compensation today: Corporate management hiring experts in executive compensation who compete among themselves to justify the highest possible executive compensation.¹⁵

The fourth and final problem with the anti-professional model is the one most relevant to this symposium: This model turns managers into bad people, by any definition of the word. No secular moral philosophy, and no major world religion, says being selfish is good. More specifically, no philosophy or religion says that you are a good person if you make the most money by any legal means.¹⁶ And much closer to home: No one's mama or

¹³ Gretchen Morgenson, *Peer Pressure: Inflating Executive Pay*, N.Y. Times, Nov. 26, 2006, <http://www.nytimes.com/2006/11/26/business/yourmoney/26peer.htm>.

¹⁴ Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (1932) *The Separation of Ownership and Control*.

¹⁵ Morgenson, *supra* note 14.

¹⁶ The Christian Gospels go so far as to say essentially the opposite: The love of money is the root of all evil. And the philosophies of Aristotle, Confucius, and Plato are hardly less scathing: See Aristotle, *Politics* 69 (Benjamin Jowett, trans., Modern Library ed., 1943,) ("Hence men seek after a better notion of riches and of the art of getting wealth than the mere acquisition of coin, and they are

daddy, much less anyone's mama *and* daddy, wants you to be selfish, never mind getting rich by any non-criminal means at hand.

As proof of that latter proposition, consider this thought experiment. Imagine yourself calling home this very evening. You say: "Hey Mama, I got a *second* job offer; they want me to be production manager at Steinway Pianos up in Brooklyn." Your mama answers: "That's nice, Dear. But let's be serious: Is Steinway going to *pay* as much as your first job offer, production manager at the porn studio over in Singapore?"

(If you're still unconvinced, let's simply raise the stakes: You say to your mama, "Hey Mama, I'm going to be competing for the Van Clyburn Solo Piano Prize down in Texas." To which your mama responds: "Sounds nice, Dear, but will that interfere with your audition for a starring role in the re-release of *Debbie Does Dallas*?")

II. THE PSEUDO-PROFESSIONAL MODEL OF BUSINESS MANAGEMENT

This second model is, so far as I can tell, the orthodox position at the Harvard Business School, as it is in the Chicago School of economics. It is a serious deformation, if not a perfect perversion, of the Brandiesian model. Its motto is famously familiar: *The customer is always right*. The corollary of that is its ideal for business managers: Do all that you can to make as large a profit as possible, constrained not only by the strict letter of the law, but also by the basic premise of market capitalism, give consumers what consumers want. And, as its ideal follows from its motto, so also do its measures of individual and social success. The best manager is the lowest-cost supplier of all things to all people; the ideal society is the one in which everyone has as much as possible of whatever they want and can afford (on whatever credit terms it takes to undercut your competitors). That, of course, is the great global shopping-mall and eBay of a world we're headed for today. It is not a world without problems of its own.

The basic problem is this: The consumer is often wrong; what *some* people want really *sucks*. Beanie Babies? Cabbage

right."); The Analects of Confucius 29 (W.E. Soothill, trans. Oxford ed., 1962) ("The Master said: 'Wealth and rank are what men desire, but unless they be obtained in the right way they may not be possessed.');" Plato, The Republic 228 (Allan Bloom, trans., 1968) ("Surely, when wealth and the wealthy are honored in a city, virtue and the good man are less honorable.").

Patch Kids? Funnel cake? We could multiply these examples *ad infinitum*, which suggests that there's worse: What a *lot* of people want really sucks. And, if not the worst, then surely sufficient to prove the present point, is this: A lot of people will pay a lot of money to watch movies in which other people *really* suck. (Consumer Alert: You should not take that last example any more literally than you need to to see my point.)

III. THE NEO-CLASSICAL PROFESSIONAL MODEL

We come, with our third model, to the vision of Brandeis himself: Business as a profession, and the professions classically conceived as occupations that require their practitioners both to know and to serve the public good. The motto of this model might well be *Do well, by doing good*, where *good* is taken to mean aligning your own personal interest with the proper advancement of the public interest. This sentiment is nicely captured in a note Brandeis once wrote to himself: "Advise client what he should have – not what he wants."¹⁷

This model's ideal for business is a bit more complex than the ideals of the other two.¹⁸ Stated as simply as possible, it has these three integrally related parts. First, make what people really need -- food, clothing, shelter, health care – as cost-effectively as possible. Second, make what makes people really better – not just the necessary stuff, but also the good stuff. Steinway makes a fine piano; become their CEO. MGM could make really good movies; become their production director.

Finally, and most importantly, make people want what would make them better. When you're president of Steinway, make *more* people want your pianos, and even *better* ones. Don't just *maintain* standards; *expand* demand and *increase* production while *raising* standards. When you're president of the new MGM, make really good movies that make little kids want to grow up to

¹⁷ Philippa Strum, Louis D. Brandeis: Justice for the People 40 (1984).

¹⁸ I spell out this model much more fully in The Future of Philanthropy Rob E. Atkinson, The Future of Philanthropy: Questioning Today's Orthodoxies, Re-Affirming Yesterday's Foundations (September 8, 2011). FSU College of Law, Public Law Research Paper No. 542. Available at SSRN: <http://ssrn.com/abstract=1924479> or <http://dx.doi.org/10.2139/ssrn.1924479> and Surveying the Foundations of Neo-Classical Professionalism in Law and Business Rob E. Atkinson, Assessing the Foundations of Neo-Classical Professionalism in Law and Business: Remodeling the Temple, Phase I (September 8, 2011). FSU College of Law, Public Law Research Paper No. 537. Available at SSRN: <http://ssrn.com/abstract=1924400> or <http://dx.doi.org/10.2139/ssrn.1924400>.

make movies like that. Make a new *Star Wars* trilogy¹⁹; teach kids to defend the Republic of Brandeisian Virtue against the Evil Empire of Gordon Gecko's greed and self-aggrandizement. Make the new *Schindler's List*²⁰; teach kids that real heroes risk everything to help the least well off. Make the new *Kingdom of Heaven*²¹; remind kids that the real hero of the Crusades, the real savior of the thrice-holy City of Jerusalem, was not Richard the Lion-Hearted, but Saladin the Saracen. Seek to manage business big in both bulk and power, but make your management great in service and grand in manner; recognize that *with great power comes great responsibility*.²²

In Brandeis's vision:

every legitimate occupation, be it profession or business or trade, furnishes abundant opportunities for usefulness, if pursued in what Mathew Arnold called "the grand manner." It is, as a rule, far more important *how* men pursue their occupation than *what* the occupation is which they select.²³

What did Brandeis mean us to gather from his invocation of Matthew Arnold's phrase "the grand manner"? The first clue comes from Brandeis's general definition of profession, which, as we saw at the outset, he believed as applicable to the emerging profession of business in his day as to the traditional professions of law and medicine:

First. A profession is an occupation for which the necessary preliminary training is intellectual in character, involving knowledge and to some extent learning, as distinguished from mere skill.

Second. It is an occupation which is pursued largely for others and not merely for one's self.

¹⁹ STAR WARS: EPISODE IV-A NEW HOPE (Lucasfilm Ltd. 1977); STAR WARS: EPISODE V-EMPIRE STRIKES BACK (Lucasfilm 1980); STAR WARS: EPISODE VI- RETURN OF THE JEDI (Lucasfilm 1983).

²⁰ SCHINDLER'S LIST (Universal Pictures 1993).

²¹ KINGDOM OF HEAVEN (Twentieth Century Fox Film Corp. 2005).

²² SPIDER-MAN (Columbia Pictures Corp. 2002).

²³ See LOUIS D. BRANDEIS, THE OPPORTUNITY IN THE LAW, IN BUSINESS – A PROFESSION 313, 313 (Small, Maynard & Co. 1914)

Third. It is an occupation in which the amount of financial gain is not the accepted measure of success.²⁴

It is the reference to “learning” that links Brandeis’s vision of professional to Mathew Arnold’s “grand manner.” The source of that phrase seems to be Arnold’s preface to a collection of his poetry, in which he himself points us still further back:

I know not how it is, but their commerce with the ancients appears to me to produce, in those who constantly practice it, a steadying and composing effect upon their judgement, nor of literary works only, but of men and events in general. They are like persons who have had a very weighty and impressive experience: they are more truly than others under the empire of facts, and more independent of the language current among those with whom they live. They wish neither to applaud nor to revile their age: they wish to know what it is, what it can give them, and whether this is what they want. What they want, they know very well; they want to educate and cultivate what is best and noblest in themselves....²⁵

Thus the truly professional model’s measure of success, both individual and social, is that of the Classics and the Scriptures: Virtue, which the ancients took to be human excellence. For you as an individual business manager, that means working where you most enhance the production of basic necessities of human existence, working where you provide the most opportunity for human excellence, working where you encourage the most people to seek that excellence in themselves and in others. And the world that your work advances will be a world where no child is left behind, where no child goes to bed hungry, where every child born has as good a chance as any other to sit where you are sitting, and study what you are studying: How to give everyone in the world what they need to be as good as our best prophets and philosophers have shown us we ourselves can

²⁴ BRANDEIS, *Business – A Profession*, *supra*, at 2.

²⁵ Matthew Arnold, *The Poetical Works of Matthew Arnold*, Preface xvii, xxviii (C. B. Tinker and H. F. Lowry, ed., 1963).

be. That is the world that Brandeis would have all professionals, including his new profession of business, work toward.

That world is the one toward which Dr. Martin Luther King worked as well. In his words, "I have the audacity to believe that peoples everywhere can have three meals a day for their bodies, education and culture for their minds, and dignity, equality and freedom for their spirits."²⁶ If Brandeis is to be believed, then professionals in business are very much the hope of that world, even as I have claimed.

But how, you may be wondering, will we know if Brandeis is to be believed, if his world and Dr. King's and Matthew Arnold's is really grounded in the great tradition of the classics and the scriptures? Enroll, if you will, in my course this coming spring, The Law, the Classics, and the Scriptures of the West. And, for good measure, add the one-credit parallel survey of the East: The Law and the Chinese Classics.

In the meantime, I commend to you a much shorter route to precisely the same conclusion: Ask your mama. Or, for that matter, anyone's mama. I'm not saying everyone's mama agrees with Brandeis and my hosts and me on what's good and true and beautiful; I'm not even saying your own mama is always right about such matters. But I am saying this: Whenever your boss (or your board of directors) tells you to do something that wouldn't make your mama proud, ask yourself this: Between the two of them, my mama and my boss, which one wants me to be the better person? To put it in a single word: Which one has for me the greatest love?

That love of our mothers for us is the foundation of the love we professionals on the Brandeisian model, in business as in law and medicine and the ministry, must have for our work. It is the love that would make us better than the world would have us be, by making us make the world better than it is. In the name of that love, parental and professional, Amen.

This being a symposium rather than a sermon, instead of dismissing you with my benediction, I should open our floor to your questions. As my hosts will attest, on the morning of the symposium itself, those in attendance had a lively discussion until time to break for refreshments. As you yourself have time and

²⁶ . Martin Luther King Jr., Nobel Peace Prize acceptance speech (Dec. 10, 1964) (transcript available at http://www.nobelprize.org/nobel_prizes/peace/laureates/1964/king-acceptance.html)

inclination, please feel free to pass your questions or comments along to me by email or phone or personal visit.²⁷

²⁷. You can visit me at Room 215, the F.S.U. College of Law, 425 West Jefferson Street, Tallahassee; my email address is ratkinson@law.fsu.edu, and my phone number is (850) 644-4503.

