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Milton C. Regan, Jr.*

Larry Mitchell's book describes the movement toward share price maximization by corporate managers. More intensive market competition both domestically and abroad has led managers to believe that their corporations have little choice but to focus on short-term profits. This practice leads to greater instability for corporate workers and efforts to externalize other costs on third parties. It also intensifies the erosion of "local" cultural practices that are seen as impediments to profit maximization, whether they are associated with countries abroad, communities in the United States, or within the corporation itself. In this process, the norms of the market gain increasing influence as the impetus for the rhythms of daily life even beyond the formal institutions of the economic system.

Professor Mitchell has done an admirable job of laying out the implications of this development for many aspects of modern life both here and abroad, thereby indicating the wide impact of corporate behavior. In this essay, I want to focus on how the changes in the corporation that Professor Mitchell describes have prompted similar shifts in another important social institution: the large American corporate law firm.

I do this for two reasons. First, the evolution of the large law firm over the last couple of decades provides a useful case study of how changes in corporate norms can shape the values of other influential entities in American society. Second, the legal profession traditionally has regarded itself as an intermediary between the public and private spheres. With respect to corporate law, that has meant at least the aspiration that lawyers would impress upon their corporate clients the importance of taking public values into account while pursuing private aims. To the extent that corporate law firms have come more closely to resemble their clients and are subject to comparable market pressures, the feasibility of this aspiration may be in doubt. If so, corporations will encounter one less source of resistance to the pursuit of short-term advantage and lawyers may lose their claim to be a profession with a distinctive ethos.

The large law firm and the large corporation have always been closely intertwined in American history. Law firms arose in the late nineteenth century as a direct response to the emergence of large business corporations whose scale of operations and need for capital were unprecedented in American society.[1] Prior to this development, lawyers tended to practice either by themselves or in loose collaborations with other lawyers. Such organizational forms were insufficient to provide rationalized services that were adequate to

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1 WAYNE K. HOBSON, THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY 1890-1930, 142-43 (1986); Thomas Paul Pinansky, *The Emergence of Law Firms in the American Legal Profession*, 9 U. ARK. LITTLE ROCK L.J. 593, 600-04 (1986-87).

address the volume and complexity of corporate legal problems. Contrary to those who lament that law practice recently has become a business in contrast to its earlier status as a profession, the large law firm from the start has represented a business form adopted in order to provide effective legal services to corporate clients. Lawyers, however, were able to proclaim their ostensible independence from corporations by pointing to the fact that they worked mostly in separate lawyer-run organizations, rather than within the corporation itself. This practice was in contrast to other purveyors of services to business, such as engineers, whose primary career paths consisted of progressing up the ladder as corporate employees.[2]

Corporations' historic reliance on outside law firms rather than inside counsel helped buffer lawyers from the full force of market competition.[3] Asymmetry of information between attorney and client about the demands and quality of legal work gave lawyers a certain degree of market power.[4] This helped reinforce the notion that lawyers were guided by autonomous professional values rather than the norms of the market. Even as they were helping corporations rationalize their operations, lawyers were not seriously pressed to adopt such efficiencies in their own practice settings. Law firms were organized as partnerships, not as corporations. They tended not to adopt bureaucratic structures or to hire professional administrators, but aspired to be governed by a consensus among partners with a sense of the firm's history and culture. They had long-term relationships with clients, to whom they typically submitted bills with no itemization of the work that had been performed. They rarely sought to lure either clients or lawyers from other law firms.[5]

This relative insulation from market forces created at least the possibility of establishing and sustaining a distinct firm culture. Partners were chosen virtually exclusively from associates who had risen through the ranks at the firm. They were compensated primarily through the "lockstep" system, whereby each member who gained partnership in a given year would receive the same share of profits. Financial information about the firm was a closely guarded secret, with only rare revelation of matters such as billing rates, hours billed, partner draws, and associate salaries. Both associates and partners found it difficult to compare their compensation or their hours worked with many of their colleagues. Such features limited competition to some degree among members of the firm, and encouraged them to develop "firm-specific capital" that enhanced the desirability of the firm as a place to practice.[6]

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2 HOBSON, *supra* note 1, at 97; *see also* ELLIOT KRAUSE, DEATH OF THE GUILDS: PROFESSIONS, STATES, AND THE ADVANCE OF CAPITALISM, 1930 TO THE PRESENT 64 (1996).

3 *See generally* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991); Milton C. Regan, Jr., *Law Firms, Competition Penalties, and the Values of Professionalism*, 13 GEO. J. LEGAL ETHICS 1, 6-8 (1999).

4 *See generally* Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869 (1990).

5 ERWIN O. SMIGEL, THE WALL STREET LAWYERS 57 (1964); *see also* PAUL HOFFMAN, LIONS IN THE STREET 60 (1973).

6 *See* Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An*

It is hard to document with any precision the claim that lawyers practicing under such conditions readily took the opportunity to constrain their corporate clients by reminding them of the larger social consequences of their actions. It is true that many of the lawyers who were most prominent in political and legal reform campaigns in the late nineteenth and early twentieth centuries were also leading attorneys for major corporate interests during the same period.[7] Furthermore, some current senior corporate lawyers critical of the contemporary profession refer to their own experience in claiming that lawyers in the first two-thirds of this century were less beholden to their clients and exercised more independence in representing them than is the case with lawyers today.[8]

At the same time, it is common to view the past through rose-colored glasses, and some lawyers who have been handsomely compensated for their efforts may feel the need to insist that they never sold out to their corporate clients. Furthermore, the supposed ease in maintaining a culture specific to the firm may have rested to some degree on the homogeneity of firms that had virtually no ethnic minorities or women as lawyers.

Nonetheless, it is plausible to believe that the traditional conditions of practice afforded some degree of insulation from market pressures that could be used to foster non-economic values both within the firm and with respect to its clients. This hypothesis reflects what William Simon has called the Progressive-Functionalist Vision of law practice.[9] This vision historically has insisted that a threshold level of material security is the precondition for lawyers' willingness both to further public values and internalize non-economic professional norms in their practice. To the extent that large firm lawyers seized upon this opportunity, they constituted one form of restraint upon the corporation's impulse to pursue short-term economic advantage to the exclusion of longer-term concerns. As such, corporate lawyers had the potential to help preserve the social capital upon which well functioning markets depend.

Things have changed dramatically for the large law firm over the last two decades or so, and the policies of large corporations have been the most important impetus for this new state of affairs. In the face of more intense market competition, both at home and abroad, and relentless pressures to maximize share price, corporations have sought to reduce legal costs and to rationalize more strictly the provision of legal services. A crucial element of this strategy has been the effort to bring legal services more directly under corporate control by locating them within the organization. In-house corporate counsel offices have substantially increased both in size and responsibil-

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Economic Inquiry into the Corporate Law Firm and How Partners Split Profits, 37 STAN. L. REV. 313, 354 (1985).

7 Robert W. Gordon, *"The Ideal and the Actual in the Law": Fantasies and Practices of New York City Lawyers, 1870-1910*, *in* THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA 55-57 (Gerald W. Gawalt ed., 1984).

8 *See generally* SOL M. LINOWITZ, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994).

9 William H. Simon, *Babbit v. Brandeis: The Decline of the Professional Ideal*, 37 STAN. L. REV. 565, 565 (1985).

ity over this period.[10] This increase has reduced the asymmetry of legal knowledge upon which large law firms previously relied in enjoying some measure of relative market power vis-à-vis their corporate clients.

The result is that companies now spread their legal work around to several firms, rather than just one or two. Much of the routine work that used to provide a steady stream of both revenues for the firm and training opportunities for its associates is now done by inside corporate counsel. Corporate counsel tend to use law firms for large-scale litigation or transactions or for highly specialized expertise. Being retained by the company on one matter does not guarantee that a firm will be used on others. Corporations often solicit proposals from different firms competing for a given representation, in so-called "beauty contests." Once a firm is selected, inside counsel monitors its services and fees, reviews its decisions, authorizes particular strategies, and closely examines its bills, sometimes with the help of professional auditors. Corporations generally have made it clear, for instance, that they are not willing to be billed for work that trains associates, or for efforts to produce work product that duplicates prior services. Pressures have mounted for the use of "task-based billing," which breaks down legal services into discrete activities, for which specific amounts are budgeted.[11]

Companies also have begun to by-pass outside lawyers by establishing internal grievance procedures to resolve employee complaints on matters such as employment discrimination and sexual harassment. By internalizing this process rather than relying on public institutions such the court system, corporations gain greater control not simply over legal costs, but over dispute resolution itself. In sum, corporations are taking a range of steps aimed at greater rationalization of their use of legal services. They now demand that corporate law firms provide services with the same degree of efficiency and cost-effectiveness that companies expect from all their other vendors.

In response, large law firms have organized themselves in ways that have come to resemble their corporate clients. Perhaps most strikingly, increasing profits per partner has become an explicit and commonplace goal of the large law firm.[12] Firms claim that attaining this goal is necessary in order to retain partners who generate large amounts of business and to signal to clients and competitors the viability of the firm. The perceived importance of this goal reflects the widespread availability of financial information about law firms that has become a staple of the legal and business press. Some firms may refer to other considerations when describing their objectives. Nonetheless, as much as maximizing shareholder profits has come to occupy center stage in the corporate arena, enhancing partner profits has come to assume overriding importance in the modern large law firm. In both cases, the argument is that this objective is crucial to organizational survival.

Many large law firms also have adopted the institutional form of their clients, trading in status as a partnership for that of a corporation. In these

10 *See generally* Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277 (1985); Robert Eli Rosen, *The Inside Counsel Movement: Professional Judgment and Organizational Representation*, 64 IND. L.J. 479 (1989).

11 *See Task-Based Billing: Is It Working?*, LEGAL TIMES, Nov. 17, 1997, at S42.

12 *See generally* Susan Hansen, *The Young and the Restless*, AMERICAN LAWYER 66 (1995).

instances, of course, the focus on maximizing shareholder wealth is identical for both lawyers and clients. Legal practices also have increasingly assumed another characteristic of their clients by transforming themselves into limited liability organizations. Whether in partnership or corporate form, numerous law firms have rejected the historical practice whereby the entire firm was potentially responsible for the conduct of all its lawyers. Furthermore, the notion of the law firm as a collegial body run by lawyers has given way to the employment of professional managers, often not themselves lawyers, to run a more hierarchical firm. Many firms have established explicit departments with billing, revenue, and profit targets, much like corporations identify specific profit centers within the organization.

Large corporate firms have adopted a number of internal measures designed to maximize profits.[13] Partner compensation is less likely now to be based on a lockstep approach. Instead, business generation has become a critical component of partners' shares of profits. The desire to ensure that lawyers continue to contribute to firm productivity after being named partner has resulted in multi-tier partnerships. A new partner may continue as a salaried employee for, say, two years after the partnership decision, while he or she is given an opportunity to demonstrate the ability to generate business and new billings. Lawyers who thereafter become equity partners may then be compensated on the basis of the amount of business that they generate, especially for large numbers of associates. Partners who begin to lag significantly behind their peers may receive a warning and find themselves on probation for some period. If they continue to be perceived as substantially less productive than other partners, the firm may terminate them.

Nor have associates been insulated from market-driven measures. Some firms are beginning to eliminate lockstep compensation for them as well. Hours billed and perceived productivity have come to assume more prominent roles in setting associate salaries as early as after one year with the firm. With clients unwilling to foot the bill for associate training, there has been some pressure for associates to begin specializing at an earlier point in their careers so that the firm can claim that they bring value to an engagement.[14]

With the importance of business generation and ostensible measures of productivity to partner compensation and retention, the opportunity cost can be substantial for partners to train and serve as mentors to associates. The result can be that the availability of training is uneven both across and within firms. Furthermore, the magnitude of this opportunity cost makes it crucial that the recipients of training are those lawyers who are seen as a good bet to stay with the firm and make partner themselves. As two scholars have suggested, the result is that many firms identify at a relatively early point those associates who are slated for a "training track" and "flatliners" who are put on a "paperwork track."[15] Some of this paperwork generated by large corpo-

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13 *See* Regan, *supra* note 3, at 10-11.

14 MICHAEL H. TROTTER, PROFIT AND THE PRACTICE OF LAW 104 (1997).

15 David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1610-13 (1998); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 539-42 (1996).

rate practice is now being "outsourced"—performed by paralegals, temporary lawyers, and contract lawyers, all of whom involve lower overhead costs for the firm.

Like their corporate clients, law firms nowadays may well merge with, acquire, or be acquired by other law firms. The desire of many to become a "one-stop shopping" source of professional services also has led to agitation to loosen restrictions on law firms' abilities to join with nonlawyer professionals such as accountants and management consultants. In the meantime, firms are able to achieve some of the benefits of collaboration through strategic contractual affiliations with such organizations, much like corporations enter into joint ventures with organizations in related product markets.

What are some of the consequences of these changes in large law firm practice? The impact necessarily will differ to some degree among firms, based on fortuities such as their particular histories, the character and personalities of their leaders, and their positions in the legal services market. Nonetheless, there is evidence of some broad patterns that tend to emerge as a result of the structural features of contemporary practice. Furthermore, to some degree we can draw reasonable conclusions about the kinds of incentives and behavior that such features on average are likely to generate.

First, what is the effect on clients—the consumers of legal services? One might expect that the attenuation of long-term ties between law firms and clients, and the corresponding greater number of one-shot interactions, increases the likelihood of lawyers engaging in opportunistic behavior toward clients. There is prominent evidence of at least some such behavior, such as over-billing clients[16] and the failure to disclose actual or potential conflicts of interest. It is difficult to say with any precision how the rates of such misconduct compare with those of two or three decades ago. Nonetheless, it is plausible to expect that some lawyers may feel more pressure than before to maximize revenues from single representations, given uncertainty about whether they will win competitions to represent the client on other matters in the future. The focus on increasing profits per partner thus has the potential to drive a wedge between the interests of corporate law firms and those of the clients they represent.

Despite this possibility, it seems more persuasive to conclude that corporations on balance tend to benefit from the more market-driven modern large law firm. The large corporation with its substantial legal department is a highly sophisticated consumer. By introducing more competition for its legal work, it is in a position to demand greater efficiencies in the provision of legal services from its outside vendors. It can inflict severe punishment for opportunistic behavior by law firms that represent it, through lawsuits for malpractice, breach of fiduciary duty, or breach of contract; referrals to bar disciplinary authorities; publicity that injures the reputation of the firm; and even support for criminal prosecution. It also has the economic leverage in many cases to insist on reductions in fees for work already performed; on alternative billing arrangements that tie compensation to outcomes; and that firms cease representing other clients with whom the corporation may be in

16 *See generally* Lisa Lerman, *Blue-Chip Bilking*, 12 GEO. J. LEGAL ETHICS 205 (1999).

competition. Companies do need to be alert that firms' desires to produce visible results may lead to legal advice that gives insufficient weight to long-term considerations. Still, the highly competitive market for corporate legal business likely tends to redound to the benefit of the client more than intensely competitive markets for the allegiance of less powerful consumers.

What about the partners and associates in large corporate firms? How do recent changes affect them? Certainly top performers can enjoy greater rewards than they did under the system of lockstep compensation. In addition, firms may be more meritocratic than before because drawing from a relatively narrow socioeconomic and ethnic pool risks overlooking valuable legal talent. Both associates and partners also enjoy greater mobility; a lawyer unhappy at a particular firm need not feel trapped and unable to seek better opportunities elsewhere.

The trade-off, however, is less security and more demanding working conditions. Compensation based on business generation means that partners are more vulnerable to shifting market conditions. Factors over which a lawyer may have no control, such as the merger of her client into another company, a corporation's decision to assign more work to its legal department, or a downturn in a particular economic sector (witness Internet start-ups) may significantly reduce her compensation. If business does not pick up or she cannot retool her skills, she may be asked to leave the firm, since her partners may not be willing to sacrifice profits to cushion her fall. Some of this unwillingness may be due to simple resistance to earning less money. Some of it, however, may also reflect concern that if profits per partner drop, key rainmakers may go elsewhere, or the firm may be perceived by clients and competitors as in trouble. A partner subject to an "eat-what-you-kill" system may be anxious about where her next meal is coming from.

Associates in the market-driven firm have enjoyed escalating salaries. They also, however, have confronted a higher chance of termination, increasing billable hour targets, and uncertain training opportunities. The dramatic rise in corporate litigation in recent years has required that large numbers of associates perform relatively narrow tasks, which do not provide training in the higher-order legal skills that are necessary both for intrinsic job satisfaction and a reasonable chance of making partner. Some also claim that the level of civility among members of the profession has declined in recent years. That is, lawyers are more willing to press for advantage, to engage in aggressive tactics, and generally to act nastier than they did in years past.

Finally, what about the implications of the market-driven firm for society as a whole? Lawyers have long contended that they occupy a distinctive place in American society because of their familiarity with the legal system.[17] The notion that an attorney representing a client is also an "officer of the court," for instance, expresses the notion that the lawyer has a duty not only to her client, but to the larger legal order. The tradition of pro bono service reflects the idea that lawyers possess skills whose benefits should not be allocated solely by the marketplace, but that should be used to some degree for the benefit of those who are socially and economically vulnerable. The os-

17 *See, e.g.*, ANTHONY T. KRONMAN, THE LOST LAWYER 11-14 (1993).

tensibly unique nature of legal services has been invoked for more than a century to justify self-regulation—the claim that the legal profession should have authority to determine for itself the nature of its ethical obligations.

What are the implications of greater market pressure on law firms' ability and willingness to live up this ideal? Put in economic terms, what is the effect of the changes that I have described on the extent to which lawyers are likely to take into account the externalities produced by client behavior when giving legal advice or litigating on behalf of corporate clients?

Again, precise documentation is impossible. There is at least an argument that the older long-term relationship between law firm and client created the risk that lawyers would identify too closely with their clients. The result might well be deliberate or unconscious neglect of the broader impact of the client's activities. One example of this phenomenon arguably is the work of law firms in their long-standing representation of tobacco companies. Allegations have been lodged, for instance, that tobacco lawyers arranged to have research on the health effects of smoking conducted under their aegis, in order to invoke the attorney-client privilege to prevent disclosure of those studies unfavorable to the industry.[18]

On the other hand, there are others who claim that lawyers with long-standing ties to corporations had more credibility and greater opportunity to urge clients to take into consideration the social impact of their actions. Management could trust that such lawyers had the long-term interest of the company in mind, since the firm's and the client's futures were intertwined to a large degree. On a practical level, lawyers' intimate knowledge of the client's operations also may have given them the opportunity to suggest alternate ways of attaining the company's objectives while minimizing externalities. Finally, the asymmetry of information between client and law firm, and the company-specific knowledge that the lawyers had acquired, meant that it was relatively costly for corporations to change law firms. This arguably made it easier for the lawyer to say no to the client without fear that the corporation would turn to other firms for legal services.

We can speak here only of the general structure of incentives and opportunities that arise for the market-driven firm, rather than claim that all law firms inevitably will behave the same way. From this broad perspective, however, it seems convincing to argue that the market-driven firm is likely to be both less willing and less able to insist that corporate clients give weight to interests beyond those of shareholder wealth maximization. If corporations feel they must assign central importance to this goal, they generally have the market power to insist that those who perform their legal work adopt the same view of the company's mission. Law firms attempting to maximize their own profits in an intensely competitive market are likely to require little explicit instruction that attending to interests beyond those of the client is not an optimal survival strategy.

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18 *See, e.g.*, DAVID KESSLER, A QUESTION OF INTENT: A GREAT AMERICAN BATTLE WITH A DEADLY DISEASE 205-06 (2001); Bruce A. Green, *Thoughts About Corporate Lawyers After Reading the Cigarette Papers: Has the "Wise Counselor" Given Way to the "Hired Gun"?*, 51 DEPAUL L. REV. 407 (2001).

Furthermore, even if law firms are inclined to take a broader view, their lawyers may not have adequate familiarity with the client to suggest other ways of achieving client goals with less adverse impact on others. Many firms work only on discrete engagements for companies, or are assigned to focus on only one aspect of a much more complex matter. As a result, they may not fully appreciate all the implications of the client's plans, or be in a position to provide advice on how to modify them in a way that is consistent with broader social interests.

On balance, the market-driven firm therefore is likely to be subject to a gravitational pull that inclines lawyers to define their role as helping the client attain whatever ends it wants. In extreme circumstances, this may lead lawyers to engage in misconduct in order to further corporate objectives. Perhaps more significant, however, is omission—the failure even to raise concerns beyond those that the client has articulated. As a result, social issues are never even put on the table for discussion. The corporate norm of maximizing shareholder wealth thus puts pressure on law firms to define their own mission narrowly, abandoning any pretense of attempting to reconcile private and public values.

In this way, law firms risk becoming yet another form of local culture whose aspirations are flattened by the dominance of market forces. It may be more difficult for any large firm to trade off economic for non-economic values by, for instance, devoting significant time to pro bono activities, making partners available to provide mentoring to associates, avoiding layoffs by reducing partner draws, subsidizing retraining for lawyers whose practices have suffered a downturn, providing flexible schedules for lawyers with young families, and limiting increases in billable hour requirements.

Furthermore, these difficulties increasingly are not confined to large firms. Small firms now find it difficult to remain independent in the face of competition by larger and larger firms. Recent years have seen numerous instances in which relatively small practices in which all lawyers are on a first-name basis have been acquired by much larger firms on the lookout for particular practice specialties. While the lawyers who are "acquired" may have some degree of relative autonomy as a group in certain instances, they nonetheless become a "profit center" for the larger firm that is expected to meet its financial targets. This ripple effect thus means not only do large firm lawyers have fewer options about the culture of the firm in which they work, but that it is increasingly difficult for lawyers even to make the choice to work in a small firm setting. In this way, law firm culture is flattened even more.

Appreciating how corporate norms have prompted changes in large law firm practice helps us evaluate with more precision recent laments that law is losing its character as a profession and is becoming more of a business.

One prominent form of this lamentation is that we should be concerned about the changes that I have described because they reflect lawyers' increasing preoccupation with financial gain.[19] As law firms adopt more of the characteristics of business corporations, the claim goes, they market legal services like any other commodity, and their lawyers tend to be uncivil and hyper-

19 *See generally* LINOWITZ, *supra* note 8, at 21-46.

aggressive in negotiation and litigation. These developments reflect a shift in values among lawyers from a professional ethos in which economic considerations are secondary to a business ethos in which they are primary.

My analysis suggests two responses to this criticism. First, as I have indicated, the major impetus for the emergence of the market-driven law firm has not been a change in the hearts and minds of lawyers. Rather, the corporate norm of shareholder wealth maximization has prompted changes in the ways that corporations use law firm services. Those changes have transformed the market for corporate legal work, and large law firms have responded to the increasingly competitive nature of that market in the ways that I have described. Exhortations to lawyers simply to rethink their values thus ignore an important structural variable in the equation.

This is not to say that self-reflection is a meaningless exercise for lawyers and for the firms in which they practice. Indeed, introspection that helps clarify the relative weight of the values involved in law practice is a necessary step for any law firm that hopes to sustain a distinctive culture of practice. It is not sufficient, however, unless it is coupled with a realistic awareness of how current conditions create a momentum toward the market-driven firm.

Second, criticism that trades on the business-profession distinction glosses over the fact that law practice has *always* been a business. Large law firms first arose in the late nineteenth century for business reasons—to provide more efficient legal services to large corporations. One can argue that the transformation that law firms have undergone over the last twenty-five years represents simply the latest round of changes that improve efficiency even more, by enhancing competition and reducing opportunities for rent-seeking by law firms. Firms no longer have captive clients or lawyers, and must deal with their corporate clients on more equal ground. This increased efficiency is something of which law firms should be proud, not ashamed, one might argue, because it means the provision of better, more cost-effective service to clients. In this way, the claim goes, recent changes in law firm practice promote, rather than erode, the status of lawyers as professionals because they strengthen the profession's commitment to its clients.

Concern about the direction of large law firm practice thus is of limited value if it frames the issue simply in terms of a dichotomy between business and professional aspects of practice. As I have argued elsewhere, it is more useful to think of professionalism as consisting of three aspirations that sometimes are in tension with one another.[20] The first is devotion to the client. This value emphasizes that lawyers must put their clients' interests first, even if it entails some personal cost. A client is not simply a source of revenue; she is someone for whom the lawyer is responsible as a fiduciary. We can characterize this value as focused on the welfare of the consumers of legal services that I discussed earlier.

The second value is what I have called craft autonomy. This is the notion that the lawyer strives for excellence as defined by her peers, rather than by the marketplace. She is not willing to compromise her professional judgment for expediency, but is true to the standards of performance that the

20 *See* Regan, *supra* note 3, at 33-43.

legal community has established. Some measure of professional autonomy affords the lawyer with a degree of control over her work life. We can characterize this value as focused on the workers in law firms.

Finally, a lawyer maintains the independence necessary to serve as a steward of the legal system. She is responsible for preserving the integrity of that system as an important form of social capital in a democracy. On occasion, even if rarely, adherence to this value may lead her to conclude that her clients' interests must give way to larger social concerns. This value obviously emphasizes the impact of the law firm's activities on the larger society.

Each of these aspects of professionalism speaks to important values. In the best tradition of the legal profession, the lawyer relies on practical judgment in attempting to reconcile these values in specific situations. The changes in the market for legal services that I have described, however, complicate and make this task more difficult. As I have suggested, these changes tend most clearly to benefit the consumers of large law firm services—that is, to vindicate the value of devotion to the client.

From this perspective, the most salient concern about the market-driven law firm is not that it represents the introduction of profane economic considerations into what once was a sacred professional temple. Rather, it is that it reflects a situation in which one professional value threatens to crowd out the other two. As devotion to the client becomes the defining value of the legal profession, concerns about craft autonomy and preserving the integrity of the legal system may begin to fade. Rather than engage in the complex task of trying to accommodate multiple professional values, the lawyer in the market-driven firm faces a simpler imperative: do whatever the client wants.

Devotion to the client obviously is not a bad thing. Indeed, it is a professional value of which lawyers can be proud. In some practice settings, such as criminal defense, it is a value that perhaps should always be given priority. Because life and liberty are at stake in those cases, we may prefer that the lawyer pursue a simplified understanding of professionalism.

Such simplification is troublesome, however, for the large corporate law firm. Corporations obviously are among the most powerful institutions in modern society, whose decisions have consequences for millions of people. The result is that the modern corporation is at the intersection of the public and the private; decisions made by corporate officers inevitably will produce a multitude of externalities, both negative and positive. As Larry Ribstein has observed, large law firms "serve in a broad counseling capacity for the biggest corporate clients that are in position to do the most harm."[21] To the extent that recent changes in the provision of legal services create pressure to provide legal advice that ignores this dimension of corporate activity, society is ill served.

Indeed, corporations themselves are poorly served in the long run by lawyers who treat the law purely in instrumental terms, as an obstacle that must be circumvented in the pursuit of the client's ends, rather than as a form of social capital that enhances the trust and cooperation necessary for mar-

21 Larry E. Ribstein, *Ethical Rules, Agency Costs, and Law Firm Structure*, 84 VA. L. REV. 1707, 1739 (1998).

kets to flourish. Witness, for instance, the stock market's jitters about the integrity of audited financial statements after the collapse of Enron. The fear is that corporate officers and the professionals who represent them treated accounting and disclosure rules precisely in this way.

A common feature of recent changes in both corporate operations and law firm practice thus is a certain narrowing of focus. Just as attention to shareholder value is a legitimate consideration for corporate management, devotion to the client is an important value for lawyers to pursue. Just as the contemporary corporation tends to place priority on maximizing share price to the neglect of concern with the interest of other corporate stakeholders, the market-driven law firm faces a gravitational pull toward client service to the exclusion of other professional values.

Furthermore, each institution threatens "local" cultures with different understandings of professional values and corporate ends. As Professor Mitchell has described, the shareholder-centric vision of corporate purpose threatens to dominate global economic markets. Similarly, "Americans pioneered the large law firm, and the fast paced, entrepreneurial, and business oriented style that is at the heart of global legal practice."[22] In addition, as David Wilkins observes, much of the world's aspiring elite lawyers either attended law school in the United States or spent time in the office of an American law firm. As a result, "the 'American mode of the production of law' has become the blueprint for globally minded lawyers the world over."[23] To the extent that this model is adopted uncritically, other, richer, understandings of the lawyer's role will begin to lose their resonance.[24]

I have suggested that those who are concerned about the direction of large law firm practice must go beyond exhortations that lawyers change their values. They must have an appreciation of the long-standing relationship between large corporations and large law firms and how recent changes in corporate norms have helped shape the contemporary law firm.

Does that mean that law firms have no control over their own destiny? I don't think so. There is an argument that the problem is not so much that many law firms have more explicitly adopted a business model for their operations, but that they have embraced a *bad* business model—one that fails to appreciate the ways in which non-economic values can not only be reconciled with economic ends but, in fact, promote them. Law firm leaders who hope to establish and sustain distinctive firm cultures, rather than simply be market-driven organizations, can look to their more enlightened corporate clients for guidance on how to sustain an organizational culture that fosters trust, loyalty, and cooperation, as well as sensitivity to the social consequences of its activities. Attention to such "organizational capital" can further the long-term prosperity and viability of the corporation in ways that a

22 David B. Wilkins, *Why Global Law Firms Should Care About Diversity: Five Lessons from the American Experience*, 2 EUR. J. L. REFORM 415, 415 (2000).

23 David Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 47 CASE W. RES. L. REV. 407, 423 (1994).

24 *See generally* JOHN LEUBSDORF, MAN IN HIS ORIGINAL DIGNITY: LEGAL ETHICS IN FRANCE (2001).

short-term focus on share price cannot. Furthermore, there is evidence that at least some corporate managers are beginning to question and to resist an obsessive focus on share price as the criterion of business performance.[25]

Law firms have confronted unprecedented market pressures in the last two or three decades, but that should not lead them to panic—to conclude that all traditional professional values must be jettisoned in the pursuit of profit. Business corporations have much longer experience with attempts to remain competitive and profitable while attempting to preserve organizational capital. Law firms can learn from this experience.

Not only can law firms learn from it; they can help reinforce it. Firms need not be passive, waiting for changes in corporate norms to occur before they feel free to give weight to multiple professional values. Their representation of large corporations provides opportunities to encourage long-term thinking that takes account of the variety of interests that are affected by corporate behavior. The advice that they give, the strategies that they suggest, and the compliance efforts that they recommend all will help shape the ethos of a corporation. To the extent that corporations are responsive to objectives beyond maximizing short-term financial gain, that broadening of perspective will in turn make it easier for corporate law firms to acknowledge the importance of attempting to reconcile all three professional values in their daily practices.

There is, of course, something of a collective action problem here. If all large law firms approached their representation of corporations in this way, all law firms would be better off in the sense that they could avoid the necessity of becoming purely market-driven organizations. In a world of fierce competition for legal work, however, firms that take a broader view risk losing out to those who are willing to follow clients' instructions without question. We therefore should not have unqualified optimism that the legal profession possesses in its own hands the solution to its difficulties. How many firms will be willing to risk competitive disadvantage by expansively construing their roles?

At the same time, there is a rhetoric of nonmarket public values that is far more robust within the law firm than in the corporation. Some of it no doubt is simply the stuff of after-dinner speeches; others may contend that it has served simply as a convenient justification for lawyers' monopoly over legal services. There are, however, attorneys notable in legal lore for their steadfast commitment to justice, their willingness to challenge established power, and their wise counsel in complex times. This legacy of professional self-understanding may make it easier for a corporate lawyer than a corporate manager to take a view beyond next quarter's earnings report. If large law firms acknowledge more clearly their symbiotic relationship with large corporations, then they will realize that taking this step can benefit not only the company and society at large, but themselves as well.

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25 *See* Joseph Fuller & Michael C. Jensen, *Just Say No to Wall Street*, 14 J. APPLIED CORP. FIN. 41, 41-42, 44 (2002), available at http://www.papers.ssrn.com/abstract=297156 (Feb. 17, 2001).