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THE MANY FUTURES OF THE BIG LAW FIRM*

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I. AN EVER-DECLINING PROFESSION

The spectre of commercialism has haunted large law firms since their rise at the end of the nineteenth century. At the turn of the century there was already a sense that the profession had compromised its integrity and, by too close embrace of business, its identity. In 1895 a New York legal newspaper[1] complained:

> [The bar] has allowed itself to lose, in large measure, the lofty independence, the genuine learning, the fine sense of professional dignity and

* We elaborate on many of the observations and ideas set forth here in MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE GROWTH AND TRANSFORMATION OF THE LARGE LAW FIRM (1991).

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1. *American Lawyer* (not the intense monthly that has since 1979 chronicled (and cheered on) rapid change in the world of large law firms, but a long-extinct legal newspaper of the same name, published in New York from 1893 to 1908).

> honor . . . . [F]or the past thirty years it has become increasingly contaminated with the spirit of commerce which looks primarily to the financial value and recompense of every undertaking.[2]

A dozen years later, New York attorney John Dos Passos delivered a similar indictment: "From 'Attorneys and Counselors at Law' they became agents, solicitors, practical promoters, and commercial operators. . . . Entering the offices of some of the law firms in a metropolitan city, one imagines that he is in a commercial counting-room, or banking department."[3] Deploring the commercialization of the profession he reported:

> It may also be safely said that the prevailing popular idea of the lawyer, too often justified by facts, is, that his profession consists in *thwarting* the law instead of *enforcing* it. . . . The public no longer calls them "great" but "successful" lawyers. . . . It is the common belief, inside and outside of the profession, that the most brilliant and learned of the lawyers are employed to defeat or strangle justice.[4]

By the 1930s, when the large firm was firmly established as the standard vehicle for delivery of the most complex legal services, its scale and stability were recognized in the pejorative phrase "law factory."[5] Describing the bar in 1933, Karl Llewellyn focused on the emergence of "a key phenomenon—the 'law factory'. . . [in which] the mass of the work is done by the ablest young men from the best law schools, while the product goes out under the name and over the name of three senior partners."[6] Corporate practice had become "itself a business. . . . [with] a large staff, a highly organized office, a high overhead, more intense specialization."[7] Large firms attracted the "ablest of legal technicians"[8] but fostered a "lopsided" business perspective that ignored the wider public functions of the bar.[9]

The "factory" metaphor caught not only the instrumentalism, but the

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2. *The Commercializing of the Profession*, 3 AM. LAW. 84 (1895).

3. JOHN R. DOS PASSOS, THE AMERICAN LAWYER: AS HE WAS—AS HE IS—AS HE CAN BE 46 (1907).

4. *Id.* at 130-31.

5. This term was used by Karl Llewellyn in a 1931 book review. *See* K.N. Llewellyn, *A Lawyer Tells the Truth*, 31 COLUM. L. REV. 1215, 1218 (1931) (book review).

6. K.N. Llewellyn, *The Bar Specializes—With What Results?*, 167 ANNALS AM. ACAD. POL. & SOC. SCI. 177, 177 (1933) (footnote omitted). Llewellyn was careful to add, however: "The ablest, i.e., of those who are deemed personable and socially unobjectionable. There is a caste tradition to be maintained, or at least not to be 'unduly' diluted." *Id.* at 177 n.3.

7. *Id.* at 177.

8. *Id.*

9. *Id.* at 179.

systematization, the division of labor, and the coordination of effort introduced by the large firm.[10] Commentators also felt that the metaphor expressed something about those firms that was profoundly at odds with professional traditions of autonomy and public service. What bothered critics was not efficiency, but what they viewed as the total commercialization associated with it. In one of the first academic treatments of the large firm, Professor A. A. Berle, Jr., in the *Encyclopaedia of the Social Sciences*, saw the abandonment of the notion that "a lawyer was an officer of the court and therefore an integral part of the scheme of justice"[11] and its replacement by a notion of the lawyer as "paid servant of his client."[12] Berle further wrote: "The complete commercialization of the American bar has stripped it of any social functions it might have performed for individuals without wealth."[13]

This grim assessment was shared by Chief Justice Harlan Fiske Stone, who described "[t]he successful lawyer of our day . . . [as] the proprietor or general manager of a new type of factory, whose legal product is increasingly the result of mass production methods."[14] Stone deplored the commercialization and deprofessionalization of the big-firm lawyer:

> More and more the amount of his income is the measure of professional success. More and more he must look for his rewards to the material satisfactions derived from profits as from a successfully conducted business, rather than to the intangible and indubitably more durable satisfactions which are to be found in a professional service more consciously directed toward the advancement of the public interest. . . . [The changed system] has made the learned profession of an earlier day the obsequious servant of business, and tainted it with the morals and manners of the marketplace in its most anti-social manifestations.[15]

10. Some commentators found further parallels, attributing to large firms the standardization, "robotization," and monotony thought characteristic of factories. In 1939, muckraking journalist Ferdinand Lundberg entitled the last of his series of *Harper's Monthly Magazine* articles on lawyers *The Law Factories: Brains of the Status Quo*. In that article, Lundberg explained: "The term 'law factories,' widely used in the legal profession, may be derisive, but it is accurate. The great law firms are organized on factory principles and grind out standardized legal advice, documents, and services as systematically as General Motors turns out automobiles." Ferdinand Lundberg, *The Law Factories: Brains of the Status Quo*, 179 HARPER'S MONTHLY MAG. 180, 180 (1939).

11. A.A. Berle, Jr., *Modern Legal Profession*, *in* 9 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 340, 343 (Edwin R.A. Seligman et al. eds., 1933).

12. *Id.*

13. *Id.* at 343-44.

14. Harlan F. Stone, The Public Influence of the Bar, Address at the Dedication of the University of Michigan Law Quadrangle (June 15, 1934), *in* 48 HARV. L. REV. 1, 6 (1934).

15. *Id.* at 6-7.

Even circa 1960—a time of prosperity, stable relations with clients, steady but manageable growth, and a comfortable assumption that this kind of law practice was a permanent fixture of American life and would go on forever[16]—inhabitants and observers regarded the big-firm world as sadly declined from an earlier day in which lawyers were statesmen and served as the conscience of business. For example, when Erwin Smigel, the pioneering student of Wall Street firms, interviewed lawyers in the late 1950s, law firm partners complained to him that the practice of law was turning into a business.[17] And Martin Mayer, another observer of the world of large firms, reflected in 1956 that young associates no longer regarded themselves as servants of the law and holders of a public trust. Mayer wrote: "[T]hey are too busy fitting themselves for existence in the 1950s, when efficiency, accuracy, and intelligence are the only values to be sought."[18]

Contemporary misgivings about the commercialization of law practice are part of a long tradition of lamentation over the decline from the virtuous professionalism of an earlier day.[19] That earlier era of virtuous professionalism always seems to lie just over the horizon of personal experience. It is easy to imagine the occupants of the big-firm world of the year 2020 deploring its decline from the integrity and professionalism of the 1990s.

II. THE ASCENDANCY OF THE LARGE LAW FIRM

Will there be big law firms in the 2020s? The large law firm is a success story: there are more of them, they are bigger, and they command a bigger share of an expanding legal market. Even the downturn of the 1990s has not substantially damaged their relative standing as suppliers of legal services. Indeed, they may be gaining market share at the expense of the in-house sector. That success, and the reasons behind it, make the large law firm a

16. For other strata of the profession, however, there was a sense of decline from a more prosperous past. In 1959 the American Bar Association's Special Committee on Economics of Law Practice complained that lawyers' incomes had fallen relative to those of doctors and dentists. The Committee saw the legal profession as "endangered by the creeping instability of its economic status" and "dwindling" as the percentage of national income spent on legal services fell to one-third of what it had been at its all-time high in the early Depression years. Part of the Committee's solution was minimum fee schedules to be enforced by the profession's disciplinary bodies. *See* SPECIAL COMMITTEE ON ECONOMICS OF LAW PRACTICE, AMERICAN BAR ASS'N, LAWYERS' ECONOMIC PROBLEMS AND SOME BAR ASSOCIATION SOLUTIONS (1959).

17. *See* ERWIN O. SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? 304-06 (1st Midland Book ed. 1969).

18. Martin Mayer, *Keepers of the Business Conscience: The Wall Street Lawyers, Part II*, HARPER'S MAG., Feb. 1956, at 50, 56.

19. For more on the "declension thesis," see generally Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 48-68 (1988).

strong contender to be the predominant organizational form for delivering legal services in the future.

The big law firm has grown and prospered because it solves two problems, one external and one internal. First, the large law firm is a proven success externally as a social form for organizing the delivery of comprehensive, continuous, high-quality legal services, especially to businesses. In the late nineteenth-century United States it appeared that the in-house corporate lawyer would come to dominate the world of business lawyering, but this trend proved short-lived.[20] Like the hospital as a way to practice medicine, the big firm has provided the standard format for delivering complex legal services. Even as the big firm is criticized, features of its style—specialization, teamwork, continuous monitoring on behalf of clients, representation in many forums—have been emulated in other vehicles for delivering legal services. The specialized boutique firm, the public-interest law firm, the corporate law department—all model themselves on a style of practice developed in the large firm. And legal professions around the world have increasingly emulated the American big firm, especially in the breadth of its legal services. No other legal enterprise has proven as capable of providing as many complex legal services to as broad a clientele. The large law firm offers clients "one-stop" expertise and an internal, "bonded" referral market. Clients with multifaceted problems are able to address those problems with the help of a single entity.[21]

That is the large firm's external success story. Second, and as important, though less well understood, is the big firm's internal success story. The large law firm has grown and prospered because it has provided an appropriate structure of incentives to facilitate delivery of the complex legal services demanded by clients. Because this second aspect of the large law firm is less well understood, it is perhaps worth briefly retelling the story of the basic transaction that underlies the large law firm.

For convenience we begin our tale with a lawyer, call her *P*, who has more shareable human capital[22] than she can use by herself. *P* wants to

20. One observer of law firm history has concluded that corporate legal business gravitated to outside firms, not law departments, because "[t]he additional experience and connections that were developed by serving a variety of clients made the value of law firms so high that it was economically infeasible, in a short-run time horizon, for corporations to 'buy out' corporate law firms, or to establish equivalent in-house legal departments." Thomas P. Pinansky, *The Emergence of Law Firms in the American Legal Profession*, 9 U. ARK. LITTLE ROCK L. REV. 593, 634 (1986-87).

21. General Motors, for example, has recently ended its attempt to foster price competition among law firms and has switched back to using fewer law firms. Ellen J. Pollock, *General Motors Is Dismissing 450 Law Firms*, WALL ST. J., Apr. 23, 1993, at B1.

22. By "shareable human capital" we refer to four types of assets: (1) a lawyer's pre-law-school endowment of intelligence, skills, general education, and the like; (2) her investment in her legal education and experience-dependent skills; (3) her professional reputation; and (4) client relationships.

increase her income by "renting" her surplus assets to other attorneys. In attempting to do so, *P* faces two types of problems. On the one hand, like any landlord, she worries that she might not get the rented assets back or that they might be returned damaged. In particular, following Gilson and Mnookin,[23] we argue that *P* will fear that a renter, call him *A*, might "grab" her clients, "leave" before *P* has a chance to recover her expenditures on *A*'s training and capital acquisition, or "shirk" by failing to produce promised levels of output or investment. On the other hand, *P* must also confront the reality that no renter ever fully trusts his landlord. *A* will have substantial concerns which must be set to rest before he will put forward maximum effort. For instance, *A* may fear that *P* will not compensate him fairly for his contributions to the firm since she has incentives to undervalue his work and because he cannot verify her evaluation of his efforts. Consequently, *A* may be disinclined to provide more than a minimal performance for *P* regardless of what he has promised: that is, he will shirk.

To protect her capital *P* must, in part, construct an incentive scheme that induces maximum effort from *A*. To provide the necessary assurances and incentives for maximum effort, we argue that the big law firm has typically employed what we call the "promotion-to-partner tournament." The stylized rules of the tournament are simple. Over a fixed period of time, the firm holds a contest in which all the *A*'s, call them associates, in a particular "entering class" compete, with the prize of partnership being awarded to some fixed percentage of the "top" contestants. An associate's final standing in the tournament depends upon the size and quality of his production of two goods: (1) high-quality legal work; and (2) his own human capital, measured subjectively, not mechanistically. After a specified period of time, the players in a particular class are ranked and the top few percent are declared "winners." The losers either are told that they can remain employees but will never become partners or are fired and given consolation prizes, such as severance pay or help finding another job, or nothing.

The tournament provides the assurances and incentives required by both parties to the deal. The associate now has an incentive to produce the maximum combination of legal work and human capital because he can rely on the firm to award promotions on the basis of productivity and performance. By conveying through past practice that, on average, a fixed percentage of the associates will be promoted after a period of time, the firm has obligated itself to distribute a fixed amount of compensation to the winners of the tournament. *Regardless of who wins the tournament the firm must pay out the same prizes.* This is essential to the firm's compensation scheme because it communicates to each associate that it is in the firm's own interest to award the prize of

23. *See* Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567, 573 (1989).

partnership to those who have produced the largest combined bundle of output, quality, and capital. To award the prize on other grounds would saddle the firm with less productive attorneys at no savings in prize money. Moreover, the associate can verify that the firm is paying out the agreed prizes by observing how preceding classes fare. So long as the firm intends to continue recruiting new associates, current associates are safe in assuming that the firm will continue to adhere to the implicit contract rather than risk the adverse reputational and motivational effects associated with breaching. Associates can be confident that productivity will be rewarded, while shirking will not be, and so long as the expected prize is competitive with the realistic alternatives, associates will exert maximum effort to win the contest. By inducing maximum effort from the associates, the tournament also alleviates the partners' fear of shirking.

However, the promotion-to-partner tournament, which is originally instituted as a mutual monitoring device, contains a hidden but significant by-product. As we demonstrate in our book, if a firm holds a tournament where a fixed percentage of associates is promoted each year, a firm will grow exponentially as long as the associate-to-partner ratio does not decrease.[24] This is because as the designated percentage are promoted, the firm must not only replace them but *must also hire enough additional associates to keep the associate-to-partner ratio from falling* so that there are associates available to continue utilizing all of the partnership's shareable assets. So long as the number of promotions exceeds the number of departures from the partnership, each promotion to partner will lead to net increases in both the number of partners and the number of associates at the firm. Because the promotion percentage is constant and the associate-to-partner ratio is constant or increasing, the firm's percentage growth rate will be constant (exponential) or increasing (faster than exponential). This is important because a firm that grows exponentially will eventually exhibit large jumps in membership. Our argument, therefore, is that what appear to have been sudden spurts in law firm size were, in significant part, the product of a long-term historical process begun on the day the firm institutionalized its promotion-to-partner tournament.

Nothing in our account precludes firms from occasionally changing their growth rates. But firms need to take care that in changing their growth rates they do not unintentionally alter the basic structure of their tournaments. To do so is to risk serious incentive problems in motivating their associates.

As we suggest above and discuss at length elsewhere, we believe that a firm will tend to promote only those associates who have at least as much human capital as the average partner and that the firm will set its promotion

24. *See* GALANTER & PALAY, *supra* note *, at 102-08.

rates to, on average, meet this target.[25] But there is no reason that associate-to-partner ratios cannot fall, *especially in an economic downturn*, if the value of the firm's human capital diminishes.

Of course, there are costs to reducing associate-to-partner ratios, and firms have borne some of these costs during the recent economic downturn. On one hand, partners may make less money or have to work harder to maintain a given standard of living. On the other hand, a firm might attempt to maintain a constant associate-to-partner ratio and attempt to reduce growth by reducing the percentage of associates that become partners. A sudden substantial decrease in a firm's promotion rate will change its growth rate. It will also effectively reduce the compensation package that the firm offers its entering class. In an economic downturn in which many firms are similarly affected, the reduced compensation may have minimal impact on the firm's ability to recruit. Even if the firm's compensation package suffers by comparison to its competitors' and it experiences recruitment difficulties, that need not portend a dramatic shift in the structure of the firm, *so long as the new promotion rate remains fairly stable.* We believe that the firm faces a dramatic transformation if it fails to maintain a constant promotion rate (even at the new, lower levels), for it is then effectively abandoning the tournament.

Our point is that any organizational alternative to the large law firm must provide the same incentives and protections offered by that enterprise and its tournament. If you want our first best guess of what the law firm of tomorrow will look like, observe carefully the law firm of today.

III. ALTERNATIVE FUTURES

It is conceivable that what lies ahead for large law firms may be very different from the course they have followed for almost a century. We make no claim that the future course of legal practice is fated and known to us. We foresee a period of fluidity and experimentation, and what will emerge from such a period remains unknown and unknowable. But, taking off from existing forms—some old and some innovative—and from current trends, we would like to speculate about the near future of the big firm and its variants, companions, and rivals in the corporate hemisphere.

A. Bigger Firms

1. The "Later Big Firm"

We call the first set of options the "Later Big Firm." Later Big Firms will share a tendency toward market orientation, rationalization of incentives,

25. *See id.* at 105-06.

and accentuated hierarchy. In such firms the "promotion-to-partnership" core will be reduced in relation to the total mass of the firm by some of the host of devices for slowing the effects of the promotion-to-partner tournament: two-tier hiring, permanent associates, paralegals, technology, contracting out, and a general stretching out of the time required to reach partner.[26] There will be various levels of partnership, and partners' performance will be continually evaluated. The tournament, already pervasive for associates and of some import for partners, will be greatly extended and intensified during the partnership phase. Partnership will become less of a plenary and permanent reward, thus necessitating the design of additional incentives for performance and loyalty. Some of this can already be seen in the winnowing of less productive partners by some firms.[27]

2. *The "Big Six Firm"*

A variant of the Later Big Firm is suggested by the observation that the coverage-driven push toward greater size, more locations, and greater range of services might lead to giant national or international firms that bear some resemblance to the "Big Six" accounting firms in size, structure, and market concentration. But to fully mimic the Big Six, a law firm will have to further modify its traditional promotion-to-partnership core. The Big Six are generally characterized by taller hierarchies and considerably higher associate-to-partner ratios than the traditional big law firms. For example, in 1989 Arthur Andersen & Co., one of the Big Six, had 40,136 professional personnel, of whom 2,405 (6.0%) were partners.[28] Thus, in addition to using more bureaucratic systems of control, the law firm that attempts to evolve in the direction of the Big Six will need to increase its ratio of associates to partners and reduce the rate at which associates are made partners.

We are skeptical that big law firms will eventually look like the Big Six accounting firms. First, the big law firms must travel a considerable distance before their market shares are anywhere near the size of a Big Six firm's. The legal-services market is still remarkably unconcentrated compared to the markets for other professional services for businesses. Moreover, conflict-of-interest problems might set more restrictive upper bounds on law firm size.[29]

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26. *See* GALANTER & PALAY, *supra* note *, at 62-66. Compare Steven Brill, *The Law Business in the Year 2000*, AM. LAW., June 1989, at 5, in which Brill foresees the emergence of firms that liberate themselves from the "growth inertia trap" of "exponential growth generated from the supply side" and learn to conform growth to increases in demand.

27. *See* GALANTER & PALAY, *supra* note *, at 67-68 & nn.188-93.

28. GALANTER & PALAY, *supra* note *, at 122. The highest partner ratio among the Big Six was 11% in 1989. *Id.* at 122 n.3.

29. Professor Susan Martyn's paper written for this conference addresses this problem.

We also remain skeptical of the Big Six option for the very reason that the big accounting firm is premised upon a relatively high associate-to-partner ratio. Law firms that attempt to emulate this model would be required to increase their associate-to-partner ratios and to reduce their promotion rates. On one hand this would reduce the expected value of being an associate. Therefore, the firm would have to pay a premium either by providing greater compensation to associates up front or by increasing the value of a partnership. A failure to adjust associate salaries or partnership value would result in a reduction in total compensation. On the other hand, as we argued above, the number of associates per partner a firm can afford is related directly to the amount of per-partner human capital possessed by the firm and the constraints on the firm's ability to monitor associates. To increase the associate-to-partner ratio, the firm would have to dramatically increase the value of its human capital per partner. We are unable to see where that increased value will come from. In addition, costs of monitoring also limit associate-to-partner ratios. Nothing indicates that firms have so substantially overcome the difficulties in monitoring associates as to allow them to significantly increase these ratios.

To say that law firms will not take the Big Six path is not to say that the Big Six might not enter the market for supplying corporate legal services. Due to their very substantial resources, their large legal departments, and their enormous networks of clients, one can easily imagine a scenario in which large accounting firms compete directly with large law firms in providing business-related legal advice. Much of the debate about law firm diversification is couched in terms of law firms incorporating other sorts of professionals. It seems improbable that the boundaries between the professions would be relaxed in one direction only. As law firms increasingly offer services that depart from the traditional legal-services norm, they will face competition from other business advisors like accounting firms, management consultants, and investment bankers, who will include legal services in their multidisciplinary packages. As the bar relaxes its claims that lawyers cannot share control of their work and firms with nonlawyers, it will find it more difficult to maintain that an entity that provides legal services must be devoted exclusively to producing legal services and must remain under the overall control of lawyers.

3. *The "Multidisciplinary Firm"*

Of course, the multidisciplinary trend will run in both directions. Not only do we expect accountants and other professionals to offer legal services,

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See Susan R. Martyn, *Visions of the Eternal Law Firm: The Future of Law Firm Screens*, 45 S.C. L. REV. 937 (1994).

but we anticipate that, more so than today, the Later Big Firm will stress a multidisciplinary, or "diversified," law practice. A firm oriented in this direction will incorporate other types of professionals and will supplement its legal services with management consulting, investment counseling, lobbying, and the like. We have noted elsewhere the move of some aggressive law firms into such arrangements already.[30] One commentator foresees that law firms will become diversified service firms deploying teams drawn from many disciplines, "more oriented to problem-solving than traditional law firms."[31] A similar evolution is already occurring in accounting firms, where the accounting-and-auditing core represents a decreasing portion of the firms' work, and consulting services an increasing portion.[32]

Is the multidisciplinary thrust another device for adding employees outside the partner/associate core? Or is it a device for changing the character of that core by including nonlawyers within it? So far most hiring of nonlawyer specialists has been in subsidiaries[33] or on an ad hoc lateral basis. Bar rules forbidding partnerships with nonlawyers[34] have obviated the promotion question. But the recent authorization of nonlawyer partners in the District of Columbia portends an erosion of such barriers.[35] We can imagine a world in which such nonlawyer workers are commonplace and in which some nonlawyers are invited to join law-firm partnerships. Firms will have to hire either senior people who have developed their expertise elsewhere or junior people who will develop their skills under the supervision of seniors.[36] Will

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30. *See* GALANTER & PALAY, *supra* note *, at 66-67.

31. James F. Fitzpatrick, *Legal Future Shock: The Role of Large Law Firms by the End of the Century*, 64 IND. L.J. 461, 465 (1989).

32. For instance, accounting and audit fell from 66% of Arthur Andersen's revenue in 1975 to 49% in 1985. Larry E. Rittenberg, The Public Accounting Profession: An Overview of Its Structure, Its Products, and Its Concerns (Nov. 23, 1987) (unpublished memorandum on file with authors).

33. The same argument from professional symmetry arises in connection with subsidiaries: If law firms can own nonlaw subsidiaries, can't nonlawyers have a law subsidiary? Corporations are allowed to have legal departments that fill their needs for legal services. Why can they not supply legal services to their customers?

34. *See generally* Thomas R. Andrews, *Nonlawyers in the Business of Law: Does the One Who Has the Gold Really Make the Rules?*, 40 HASTINGS L.J. 577, 584-99 (1989).

35. On Mar. 1, 1990, the District of Columbia Court of Appeals adopted a rule that permits partnerships for nonlawyers who are involved exclusively with helping lawyers to provide legal services. *See* Neil A. Lewis, *Non-Lawyers to Be Partners in Firms in Nation's Capital*, N.Y. TIMES, Mar. 2, 1990, at B8; Randall Samborn, *Non-Lawyers as Firm Partners*, NAT'L L.J., Mar. 8, 1990, at 1. Because, under the rule, nonlawyers may now be partners only in firms whose sole purpose is to provide legal services to clients, law firms will continue to use subsidiaries to provide services that cannot readily be characterized as "legal services."

36. Some juniors might be hired to remain supervised staff. Presumably, however, some junior hires would be talented people with the potential to develop their own human capital.

such junior nonlawyers be hired on the associate's "promotion to partner" deal or on some other basis? How will a firm provide incentives to induce people to work hard and to develop their human capital in such specific "multidisciplinary" forms? How can the work of these nonlawyers be monitored? Because the problems of monitoring and motivating other professionals are quite similar to the problems of monitoring and motivating lawyers, it is likely that these problems will be solved by "tournaments" not unlike those used by current law firms. Will the nonlawyers participate in the same tournament as lawyer associates? Or will firms organize parallel tournaments similar to the separate tenure competitions in neighboring departments in universities?

So long as such nonlawyers are rare, relatively immobile, and hired on individualized deals, their presence may enlarge profits for partners without any threat of expanding the partnership. But when the inclusion of nonlawyers becomes commonplace, and they therefore have opportunities for lateral movement, there will be pressure on firms to reward the nonlawyers at levels sufficient to retain them. The most accomplished professionals are not likely to be content to remain in a subordinate tier. So even if the multidisciplinary model seems tempting as a device to shrink (relatively) the promotion-to-partner tournament, we would expect its widespread and extended use to require the enlargement or duplication of the core promotion tournament. In other words, even if diversification succeeds in shrinking the proportion of lawyers competing for ownership interests, the number of professionals involved in one promotion tournament or another is unlikely to decrease substantially as a proportion of the total firm size.

B. *Modified Firms*

Another set of alternatives retain the specialization, rationalization, and marketing themes of the Later Big Firm but either abandon hierarchy, coverage, and size or modify the Later Big Firm's relatively uniform structure of rewards.

1. *Boutiques*

The term "boutique" has come to refer to highly specialized small firms residing in the corporate "hemisphere."[37] These firms cultivate their comparative advantages in selected specialties and suppress any push to more general coverage in order to maintain their attractiveness for referral work

37. *See* Gail Appleson, *Boutique Firms Hold Their Own*, NAT'L L.J., Mar. 7, 1983, at 1; Marcia Coyle, *Boutique Shakeout: Merger Can Be an Attractive Option*, NAT'L L.J., Mar. 2, 1987, at 1; Jan Schaffer, *Cost-Cutting Legal Boutiques Tailor Services to Clients*, PHIL. INQUIRER, Nov. 16, 1981, at 6B; *Thirteen Great Small Firms*, AM. LAW., Apr. 1981, at 27.

from big firms.[38] Despite their small size, such firms compete with big firms for lawyers. Typically, though, their ratios of associates to partners are lower than those of big firms.

Though commentators are not always careful to do so, it is important to distinguish the boutique from the incipient big law firm.[39] The boutique combines small size, intense lawyer and firm specialization, and a commitment to remain small.[40] The incipient big firm may contain the first two elements but never the last. Unlike partners in big firms, where a major part of the partners' return is from renting capital to associates, it appears that partners in boutiques increase their income by using associates and other resources to maximize return on the sale of their own time.[41] But recognizing the differences between the large law firm and the boutique simply raises a host of yet-unanswered questions.

For instance, what incentives do high-quality young attorneys have for joining and remaining with a boutique? Certainly the boutique must pay well. But presumably the boutique pays some of the compensation in the "currency" of collegiality, absence of the competitive pressure of the tournament, the opportunity to work with senior attorneys as a protege, and so forth. The close personal relationships, increased loyalty, and desire for regard from seniors provide boutiques with the control over shirking that is provided by the tournament in the big law firm. But such a compensation scheme raises still more questions. If all the compensation is paid up front, what incentives are there for the associate to remain with the firm once he has learned all he can from the present partners? Will the young lawyer find it undiminishingly rewarding to be the protege of a senior attorney? If an associate who masters the skills of the partners is promoted, how does the firm remain small? If that associate is replaced, can the top of the pyramid grow without the bottom growing? If associates typically leave and build their own specialized practices, how will the boutique maintain its comparative advantage and the

38. The market for highly specialized services is in large part a referral market, and referral is encouraged where the referring firm has no fear that the referee firm can compete with it for general representation of the client.

39. It is also important to distinguish it from other kinds of firms that remain small because they have no shareable human capital. *See* GALANTER & PALAY, *supra* note *, at 109-110.

40. From the point of view of associates, a branch of a large firm may have appealing boutique-like qualities of small size and personal relations combined with a large-firm credential, less travel, and more transfer possibilities that may facilitate moves for a two-career family.

41. As one not necessarily typical boutique manager put it: "[W]e have got to make our profit off making more money on a case per hour. . . . Contingent fee work primarily. That is what allows us to get sufficient profit so we don't have to add a bunch of associates on who [sic] we are leveraging and making money." Steven Susman, Remarks at *American Lawyer* Eighties Shakeout Conference (June 1, 1987), transcript at 133 (transcript on file with author).

correspondingly high fees it previously commanded? Just how big can a specialized firm get? Are the services the boutique provides inherently different from those of the big firm? Is there a commitment to confine income gains to those that can be had by cultivating comparative advantages and specialization rather than by increasing the base of the pyramid? Is this a viable strategy given that specializations fall as well as rise in favor?[42] These are all questions which must be confronted by any lawyer contemplating a boutique practice. That these questions do not have easy answers explains in part why the true boutique is observed only relatively rarely. Will the boutique form become widespread? We tend to doubt it, but the boutique is likely to continue to occupy an important niche as a supplier of legal services to the business and legal communities.

2. *Mixed Compensation, or "Lifestyle," Firms*

By the "mixed compensation"[43] firm we refer to firms in which there is a commitment to reduce the traditional big firm's heavy dependence on monetary compensation and instead to facilitate a mixture of pecuniary and nonpecuniary rewards such as child-rearing leaves, flextime, part-time work, sabbaticals, and time for political or pro bono work.[44] The lawyers in such

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42. *See, e.g.*, David Ranii, *Specialized Bars Strive to Survive*, NAT'L L.J., Sept. 14, 1981, at 1 (describing the attrition of various administrative law specialties in the era of deregulation).

43. Of course, compensation in the strictest sense is almost always "mixed" and includes not only cash, but also implicit values such as satisfaction, personal fulfillment, prestige, and the like. We want to distinguish here those firms in which the value placed on the nonmonetary elements of the package is no longer implicit and is not assumed to be the same for all members of the firm.

44. The term "lifestyle" has emerged as a descriptive tag referring to the whole collection of preferences for other sorts of fulfillment over more income (and the work satisfaction associated with obtaining it.) *See, e.g.*, Brill, *supra* note 26, at 24 ("The real questions the new technology raises have to do with life-style and employment opportunity."); Terry Carter, *Students Grill Potential Bosses: What is Life Really Like There*, NAT'L L.J., June 19, 1989, at 4 ("Stanford Law School's placement office recently sent a questionnaire . . . with a laundry list on lifestyle issues."); Terry Carter, *Now, a Novel Twist on Flex-Time: NALP Chief Moves to California*, NAT'L L.J., July 3, 1989, at 4 ("After several years of spotlighting the wishes of newly minted lawyers for lifestyle benefits from employers, NALP has made a major lifestyle concession of its own: Executive Director Jamienne S. Studley is moving from the association's Washington, D.C., office to follow her husband to San Francisco, and she will still be executive director of the D.C.-based NALP."). We use the more cumbrous "mixed compensation" tag because the term "lifestyle" is difficult to separate from connotations of self-indulgent consumption. In particular, "lifestyle" suggests an equation of parental responsibilities with very different kinds of preferences. We do not assert that these preferences are of equal value; neither do we assert that they are entirely distinct. One might, for example, imagine distinct "parenting" and "other" types of mixed-compensation firms. But we doubt that such types would remain distinct, since parenting

firms are willing to take returns in the form of these amenities in lieu of higher cash income. Attorneys in such a firm might emphasize integrating work and family responsibilities by means of child care, flextime, and the "electronic cottage." Or they might be eager to take their returns in terms of less hierarchy on the job, greater involvement in political movements, or other "communal" forms. In its various versions, the mixed-compensation firm represents an attempt to harmonize professional work with other valued aspects of life.

Among the hundreds of big firms there are some that aspire to maximize not only the monetary rewards, but also the total fulfillment, of their lawyers. Informal inquiries several years ago generated a list of half a dozen such firms. But the feat has proven peculiarly difficult to pull off.

Prominent among "lifestyle" firms is Holland and Hart, one of Denver's "big four" firms. Founded in 1947, Holland and Hart is recognizably a traditional big law firm, organized around the promotion-to-partner tournament and responsive to the pressures of the market: it has brought in several small firms by merger; it has eight branches; and it pays its lawyers "a business-getting reward of 10 percent of the fees they bring in the door."[45] At the same time, however, the firm has institutionalized an unusual degree of egalitarianism in titles, offices, votes, and personal relations; a heavy commitment to pro bono work (five to twenty percent of each lawyer's time); periodic sabbaticals; and other human-enrichment policies.[46] As cynics might anticipate, paradise is not without some murmurs of dissension. As a senior partner observed: "The bottom-line movement gained momentum. . . . The collegial aspect has fallen off and emphasis on productivity and profits has gained."[47]

Is it foreordained that the party of the bottom line will prevail? Our expectation that firms will keep growing if they can rests on the assumption that partners prefer not to decrease income. Are we saying that they are single-mindedly determined to have more *cash*? Not necessarily, only that they want "more." But why not take rewards in other forms? Why do big-firm lawyers insist on taking the gains of firm growth in the form of more money income rather than sabbaticals, time for child-care, political involvement, or greater work satisfaction? Presumably some lawyers would trade the next increment in cash for an increment of one of these other benefits. Why is this only dimly reflected in the way large firms are organized? Instead, most large firms are organized as if everyone were trying to maximize take-

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responsibilities tend to be concentrated during the first half of lawyers' tenures with their firms.

45. Rita H. Jensen, *Seeking a Balance*, NAT'L L.J., July 18, 1988, at 1, 22.

46. *See id.* at 1, 22.

47. *Id.* at 23.

home income. Since firms have successfully created internal markets for their human capital, why it is apparently so much more difficult for them to create a companion internal market in amenities?

We believe that there are at least two problems which lead firms to emphasize monetary rewards above all else. First, there is the transaction-cost problem of attempting to value the nonmonetary benefits. Money is not all that partners want. But securing and monitoring agreement about the priority, value, and mix of "goods" attorneys want as their returns from practice becomes ever more complex as a firm grows. Since "money" is high, even if not first, on everyone's scale, it is almost always easier to get agreement on more money than on any competing benefit. And as firms get larger, agreement becomes even more difficult. This is especially so when firms, as they grow, become more diverse in terms of gender, ethnicity, class origins, and educational backgrounds—and when lateral hiring and mergers reduce opportunities for differences to be smoothed out by early socialization in the firm culture. The problem of getting firm personnel to agree that they would all prefer a specific competing benefit to more money becomes insurmountable. So most big firms fall back on money as the medium of exchange which can be used as a second-best solution, a summation of the diverse priorities of the members. Reputation and prestige, insofar as they are instrumental to securing more money, are also relatively susceptible to agreement.

Our transaction cost/governance argument about the increasing difficulty of agreement on nonmonetary forms of reward as firms grow is reinforced by changes in the market for attorneys. The ready availability of lateral movement permits the partner who wants money instead of, say, sabbaticals, to leave if her partners insist on the latter. A concentration of partners who want sabbaticals or more independence can overcome problems of pluralistic ignorance and negotiate the package they want. But then those who prefer money can leave and go elsewhere, with disruptive effects. Hence, even if they are in the majority, and even if they know it, the mixed-rewards partners are not likely to impose their will.[48] "Mixed-rewards dissidents," in contrast, are not as mobile since they would have to find new firms that have schedules of rewards that approximate their own desires. Such firms are rare and usually small, and their reward schedules are not readily known. So the transaction costs of such a move for mixed-rewards dissidents are very high.

Second, mixed-compensation firms tend to emphasize monetary rewards because even firms with a significant concentration of lawyers seeking nonmonetary compensation must face the problem of assuring those who receive alternative forms of payment that they are not being exploited. The

48. Instances of successful consensus seem to rely heavily on strong leadership, embodied in firm "tradition" and selective recruitment. How enduring this proves in the large-firm setting remains to be seen.

problem stems in part from the suspicion of those receiving mixed-compensation packages that they are not being fully compensated for the value they add to the firm. Whether true or not, the perception exists. Perhaps the perception originates in the sense that the market for those willing to sell their services for alternative compensation is more limited than for those willing to work for traditional pay. The concern is that an attorney, once he has declared his preference to receive mixed compensation, is no longer fully mobile and has no less costly alternative than to sell his services to his existing firm. Consequently, he believes that his firm gains monopsonistic[49] power over his services and has the ability to extract a rent from him when he attempts buy back his time for alternative pursuits or obligations. This leads to feelings of vulnerability, exploitation, and exposure to additional pressures.

C. Analogues of the Large Firm

Next, we come to some options that pursue the benefits of size—visibility, economies of scale and scope, and capacity to take on large matters—not by enlarging firms but by creating linkages between them.

1. Networks or Affiliation Groups

Smaller firms may seek to obtain the benefits of the big firm by linking themselves to other firms to share clients or training facilities or information about management, practice development strategies, tactics, support services, and experts for litigation. In many respects the linkage of smaller firms is an extension or accentuation of the big-firm structure, which is in a sense a network of working groups, departments, and regional offices. Some big firms—the Cravath firm, for example—are tightly integrated, with a relatively small partnership and no branch offices. But with the small-firm networks, coordination is accomplished without formal integration. Thus the work of a number of law firms in a set of related matters might be supported and coordinated without creating an elaborate internal organization. The practices of in-house legal departments or outside firms serving as national litigation coordinators—in the defense of a particular product, for example—can produce such networks without formal organizations. Such a coordinator may select local counsel, provide technical backup, and set litigation policy with an eye to maximizing the integrity of the product.[50] By "affiliation groups,"

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49. A monopsonist is the demand-side equivalent to a monopolist. Like the monopolist, who is the single supplier of a particular output, a monopsonist is the only consumer of some good or service.

50. *See* Myra Alperson, *Asbestos Defendants Begin To Cooperate in Litigation*, LEGAL TIMES, Sept. 19, 1983, at 3 (a New York firm serving as national counsel to one asbestos manufacturer set up a document center and devised a two-way communication system to

however, we refer to a variety of organizational forms that are more inclusive and less integrated than the conventional law firm, yet more integrated than these ad hoc support arrangements. Some of these groups are regional; some national and international. Some are electronic networks with little organizational superstructure; others have separate headquarters and staff.[51] They share the aspiration to achieve some of the advantages of pooling capital while retaining local autonomy and avoiding the governance problems that follow mergers.[52] Although affiliation groups pool human capital, the sharing is interfirm, not intrafirm. This represents a form of pooling different from the partner/associate deal that is at the heart of the of the big law firm. Such an arrangement obviates the need for a tournament within the affiliation group, but not the need for a parallel tournaments within the component firms.[53]

2. *Subcontracting*

Extra-firm collaboration need not be prearranged or continuing. Firms might enlarge their capacity by subcontracting to other lawyers or firms.[54] For example, the *National Law Journal* reported that Seattle firms involved in the massive Washington Public Power Supply System securities litigation "[were] tending to use contract lawyers rather than letting themselves balloon with the extra business."[55] Firms may have a strategy of seeking very large matters and meeting staffing needs by contracting with smaller firms. A dynamic Houston firm of some thirty lawyers was thus able to take on the massive Hunt Brothers litigation: "[W]e go to small firms around the country and . . . we pick the lawyers we want to work on the case . . . . It's great for referrals in the future. It assures that we aren't going to have to expand too quickly . . . ."[56] Subcontracting strategies are facilitated by the growth of

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coordinate the activities of counsel in 40 different jurisdictions); Irene Warshauer, *Litigation Management Techniques*, ALTERNATIVES HIGH COST LITIG., Nov. 1984, at 7 (attorney-in-charge describing the role of this kind of coordinating counsel).

51. *See* Rita H. Jensen, *Networking: The Future of Law Firms?*, NAT'L L.J., Mar. 7, 1988, at 1.

52. The appearance of such networks invites the question of whether we might expect to find the related but distinct two-level solution of franchising, in which the parties contract for an exchange of capital in a standardized form. One might imagine a national law firm exchanging its brand name and package of tested procedures for a smaller firm's local reputation and client contacts. Some law firm branching may already approximate this.

53. Each of the member firms may be built around such a tournament, but the interfirm tournaments are not integrated but remain parallel. We might imagine scenarios of disintegration in which a firm decomposes its tournament into several parallel ones—for example, for separate departments, regional offices, or nonlawyer professional groups.

54. *See* James S. Granelli, *Hiring Out: Boon for Small Firm*, NAT'L L.J., Nov. 6, 1978, at 1.

55. Gail D. Cox, *Fees Keep Coming for Seattle Bar*, NAT'L L.J., Apr. 13, 1987, at 1, 34.

56. Steven Susman, Remarks at *American Lawyer* Eighties Shakeout Conference (June 1,

firms supplying temporary legal workers, both lawyers and paralegals.[57] Outside suppliers also provide firms with litigation support services that not only include computerized document retrieval but can extend to "taking over case management, tracing the whereabouts of defendants and witnesses, writing briefs and researching issues, providing expert witnesses and making visual presentations for trial."[58] Firms can use these services to achieve enlarged capacity while avoiding a commitment to growth that might be unsustainable.

D. *Nonfirm Alternatives*

Finally in our list of alternatives, we should consider providers of business-law services who have not chosen the law firm as a vehicle for organizing these services.

Corporate law departments, for example, have grown rapidly at the same time that there are more and larger law firms. There are now groups of salaried lawyers, in corporations, governments, and other organizations, who are undertaking more and more of the range of matters traditionally handled by big law firms. In some instances this means displacing the large law firm; in other instances it means enhancing control over outside law firms. Corporate departments may model themselves on the big firm[59] or adopt organizational structures that depart sharply from that of the big firm.[60]

In-house law departments are very different creatures that deserve more detailed analysis. They do not enjoy the autonomy of free-standing firms; their size is linked to the needs of a single client; the prosperity of senior members is not connected to the number of junior members. To incorporate the promotion-to-partner tournament as an incentive, the department would have to be able to sustain growth independently of the needs of its corporation.

1987), transcript at 129-30 (transcript on file with author). Farming out work has always been a part of the big firm repertoire. What seems to be new is its elaboration as an alternative way of being a contender for the most profitable legal work.

57. *See* Barbara Berkman, *Temporarily Yours: Associates for Hire*, AM. LAW., Mar. 1988, at 24; Laura Mansnerus, *Law Firms, Too, Hire Lawyers by the Hour*, N.Y. TIMES, Mar. 4, 1988, at B10.

58. Martha Middleton, *Getting Support*, NAT'L L.J., June 4, 1984, at 1, 26. The recent growth of contract research services is recounted in Arthur S. Hayes, *Lawyers Hire Ghost-writers, Raising Specter of Liability*, WALL ST. J., Dec. 5, 1989, at B1.

59. General Foods' attempt to organize its law department as a firm with associates, promotion-to-partner tournaments, and collegial governance is described in MARK STEVENS, POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS 80-94 (1987).

60. *See* Carl D. Liggio, Remarks at the Federal Bar Council 1984 Bench and Bar Conference, Dorado, Puerto Rico (Jan. 29- Feb. 5, 1984), transcript at 107 (transcript on file with author) (General Counsel of Arthur Young and Co. describing his office of nine lawyers and sixty support staff).

One possibility is to de-link the department from company needs by selling excess capacity to other companies,[61] or to employees or small businesses, or even to outside law firms. One can imagine a firm that is a "law subsidiary," rather than a law department, of a corporation. The development of such a firm would of course confront the long-standing ban on the practice of law by corporations.[62]

E. Profession-Wide Structural Changes

All of the formats discussed here leave undisturbed the basic architectural features of the system of legal services.[63] One of these is the division of the profession into what Heinz and Laumann call the individual and corporate hemispheres.[64] Specialization, they point out, is as much by client as by field of law.[65] Could the separation of hemispheres be overcome? Perhaps. Imagine, for example, a pool of personal-injury or labor lawyers serving clients on either side by the "cab rank" principle.[66] This in turn would involve a retreat from the strong identification with the client that has been such a distinctive characteristic of American lawyering. We might also imagine that legal services were provided as a public utility rather than in a competitive marketplace.[67] This would give an unaccustomed primacy to the

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61. *See id.* (describing how a corporate law department that developed expertise in the unitary tax area was retained by other corporate law departments).

62. See Andrews, *supra* note 34.

63. One of these architectural features is that all legal services to all kinds of clients are provided by members of a single, albeit highly differentiated and stratified, licensed profession. We suspect that in spite of intensified specialization and stratification, ideological and political considerations will keep "law" a single profession. In a 1921 Carnegie Foundation report that many hoped would be the Flexner Report of legal education, Alfred Z. Reed proposed the formation of "[a]n Inner Bar distinguished from the General Body of Practitioners," ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 237 (1921), to include "lawyers of superior attainments, of broader vision, of greater ability to identify themselves with a larger whole than is possible for relatively untrained minds . . . [and] less highly trained lawyers to administer, in behalf of the people, the law as it is." *Id.* at 238. This aspect of the report received a frigid reception and was never acted upon. We see nothing in the present situation that suggests any new support for the notion of separate training and licensing of an elite cadre of lawyers.

64. *See* JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 319 (1982).

65. *See id.* at 324-25. For a more elaborate account of patterns of lawyer specialization, see LYNN M. LOPUCKI, THE DE FACTO PATTERN OF LAWYER SPECIALIZATION (1990).

66. The "cab rank" rule is an English Bar rule that obligates a barrister to accept the next client in line and to argue that client's position, whatever it may be. Gordon, *supra* note 19, at 83 n.61.

67. For example, Marvin Frankel has proposed a National Legal Service that would set up "government law offices comprising salaried lawyers who would be available to serve all citizens, rich or poor, for every species of legal problems." Marvin E. Frankel, *An Immodest*

theme of lawyers as public officers.

We mention these more far-reaching proposals to put in perspective the new forms of practice that we discuss here, which leave in place the basic architecture of the system. Although nothing is more common than the occurrence of changes unanticipated by social observers, we confess that we see on the horizon nothing that would change the commitment to a lightly regulated, decentralized, private market for legal services involving intense lawyer-client ties.

IV. Final Thoughts

Many of the problems faced by big firms originate in the discomfort of the attorneys who must deal with the increasing pressures of growth. But that growth cannot be controlled in isolation. Much of it is a by-product of the very mechanism which allows lawyers to efficiently exchange their assets. So long as business attorneys have a need to share capital and labor, there will be a demand for some mechanism to protect against the risks inherent in the exchange. The large law firm's promotion-to-partner tournament has played an integral part in safeguarding the interests of the parties to this exchange. Growth, fortunately or unfortunately, has been a by-product of that device.

We can imagine an impulse to address the problems of big firms through public regulation. Various proposals can be conjectured: control of firm size, control of hierarchy within the firm, or the elimination of firms altogether. But we are skeptical of the need for and efficacy of such reforms and believe that most such attempts misconstrue the nature of the big firm's problem. Attempts to limit by fiat the size, organization, or growth of firms, without also addressing the risks inherent in the underlying transaction, endanger the exchanges which allow skilled lawyers to address more issues and service more clients. Regulating growth might also jeopardize the very exchanges which permit young lawyers to develop the skills, experience, and reputation to assist large clients with increasingly large and complex problems.

We suspect that reforms that focus only on the structure of firms without also addressing how to safeguard the underlying exchanges would do little to alleviate the problems of commercialization that trouble big-firm lawyers. We believe that the big firm has provided useful means of dealing with the monitoring and incentive-compatibility problems associated with sharing human capital. Will it always? Not necessarily. But lawyers are neither unintelligent nor selfless. If it is possible to more efficiently organize the exchange of human capital without firms, enterprising lawyers are likely to do so and thereby gain a competitive edge over those who are slow to respond. But until that time, efforts to "break up" law firms will not eliminate the need

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Proposal, N.Y. TIMES, Dec. 4, 1977, § 6, at 92, 100; *see also* Marvin E. Frankel, *Proposal: A National Legal Service*, 45 S.C. L. REV. 887 (1994).

to share human capital but will impose greater transaction costs on doing so.

If intervention in firm organization is justified, it is not to make lawyers comfortable but because firm organization affects the kind, quantity, quality, cost, or distribution of legal services. If, for example, we knew that the growth and transformation of business-law firms reduced the availability of legal services, or made them more expensive or decreased their quality, we would have cause for concern. In making such assessments, we should not be interested only with the way that firm organization affects the large firms' business clients. We should be equally concerned about firm organization's effects on wider constituencies. Does the growth of big firms increase the disparity in quality and quantity of legal services afforded to large corporations as compared to their smaller antagonists, or to representatives of diffuse and unorganized interests, or to public agencies? How do the changes in the market for legal talent brought about by growth in the number and size of large firms affect the supply of legal services for others? And how do increases in the size, competitiveness, and hierarchy of large firms affect the lawyers' independence in giving advice, their firmness in holding clients to legal or moral standards, their participation in legal reform, and so forth?

Little research addresses these questions. What research there is suggests that disparities in the quality of representation have shrunk, not grown, in the recent past. It also suggests that lawyers have in the past displayed fewer noble attributes than we might have hoped.[68] That recent growth in the scale of law firms has decreased the production of public benefits by lawyers is far from clear. We think these are questions that deserve exploration. If the public intervenes in law firm organization, it should be with an eye to protecting public interests, not lawyer comfort levels. And any such intervention will have to keep in mind the way in which the law firm is a solution to a tricky set of problems that flow from the very nature of the lawyer's craft.

As we survey the big firm of today, its variants, companions, and rivals, we may be seeing prefigurations of emergent forms of practice, or we may be looking at sports and chimeras. What forms will prosper depends on unknown contingencies, among them the still emergent preferences of lawyers. Nevertheless, we want to close with a few speculations about the general contours of things to come.

The present era of transformation is reminiscent of the formative era of big firms. The big firm arose in the late nineteenth century from lawyers' participation in the restructuring (by consolidations, mergers, and reorganizations) and financing of business organizations and from handling the litigation that swirled around them in a legal setting of unprecedented complexity.

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68. *See, e.g.*, ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 231-69 (1988).

Lawyers and clients were mobile; firm arrangements were fluid and volatile. The new kind of law firm that crystallized provided services that ranged far beyond what had earlier been considered the boundaries of the practice of law.[69] Today, we are in another era of business restructuring, the complexity of which is compounded by transnational flows of capital and new information technologies. As the demand for legal services changes, with more complex deals and greater use of litigation as a business strategy, there is an expansion of services provided by lawyers. We see a volatility and organizational innovation that have been absent from the legal scene for generations.

As we talk about changes, we should recall the considerable stability of the world of big firms. Big law firms are still relatively small units; they have relatively small shares of their market; they are relatively unbureaucratic; they are dependent on particular kinds of clients; and they are constrained somewhat by an ideology of professionalism. These continuities coexist with powerful and enduring currents of change. We do not anticipate a reversal of the trend to rationalization; we expect that by cost accounting, specialized managers, and other means, firms will be more self-consciously strategic in their management and planning. We also anticipate that law firms will be increasingly entrepreneurial, oriented to finding new markets for their services and developing new services (including new combinations of "legal" and "nonlegal" services) and new forms of firm organization. Up to now there has been basically one model of the big firm with minor variations.[70] Later Big Firms are coming to look less alike as they try different strategies for coping. We anticipate pluralization—both in that big firms will be less similar and that some of the work they presently do will be done by firms (or nonfirms) that are not big firms at all.

But little suggests that the great promotion-to-partner tournament is on the wane. Nothing has reduced the need of both partners and associates for protection from opportunistic conduct. Partners still require a method of motivating and monitoring associates, and associates continue to need assurances that hard work will be truthfully evaluated and rewarded. The promotion-to-partner tournament solves both problems. We can imagine firms having increasingly elaborate tournaments, and we see evidence of that in the tiering of partnerships and in the firing of some associates earlier than in the past. We can see the reduction of the promotion-to-partnership core relative to the entire mass of the firm, but we find no evidence that the core is not going to continue to grow. This does not mean that every firm will keep

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69. *See* Pinansky, *supra* note 20, at 623.

70. For more on the tendency of organizations in a field to resemble each other, and the forces that support such isomorphism, see generally Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOCIOLOGICAL REV. 147 (1983).

growing inexorably. Firms may break apart—but we expect that the successor pieces would then recommence the pattern of exponential growth. We can also imagine a downward trend in which the portion of growth due to demand would decrease so that overall growth would be slower, possibly even resulting in changes in promotion rates. There may be major discontinuities, but the inherent difficulties of monitoring the sharing of lawyers' human capital suggests that the changes will be of degree, not of kind. We believe that the coming changes, like the changes that have already occurred, will be designed to supplement the tournament, not to replace it.