8 Professionals organizing professionals

Comparing the logic of United States and United Kingdom law practice

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Introduction

> Once you've got a major client, the rest follow like sheep. You can be a lousy lawyer, but if they like you, they'll come. It's the herd instinct. Look, if I'm general counsel of a large corporation, no one can criticize me if I retain Kirkland and Ellis. It doesn't have anything to do with how good they are, just how big they are. So you take a risk when you hire someone smaller.
>
> (Tischmann, Senior Attorney)

This partner was rationalizing his success in obtaining clients, keeping them and using them as a means of acquiring the mantle of senior partner as soon as the current senior partner retired. While this is a common feature of corporate law practice in the United States, it has not been the driving force behind United Kingdom law firms. But I will argue that English large law firms are now becoming captive to the same forces as American firms. For example, to balance the quotation above, an English planning lawyer was described thus:

> 'All my friends are my clients,' [Cooper] claims. 'I don't have a private life.' That is the only possible explanation for the fact that he personally billed £1.75m last year. . . . That means that Cooper's department . . . billing £2.4m, was responsible for more than ten per cent of . . . Gouldens' gross fees last year . . . Cooper claims that he probably works 4,500 and 5,000 billable hours a year – which boils down to between 12 and 13 hours *every single* day of the year – and an average of nearly £400 an hour if based on a strict hourly basis. 'Work it out,' he challenges, 'I start at 7a.m. and start charging, charging, charging.'
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> (Dillon, 1992, p. 25)

The stereotypical American law firm organization followed the principles laid down by Cravath early in the twentieth century (Swaine, 1946; Nelson, 1988; Galanter and Palay, 1991). Those who aspire to partnership in the firm must undergo a tournament with each other to establish who will win the prize of election to membership. Associates embark on a range of cases over a seven or

eight year period at which time they are evaluated. If they succeed, they become partners; if they fail, they must leave the firm. Within this partnership model inhered the values of collegiality and the sharing of profits and losses. Indeed, it went further as liability was unlimited, as befitted a professional. The prime capital a lawyer possesses is human, which consists of skills, experience, reputation and relationships with clients (Galanter and Palay, 1991, pp. 89–90). When lawyers have surplus capital, the firm hires more associates to absorb the surplus, thus intensifying the tournament.

English law firms have not typically followed the Cravath pattern. Histories of the City law firms (e.g., Slinn, 1984; Dennett, 1989; St George, 1995) show a more benign form of collegial dictatorship which operated by restricting the size of the partnership and relying on unqualified clerks for some areas of work. However, cultural patterns of organization in English firms have altered and in many ways become similar to the American model.[1] But the transformation has not been complete, nor is it likely to be so. There is a range of institutional factors that militate against the assimilation of the two legal professions. Among these are differences in legal education, formal distinctions between different units of the legal profession (e.g., barristers and solicitors), regulation of unauthorized practice e.g., the practice of law is more tightly regulated in the US (cf. Rhode, 1981) and relationship of the profession to the state (Abbott, 1988; Johnson, 1993; Baldwin, 1998). And finally their developments have not been isochronal with each other (Flood, 1989).

If we historicize organizational practice among lawyers, we cannot omit the roles of professionalism and professionalization. Ideas surrounding the concepts of collegiality, development of expertise, incorporation, unlimited liability, multi-disciplinary practice, ethical standards are either deeply embedded in or sometimes antithetical to professionalism (cf. Greenwood *et al.*, 1990). These are continuing tensions that professional service firms tackle, or, in other terms, 'organizational change represents not so much a shift from one archetype to another, but a layering of one archetype on another' (Cooper *et al.*, 1996, p. 624).

In this chapter I examine the relationship of work and organization in American and British law firms, which I argue is reflexive (see Flood, 1996). For the purposes of this analysis professionalism is treated as an epiphenomenon while the assertion of power and authority in law firms is treated as a dependent variable which can be explained by the network of client relations in the firm and the ways work is distributed. This goes beyond a view dependent solely on the internal workings of the firm. Of course the wider, ever-changing environment is crucial to how law firms function.[2] Corporate law firms are products of histories, ideologies, cognitive scripts and reclaimed narratives that persist through time (cf. Powell and DiMaggio, 1991; Greenwood and Hinings, 1996). But here I look more towards work than external effects, such as the state. I use two main sources of data, namely, an ethnographic study of corporate lawyers in Chicago (Flood, 1987) and interview studies of City lawyers in London, especially in relation to the market for advocacy services (Flood, 1996; Flood *et al.*, 1996). The first case study

focuses on the work of lawyers in general; the second concentrates on one sphere of activity, namely, litigation and advocacy. These two studies are quite different, both in method and scope, and are obviously not comparable *pari passu*, but they serve to illustrate differences across the US–UK divide in intra-law firm organization and the role of lawyers *vis-à-vis* clients. From these perspectives they are informative and complementary. In both studies I have taken a small slice of lawyers' work and relationships and investigated these in depth and used them to make a more general point about the manner in which lawyers present or articulate their organizations and attempt to represent distinctiveness. In both, the client is the point of convergence. In the first case study the client is seen as a means to power in the firm. In the second the client is instrumental in the redistribution of work between two sectors of the profession and the way that bears on a solicitor's place in the firm.

Large law firms are intrinsically risk prone enterprises, always in competition with other professional service providers – e.g., accounting firms, investment banks, consultants – for clients, both domestically and internationally. Risk is also present in the structure of law firms, since partnership connotes sets of constrained choices that are based not on office but on perceptions by others that some partners will necessarily have more symbolic capital available to them which confers privilege and status. This idea of risk permeates through the organization and, as Beck writes, 'coping with risk can include a *reorganization of power and authority* (1992, p. 24). For example, the major change in the firms' relationships with clients over the past twenty years has been the shift from long-term, embedded, comprehensive relationships to shorter-term transactional interaction (Nelson, 1988). Rather than use a single law firm for all legal matters, clients shop around for expertise drawing on different firms for various skills. How the selecting is done is open to question. In some cases the selection is not strictly objective insofar as it is based on the single criterion of being the right firm for the job. There is an element of spreading the work among 'favourite' law firms to keep them happy.[3] Joe Flom said, perhaps disingenuously, of his firm, Skadden Arps:

> We are building a series of boutiques, or specialists, in individual areas with enough overall strength in terms of quantity so that we can put 30 or 40 people to work on an emergency basis without destroying the continuing business of the firm. . . . If you are lucky and get the people working together on a transactional basis, it works quite well. When I say transactional basis, and I think this is the essence of where corporate practice is going, people are coming in for specific transactions. They are not looking for somebody who is in the same clubs that they are in. They are looking for somebody who will do a particular job, and do it well.
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> (Federal Bar Council, 1984, pp. 95–6)

Therefore the ability to sustain client links over the long term is essential for partners who wish to claim authority within their firms, that is, partners have to

work continually to maintain their domination over other lawyers (Bourdieu, 1990, p. 129).

Professional service firms are not simply constellations of diverse interests that mingle for the sake of profit. On the contrary, it is their histories, always evolving, that create their interest. Although the behaviours of the lawyers in the firm may be patterned in some respects, that is not to argue that their actions are determined by any specific modalities. Bourdieu puts it this way, 'The conditionings associated with a particular class of conditions of existence produce *habitus*,[4] systems of durable, transposable dispositions . . . as principles which generate and organize practices' (1990, p. 53). The possibilities and potential for change in law firms, amongst others, are both repressed and reproduced by *habitus*. The obverse of this picture is that professional service firms are also client-driven organizations. One of the most famous examples is the law firm, Freshfields, which has enjoyed a long-term relationship, about three hundred years, with its chief client, the Bank of England (Slinn, 1984). When comparing medical practice to legal practice Heinz and Laumann (1982) demonstrated that the choice of legal specialty in the corporate hemisphere was provoked by client pressure and need rather than intellectual interest, as in the case of medicine. Most corporate law firms depend on repeat business based on retainers. Without clients who pay these fees lawyers cannot practise, unless they are in government or are members of corporate legal departments. Clients, then, are the lifeblood of the law firm. But unlike blood, which reproduces itself in the marrow and replenishes itself on oxygen, clients do not always possess those propensities for self-reproduction. Law firms, especially corporate ones, must therefore receive continuous transfusions of clients in order to exist and to thrive. This requires firms to compete vigorously both to find clients and then to keep them (cf. Abel, 1989; Sander and Williams, 1989). Getting clients is not a talent equally distributed among professionals. Little has been written on the topic: Bourn's study (1986), for example, focuses on how businesses find lawyers. Mostly, client-getting is part of the arcane nature of practice.

The lawyer–client relationship entails a structural coupling of cultures so that trust is possible between the two. This coupling comes about in part through the process of attracting and retaining clients. It is replete with contingency. Both clients and lawyers are mobile. Clients can change lawyers and lawyers can move to different firms. With the decline in the durability of partnership during the 1980s, mobility has increased dramatically (see Eisler, 1991; Caplan, 1993). Both sides play with calculations of risk and develop trajectories of trust through the building of the lawyer–client relationship. There is an enormous impact on the culture of the firm and as relationships develop, the power relations within the firm alter and shift to reflect the new dimensions of economic intensity. Committee assignments change, partners' shares rise and fall, associates find their patrons have immense patronage or none at all. To extend a metaphor of uncertainty I term this aspect 'managing the cultural organization of uncertainty'.

To understand 'markets for legal services', I adopt White's interpretation (1981). Rather than assuming that markets are arenas theoretically populated by

producers and consumers (although of course to an extent they are), White asks questions not normally broached by economists. The key one is: 'Why, when even the largest of firms wants to offer a product new to it to the public, does it usually do so by acquiring the persona of a firm belonging to an existing market?' (White, 1981, pp. 517–18). The burgeoning market for advocacy services in the UK case study illustrates this. In some respects solicitor advocates want to be like barristers, while in others they claim a difference which says, in effect, besides being advocates we are *also* solicitors. White's (1981, p. 518) sociological view of markets sees them as 'self-reproducing social structures among specific cliques of firms . . . who evolve roles from observations of each other's behaviour . . . I insist that what a firm does in a market is to watch the competition in terms of observables'. Advocacy lends itself to 'observables' superbly.

Markets for expert knowledge tend to be small and sustained through relatively stable memberships. These memberships are socially structured and depend on developing trust and order (Granovetter, 1985; Baker, 1990). Reputation plays a significant role, as Leifer indicates: 'A small and identifiable group of producers, attached to brands, develop stable and distinct reputations among consumers and hold onto stable market (volume) shares. The reputations are not arbitrarily distributed across producers, but are often tied to market share' (Leifer, 1985, p. 443). Markets here are sets of roles adopted by the players in attempts to maximize their welfare. We also need to understand the effect of status as perceived by producers and consumers. Since reputations are unevenly distributed, perceived differences in quality frequently result in high-status producers receiving more customers than low-status producers. Moreover, the business flows to them with minimal or no costs of advertising (Podolny, 1993). Such a market is difficult to enter and price will not be the crucial determinant in selecting a professional.[5] The connections between status and quality are at best fuzzy; they depend on incomplete signals about status from producers, buyers and interested third parties. There are also time lags in the signalling process. The embeddedness of social relations within markets can help to facilitate the distribution of signals, but consumers are usually risk-averse and will require proof of levels of quality (Podolny, 1993, p. 838). In the case of advocacy, while it is an observable activity, a consumer can incur high transaction costs when retaining new advocates.

The US case study

The ethnography here is of a Chicago law firm, which I call Tischmann Weinstock and Levine (Flood, 1987). The firm's name is a pseudonym and I have changed a few details in my description of the firm to make it harder to identify, but these changes do not affect the analysis. I will first present a brief picture of the social structure and work of the firm and then explain how the research was done.[6]

The firm is composed of about ninety lawyers who practise in tax, real estate, business, estate planning and litigation. Tischmann considers itself a general practice firm. Within the largest practice areas are litigation, real estate, and

corporate, all of comparable size. The lawyers are evenly divided in number between partners and associates. Tischmann has a policy of maintaining an approximate one-to-one partner-to-associate ratio, an inducement it uses to counteract the lure of the megafirms to potential associates (cf. Galanter and Palay, 1991).[7] The firm's clients range from large multimillion-dollar companies to wealthy individuals with large estate-planning and corporate needs. The majority of the corporate clients were controlled by five of the partners. By controlling the major clients, these five partners were thus able to exercise considerable authority in the firm. Tischmann is more fortunate than some insofar as it is an established firm that has built up expertise in certain areas for which it has earned a strong reputation. Its client book, which lists all clients and the jobs being done for them is substantial: over 220 pages long. In the markets of the 1980s and 1990s, however, a strong reputation is ultimately ephemeral, which Tischmann has recognized.

History of clients at Tischmann

Tischmann had an advantage, which to some could also be a disadvantage, of being a minority Jewish firm in its early days of the 1920s and 1930s. Jewish lawyers and other professionals were barred from the mainstream, white Anglo-Saxon Protestant firms, so they formed their own firms that served Jewish clients. For some years, in effect, there existed an alternative parallel Jewish economy. Exclusion by others brought cohesion within the group. In these early days, Tischmann was composed mainly of German Jews. They established their client lists through personal networks based on such institutions as the Standard Club in downtown Chicago. Gradually, as the influx of Jews from Eastern Europe strengthened, they joined the firm and added their networks of clients to the others. Clients requested such services as incorporating companies, putting together real estate deals, and planning estates, but there was little litigation. Some of its early clients became multinational companies and outgrew the firm. Thus, Tischmann was primarily a facilitative law firm: its members counselled, negotiated, and advised rather than litigated conflicts.

One feature of the early period lingered through to the 1970s. Individual lawyers thought of clients as their personal property, not those of the firm. Although the firm existed, the constituent lawyers did not always think of it as an entity to be continued with clients being served by generation after generation of lawyers. For example, it was common for no prior arrangements for another lawyer from the firm to be assigned in the event of a death or retirement. Firm consciousness, then, is a fairly recent phenomenon. The clients, too, viewed their relations with lawyers in much the same fashion: their affairs were handled by an individual lawyer and not by the firm. Once it was established that, although lawyers had 'rights' in a client by virtue of having brought that client into the firm, the firm 'owned' the client. Of course, there was no way this rule could be enforced against clients; they were free to view the situation any way they wanted. The consciousness of Tischmann as an entity was established when the firm decided not to alter its name

according to the composition of the partners who ran the firm. The name would no longer reflect congeries of personnel, but instead would symbolically identify the firm as an enduring entity. This feature of nomenclature raises the issue of 'branding' as an index of quality, which I will return to below.

During the 1980s the trend towards the concept of the firm being the key representative of the client received a setback. For example, through aggressive marketing, Finley Kumble attempted to dominate the legal market by acquiring law firms and raiding others for their best 'rainmakers' (Flood, 1994). Stevens (1987, p. 42) quoted the managing partner, Steve Kumble, as articulating the philosophy that:

> Lawyers bring in clients and law firms service them. I don't care what anyone says about a firm's history or traditions or any such nonsense. Except for a few clients who are still deep in the stone age, you don't get hired that way. Clients go with the lawyer they know, the lawyer they've worked with, the lawyer who delivers for them regardless of his firm's place in the pecking order. Sure you have to be able to service that client once he's on board, but it's the individual who gets him there. . . . Those who fail to see this, and thank heaven there are many of them, overrate the power of the firm and underrate the power of the lawyers that make it work.

Interestingly, this is in direct contrast to others' views. For example, Peter Brown (Federal Bar Council, 1984, p. 90) expressed his sentiments thus:

> The large law firm has now become an American institution in itself. Lawyers in big firms are no longer accountable to individual clients. Rather, they are accountable to their law firm. Law firms are the entity, not the individual. The objective of the large law firm is simply to make money and to grow bigger in order to make more money. To a large extent, the client has been left out in the cold.

Getting clients

The simplest method of obtaining clients is to inherit them. It is painless and requires little original effort. What it does require is a patronage relationship so that a senior lawyer can devolve his 'empire' to a protégé. The senior partner in Tischmann had one of the biggest clients in the firm, a large corporation (and its head), which he had served for many years. As he began contemplating his retirement, he started to give more and more responsibility to a younger, though fairly senior, partner who had done a considerable amount of work for this client. The junior partner had worked alongside the senior partner for many years but had never been considered a co-equal. Some of the lawyers in the firm were worried that the client, who was known to regard the senior partner in an avuncular light and looked to him for advice on all sorts of business and personal matters, might not transfer his esteem, and therefore business, to the new partner.

Because this partner was younger and had not engaged in the same extensive counselling relationship with the client as had the senior partner, the relationship lacked intimacy. Others thought the relationship would alter and become more formal, technical, and arm's length. Most considered it likely (or hoped) that the client would stay with the firm.

Sometimes problems exist where younger lawyers should be inheriting clients and the older lawyers refrain from passing along responsibility. This leads to the younger lawyers defecting from the firm. Two senior partners at Tischmann had such reputations. Their philosophy was that junior and middle range partners should serve the senior partners' clients rather than be concerned with clients of their own. This attitude frustrated the junior partners. They could see no future for themselves except as the 'minders and grinders' (Nelson, 1988) of these partners and their clients. Any clients they tried to bring into the firm were labelled 'inferior' by the senior partners, who believed their clients were the *crème de la crème*. The only solution for the junior partners was to leave and move to firms that would encourage their drive and ambition.

The usual method for getting clients takes place outside the firm. It entails joining clubs, being involved in business ventures, giving seminars to chambers of commerce, having a well-connected family, and more; but most of all it entails being lucky. One partner, who had some of the most valuable clients in the firm, made his first connection with a big client in the elevator of his apartment building. The story had acquired the status of legend, but demonstrated the element of serendipity in business where personal relations are of paramount importance. A neighbour of his was complaining one day that he could not find a lawyer to handle a corporate problem his commercial real estate company was having difficulty with. The partner offered himself, and that became the start of a constant supply of work from the company, which continued even when the neighbour moved to another part of the country. As the partner's reputation in this field of work grew, so did his range of clients. In the space of a few years he became one of the most powerful members of the firm, with his clients generating several million dollars' worth of business a year.

Another partner, whose cousin was extremely successful in starting his own companies, received the legal business the companies generated. As the cousin prospered, so did the lawyer. One side effect of having a cousin well known in the securities business was that other securities people knew of him and were willing to give their legal work to the lawyer. While attending a securities conference one day, the lawyer enlisted two new clients because they knew his cousin and needed a mid-West lawyer. This lawyer also thought carefully about what kind of conference or seminar he would attend: 'It's no good going to a seminar that is full of lawyers. I'm not going to get any business out of them. I need a place that's full of securities people and accountants; they're the ones who can bring me real business.' He would also sign himself up for conferences but not attend. 'I don't need them, but when people look through the lists of participants they'll see my name and that of the firm. And with luck, if they need a securities lawyer, they'll call me.'

Giving seminars can be an important way of legitimately publicizing and marketing the firm. One labour lawyer who was trying to develop a satellite practice in one of the Chicago suburbs was a frequent speaker at chamber of commerce seminars. When the lawyers were asked to present a paper at such a seminar, they would put together a package about the firm. It would list the lawyers and their fields, and try to emphasize the distinctiveness of the firm. But with a general practice firm, proving distinctiveness is often hard to achieve.

The brochure presented an interesting insight into how the firm perceived itself:

> Founded in 1905, Tischmann still maintains its original philosophy that its lawyers are both attorneys and counselors. We offer expert advice on legal questions and advice is given with an eye to the broader context in which the legal questions arise. By identifying both legal and non-legal considerations, we can recommend action which is not only legally sound, but which will produce the best overall results for our clients.
>
> In the firm's view, the ever-increasing complexity of doing business in today's regulatory climate increases the importance of the role of the lawyer as attorney and counselor. The practice of law can no longer be a 'reaction' to problems as they arise. If possible, the lawyer should counsel and advise the client in hope of anticipating the many problems the client may face in the future. We feel that by careful and innovative lawyering, we have met and will continue to meet the challenges of today's law practice.
>
> The firm has a reputation for creative lawyering in which our lawyers find ways to accomplish the results the client seeks. While our lawyers have a broad range of experience, each has also developed special expertise in a specific substantive area of the law. As a result, each Tischmann client should expect to be in 'one to one' contact with his or her personal lawyer who knows and understands the client's business. At the same time, each client knows that each lawyer is able to call upon the knowledge and experience of other lawyers in our office to provide the best planning and solutions to specific legal problems.

Firm brochures fundamentally say the same thing, which makes one difficult to distinguish from the other. One can derive an idea that legal work (and by extension, professional services' work) is fundamentally fungible. Once a 'legal device' has been created, e.g., the 'poison pill', it cannot be patented and is open to copying by others (Powell, 1993).[8] The work is essentially reputational, hence the similarity of these brochures.

Brochures themselves rarely, if ever, produce a client, but personal contacts with the audience, say personnel directors from local businesses, do succeed in bringing in clients. The particular partner involved in developing the suburban practice found that many businesses needed counselling on how to negotiate with labour unions that wished to become established. The suburbs are traditionally places where businesses go when they leave the inner city, often to avoid unions'

power. The chambers of commerce, then, were ideal avenues for him to use to tap into this market. He also produced a newsletter for the firm, which told the attorneys how the suburban practice was faring. Most of its six or so pages were given over to the fruits of client development and seminars given by the lawyers, e.g., 'The seminars are definitely gaining exposure for Tischmann's suburban office and the number of suburban clients is steadily increasing.' There then followed a list of lawyers and clients brought into the fold. The seminar reports were glowing: 'Bill Smith's [a Tischmann partner] November 1 seminar on 'Interest-Free and Other Below-Market Loans' attracted a standing room only crowd for this office. Attendees were representatives from Merrill Lynch, Touche Ross, Porte Brown, Tempo Graphics, Royal Fuel, Detterbeck and Company, and Peacock Engineering.'

For the Tischmann lawyers a popular method for getting clients was through being on the opposing side of a case. A partner with several large corporate clients said he acquired them all this way. He had been involved in large real estate partnership transactions and had handled them sufficiently well that the people on the other sides had sought him out for future deals. Attracting a client by this manner meant that a client had 'proof positive' of a lawyer's ability.

The most frequent form of client-getting is via networks. Bourn (1986, p. 59) found that 75 per cent of her sample of businesses located attorneys through networks of friends and colleagues. Typically, such a request is: 'I need a lawyer who can handle a securities issue for me. Do you know anyone?' According to Bourn, the next largest category is that of personal knowledge (29 per cent) where the potential client actually knows a lawyer. The lawyers at Tischmann were plugged into many networks, not just chambers of commerce, but also charitable foundations, especially Jewish ones, schools, political activities, both Democrat and Republican, and bar associations. Besides formal membership in bar associations through joining sections and becoming officers in them, bar associations can sometimes produce unexpected effects.

In 1984, the American Bar Association held its annual meeting in Chicago, in part to inaugurate its new downtown bar centre. This occasion provided an opportunity for many Chicago law firms to act as unofficial hosts to out-of-town lawyers. Tischmann was among them. The majority of the firms were holding their receptions in hotels and restaurants. Tischmann, or rather its management committee, decided to hold a reception during the meeting, but something out of the ordinary, something distinctive. The firm planned its reception to be in the top storey of a department store. The same summer that the American Bar Center was opening, a new, very fashionable and expensive, luxury department store, Neiman Marcus, opened on Michigan Avenue, one of the main downtown shopping centres, near to the bar centre. Tischmann reserved the top floor restaurant and part of the food hall.

In order to make the reception a success, the Tischmann management committee hired a consultant. His task was to help the lawyers use the reception as a vehicle for promoting the firm and increasing business – to plan it as a military campaign. The first step was acquiring the lists of those attending the ABA

meeting, and then combing them for people the lawyers knew. Those that were considered good 'business prospects' were invited by the lawyers that knew them. In addition, a request was sent to every lawyer in the firm asking for a list of 'notables' who should receive invitations. Ultimately, more than a thousand invitations, with *handwritten* envelopes, were sent. Brigades of secretaries, messengers and paralegals were dragooned into writing the envelopes. The consultant had told them that handwritten envelopes would inspire a warmer response among those invited.

As the date for the reception approached, the consultant was brought into a breakfast meeting at the firm, which every lawyer was commanded to attend. The memorandum from the partner in charge of the party to all attorneys and summer associates was headed, 'Re: Survival Techniques at Parties':

'Peter Smith, Director of Marketing and Director of Midwest Law Firms Group at XXX Accounting Company will be hosting a one hour meeting on Wednesday morning of this week at 8:30 a.m. in the 32nd Floor Conference Room at which he will be sharing some ideas which he has in regard to creating the appropriate image at cocktail parties. Attendance by all is expected. We would like to be finished by 9:30 a.m., therefore, please be there promptly at 8:30 a.m.'

Over sweet rolls and coffee, the senior partner spoke about the importance of the occasion as a means of publicizing the firm and raising its business profile. Many of the lawyers attending were disconcerted about the event; it was expensive, the rental cost was nearly $10,000 for the evening, and it seemed a most artificial way of generating business. The consultant lectured about how the party should be conducted. His main emphasis was on how to change the conversation from social talk to business talk, and then finding the appropriate moment to hand over a business card. He warned that no opportunity should be missed to switch a conversation from social to business; otherwise the talk would be 'wasted.' About 230 of those invited agreed to come, but the partner in charge told the lawyers to write to those who could not attend, offering future assistance if ever needed. A few days before the reception, the event received some publicity from a local newspaper as one of the events to attend during the ABA meetings.

After the reception, considerable follow-up work was done. The partner in charge distributed another memorandum on the 'ABA Party:'

> Attached hereto are the following:
>
> 1 List of guests who attended the party;
> 2 List of guests who indicated that they would be in attendance but who did not come to the party;
> 3 Copy of three signatures from our guest books which we are unable to read – if anyone recognizes any of these please let my secretary know; and
> 4 Your guest list as submitted to the ABA Party Committee for placement on the computer.
>
> I find it difficult to prepare letters for others and, therefore, in lieu of my suggesting a form of letter, I would rather suggest that the following points

could be covered in the letter and that the style of the same should be yours rather than mine:

1 Thank them for attending;
2 Possibly mention something either legal or otherwise relative to what you may have discussed at the party;
3 Possibly some reference to their work on an ABA committee; and/or
4 A possible line such as 'looking forward to working with you in the future.'

When, finally, the paperwork was removed to the file room, it occupied six expandable folders: the total cost of the reception was $18,000. In effect, the party was a public relations exercise that left the firm with no real way of establishing how much business had been generated.

Keeping clients

The dream of most lawyers is to find clients who will keep them for the remainder of their careers. Shearman and Sterling's representation of Citicorp, a client that generates millions of dollars in fees every year, is paradigmatic. The trick is to capture a client, especially a corporate client, when it is small, and then to grow with it. One partner at Tischmann who had a publicly held company for a client said he originally obtained the client because. 'The guy who runs it and I knew each other from years ago and grew up together.' He felt he had nurtured the client through its formative years into its present state. Consequently, he was very protective of, and defensive about, the client. When the client became involved in litigation, the lawyer called in a litigation partner to assist him. He was, however, concerned about clearly establishing the line of authority from the outset: every decision had to go through him; the litigation partner would have no direct contact with the client. Moreover, the differences in approach between corporate attorneys and litigators disturbed him. At one stage the litigator argued that they should seek an award of counsel's fees from the court. The corporate partner was adamantly opposed because he did not want the client to think that fees would be taken care of by some external agency. 'I like to be concise with clients,' he said, meaning clients should be aware of whom, and how much, they will pay. He went on to say that if the litigator wanted to work with him on this case he should share the same frame of reference: 'We better be on the same beam.'

This kind of extreme paternalism is common among the senior lawyers. At least three were enmeshed in such relationships with their clients, and their success was thought to depend on paternalism, which raised fears about what would happen to the clients' relationship with the firm when these lawyers retired. This was brought to a head in one extreme case when a senior lawyer died nine months after joining the firm as part of a merger. There were grave fears over whether the newly merged Tischmann, as a unit, had developed sufficiently strong links with this lawyer's clients to fill the void caused by his death. But even paternalism has its limits. One senior partner had no problem being aggressive and forceful with

clients who were contemporaries with or younger than him. With older clients, however, he averred that 'I am deferential; I let them tell me what to do; I won't argue with them.'

Keeping clients content is sometimes wearing for the lawyer, but it is part of the game of being a lawyer and therefore must be accepted. Very wealthy clients seem to be the most capricious. Two partners, one senior, the other in the middle range, visited a client in the suburbs to discuss a new theory they had developed for his case against the trustees of a large charitable foundation. The client made them drink about four scotches before they could really discuss matters; moreover, they were worried whether he would accept their ideas. At first, he liked the idea; later he equivocated. The senior partner tried to reinforce his idea by saying, 'It's no worse than Kirkland would do for you.' The same client once called the partner at 10 p.m. to hear the partner's final speech in a case. They talked until 3 o'clock in the morning. The next day when the jury brought in a verdict in favour of the client, the client leaned over to the lawyer and said, 'Well, at least you got that f***ing right!'

Another wealthy client was involved in extensive litigation during the course of which he had discarded several lawyers. When a Tischmann partner received the case, he thought it a 'mixed blessing', never knowing if the client would depart. During the discovery phase of the litigation, the opposing party requested some personal papers from the client. These papers included explicit, often critical comments about his lawyers, past and present. The issue was so sensitive, that the papers were given to a paralegal, who was then locked in a room and instructed to 'white out' all remarks about the partner. The remarks about the current lawyer–client relationship were excluded from discovery on the grounds of lawyer–client confidentiality. Even the partner himself was forbidden to see the unexpurgated papers.

To keep clients, lawyers must both follow their demands and, on occasion, anticipate them. One large client felt it would be a good idea for Tischmann to open a branch at its mid-West headquarters in the suburbs. Tischmann complied. (The venture was unsuccessful, however, since it failed to generate substantial amounts of new business.) Another client, in cooperation with a partner, had been pressing for a branch office in another state, but the firm was wary about committing resources to the proposed plan because of the failure of the suburban venture.

Anticipating clients' demands can best be illustrated by the following example. A partner who inherited, from a senior lawyer, a small but rapidly growing company as a client visited the company for its annual general meeting. While the lawyer was talking to the president of the company, the president told him that the company was implementing a change in its corporate structure. The actual legal work was, however, being done by another law firm. The partner was shocked and asked why the work had not been given to him. The president said he believed Tischmann had no expertise in this kind of work and so he had looked elsewhere. Because the type of structural corporate change being sought was relatively new, the partner had not anticipated that his client would need this kind

of work. No amount of persuasion on his part could make the president redirect the work to Tischmann. The firm still 'possessed' the company as a client, but it had failed to obtain a substantial and profitable piece of business from it.

The archetypal means of retaining clients is to cross-sell services to them. Thus, if a client came to the firm with a single task in mind, such as a real estate transaction, the firm would attempt to entice the client into using the firm's tax, ERISA, or litigation departments as well, and, if possible, put the client on a retainer so there was a constant stream of money coming into the firm. But cross-selling is a delicate matter. If a client, for example, is referred to a lawyer because of some special expertise, the lawyer may not be able to cross-sell the client. A partner who was a specialist in an arcane area of tax law had many clients referred to him for that particular matter alone. It was understood by those who referred the work, although never openly articulated, that he would never attempt to poach the clients or he would face the sanction of no further referrals. Even if, therefore, referred clients asked about other services in Tischmann, he had to refuse them for fear of upsetting the lawyer who had referred them.[9] But if a client came without a referral, then it was understood that open season had been declared.

Another form of cross-selling sometimes occurs between lawyer and client. A partner who worked for an investment bank was expected to refer Tischmann's clients to the bank, thus establishing a symbiotic relationship. This type of symbiosis was taken a step further when a big client of the firm asked the partnership to form a limited partnership with it to enter a real estate deal: Tischmann had little choice but to comply or face dwindling interest from the client.

'Making rain'

Lawyers who bring in substantial numbers of clients are called 'rainmakers'. One central consequence of being a rainmaker is to be bestowed with power and wealth. That is, rainmakers control the firm and receive the largest draws of the partners.[10] They win seats on the management committees of firms and thus obtain positions with the authority to help create and influence policy and the future direction of the firm. At Tischmann there were seven lawyers on the management committee, all of who were substantial client finders and minders. They also constituted the highest remunerated group in the firm.

Most American law firms use the 'eat what you kill' method of remuneration. Rewards are directly based on the business generated by a lawyer (Gilson and Mnookin, 1985). Firms make no allowances for equality or equity. Each partner must maximize his or her own rewards. In the UK system a 'lockstep' arrangement is the norm (see Morris and Pinnington, Chapter 10, this volume). Here incoming cohorts of partners constitute a class that is given the same level of rewards. Each year the level is raised until the class reaches a plateau near retirement when the levels are reduced. The rationale of the system is that the firm retains a corporate identity and refutes the cult of the individual. Improved rewards come through increasing the firm's business at large.

In this section I will show how although a lawyer may control a large number of clients, that degree of control does not of itself indicate whether a lawyer will be considered either a rainmaker or a member of the firm's elite. In Table 8.1, I have rank ordered the lawyers in Tischmann by the numbers of clients attributed to them. These figures are derived from the 1986 Tischmann client book. The attribution is made on the basis that a lawyer is considered in control of a client, i.e., belongs to the lawyer, when that lawyer is designated, in the client book, as the billing partner. Only in a few cases have some lawyers not actively generated their entire clientele. Instead, they have been granted clients by another lawyer for some reason. For example, when one large corporate client split into two entities, the original billing partner continued with one while the other part was assigned to another partner. In all other cases the lawyers generated their own business and therefore possess their own clientele. These clients are broken down into two categories, individual and corporate (following Heinz and Laumann, 1982),

Table 8.1 Numbers of clients by top echelon of lawyers

	Number of clients		*% of total clients*	
Lawyer and status	*Individual*	*Corporate*	*Individual*	*Corporate*
1-sp	153	143	9.6	15.2
2-sp	137	68	8.6	7.2
3-sp	140	37	8.8	3.9
4-sp	82	50	5.1	5.3
5-sp	44	43	2.8	4.8
6-sp	44	43	2.8	4.8
7-sp	49	39		
8-sp	54	22		
9-sp	64	22		
10-jp	57	23		
11-sp	49	18		
12-sp	47	18		
13-mp	41	26		
14-mp	26	46		
15-sp	39	29		
16-mp	38	28		
17-mp	28	26		
18-jp	19	26		
19-mp	18	20		
20-mp	93	13		

Source: Adapted from Flood, 1987.

Notes: The lawyer number includes the status of the lawyer in the firm as follows: *sp* = senior partner, *mp* = middle-range partner, *jp* = junior partner.

The next rank is 'senior associate' (*sa*) – the highest ranked *sa* was 29 (with 5 individual and 24 corporate clients).

1 the next 12 lawyers (ranked 21 to 32) include 2 *sp*, 5 *mp*, 3 *jp*, and 2 *sa*, and have an average of 25 individual and 11 corporate clients.

2 the remaining lawyers have no significant numbers of clients, but the firm totals according to the Tischmann client book are 1,594 (individual) and 939 (corporate).

which reflect the types of clients Tischmann handles. The lawyers, too, are separated into the status groups of senior partner, middle partner, junior partner, senior associate, middle associate and junior associate. As might be expected, senior partners control the majority of the clients.

These numbers, very crudely, indicate who are and who are not the rainmakers in Tischmann. The low numbers signify one of two things: that either the lawyers are relatively new associates who would not be expected to have any clients yet, or lawyers who have been unsuccessful at finding clients. The following lawyers have the most clients (i.e., they have large numbers of both individual and corporate clients).

In the case of three, most of the clients are individuals (79 per cent). What the numbers fail to indicate is who has the most active clients. Although a lawyer may have a large roster of clients, they may only bring in small amounts of work. To be a successful rainmaker, a lawyer must have clients who are sources of regular, continuous work. Thus, a lawyer could have only one or two clients, but these could be enormously profitable, if they were large institutions. So, while simple numbers help to paint a picture of who is likely to be successful within the firm, they do not tell us who is a consistent rainmaker. The profile of the rainmaker can be obtained through somewhat different means, however. As I mentioned above, there is certain congruence between the most successful rainmakers and the members of the management committee.

In Table 8.1, the actual members of the management committee are lawyers 1, 2, 3, 4, 5, 9 and 15. The mean number of their clients, both individual and corporate, is 150. The list excludes some who one might expect from the aggregate numbers of clients would be included, e.g., 6, 7, 8, 10, 12, 14 and 20. However, their mean number of clients is only 77.5, approximately half the number of the management committee, which is insufficient for inclusion on the committee.

Admittedly, a management committee this large would be unwieldy, but there have to be good reasons for excluding such potential members. On the whole, individual clients do not carry as much weight as corporate ones. Many of the clients of lawyers 7, 8 and 22, are estate planning clients. That is, much of their legal work is done on a once-only basis. The client supplies the relevant data and the lawyer draws up the appropriate plan; and unless the client's situation changes radically or there is an abrupt exogenous change, as with the 1986 Tax Reform Act, the plan is not altered. Hence, these lawyers' clients are not, in part, 'continuous feed' or 'repeat player' clients. Other reasons for exclusion from the management committee are self-selection through, e.g., old age (as in the case of lawyer 7 who was in his eighties), poor health, and semi-retirement (as in the case of lawyer 12).

To attempt to locate a rational basis for identifying successful rainmakers, I analysed the time records of all the attorneys in Table 8.1 for two sample two-week periods in March and October. These records provided information on, amongst other things, which lawyers did what tasks for what clients and for which lawyers as billing partners (i.e., to whom the client belonged) and for how long.

A task here is defined as an episode of work carried out on behalf of a client, e.g., a telephone call, or drafting a letter.[11] Taking the two groups of lawyers with the highest numbers of clients in the firm, namely, the members of the management committee and the group of alternates, we can compute the group means of numbers of tasks per the management and alternates groups per the clients for each group. Table 8.2 illustrates the derivation of these means by showing the total numbers of episodes of work for the sample four-week period for each lawyer in the two groups.

Table 8.2 leads to certain conclusions about which lawyers, in terms of possessing business-producing clients or the lack thereof, would or would not be counted as major rainmakers in the firm. The management committee group is far ahead of the alternates group with a mean number of episodes of work per group of clients of 901 compared to the alternates' mean number of 225.6. Lawyers 20 and 22 are not recognizable as legitimate candidates because their levels of tasks are so low (33 in each case), despite the relatively high number of clients on their rosters, 93 individual, 13 corporate and 44 individual, 2 corporate, respectively. Conversely, lawyers 4 and 5 have extremely large numbers of tasks to their credit, 1,385 and 2,205 respectively: they also happen to be the two most powerful lawyers in the firm.

Those between the two poles who are on the management committee, except for one member, share a minimum of 400 tasks for the period. The exception is lawyer 3, who has only 327 tasks with a preponderance of individual over corporate clients. His position is politically charged since he belonged to the firm Tischmann merged with and the two firms had to be represented on the committee. Lawyer 7 would have been the natural choice (with 346 total tasks), but he removed himself on the grounds of age and lawyer 3 was the next in line. This also helps to explain why lawyer 8 is no longer a member. He stepped down when the merger took place to allow the other firm to put its representatives on the committee, although he could validly have claimed a seat.

Table 8.2 Total and mean numbers of work/task episodes for sample four-week period for lawyers in management committee and lawyers in alternate group

Management group		*Alternate group*	
Lawyer	*Total work episodes for each lawyer*	*Lawyer*	*Total work episodes for each lawyer*
5	2,205	8	430
4	1,385	7	346
9	754	6	338
2	633	10	328
1	588	14	157
15	415	12	140
3	*327*	28	*33*
Totals	6,307		1,805
Means	901		225.6

Source: Adapted from Flood, 1987.

Putting aside this anomaly, 400 tasks in a four week sample period would appear to be the threshold for membership on the committee. Clearly, then, lawyers 6, 10 and 14 are not candidates. Another distinguishing feature is that, again except for one lawyer, the members of the management committee have at least one corporate client for which there are more than a hundred tasks in the sample four-week period. Lawyers 4 and 5 demonstrate their pre-eminence in this area by having very high numbers of tasks per client. Lawyer 4 has two clients, *Alpha* and *Beta*, with 274 and 198 tasks per sample four-week period respectively. Lawyer 5, who is by far the most successful and powerful lawyer in the firm, has four clients who generate enormous amounts of work: *Gamma* with 848, *Delta* with 347, *Epsilon* with 256, and *Zeta* with 251 tasks in the sample four-week period. Lawyer 2 has at best 77 tasks for a single client, but this is counterbalanced by his having 633 total tasks, the fourth highest total. Lawyer 6 comes close with one corporate client generating 95 tasks, but his total is low at 338 tasks in the sample period.

Perhaps one anomaly is lawyer 1, who had the highest numbers of clients, both individual and corporate, of any lawyer in the firm, namely, 153 (individual) and 143 (corporate); but his number of tasks is only the fifth largest in the firm. His situation (along with lawyer 20, who out of 93 individual and 13 corporate clients had only 33 tasks) illustrates the problem inherent in relying on numbers of clients as an indicator of business activity.

The statistics also show how reliant the lawyers are on a relatively small number of clients, despite having large numbers on their roster. For example, with the exceptions of lawyers 1 and 3, the ten biggest clients per lawyer in Table 8.2 account for at least 60 per cent of each lawyer's business, in most cases higher. These lawyers, then, probably typical of most, have fairly concentrated practices: a few clients provide sufficient work for a successful practice. The two exceptions, lawyers 1 and 3, have rather more diffuse practices with 57.9 per cent and 58.4 per cent, respectively. These lower percentages are probably a reflection of the exceptionally large range of clients each possesses, especially individual clients.

The foregoing represents a sketch of the successful rainmaker: a lawyer who has corporate clients that generate continually high levels of tasks which keep other lawyers within the firm in work. A lawyer who merely has a large number of clients on the books is not necessarily successful if most of those clients are moribund: a static picture can therefore lie. Instead, it is obligatory to examine the amount (flow) of work transacted through a lawyer. Lawyers having few clients who demand large amounts of legal work on a regular basis are easily more successful and possess more symbolic capital (social and economic) than those who have many clients that require work only from time to time. The high rates of capital acquisition enable the successful lawyers to dominate the management of the firm and plot its direction. However, they are reluctant to become involved in the day-to-day aspects of management, preferring instead to allocate that work to middle range partners.[12]

The UK case study

The British legal profession has undergone significant change in the last decade or so. Solicitors have been granted rights of audience in the higher courts; legal aid is coordinated under franchising arrangements; multinational practices are common; and the government has interposed more regulation in the form of bodies such as the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) (cf. Johnson, 1993).[13] And, more importantly, for corporate lawyers the City of London was effectively deregulated and reregulated by the 'Big Bang' of the 1980s. London truly became one of the troika of global cities servicing global capital (Sassen, 1991). City solicitors have long been aware of the foundation of their role. In 1977, in evidence to the Royal Commission on Legal Services (the Benson Commission), and in 1989, in reply to the British government's Green Paper on the work and organization of the legal profession, the City of London Solicitors' Company and City of London Law Society put forward the argument that English law was a product marketed by English lawyers throughout the world. For example, in the 1989 reply, the City of London Law Society (1989, p. 5) said:

> The advantages of English law as a 'product' enable solicitors to contribute to this country's balance of payments some £250,000,000 per annum in invisible exports and constitute an important part of the attraction of the City of London as a world financial and insurance centre.

Rather like the big American corporate law firms, English corporate law firms really began to expand in numbers and size in the 1970s. The main fuel was provided later by the Big Bang and then augmented by firm mergers. It is important to stress, however, how small the typical City firm was in the post-World War II period. Slinn (1984, p. 159) notes of Freshfields, 'In 1946 there were seven partners, fewer than at least two of the other leading City firms, Linklaters & Paines and Slaughter and May, each of whom had twelve partners'. And following lifting of the restriction on partner numbers, Slaughter and May had 24 partners in 1968 (Dennett, 1989, p. 236). As partnership became a normal expectation for assistant solicitors, the partnership track has extended from around five years to eight to ten. The length of the track depends, on part, on the structure of the partnership – whether it is two-tiered with salaried and equity partners or solely equity partners. The former lengthens the process (Flood, 1996, p. 177). A change which is emerging in the 1990s is the lack of desire on the part of some assistants to achieve partnership. They view the prize as too costly in terms of the other aspects of their lives. Instead, they elect for a form of permanent senior assistantship (cf. Flam, 1993; Morris and Pinnington, Chapter 10, this volume).[14] This suggests the 'Cravathization' of UK firms is not complete. Moreover, most City firms use lockstep reward systems. The rationale for the approach is that it breeds collegiality and cooperativeness rather than competition between lawyers (cf. Gilson and Mnookin, 1985). One possible consequence is that UK lawyers feel

less pressure to generate billable hours compared to American lawyers and are therefore not in a race with such sharply measured outcomes.[15]

Getting and caring for clients

The key element in attaining partnership is clearly business-getting, which is continually reviewed through the partner's career. This has been epitomized by a tribute to Sir George Allen, a founding partner of Allen & Overy, on his retirement in 1952, which said, 'He completely identified himself with his client . . . always gave himself wholeheartedly to the client's interests' (Allen & Overy, n.d. p. 2).

The British legal profession has traditionally hived off advocacy as a separate activity. Whereas solicitors start litigation, it has been the custom for barristers to present the case in court. In 1992 that division was breached by the government, which allowed solicitors to become eligible to act as advocates in the higher courts (Flood *et al.*, 1996). Although the take-up of these rights has been slow, the consequences for the organization of law firms is profound.[16] Among those, for example, who have been perplexed over hiring two sets of lawyers to conduct a case are American clients who are used to dealing with a single firm that both prepares and presents litigation.[17] This section uses the illustration of the division of labour between solicitors and barristers to explore how organizations, in relation to clients, are perceived by the actors.

A corporate solicitor explained the manner in which referrals had been handled and are viewed now:

> A client who knows you inside out. You know the client inside out. You know all of the facts. You could recite this case backwards. You have gone through all of the settlement negotiations and they break down and then the client says, 'Right sue them.' With our existing system I then say, 'I will now introduce you to Mr So and So or Ms So and So who is a barrister. He or she will prepare the pleadings for the case and I will instruct them to do this. Then when we go to court he or she will stand up and will argue your case.' Explaining that to someone from overseas is like explaining to a Martian our legal system . . .
>
> You all know who the boss is. Boss one is the client. You know who the second boss is, it is the instructing solicitor. The roles in the past, for perfectly understandable reasons, have been that the roles have become completely reversed and it has become boss one is the barrister, boss two is the solicitor and boss three or maybe not the boss at all is the client.

There are cost implications to taking advocacy in to the solicitor's firm. A junior partner reflected on how barristers in commercial chambers appear to earn much more than senior partners in a City law firm, while charging less.

> On an hour by hour basis barristers work out cheaper to use, except perhaps for the very, very senior QCs. Barristers may end up earning a lot more

> money but that is because they do not have to pay the same rents, they do not have to pay for the same office rates, they do not have to keep the same thing like this going. This all cuts into the cost, but it also means that for every hour of time that we give to a client in the law firm we have got to charge more for that in order to make a profit than the barrister who is sitting down at the bar . . . So that is a major disincentive to try and say to clients we will do all of your cases.

In many ways the division of labour between solicitors and advocates has to be decided fairly early in a case so that the best team of experts can gathered, as a partner related:

> If you've got a large case, or a large problem for a client that may become litigious, you will start to put together a team of people to help the client at an early stage and that team may well comprise a senior barrister, a junior barrister, whom you would consult at the very outset to introduce them to the problem because it is something that you would want them to work on with you as the problem progresses. We would not on any case of substance run everything ourselves right to the last minute and then suddenly get in a barrister.

These views were not universally endorsed, however, by other lawyers. One senior partner said:

> I certainly do not see any merit in saying to my clients you have got to double-man this case just so there is a future for the bar. My clients are not impressed with that idea.

The need to attend to the client's needs, to keep the client informed, and to maintain with the client a two-way communication link, was emphasized generally. The close contact with a client was seen as a big difference between what solicitors and barristers do. An assistant solicitor said,

> The barrister rarely has to worry about clients – big advantage. They do have to worry about PR. They do have to make sure that the client is happy, but primarily they do not have to worry about that. They can just do their specific job in their specific way and give it back to the solicitor, and it is the solicitor's job to pass it out. So client liaison is so much a solicitor's job.

The head of the litigation department in the same firm felt not only that the roles of the advocate and the solicitor, especially if a partner, are different, but they may even be antithetical.

> I suspect that all of the requirements of an advocate are antithetic to the ethos of a partner in a City law firm, certainly as we are currently structured.

> A partner in a City law firm is meant to be a 'client-getter' and a 'client-pleaser' and, much less important, but nonetheless important, available to his partners. As I have said, I don't think that any of that is something that an advocate can readily do consistently with the requirements of his role as an advocate. It may be that I have been putting it at a very practical level; I get my leg mercilessly pulled by clients and partners if I'm not available every hour of the day at the end of the telephone at my desk. It's bad enough going out for meetings, it gets much worse if you go to a trial for a few weeks.

The problem of reconciling the requirements of being a City partner raised by the firm's clients and fellow partners and colleagues, with the need to become unavailable so as to prepare a case, and later present the case perhaps for days on end, were felt by the other firms. A junior partner argued, 'We are not geared to providing the time to people required to prepare for cases and we have not had the experience that junior counsel have had day in and day out in the tribunals where they practise.'

It is indicative that, while the problem of combining the role of client-pleaser with advocate, the presenter of a case in court is perceived in similar terms in all firms. There are important differences in perceptions of how the problem can be resolved. What is seen as an antithesis or an incompatibility between the two roles in one firm, is perceived as a mere management problem for another.[18] The senior partner in one of the latter firms explained:

> The burden of preparation is quite high and that means the solicitor advocate has to then be able to manage his practice so as to keep all of his other clients happy and that's something which I don't think any of us have yet really had to focus on. One of my partners was in a four week hearing, and another one is set for October which could run six to eight weeks. He wonders, 'How am I going to handle the rest of my clients?' That's a management issue.

The role of City firm solicitors as the sole contact point for clients is undoubtedly creating problems for firms that wish to expand their advocacy services. It is also seen as a major difference between barristers and solicitors. Most interviewees, for example, felt that direct professional access between clients and barristers had made little difference to their professional practices, because barristers had limited skills, or desire, to deal with clients directly. The clash of cultures between solicitors and barristers was also expressed in other terms, relating to differences between the two branches of the legal profession. One identified difference was that of the barrister as a loner and the solicitor as the team worker. A head of litigation pointed out:

> Barristers are not very 'house trained'. We have many years ago now taken a couple in-house and it was a disaster on their side. They sort of operated as if they were still sole practitioners taking up pretty much any client that they wanted, to do whatever they wanted and it just does not really work.

The loner mentality was seen to be totally incompatible with the work of a City firm, and especially the role expected of partners by their clients. As the head of litigation in another firm argued, 'Access to partners is very important for our clients because of, normally, their profile and the type of cases they bring to us, so it is important that they feel that partners are dedicating time to their case.' The head of litigation in one firm felt there was a big contradiction between lawyers as negotiators and as advocates.

> Another reason for keeping the role of an advocate separate from that of the manager of the team and from the solicitor, if you like, is that when you come to settlement discussions most advocates, and that means at the moment barristers, will tell you that they would rather not get involved in settlement discussions for the very good reason that if you are an advocate you want to see things slightly black and white. Your case is white and his case black. To be a successful negotiator, settler, you have got to see the shades of grey in the situation.

Career structures

For many established solicitors the changes in the advocacy rules are of marginal effect on their own careers. The main impact of the change is received by the junior members of the law firms. This distinction places an age-related tension on firm development. The head of litigation in one firm was facing this problem.

> We have to meet the expectation of junior lawyers, most of whom are now joining the litigation department with the expectation that not only in their working lifetime but within the short to medium term they will be conducting cases, perhaps not monsters but at any rate cases, and they are expecting us to provide not only with the training but also with the experience. We must live with the challenges that arise for us everyday. Challenging is this: First, how do we get our people to have sufficient advocacy experience that they can compete effectively with the bar? . . . The second question is: how do we structure ourselves internally to provide that service?

The same senior partner explained how the older members of the firm, like himself, were not likely to benefit directly from increased advocacy exposure.

> By the stage of my career that I have reached I can actually bring something to the party that the clients expect me to bring which is a certain amount, I suppose, of experience, you know, 'Well, I have done this before.' I don't think that the client would find it terribly attractive to substitute that for, 'Well, I am now going to do the advocacy, I know that I have never done it before, but I will have a go at that as well.' The other reason for it is I suspect that it will take something like ten years or so before you will see solicitors standing up and handling complex cases before the high court.

Some lawyers believed that developing an advocacy capacity was a means of achieving a competitive edge, which centred only on inter-firm struggle.

> Certainly no one wants to get left behind. That's exactly where the emphasis is coming from at the moment. It isn't coming from the client. It isn't coming from the attitude at the bar. It's coming from fierce competition between City firms to be able to say, 'We can add something different. We are a 'one-stop shop', if clients buy that.'

It is clear that a range of pressures are being felt by City law firms, both from within as junior lawyers wish to expand their portfolios of skills and symbolic resources, and from without as clients press to see a more rational system that is synchronized with others outside the UK. However beleaguered solicitors may feel, their concerns are being amplified with the forces to globalization of legal services which are themselves being influenced by the moves of the large accounting firms to establish and legitimate multidisciplinary practices (MDPs), in some cases by taking over law firms (cf. Brill, 1985).

Discussion

Comparing the two case studies in particular, and US and UK legal professions in general, we can see that the UK legal profession is subject to pressures of change far greater than in the US. Plausible reasons for American stability can be found in the substantial domestic market enjoyed by American lawyers and the influential role of the Securities and Exchange Commission in international capital markets work. Further causes are located in the role of the American attorney in putting deals together: attorneys are depicted as quarterbacks coordinating the strategy of deals in alliance with bankers and others (Fitzpatrick, 1989). British lawyers have always assumed the role of underlabourer in deal-making, the lead role going to the merchant and investment banks. These reasons have enabled American lawyers to concentrate on work without being troubled to the *same extent* by external competition.

Change in the law firm

Both case studies, then, illustrate the role of *habitus* in declaring the conditions of their respective fields. 'Durable dispositions' are displayed in the work of getting and keeping clients and in the attempts to come to terms with the creation of new markets and a new division of labour. The forces for and against change become apparent as these lawyers struggle with their modes of working. The processes of institutional change may be quickly imposed from without, but the response internally can be slow (or fast) depending on where in the institution the change is occurring and where it meets resistance. One of the points I put forward at the beginning of this chapter was the reflexive nature of legal work and organization.[19] Law firms are infused with law, because they are legal

arrangements and composed of lawyers, and they also stand apart from law, because they demand an association based on voluntaries (which has its material rewards).[20] This varies between countries: the US has a far more individuated system based on meritocratic rewards, and the UK has a more collectivized system, which rewards groups through lockstep. Thus the goals of the collective are competing with the desires of the individual, although it would be reasonable to say they are not incompatible.

The American example shows that power and authority lie in the individual's command of clients and the resources that can be committed to them. Rainmaking is highly applauded. In Britain it is possible to command many clients, but still be subject to the will of the collectivity. The firm is perceived as an entity that endures and outlives the individuals. Yet, in part, these are idealized and romanticized conceptions of law firm organization. Actors are capable of selecting action because of irrational reasons, e.g., because they perceive others might be following a particular course of action and therefore they must be publicly seen to do alike (Han, 1994). This can occur even if the consequences are deleterious to the actor.[21]

> Institutional factors often lead organizations to conform to societal norms even when formal enforcement mechanisms are highly flawed. Frequently cited institutional influences include historical legacies, cultural mores, cognitive scripts and structural linkages to the professions and to the state. Each, in its own way, displaces single-minded profit maximization with a heightened sensitivity to the organizational embeddedness within a larger social environment . . . [That is,] organizations adopt many practices and structures, not for efficiency reasons, but because the cultural environment constructs adoption as the proper, legitimate, or natural thing to do.
>
> (Suchman and Edelman, 1996, p. 919)

Therefore, although there are stark differences between the two types, there are similarities insofar as neither can step away entirely from the 'normal' model of a law firm. If they were to do so, even if it were in the individuals' self-interest, the perceptions of the public and others would be shocked. It is unlikely that a wholesale reconfiguration of the law firm partnership could take place as long as the present norms and ethics of law practice exist. Forms of incorporation and limited liability that have been explored by law firms have been genteel, to say the least. The law firm as an organization requires the patina of professionalism in order to justify itself as organization and to its lawyer-members. It may be seething with dissension and difference (Martin and Meyerson [1988] quoted in Schultz, 1995): the classification of partners as junior and senior creates subcultures that can be oppositional to each other. Yet the public face of the organization will strongly attempt to portray itself as smooth and unriven.

Knowledge markets

In the UK case study I showed the perceptions of a change in the market for legal services. The sediment was truly stirred by expansion of advocacy services. Similar effects are being observed among welfare lawyers, as the government changes the funding structure of legal aid (cf. Sommerlad, 1995). Perhaps the bigger game is being played in the corporate sphere at the global level. If two jurisdictions, New York and England, have come to dominate world markets in law, the organizations that deliver those services will have to compete. The deregulation of the British financial markets in the 1980s and the creation of the single European market in 1992 were signals for US law firms to enter the British market by setting up firms in London and elsewhere. The Courts and Services Act 1990 enabled the establishment of multinational law practices in the UK, which allowed foreign firms to associate with, merge with British law firms or employ British lawyers (Flood, 1996). The first wave of big American firms to move into London offered, by English standards, large salaries (Flanagan, 1998). The lure was powerful and British lawyers were joining American firms. One of the effects was to import American firm organizational modes to London. A few firms began to shift their remuneration systems from lockstep to 'eat what you kill'. And as the struggle over which lawyers could deliver the most expertise in capital markets work, English firms began to set up offices in New York and elsewhere in the US. At first, both US and UK firms played safe by offering services based on their own jurisdictional skills. Over time, however, they each began to offer expertise in both types of law (Swann, 1998).[22] The transfer market between UK and US law firms is now a regular occurrence. Lawyers move but the firm retains its identity. For City firms 'branding' as an index of quality assurance is critical.

Both in the US and UK law firms are retelling their histories as part of an intellectual enterprise that endows them with legitimacy. In addition to individual lawyers increasing their symbolic capital, the firm is also creating capital. We see this in part through the fixity of naming that law firms have adopted; no longer do names change with the partners – the image of the brand is central to the identity of the organization. Simple regulation, inscribed in codes of conduct and elsewhere, has become inadequate to capture the complexities of global corporate life. The malpractice insurance schemes run by the professional bodies are largely for the benefit of a public suffering incompetent service delivered by small firms and solo practitioners. Large firms potentially face negligence claims amounting to millions of pounds and dollars; thus they take out extra cover beyond the professional bodies' thresholds. How esteem, status and prestige are conserved and raised becomes an important issue for corporate law firms. For the top echelon of firms in the US and the UK, their names are brands, which clients know are unlikely to be adulterated by commingling with accounting firms, for example, become guarantees of 'excellence'. The result of staying with the brand is that the organization cannot so radically alter its structure as to become unrecognizable. While it may move from a more traditional partnership mode to a more managerial style, it does not and cannot affect the integrity of the original

structure. Mergers and lateral hiring of staff have undoubtedly increased in frequency, but success, internally and externally, is still measured by the strength of organic growth (Lee, 1997, p. 21). As this suggests, the normative structures of professions render them peculiarly resistant to concerns of economy or efficiency.

Multi-disciplinary practice is seen by some commentators as inevitable (Scott, 1998; *The Lawyer*, 1998a).[23] Law firms below the top rank have actively discussed forming alliances with Big Five accounting firms, while stopping short of full merger (Lindsay, 1998a). The dangers to institutional integrity and legitimation in such alliances have been submerged of late. Arthur Andersen has been able to form alliances with Spain's and Scotland's largest firms without demur (Lindsay, 1998b). But Andersen's attempt at establishing an alliance with a City law firm, Wilde Sapte, courted disaster (Flood, 1998). The entire courtship was conducted in the public gaze and when Andersen's spurned Wilde Sapte, the law firm began to atrophy. The failure was partially due to two key rainmakers leaving Wilde Sapte for another firm – after they had voted for the alliance. A large, 250-year-old City law firm was snubbed. The extent of the damage to the reputation of Wilde Sapte is yet incalculable, but the intensity of the reaction to the failure has introduced caution among other potential suitors. The rupture with the law firm's established culture was significant and abrupt. This suggests that interfering with the image inscribed on an established law firm is a high-risk venture. The brand could be devalued beyond recall.[24]

To conclude, if law firms are gradually adopting new configurations in their organizational schemas, from, say, P^2 to MPB, the reason may be that others are doing so and therefore the herd instinct comes into play – even if there is no rational reason for the change. Control of an organization does not necessarily indicate how change should be managed. Even departmental structures are fragile: some firms prefer to cross-cut them with joint-expertise groups so that collectivities of lawyers are brought together for specific purposes, e.g., crisis management. Adaptation to new markets introduces uncertainty and random factors that are not immediately amenable to rational planning, e.g., should intra-firm advocates be insulated from clients and other lawyers? If they were, how would that conflict with client control and the maintenance of authority in the firm? Cooper *et al.* (1996) are right when they argue the case for the sedimentation approach to law firm organization. While firms may oscillate over the spectrum of P^2 to MPB, most, however, are combinations of the archetypes. What is clearer is that international competition and the threat of multidisciplinary practices from the accounting firms are forcing English corporate law firms to revisit their traditions, billing becomes more aggressive, lockstep begins to pall. Incentives to remain with a firm for the long term fade and career mobility becomes the norm. These sorts of conditions will conspire to cause the P^2 archetype to weaken and instead favour the MPB.

Notes

1 Those below partner level, in both systems, have always been treated as employees with minimal standing in the firm (see Spangler, 1986).
2 For example, the Lord Chancellor's Department (1998) has issued a White Paper that proposes to grant complete rights of audience to solicitors from their initial qualification. This would place them in direct competition with barristers.
3 Personal communication from City solicitor, August 1998.
4 *Habitus* is the system of dispositions (i.e., 'virtualities, potentialities, eventualities') of actors in a particular field that is continuously subjected to everyday experiences and is therefore an integral part of social action (Bourdieu and Wacquant, 1992, pp. 133–135).
5 For example, the market for auditing services among large corporations is dominated by the Big Five accounting firms which possess the numbers of auditors and cost structure that enable them to undertake, say, the auditing of Ford (see Han, 1994).
6 I examined the firm's web site in July 1998 and found Tischmann contained many of the same attorneys as ten years before. The composition of the management committee hadn't changed significantly in the intervening years. Perhaps one notable element was that the retirement of senior lawyers appears to have more of a voluntary flavour than in the UK where it is usually mandatory at between 60 and, more rarely, 65 years of age. I noticed on the web site that one lawyer in Tischmann who in the 1970s was in his own 70s, was still presented to be in active practice.
7 Using the ranking system of law schools devised by Heinz and Laumann (1982), I found that 50 per cent of the firm's lawyers graduated from elite law schools (Harvard, Yale, Chicago, Michigan), about one-quarter from prestige law schools (Northwestern, Duke), and about 10 per cent each from regional schools (Illinois, Iowa, Notre Dame, Wisconsin) and from local schools (Chicago–Kent, Loyola, De Paul). The range of the billing rates, at the time of the research, was from $70 to $225 with a median of $115.
8 The lifespan of ideas may be very short. A leading New York bankruptcy lawyer remarked that his briefs and other documents would appear on the Internet shortly after they were filed. He even had his own arguments quoted back at him, without attribution. Personal communication, December 1996.
9 Sometimes cross-referrals *within* a firm are also conducted with great caution and the consideration of keeping the client within one's firm grip. For example, a partner may never pass work to another 'aggressive' partner within the same firm. Personal communication from City solicitor, August 1998.
10 From the figures, I was able to see at Tischmann, the top attorneys in the firm received over four times the amount awarded to the junior partners.
11 An analysis of the manner in which work was recorded showed that on average 55 per cent of a Tischmann lawyer's time was spent in talk on the phone, at meetings, in conferences, etc. For senior partners 95 per cent of their time was billed as talk; for middle-range partners, 65 per cent; for junior partners, 50 per cent; for associates, less than 15 per cent (Flood, 1987).
12 There was one item about which the management committee was firm, namely, the recording of time sheets and billing. Any lawyer who was tardy in submitting time sheets didn't receive his or her salary cheque for that month until the sheet was completed.
13 The Lord Chancellor's Department (1998) has proposed that ACLEC should be abolished.
14 Personal communication from City solicitor, July 1998.
15 The average annual billable hours target for UK lawyers is around 1,400 hours. In the US it can be anywhere between 2,000 to 2,500 hours per year (Alcock, 1998).
16 The Lord Chancellor's Department (1998) estimates that out of approximately 60,000 solicitors in England and Wales only 600 have become solicitor-advocates.

17 The importance of these perceptions can be demonstrated by the example of the Commercial Court in London, which is staffed by a small cadre of elite judges. A full 80 per cent of its caseload involves one overseas party, and 50 per cent of the caseload involves both parties being foreign. Therefore it is a forum of choice for many non-UK corporate litigants. See the International Centre for Commercial Law web site at http://www.icclaw.com.
18 Tischmann, like most US law firms, had no problems with this division of labour. Whoever the client belonged to was the client 'carer-pleaser', but many litigation cases were referred from the corporate and property departments so the litigator would be responsible for the case but not the client.
19 Reflexivity is also a major theme in John Gray's chapter (5) in this volume.
20 I am not denying that partnership is underdeveloped jurisprudentially; quite the contrary, but partnership requires a high degree of consensus. Some law partnerships still require unanimous votes for organizational change. The City firm of Denton Hall refused to merge with two other City firms because a single partner objected (Hoult, 1998, p. 15).
21 For example, in the rush to open overseas offices, law firms didn't always analyse the need for one, and so many were closed after a short but expensive time (Flood, 1996).
22 Work does not always follow expected patterns. For example, the US firms have been strong in privatization work in Eastern Europe, an economic process pioneered in the UK; and UK firms have been at the forefront of utilities regulatory work in the US, which has a longer tradition of this type of regulation than the UK.
23 In the US there are restrictive rules on who can deliver legal services and how audit services can be combined with legal services. These rules inhibit the formation of MDPs in the US (Cannon, 1997).
24 Both the American Bar Association and the Conseil National des Barreaux in France have initiated inquiries into MDPs because they fear the legal profession will fragment with their implementation (*The Lawyer*, 1998b; Tyler, 1998). The Paris Bar has gone further requiring MDPs to 'reveal to their local Bar the legal and financial structure between the lawyers and the other professions involved' (Tyler, 1998, p. 16).

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