

LAWYERS AND POLITICAL CAREERS

MICHAEL COHEN

University of Georgia

THAT THE LEGAL PROFESSION IS not monolithic, but consists of a group of specialties, is well-known.¹ In this respect, the legal profession's structure is similar to that of other professions that have been studied.² The structural conditions conducive to the growth of specialties arise from the inability of any individual to master all the techniques and knowledge of a complex occupation.³ In law, the specialties are usually organized around a field of legal doctrine, such as probate; tasks, such as litigation and legal research; or client relationships, such as house counsel and government lawyers.⁴ A given law practice or career, of course, may and typically does include more than one specialty.⁵ Public office-holding is another prominent part of the work that lawyers do, but it has so far hardly been taken into account by the legal profession as part of its work.⁶ Indeed, many discussions of lawyers' work barely mention their involvement in politics, except for offhand references.⁷ Yet the evidence shows that public office-holding figures importantly in the lawyer's world of work.⁸ Even beyond occasional office-holding, evidence to be cited in this paper suggests that for some lawyers public office-holding takes on some characteristics of a career, perhaps amount-

-
1. Q. JOHNSTONE & D. HOPSON, JR., *LAWYERS AND THEIR WORK* 33 (1967).
 2. R. Bucher, *Pathology: A Study of Social Movements Within a Profession*, 10 *SOCIAL PROBLEMS* 40-51 (1962); M. Cohen, *Private Practice in Social Work*, 14 *SOCIAL PROBLEMS* 84-93 (1966).
 3. E. C. HUGHES, *MEN AND THEIR WORK* 117-18 (1958).
 4. JOHNSTONE & HOPSON, *supra* note 1, at 138-40.
 5. J. CARLIN, *LAWYERS ON THEIR OWN* (1962).
 6. Public office-holding here refers to both elective and appointive offices.
 7. JOHNSTONE & HOPSON, *supra* note 1, at 23; and M. MAYER, *THE LAWYERS* 12 (1966).
 8. H. EULAU & J. D. SPRAGUE, *LAWYERS IN POLITICS* 11-12 (1964).

ing to another specialty within law. Admittedly, the uncertainties and risks of public office mean that few men who go into politics give up their other means of livelihood entirely. Yet some men become sufficiently involved in public office-holding for both them and observers to think of it in career terms.

The development of public office-holding as a career, perhaps even as a specialty, among lawyers may have been little noted by writers on the legal profession because the usual model of the legal profession, its specialties, and its careers, is oriented toward lawyers' work for clients. Thus, since lawyers' activity in politics tends to fall outside this model, the potential importance of this area of endeavor for conceptualizations of the legal profession has been overlooked, as has its potential importance in the lives and careers of individual lawyers. The great amount of attention many lawyers devote to politics, and the implications this has for legal careers and legal training, have been defined out of existence.

This paper sets itself several tasks. First, it documents the importance of careers of public office-holding among lawyers. Studies suggest that lawyers, among all those who enter politics, disproportionately tend to become the careerists. Second, the paper examines various explanations that try to account for this phenomenon. Lastly, it offers an explanation that integrates the various theories proposed.

The career concept has been used to describe the relationship between an individual and his work at several different levels. At the deepest level, it refers to the totality of adjustments a man makes between himself, his life's events, and his world of work.⁹ In this sense, career is a broadly encompassing concept. More narrowly, career refers to an individual's movement through ranked statuses in an occupation or organization.¹⁰ Such movement may be more or less rigidly structured and more or less well-known in advance. A career through the ranks of a highly bureaucratized organization falls at one extreme of the continuum, in that the steps are rationalized, regularized, and known well in advance. In contrast to this are the careers where the routes are not clearly marked out in advance, even if there is some rough rank ordering of statuses. Political careers tend to be the latter sort. With some exceptions—notably in the hierarchy of judgeships—there do not seem to be regularized, standardized routes for getting from one

9. HUGHES, *supra* note 3, at 129.

10. *Id.* at 6.

office in the political system to another, higher one. However, regularized political careers have been found to exist among typographers who compete for office in their occupational union.¹¹ Thus, it is possible that such patterns do exist in the wider political system. But, the high risks and uncertainties attached to elections and appointments may mean that public office-holding as a career, in general can never become as institutionalized as bureaucratic careers.

The difficulty of conceptualizing political careers is compounded by the fact that, in contrast to other careers, they appear to be intermittent and intertwined with other work. Whether there are variations in their intermittency and, if so, to what these are due, is not known. Such knowledge would make it possible to distinguish political careerists with some precision. But, in the absence of such knowledge, and to avoid premature closure of the concept, for the purposes of this paper a political career simply means a relatively high proportion of the lawyer's life is spent in public office or holding progressively higher level public offices.

The inference that lawyers may be the most prominent careerists among public office-holders is based on studies of judges, U.S. Senators, Governors, state legislators, and other office-holders. The first evidence comes from Sayre and Kaufman's study of judges in New York City.¹² They maintain that a lawyer who enters the judicial system, either through election or appointment, "knows that there is a very high probability that he can remain as long as he wants."¹³ Not only is the judge's term already lengthy, but informal practices help keep him in office. The Mayor and Governor tend to reappoint judges, and "both major parties customarily endorse sitting judges running for re-election without regard to party except in the most unusual circumstances."¹⁴ A major factor which helps judges attain office and build a career in New York City politics is their control of the largest amount of patronage still available. Their posts in turn are generally awarded for the service they give to a political party. Once having entered the judicial hierarchy, which is based on the ranking of courts and on the salaries attached to posts, a man can secure his position through patronage and thus continue in office. Enough openings become available yearly at each level to provide upward movement through the system. In the unlikely

11. S. M. LIPSET, M. TROW, & J. COLEMAN, *UNION DEMOCRACY* 251 (1962).

12. W. S. SAYRE & H. KAUFMAN, *GOVERNING NEW YORK CITY* 522-54 (1960).

13. *Id.* at 534.

14. *Id.*

event that a judge is defeated when he stands for reelection, an appointive judgeship is frequently available.

New York City, of course, is unusual for the number of judgeships in its judicial system and for their high salaries. In 1958, there were 380 judgeships with salaries ranging from \$16,000 to \$40,000 yearly; 315 of these open only to New York City residents.¹⁵ In addition, there are clerkships and other positions, often well paid, customarily held by lawyers on appointment by presiding judges. They amount to approximately several thousand positions outside the competitive civil service.¹⁶ We cannot conclude, of course, that New York City is representative of political career opportunities available elsewhere for lawyers. Rather, Sayre and Kaufman's study presents some evidence that lawyers are prominent among career public office-holders.

Further evidence comes from Matthews' study of U.S. Senators.¹⁷ He studied the 180 men who sat in the Senate from 1947 to 1957. The largest group, 55% of them, were categorized as "professional politicians," that is, as men who had spent most of their adult lives holding public office. They tended to begin quite young, reaching the Senate after a slow rise. Most of them became Senator after holding office as U.S. Representative or State Governor.¹⁸ Sixty-four per cent of these men were trained as lawyers, but had spent most of their lives in public office. There were also lawyers in the Senate who were not "professional politicians," but those who *were* constituted the modal pattern for lawyers.

Two studies of Governors also suggest that lawyers tend to be the careerists among public office-holders. One was an examination by Cortez Ewing of the 46 Governors in the 12 Southern States of the Confederacy plus Oklahoma from 1838 to 1948.¹⁹ Of these, 72% were lawyers. When they are compared with the nonlawyer Governors, holding age constant, the tabulation shows that they have consistently spent a higher percentage of their adult lives in public office.²⁰ In addition, the lawyers tended to reach the governorship earlier in life than the others, suggesting they were more seriously pursuing a career in public life.

15. *Id.* at 532.

16. *Id.* at 530.

17. D. R. MATTHEWS, *U.S. SENATORS AND THEIR WORLD* (1960).

18. *Id.* at 63.

19. C. A. M. Ewing, *Southern Governors*, 10 J. POL. 385-409 (1948).

20. *Id.* at 392-93.

The second study of Governors is one reported by Schlesinger.²¹ He studied all 995 Governors elected from 1870 to 1950, of whom 46% had been practicing lawyers. In Schlesinger's tabulations, the longer a man had held public office the more likely he was to be a lawyer. Approximately 50% of the Governors with ten or more years of political experience were lawyers, and approximately 60% of those with fifteen or more years of political experience were lawyers. On the basis of this evidence, Schlesinger concluded that the "direct relation between the length of a man's career leading up to the governorship and his occupation lends weight to the proposition that the lawyer in politics is to be equated with the careerist in politics."²²

In two studies of state legislators, by David Derge, the author concluded that the lawyers were the career public office-holders. In the first study, of Illinois and Missouri legislators, Derge found that 31% of the lawyer-legislators in 1955 and 1957 had held public office before entering the legislature, while only 13% of all others had done so.²³ In this study, Derge also checked the backgrounds of all Illinois and Missouri legislators as far back as 1937. He found that lawyers tend to be younger than nonlawyers both when they enter and when they leave the legislature. As he says, "Over the 20 year period, about half of the lawyers entered before they had reached 40, while less than a quarter of the non-lawyers entered by this age. About 50 per cent more non-lawyers began legislative service between the ages of 40 and 59."²⁴ As for lawyers' younger age at retirement, Derge found that, "more than twice as many lawyers retired from legislative service before they had reached age 40, and more than twice as many non-lawyers continued legislative service beyond the age 60."²⁵ On the basis of this evidence and the fact that lawyers are prevalent in other state and local elective offices, Derge concluded that lawyers tend to be the careerists who leave the state legislature early in order to go on to other public office.

In his second study, Derge found the same pattern to be valid for Indiana state legislators in 1959.²⁶ Among these legislators, lawyers

21. J. A. Schlesinger, *Lawyers and Politics: A Clarified View*, 1 *MIDWEST J. POL. SCI.* 26-39 (1957).

22. *Id.* at 29.

21 *J. POL.* 416 (1959).

23. D. R. Derge, *The Lawyer as Decision-Maker in the American State Legislature*,

24. *Id.* at 419.

25. *Id.*

26. D. R. Derge, *The Lawyer in the Indiana General Assembly*, 6 *MIDWEST J. POL. SCI.* 19-53 (1962).

were younger than nonlawyers both at entry and at retirement from the legislature, and they were more likely to retire voluntarily. In addition, lawyer ex-legislators were more likely than the others to compete for other public offices and to continue political party activity after leaving the legislature. As Derge concluded, "lawyers tend more to stay in politics after legislative retirement. [They] come closer to fitting the image of 'professional politician' than non-lawyers."²⁷

Besides the studies already reviewed, a number of studies have documented the social and occupational backgrounds of public office-holders. These studies, along with those already cited, have, with some exceptions, consistently shown that lawyers are more prevalent in public office than members of other occupations. But, for our purposes, an even more interesting aspect of all these studies is that they reveal a close relationship between the importance of the office in the political system and the percentage of lawyers who were found holding that office. The more important the office, the higher the percentage of lawyers. Table 1 shows this relationship. On the assumption that the higher the office, the more likely the individual was to have had previous office-holding experience (which seems warranted from the other data presented), the table suggests that it is the lawyers who make careers out of public office-holding. At each level of office it is the nonlawyers who drop out, while the lawyers continue.

There is impressive evidence, then, for the conclusion that public office-holding is an important career among lawyers. Our next task is to account for this phenomenon.

There has been no end of theories, of course, that try to explain why lawyers go into politics and hold public office.²⁸ These explanations range from attributing to lawyers special personality traits which motivate them to seek office all the way to seeing public office-holding as an obligation of the lawyer's professional role. Most of the explanations, however, tend to be at a low level of generality which does not allow inclusion of very many cases, or else they specify necessary but not sufficient conditions. For example, one popular theory has it that lawyers become politically active to advertise themselves, especially at the beginning of their careers.²⁹ However true this may be for some

27. *Id.* at 53.

28. M. Cohen, *Law and Public Office-Holding*, 1966 (Ph.D. thesis).

29. A. P. BLAUSTEIN & C. O. PORTER, *THE AMERICAN LAWYER* 98 (1954).

LAWYERS AND POLITICAL CAREERS

TABLE 1

COMPARISON OF PERCENTAGES OF LAWYERS HOLDING VARIOUS PUBLIC OFFICES

<i>Public Office</i>	<i>Percentage of Lawyers</i>
Presidents, Vice-Presidents, Cabinet members, Supreme Court Justices, Speakers of the House, 1789-1952 ^a	75
Southern Governors, 1938-1948 ^b	72
Presidents, Vice-Presidents, Cabinet members, 1877-1934 ^c	70
U.S. Senate, 71st-75th Congresses, average ^d	68
All Presidents ^e	66
U.S. Senate, 77th Congress ^f	61
U.S. House of Representatives, 71st-75th Congresses, average ^g	61
U.S. House of Representatives, 77th Congress ^h	58
U.S. Senate, 81st Congress ⁱ	57
U.S. House of Representatives, 81st Congress ^j	56
All U.S. Senators, 1947-1957 ^k	54
Governors, 1930-1940 ^l	52
Missouri Senate, 1937-1957 ^m	49
New York Senate, 1904-1964, average ⁿ	48
New York Assembly, 1904-1964, average ^o	47
Illinois Senate, 1937-1957 ^p	42
18 State Senates, c. 1963, average ^q	39
28 State Senates, 1899, average ^r	35
Governors, 1870-1949, minimum ^s	32
13 State legislatures, both houses, 1925-1935 ^t	28
Illinois House, 1937-1957 ^u	27
18 State lower houses, c. 1963, average ^v	24
Missouri House, 1937-1957 ^w	23
28 State lower houses, 1899, average ^x	19

- a. C. W. MILLS, *POWER, POLITICS AND PEOPLE* 203 (n.d.).
- b. C. A. M. Ewing, *Southern Governors*, 10 J. POL. 392-93 (1948).
- c. D. E. MATTHEWS, *THE SOCIAL BACKGROUND OF POLITICAL DECISION-MAKERS* 30 (1954).
- d. A. P. BLAUSTEIN & C. O. PORTER, *THE AMERICAN LAWYER* 97 (1954).
- e. MATTHEWS, *supra* note c.
- f. M. McKinney, *The Personnel of the Seventy-Seventh Congress*, 36 AM. POL. SCI. REV. 72 (1942).
- g. BLAUSTEIN & PORTER, *supra* note d.
- h. McKinney, *supra* note f.
- i. D. R. MATTHEWS, *U. S. SENATORS AND THEIR WORLD* 282 (1960).
- j. *Id.*
- k. *Id.*
- l. MATTHEWS, *supra* note c.
- m. D. R. Derge, *The Lawyer as Decision-Maker in the American State Legislature*, 21 J. POL. 410 (1959).

(Notes to Table 1 continued on following page)

lawyers, it does not explain the cases of those who enter politics after they have established practices, or of those who never have a large practice, but spend most of their time in public office. Or, to take another example, one theory has it that lawyers become politically active because they have occupations that can be left for a time and resumed without loss of skill or earning power.³⁰ This is the famous "dispensability" hypothesis. While it may be true that a law career has this characteristic (although some lawyers deny it), it still does not get us far, for there are others, such as clergymen and teachers, whose occupations are equally "dispensable," but who are far less likely to enter politics. Thus, instead of this multitude of small theories, each one of which only moves a short distance toward explanation, we need a broader-gauged theory. Several alternative theories of this kind are available in the literature. These both subsume the smaller ones, and lend themselves to being integrated into a model of a process that can consistently account for the phenomenon of the high prevalence of political careerists among lawyers. In addition, we believe this model is capable of empirical testing with newly collected data.

The model to be presented can be summarized at the outset by the following propositions:

1. The more closely related an occupation is to the subculture of politics, the more visible its members are to that subculture, and vice versa.
2. (a) The greater the control an individual has over his work arrangements, the greater his flexibility.

Notes to Table 1 (continued):

- n. M. Cohen, *Law and Public Office-Holding*, 1966, at 9 (Ph.D. thesis).
 - o. *Id.*
 - p. Derge, *supra* note m.
 - q. Cohen, *supra* note n, at 10.
 - r. G. H. Haynes, *Representation in the Legislatures of the North Atlantic States*, 15 ANNALS 221 (March 1900); G. H. Haynes, *Representation in the Legislatures of the North Central States*, 15 ANNALS 414 (May 1900); G. H. Haynes, *Representation in Western State Legislatures*, 15 ANNALS 256 (Sept. 1900); G. H. Haynes, *Representation in Southern State Legislatures*, 15 ANNALS 104 (July 1900).
 - s. J. A. Schlesinger, *Lawyers and Politics: A Clarified View*, 1 MIDWEST J. POL. SCI. 28 (1947).
 - t. C. S. Hyneman, *Who Makes Our Laws?*, in LEGISLATIVE BEHAVIOR 255 (J. C. Whalke & H. Eulau eds. 1959).
 - u. Derge, *supra* note m.
 - v. Cohen, *supra* note q.
 - w. Derge, *supra* note m.
 - x. Haynes, *supra* note r.
30. M. Weber, *Politics as a Vocation*, in FROM MAX WEBER 77-128 (H. H. Gerth & C. W. Mills eds. 1958).

- (b) The greater the flexibility of an individual's work arrangements, the greater the likelihood that he will be available for public office-holding.
3. The greater the perceived ability to succeed in the opportunity structure of public office, the greater the ambition to pursue a political career.

The first of these propositions is derived from visibility theory; numbers 2a and 2b from availability theory; and the third from ambition theory. In combination, and seen as a process, these theories more adequately explain the phenomenon of political careerism among lawyers than each of them does alone, or than any of the narrower-gauged theories does alone. Let us examine each in turn.

Visibility theory was advanced by March and Simon to explain the recruitment process of individuals into organizations.³¹ As used by them, the theory says that movement into and out of organizations by employees is partly dependent upon the degree of visibility that the individual has for other organizations and the degree of visibility that organizations have for the individual. A high degree of visibility facilitates movement and gives individuals more opportunity to satisfy their ambitions. Visibility itself is dependent upon the characteristics the individual exhibits and where he is at a given time. If we think of society as a map, it is obvious that individuals are more or less known to organizations and vice versa depending upon their characteristics and where they are.

The correspondence of visibility theory to the world of lawyers and public office should be apparent. The world of politics and public office-holding is highly visible to lawyers and they to it simply because of their work. For example, in the ordinary course of their practices they will meet judges, prosecutors, and public attorneys. The lawyer's work brings him perhaps more than anyone else into the political subculture of our society. Once in the subculture he can see the opportunities for public office-holding, if he was not already aware of them in law school or before, when he was being socialized into the occupation. We might also expect opportunities to come knocking on the lawyer's door more than others' because he moves in this subculture. This might especially be true where, as in small towns, a shortage of potential office-holders exists. Finally, we would especially expect law-

31. J. G. MARCH & H. SIMON, *ORGANIZATIONS* 103-4 (1958).

yers to seek out, and be sought for, those offices requiring legal knowledge. Indeed, there is evidence that performing these offices often fuses into the lawyer's regular professional career.³²

Some corroborative evidence from a different setting for this line of thought comes from Lipset's study of the internal politics of the International Typographical Union.³³ In trying to account for differential participation in internal union politics by typographers, Lipset learned that those who participated in the nonpolitical secondary associations of typographers, such as social clubs, were more likely to be politically active than those who did not.³⁴ This was because such participation gave them more opportunities than other union members to meet and associate with those typographers who were already politically active. Thus, joining such associations brought typographers into the political subculture of their union, much as the lawyers' occupational culture brings them into the orbit of politics.

We have already alluded to availability theory, and it requires little additional discussion. Availability theory says that many, if not all, lawyers are in an especially good position to take advantage of opportunities that are visible to them because of the flexibility of their occupation. That is, solo practitioners and partners in small firms, at least, can arrange hours and even days of the week to make time available for public office. (We assume that associates and partners in larger firms would have less such flexibility, and thus would be less prevalent in public office.) Many public offices are part-time, of course, making an accommodation between the two types of work even easier. Further, even when lawyers have been away from their practices for a time in full-time office, they may find it easy to resume their practice and in fact may be in greater demand than before because of their political experience. Thus, while the lawyer's availability for public office cannot alone explain the phenomenon of careerism, for others are also available, it may act as a facilitating condition in conjunction with other factors. To the extent that lawyers find it difficult to resume practice after holding office, to that extent of course we would expect them to become committed to a purely political career.

32. W. I. Wardwell & A. L. Wood, *The Extra-Professional Role of the Lawyer*, 61 AM J. SOCIOLOGY 304-7 (1956).

33. LIPSET, TROW, & COLEMAN, *supra* note 11.

34. *Id.* at 93-99.

Ambition theory is perhaps less widely known than the others and requires more explanation. Although a form of ambition theory has been advanced by economists to explain the operation of political parties in a democracy,³⁵ the form to be presented here was advanced by Joseph Schlesinger to explain political recruitment in general.³⁶ Schlesinger adopted and further developed ambition theory to avoid the problems inherent in discerning and measuring the variety of motives and purposes which have been imputed to those who have sought careers in politics. According to Schlesinger, the only assumption we need to make about individuals, is their potential for ambition. But whether or not a man is ambitious in politics depends upon several factors. One of these is that a structure of progressively more rewarding opportunities must be available, or at least be perceived as being available. The whole career line need not be seen at one time, but may progressively come into view as one advances. This also means that political careers may take unexpected turns as unanticipated opportunities arise. Ambition also depends upon whether an individual is in an office which is known to lead somewhere or not. That is, Governors can generally think of aspiring to be a Representative or Senator, or even President, while, at the other extreme, many city attorneyships may be dead ends. Furthermore, to be a careerist in politics, ambition must be progressive. This means that as success occurs, and as future success seems possible, the politician continues to be drawn ever further into pursuing a political career. At each stage, he reevaluates his opportunities, risks, and chances, adjusting his sights accordingly. Thus, his political career is a series of adjustments between ambitions and opportunities.

If we look at the position of lawyers even more closely, the argument becomes stronger. Lawyers, we might assume, because they can enter politics earlier, because they are likely to be aware of more opportunities, and because they can perhaps accommodate themselves more flexibly to a variety of alternative opportunities, have an inside track and thus can become the careerists. If we think of the opportunity structure of public offices as a net through which players can move, lawyers are probably open to more alternatives than most other players and are less likely to be knocked out of the game early. They have the judge-ships and public attorneyships to fall back on or to give them alternative routes that other political hopefuls do not have. A nonlawyer Repre-

35. A. DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957).

36. J. A. SCHLESINGER, *AMBITION AND POLITICS* 1-21 (1966).

tentative may have nowhere to go if he loses office, while a lawyer-Representative may be able to count on an appointive judgeship.

Thus, in the process of forming a political career, the lawyer may be able to be more tentative in his commitment than most others, which may help account for his presence. The vagaries of politics means that it is risky to sever all other ties when running for office, or even while holding it.³⁷ The lawyer is in a position to make the tentative commitment required because he often has other work or offices to fall back on should he lose, or because he can combine public office-holding with his usual work. To take the example of New York City, it has been reported that:

Among the judges sitting in 1958, not only were there individuals who once occupied comparatively minor posts in one or another of the branches and levels of government, but there are also former congressmen, an ex-Mayor, and at least two former city department heads. For others, the courts have been primarily safe way-stations on the road to other political offices. In recent years two judges have left the bench to run for Mayor, and others have resigned to accept other appointive offices, or to seek other elective offices. Six of the fourteen men who have been Mayor or Acting Mayor of the Greater city since its formation in 1898 were judges at some point in their prior careers, and several moved directly from the bench to City Hall.³⁸

Thus, the lawyer knows the world of public office-holding from his work. Many of the jobs are open only to him. He probably has more alternatives for making his way through the opportunity structure of public office. His commitment need not be total. The rewards can be high. The conditions for being a political careerist may flourish more among lawyers than others.

37. H. S. Becker, *Notes on the Concept of Commitment*, 66 AM. J. SOCIOLOGY 32-40 (1960).

38. SAYRE & KAUFMAN, *supra* note 12, at 535.