



## City Research Online

### City, University of London Institutional Repository

---

**Citation:** Duncan, N. J. (2019). In-house lawyers' ethics: institutional logics, legal risk and the tournament of influence. *The Law Teacher*, 53(3), pp. 385-387. doi: 10.1080/03069400.2019.1626568

This is the accepted version of the paper.

This version of the publication may differ from the final published version.

---

**Permanent repository link:** <https://openaccess.city.ac.uk/id/eprint/22678/>

**Link to published version:** <https://doi.org/10.1080/03069400.2019.1626568>

**Copyright:** City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

**Reuse:** Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

---

---

---

City Research Online:

<http://openaccess.city.ac.uk/>

[publications@city.ac.uk](mailto:publications@city.ac.uk)

---

## The Law Teacher

**In-House Lawyers' Ethics: Institutional Logics, Legal Risk and the Tournament of Influence, by Richard Moorhead, Steven Vaughan and Cristina Godhino, (Hart, 2019, 1st ed., xii + 248 pp, £55.00 Hardback (or E-book), ISBN 978-1509905942**  
--Manuscript Draft--

<b>Full Title:</b>	In-House Lawyers' Ethics: Institutional Logics, Legal Risk and the Tournament of Influence, by Richard Moorhead, Steven Vaughan and Cristina Godhino, (Hart, 2019, 1st ed., xii + 248 pp, £55.00 Hardback (or E-book), ISBN 978-1509905942
<b>Manuscript Number:</b>	
<b>Article Type:</b>	Learning Resources Reviews
<b>Order of Authors:</b>	Nigel Duncan

**In-House Lawyers' Ethics: Institutional Logics, Legal Risk and the Tournament of Influence**, by Richard Moorhead, Steven Vaughan and Cristina Godhino, (Hart, 2019, 1<sup>st</sup> ed., xii + 248 pp, £55.00 Hardback (or E-book), ISBN 978-1509905942

Legal practice is changing. We have a responsibility to our students, not only to warn them of the competition for remunerative work, of the organisational and technological changes that are affecting legal practice and the professional responsibilities that accompany their status as lawyers, but also of the increased opportunities for work as in-house lawyers and the different tensions that such roles bring. So this book, while not primarily an undergraduate text, has an important place in the library for all students considering their future as a potential lawyer, their tutors and their careers advisors. For those studying legal ethics or the role of lawyers in the context of a legal system module it will have more specific relevance and should be a key text for students studying in these areas on LLM degrees.

The book is the result of an empirical research project consisting of two sets of structured interviews with a significant number of in-house lawyers, the second informed by an online survey. Part of the research focussed on vignettes designed to explore reactions to specific challenging situations where the tensions between commercial pressures and ethical demands become acute. The analysis of their data is rich and varied, with each part designed to test the validity of the others. As such, it is a significant addition to the existing research into the ethics of lawyers in general and in-house lawyers in particular.

The findings are salutary. There are those whose perceptions of commercial lawyers are fundamentally cynical and those who are optimistic about their ability to improve the ethical behaviour of their commercial clients. Here, although there is data to support either view, the overall message is that the truth is much more complicated and variable than either view would suggest. If anything, the authors' conclusions suggest reasons to be concerned more than to be optimistic (although given the complexity of the findings, that may be refracted through my eyes).

It challenges the academic literature that presumes a zero-sum game involving tension between business goals and professional obligations. This is not how in-house lawyers perceive their role. From these interviews we come to understand how organisational structures and the individual lawyer's position and status within them provide different opportunities for influence. The book explains the context of the decision whether or not to say "No" in a network of relationships developed over time. The authors analyse this as a 'tournament of influence'.

Factors include seniority and status, economic reward, perceived support for commercial goals and an ability to explain risk. Gate-keeping functions exist in a continuum of organisational activities and influences. The lawyer who always says "No" is likely to be bypassed. The lawyer who has a history of being willing to warn of risks but to permit actions provided those risks are understood (and do not, for example, involve criminality) will be more able to exercise influence when they really must say "No". As one interviewee said: "It's important to know when to say 'No'. You want to avoid the legal department becoming the 'Department of No'." (p. 81). This involves compromise and possible exploitation of uncertainty and interpretation of the law. Ethical purists will find this extremely uncomfortable, but it may be the most effective way of avoiding serious wrongdoing and shifting the culture of an organisation in an appropriate direction.

1 Influencing this culture (how risk-averse, what attitude to profitability v the public interest?)  
2 can only be achieved as part of a long game. This requires character and resilience. The  
3 authors explore their interviewees' self-identity through the lens of specific orientations and  
4 measure the relationship between these and ethical inclination. Independence was seen as  
5 a key characteristic with professional orientation also important (and useful for supporting  
6 independence when difficult decisions were being taken). However, the proportion of  
7 interviewees who could make realistic use of their professional Code was small, and the role  
8 of the regulators was seen as of little relevance. Code learning rarely provided a sound basis  
9 for ethical decision-making. So those who have learnt their professional ethics simply by  
10 learning the Codes of Conduct have a huge amount to learn from this book. This is one area  
11 where it will be of enormous value: helping new and experienced lawyers to understand  
12 more about their responsibilities in a commercial world. They are introduced to theories of  
13 organisational and management behaviour, theories of risk and individual psychology. It  
14 should encourage them to reflect on their personal orientations and values and to enquire  
15 into the values of the organisations with which they are considering working. In this way they  
16 will be in a better position to take the decisions recommended by Adrian Evans in *The Good  
17 Lawyer (CUP, 2014)*. Newly-qualified lawyers considering which vacancies to go for and  
18 experienced lawyers considering a shift to in-house practice, will find this book illuminating.  
19  
20  
21

22 The authors clearly respect the work of those who have learnt when to say "No". The  
23 dedication of the book is: "For our Mums. They knew when and how to say, 'No'." Their  
24 research and writing will help readers to act like their Mums, but also to question whether  
25 saying "No" is really the point, what influences the lawyer who must advise on commercial  
26 decisions, and how to prepare themselves for this responsibility in the specific context of in-  
27 house practice.  
28  
29

30 Nigel Duncan

31 *City Law School, City, University of London,*

32 *n.j.duncan@city.ac.uk*  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65