Encyclopedia of Law & Society: American and Global Perspectives

Law Firms

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Lawyers create and apply knowledge for clients, and law firms are the paradigmatic vehicle for delivering that knowledge. Lawyers typically form firms by partnership, where all the members agree to enjoy the profits or suffer the losses. These are usually flat-profiled organizations composed of partners (owners), associates (employee attorneys), and staff. Other firms may be run as franchises or as more hierarchical and autocratic structures. Some law firms can trace their histories for hundreds of years. For example, Freshfields in London became solicitors to the Bank of England in 1743. However, some countries, such as Greece, have only allowed the formation of law firms since the 1990s; and in other countries, such as England and Wales, parts of the legal profession, such as barristers, prohibit the creation of law firm partnerships.

Law firms obviously come in many shapes and sizes. In the late twentieth century, one could characterize the legal profession by the growth of corporate mega–law firms. They measure their lawyers in the thousands and have scores of offices around the world. Although they are primarily an AngloAmerican phenomenon, mega–law firms are also taking root elsewhere in the world.

Professional service firms have developed portfolios of resources, which use many different types of skills. This has been particularly apparent in accounting and consultancy services. Law firms are beginning to move in this direction, also, but courts and some regulators are less than enthusiastic.

History

Historians cannot assign any definitive origin to law firms, but they have found records of twoand threeman partnerships existing in England in 1780. The great majority of lawyers, however, were solo practitioners. Industrialization was one of the main incentives for the development of law practice in both the United States and Europe. Landed gentry began to exploit their latent natural resources, which brought lawyers into the business of creating businesses and raising finances for them. Big enterprises, such as the formation of the railroads, demanded an array of legal skills in finance, corporate structure, and bankruptcy, which lawyers were able to offer.

Permissive and facilitative legislation, such as the British Joint Stock Companies Act of 1856 and the Limited Liability Act of 1855, fostered the spirit of enterprise. Regulation was limited and fraud rife. The City of London became a hive of inventive activity as investment trusts were born and foreign bonds issued. As railways extended their lines, law firms were involved in forming companies, acquiring land, petitioning Parliament, and resolving contract disputes. For example, the London firm of Norton Rose maintained twenty-three railway company accounts between 1848 and 1878. These law firms had small numbers of partners; two or three were the norm. However, they buttressed their activities with large numbers of clerks, who were unqualified men, at ratios of partners to clerks of one in twenty to one in one hundred. The railway business gave lawyers considerable experience in risk management, investment **[p. 925 ↓]** strategy, and trust administration, both in England and abroad.

Nineteenth-century New York City was the true birthplace of the modern law firm. Both legal education and law firms transformed themselves to become meritocratic and rational. Law schools did this by adopting the case method devised by Christopher Columbus Langdell (1826–1906) at Harvard. Paul Cravath (1861–1940) evolved his law firm organically by selecting partners from the finest associates trained within the firm.

The innovations in legal education allowed the ranking of students on intellectual grounds and this, coupled with the selection of student editors for law reviews, allowed law firms to choose the brightest applicants. For Cravath, the training of lawyers was a continuation of the law school process in the real world. He believed that associates should observe their seniors breaking down complex problems into component parts; seniors would then assign an associate a part to analyze. At the same time, the associate rotated through the different departments of the law firm before specializing. Cravath insisted that the ideal tenure for a lawyer in the firm was six years, after which he either could stay on as a partner if the partners selected him or could move to another post, perhaps in a client's legal department. Associates who stayed longer would not have the correct motivation to ensure the firm's success, so “up or out” became the norm. The Cravath law firm still refers to the use of this model on its Web site.

As law firms were changing from small, parochial partnerships into large, complex, diverse organizations, mirroring the growth of the economy, the expression “law factory” emerged. Tensions within the profession opened up, so that one Julius Henry Cohen, for example, published a small book in 1916 titled *Law: Business or Profession?* The expansion of the imperial world brought with it international development for law firms. John Foster Dulles (1888–1959), of the New York law firm Sullivan & Cromwell, played a key role in the negotiations of the Versailles Treaty at the end of the First World War. His firm subsequently helped capital flow from North America to Europe, especially to Germany, aiding the National Socialist government. With the birth of the New Deal in the 1930s, many lawyers moved into government agencies. Eventually, they left for private practice, but in so doing, they established the pattern of the revolving door between government and practice, which worked to the benefit of law firms. Dulles became secretary of state in President Dwight Eisenhower's administration (1953–1961). John McCloy (1895–1989) of Milbank Tweed served as high commissioner of post–World War II Germany, was president of the World Bank among many other offices, and acted as advisor to every U.S. president from Franklin Roosevelt to Ronald Reagan. Such lawyers comprised a modern aristocracy.

In the period since the Second World War, not only have the numbers of lawyers grown significantly but large law firms have expanded in number and size. The most dynamic growth has taken place in the large law firm sector. Taken together, small law firms, while containing the largest number of lawyers, are declining in strength as the changing economics of practice militate against them. In the United States, franchise law firms have emerged, and in the United Kingdom, alternative legal services providers, such as banks, insurance companies, trades unions, and building societies, have emerged.

Small, Medium, and Large Law Firms

In England and Wales in 2003, the Law Society estimated that there were around 9,200 law firms, with 27 percent of them based in London. Eighty-five percent of law firms had four or fewer partners, including 45 percent of firms of solo practitioners. Firms with more than twenty-six partners (1.6 percent of the whole) are increasing in number, and 60 percent of these are located in London. In addition, mega–law firms, which accommodate 20 percent of all practicing lawyers, are virtually all London-based. There were 155 multinational practices in England and Wales.

The American Bar Association data for 2000 show that there are over one million lawyers of whom 75 percent practice in 47,563 law firms in the United States. Firms with one to five lawyers comprise 76 percent of law firms, while firms with more than **[p. 926 ↓]** twenty lawyers comprise 24 percent (firms with more than 101 lawyers comprise 14 percent). Although the number of law firms has increased—in 1980 there were 38,500 and in 1991 there were 42,500—the rise has been at the expense of the smaller firms, which in 1981 made up 81 percent of the population.

The United Kingdom and the United States show similar trends in the annual decline in the overall numbers of smaller law firms. Small firms are shrinking in number, while larger firms are growing in size if not so much in quantity. When these movements become linked with the trend of increasing numbers of applicants to the legal profession each year, it suggests that consolidation of law firms is occurring. The most growth has been in large law firms: there are a substantial number of law firms with over 1,000 lawyers. Even the largest law firms are tiny compared with the large accounting firms such as PricewaterhouseCoopers (PwC), which has over 120,000 professionals on its staff worldwide.

The statistics for lawyers across Europe show wildly divergent numbers. For example, Germany has about 116,000 lawyers, France over 40,000, Italy 140,000, and Belgium 12,600; these numbers seem to indicate that population alone is not a reliable indicator of the number of lawyers. Moreover, in these countries the typical law firm is small. For example, France has 2.73 lawyers in the average law firm. There are occasional large law firms such as NautaDutilh of Amsterdam, with 500 lawyers. Beyond Europe, statistics are scant, but in a country such as China, there are 110,000 lawyers; more than 10,000 domestic law firms and around 160 international law firms have offices in China.

Work in Law Firms

Most legal practice occurs in urban areas. For rural areas and middle-sized cities, the demand for legal services appears to correlate with the level of retail trade and local government activity. Lawyers' work in law firms varies tremendously, depending on the kind of firm and the type of client. John Heinz and Edward Laumann offered an analytical framework for distinguishing firms' work by client type in the United States. Practice effectively fell into two hemispheres, personal and corporate. Personal plight lawyers were involved in the less prestigious areas of law, such as plaintiffs' personal injury, criminal defense, and divorce. In the corporate hemisphere, most practice areas were of considerably greater prestige, and a considerable segment of the work was for institutions such as finance houses and governments. These areas included business litigation, antitrust defense, securities, and intellectual property work.

In the United Kingdom, much of the personal plight work deals with property transactions and statefunded areas such as criminal defense, children's cases, and immigration and asylum matters. According to Heinz and Laumann, the types of work with the most stable sets of clients were probate, labor (both union and management), commercial, and municipal. Later research has suggested that these distinctions are no longer so sharp.

Large law firms are significantly involved in international legal work. This work can have three characteristics: (1) it may involve the export of the “home” legal order; (2) it may involve the practice of “local” law; or (3) it may involve the creation of nonstate law such as *lex mercatoria*, which is found in large-scale international arbitration. These characteristics reflect the way law firms seek to position themselves in the global market for professional services.

Essentially, there are two strategies available to law firms for becoming dominant players in the global market. The first is to establish the firm as a leader within its own market without establishing overseas offices, as Cravath Swaine & Moore of New York (about 400 lawyers) and Slaughter & May of London (about 600 lawyers) have done. Their domestic professional reputations endow them with the capabilities of forming a series of “best friend” alliances with similar elite firms elsewhere in the world and circumventing the costs associated with globalization. The second strategy is to attain global reach with offices in as many countries as possible, as Baker & McKenzie (United States, sixty-nine offices in thirty-eight countries) and Clifford Chance (United Kingdom, twentynine offices in nineteen countries), both with over 3,000 lawyers, have done. The global firms provide all legal services in-house.

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The remaining firms occupy a middle ground that includes a mixture of domestic and international laws. Nevertheless, there is intense competition among law firms for international or transnational work. Law firms actively promote *their* country's law as the best vehicle for business transactions. The area of capital markets work displays this clearly. The main sources of finance in the international arena are in New York and London. Therefore, most transactions would occur under New York state law or British law, or a hybrid of both. Increasingly, global transactions involve a number of different jurisdictions; each should take on a form that allows either New York or British law to coordinate its range.

A significant area for growth in law firms has occurred among *franchise law firms.* These firms capitalize on the range of legal needs manifested by the middle class. The work is highly standardized; lawyers do not attempt anything complex. Franchise law firms are corporate in form, with no partnership prospects for their attorneys; they have many satellite offices that generate work involving wills, licenses, and leases for secretaries. The firm offices are typically located in retail areas, such as shopping malls.

Law Firm Growth: Tournaments, Mergers, and Clients

It is clear that law firms have grown in size and appear to have a dynamic for growth. Scholars have adduced several causes to explain this growth. Marc Galanter and Thomas Palay argued that there was a tournament at the heart of law firms, which provided the reason for growth. Law firm partners possess capital. The best way to exploit their capital is to hire associates who will share in it and expand the work base. This leveraging creates profit for the partners, who can promote only some of these associates to maintain the profitable partner-associate ratio. Therefore, they engage in a tournament to discover which ones will succeed. Those who become partners will have invested heavily in the firm; hence, they will be committed to staying. This model is similar to the Cravath model outlined above. The law firm contains its own engine of growth, even exponential growth.

The model has attracted critics. Some say growth rates among law firms vary too much for a single model to explain them. Moreover, many law firms are introducing more layers at a level between associate and partner, such as "salaried partner" or "nonequity partner," thereby extending the tenure track. Others suggest that firms have incentives to become "one-stop shops" for their clients, cross-selling services in several areas so clients rely on a single firm for all of their legal work. Finally, law firms grow by offering a significant array of services to a large range of clients to avoid becoming dependent on a single client or a particular type of work.

Many law firms have grown through mergers. In some cases, it is a marriage of equals; in others, it is, effectively, a takeover. One of the key mergers that sparked a rush to merge among law firms was that between Clifford-Turner and Coward Chance in the late 1980s. The deregulation of financial services, the "Big Bang" in London in the mid-1980s, galvanized corporate and banking firms. The result was the creation of the United Kingdom's largest law firm, Clifford Chance. In the 1990s, Clifford Chance undertook a three-way merger with Pünder Volhard of Frankfurt and Rogers & Wells of New York, producing one of the world's biggest law firms.

The other big global law firm, Baker & McKenzie, took a different route. It started in the late 1940s in Chicago with the intention of becoming a firm with global reach. The process was to acquire lawyers in each target country to form a firm that was a partnership within the local jurisdiction but also a part of an international partnership. Over a period of fifty years, Baker & McKenzie achieved what Clifford Chance attained in fifteen years by aggressive mergers and acquisitions.

Another firm that one should consider in this context is Skadden Arps of New York. In its early years, the firm was largely Jewish; because of discrimination against Jews in the United States, Skadden undertook mainly marginal legal work. During the 1960s and 1970s, Skadden earned a reputation for aggressive lawyering in hostile mergers and acquisitions (M&A), which mainstream law firms shunned. From this basis, Skadden was able to evolve from an M&A law firm to a full-service one. The firm became renowned for **[p. 928 ↓]** engaging in high-profile transactions, such as the $25 billion leveraged buyout of RJR Nabisco by the private equity firm Kohlberg Kravis Roberts.

Perhaps the most significant feature of the emergence of law firms such as Skadden Arps and Wachtell Lipton, another Jewish M&A firm, was the manner in which they altered the structure of lawyer-client relationships. Until the 1980s, corporate client relationships with legal counselors were of long-standing duration. Some of the relationships between law firms and investment banks go back more than a hundred years, based on social as well as economic links. Because of the important skills that a firm such as Skadden could bring to bear in proxy fights, any corporation enmeshed in a hostile takeover would not be able to rely on the abilities of its regular law firm; it simply would not have the necessary experience. The corporation would attempt to retain Joe Flom of Skadden or Marty Lipton of Wachtell, the key players in the field. In this way, these firms served notice that long-standing lawyer-client relationships were evolving in favor of transactional relationships. Two other changes reinforced this alteration in style. Corporations took more of their legal work in-house and corporate legal counsels became more selective about which law firm they chose, tightly monitoring budgets and bills. Law firms ceased to be the stable structures they traditionally had been. Instead of partners remaining with the same firm throughout their careers, they began to move from firm to firm, seeking greater advantages and taking their clients with them.

Work Practices and Gender

Law firms are nominally partnerships and have a flat profile. They also appear at face value to be collegial organizations. These characteristics evolved as law firms coped with the demands of increased competition in the legal and professional marketplace. Law firms are no longer the only organizations that deliver legal services. Personal-plight service providers already include banks, insurance companies, and supermarkets. In the corporate sector, accounting firms established their own law firms (for example, Landwell and PwC).

Scholars sometimes divide law firms by the category of worker. The tripartite division of “finders, minders, and grinders” is an expressive depiction of basic functions within law firms. The *finders* are the “rainmakers,” or business-getters, who bring in the clients. They often play significant roles in the governance of the firm. *Minders* are lawyers who execute and distribute work among the firm's associates; often, they are junior partners. *Grinders* are the ones upon whom the bulk of the work falls, the associates who write the memoranda and briefs. Crude as this distinction is, it provides a guide to law firm hierarchy, power, and remuneration. Rainmaking creates work for the firm as a whole and usually pays separately and profitably. This is sometimes referred to the "eat what you kill," or merit approach, in contrast to the "lockstep," or seniority, method, whereby partners form separate cohorts depending on date of promotion, with each cohort's members receiving the same amount. Lockstep has traditionally been the British law firm mode of remuneration, although some American firms have also adopted it. "Eat what you kill" is now becoming the predominant mode, especially as law firms globalize and encounter cultures where equality and collegiality have been absent. The rewards of "eat what you kill" usually include a position on management and partner remuneration committees and a strong say in which associates should be promoted to the partnership.

Maintaining the durability of law firm partnerships involves subtle negotiations among peers, the forming of alliances, and the building of niches. Although bureaucracies endow hierarchies with authority to manage organizational relationships and resolve conflicts, collegial structures are interdependent and in need of lateral controls that depend on moral suasion. Although collegiality may be a dominant motif in law firms, gender equality is not. Law firms are primarily male institutions, even though greater proportions of women are entering the legal profession.

In part, the difficulties for women lie in the law firm culture. Two aspects are significant. The first is the long-hours culture that is endemic in law firms; yearly billable targets of 2,000 to 3,000 hours are habitually the norm. The second is the culture that **[p. 929 ↓]** creates sets of resource interdependencies not always available to women because they are unable to join established networks, that is, "old boy networks," or easily start new ones. These barriers to combining family life and law practice and to creating social capital spur women on to leave private practice in favor of corporate in-house or government legal positions they perceive as less stressful and more family friendly. There are also similarities with ethnic minority members of law firms.

Ethics, Regulation, and New Forms of Practice

As Emmanuel Lazega pointed out, the greater a law firm's ethical commitment, the more business it will turn away. Yet ethics and regulation are of considerable concern to law firms. The consolidation of law firms has created an ever-increasing capacity for conflicts of interest. Joe Flom of Skadden Arps was notorious for having a retainer agreement with clients that expressly forbade them to claim conflict of interest in hostile takeovers if he was unable to act for them. The move from stable lawyer-client relationships to more transactional relationships has also heightened the potential for conflicts, especially where service cross-selling occurs. It is clear that a division between large law firms and medium-sized and smaller law firms is emerging over ethical conflicts. The latter two groups are generally able to accommodate the rules, but the large firms would like to redefine them. Flom went so far as to suggest that bar associations should abandon conflicts rules to prevent shortages of available skills. The situation has intensified with various corporate crises, such as the collapse of Enron, which implicated several large law firms in unethical activity. Some law firms have created *Chinese walls*, or artificial intrafirm barriers between teams, to avoid conflicts. Although in many cases clients sanction the adoption of Chinese walls, courts have cast doubt on their efficacy.

Ethical codes are generally the task of local jurisdictions, yet globalization is raising new ethical and regulatory issues. States no longer have the power to control the movements of capital or the autonomy of multinational enterprises (MNEs). In addition, the capital values of large MNEs dwarf the gross domestic product (GDP) of some nation-states. Nation-states' long-term commitments are increasingly binding them to supranational rules, such as the General Agreement on Trade in Services (GATS), North American Free Trade Agreement (NAFTA), and International Convergence of Capital Measurement and Capital Standards (New Accord, Basel II), which may run counter to domestic policies.

Generally, if self-governance is difficult or impossible, regulatory agencies step in; lawyers, however, have mostly avoided regulation. Some bodies, such as the U.S.

Securities and Exchange Commission, are making moves toward becoming global regulators through legislation such as the Sarbanes-Oxley Act of 2002. Lawyers are tentatively taking the first steps in creating global ethical regimes through the International Bar Association *International Code of Ethics* and the Council of the Bars and Law Societies of the European Community *Code of Conduct for Lawyers in the European Union.* These developments depend on the law firm remaining an entity *sui generis;* this is not necessarily the case. The emergence of the multidisciplinary practice—and its “little sister,” the legal disciplinary practice—combining different professionals in a single organization, is already straining the limits of organizational identity and selfgovernance. Where the state is stepping in, it is in the guise of antitrust authorities (in the United Kingdom and Ireland), advocating the removal of restrictive professional boundaries, especially those between professions. Law firms live in interesting times.

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See also

- Arbitration, International
- Education, Legal
- Ethics, Legal
- Gender
- Government Lawyers
- Industrialization
- International Trade
- Lawyers
- Politicians, Lawyers as
- Urbanization

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