PARTNERS WITH POWER

Social Transformation of the Large Law Firm

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Preface

I became interested in patterns of organizational change in the large law firm through the conjunction of practical and intellectual experience. After clerking a summer in a large Chicago law firm in 1977, I took Arnold Feldman's course on industrialism and industrialization at Northwestern University and was exposed to the writings of E. P. Thompson, Alfred Chandler, Jr., and Reinhard Bendix on the rise of the modern industrial order. It struck me that corporate law firms constituted an important and interesting set of organizations within industrial society, for they constituted the elite strata of a professional sector that had undergone explosive growth in recent years and were themselves in the midst of an apparent transformation in the size, structure, and functioning of the organization. Yet no one writing on the professions or the sociology of law had attempted an analysis linking processes of structural change in the corporate law firm with the changing role of law and lawyers in the United States.

Erwin Smigel's book *The Wall Street Lawyer* (1969), for which the primary data were collected in the late 1950s and which had been given only a minor update in 1969, remained virtually the only serious scholarly work on large law firms. In the decade following the publication of the last edition of Smigel's book, large firms had experienced dramatic growth. While only twenty firms had more than one hundred lawyers in 1968, by 1984 more than two hundred firms had surpassed the one hundred mark and sixty firms had more than two hundred

lawyers. The striking pace of change in firms not only emphasized the dated character of Smigel's research but also called attention to other problems of theoretical emphasis and analysis. Most glaring was the absence of any theory of growth or structural change that might explain the increasing size of firms or the implications of growth for the governance of the organization and the role the large firm plays in the legal system.

Indeed I soon learned that the limitations of Smigel's work were characteristic of the professions literature in general. Scholars of the professions largely had ignored the economic structure of professional organizations and the relationship between the structure of the professional firm and the market for professional services. Although the sociology of the professions frequently had examined the relationships between professionals and bureaucratic organizations of various types (universities, hospitals, social welfare agencies), much less attention had been given to hierarchical relationships among professional colleagues in autonomous professional organizations or to changes in the nature of these relationships under the force of increasing organizational size and complexity.

To understand the large law firm and the changes it was exhibiting, research needed to focus on these less studied aspects of the professional organization. I have done so by developing what I call the organizational dominance framework, a framework that attempts to explain how large law firms have achieved and maintained a dominant position in the market for corporate legal services, as well as how the leading partners of firms have gained and legitimated a dominant position within the organization.

This book, however, is not intended only as an organizational analysis. It also aspires to a contribution to the sociology of law. Although the large law firm contains only a relatively small percentage of American lawyers (some 7.3 percent of private practitioners work in firms of more than fifty lawyers [Curran 1985, p. 13]) and in that sense is an atypical element of the American legal profession, it is an institution that has had a much greater impact on the American legal system than mere numbers indicate. It has been described as the pinnacle of the status hierarchy of the legal profession in that it recruits the top graduates of the top law schools, it represents the most resourceful of clients in the most intellectually challenging and rapidly changing fields of substantive law, and its members often occupy positions of leadership in bar associations, law reform commissions, and civic and political

organizations (Auerbach 1976). The large law firm has therefore been a central institution in the development of the distinctive norms and cultural understandings that define the ideal of professionalism for American lawyers, including autonomy from clients, an orientation to public service, and a commitment to the practice of law as something more than a business.

The fate of professionalism within the American legal profession is very much connected to the changes taking place in large firms. Despite almost a century of public doubts about the autonomy and social responsibility of large law firms, Talcott Parsons (1962) and Erwin Smigel (1969) expressed optimism about the role that lawyers and large firms play in society. Both argued that the elite of the legal profession could perform a mediating role in legal and social change by convincing their powerful clientele to follow the dictates of legal rules and to abide by policies that served the public interest rather than the client's narrow purposes. Thus the independence of corporate law firms and their commitment to civic and professional values were asserted to be potent forces for the normative integration of society.

All these elements—the historical legacy of professionalism in large law firms, the functionalist conviction that large firms contribute to the development of legal outcomes and legal rules that are rational and just, and the dramatic but largely unexplained expansion of firms in the last decade—suggested that the study of social change in the large law firm was significant to theories of the role that law plays in American society.

Indeed there is perhaps more anxiety now within the elite of the legal profession over what that role is than ever before, and much of this concern centers on the large law firm. The same lawyers who built large law firms into the kinds of organizations they are today openly express the fear that economic pressures have become so intense that partners and associates are driven to specialize narrowly, bill "too many" hours, and forgo activities in bar associations, civic institutions, and pro bono litigation that would serve the public interest. Such public figures as the Chief Justice of the United States (Rehnquist 1986) and the president (and former law school dean) of Harvard University (Bok 1983) voice similar concerns about the impact of the changes taking place in firms on the ethics and public service orientations of lawyers. The sense of malaise that grips the corporate elite of the profession reflects broader questions about the legal system. The whole edifice of American law and the prominent part law has come to play in American life is

attacked from both the right and the left. Politically conservative critics allege that the law has gone too far, that it has become too costly, that it has begun to undermine the moral fabric of the community (see the references in Galanter 1983b). Critics on the left, who have come to occupy a significant portion of the faculty positions in the elite law schools from which large firms recruit, argue that the law has not gone far enough, that any system of rights and rules that legitimates the current structure of inequality and domination is itself unjust and subject to internal contradictions (see the readings in Kairys 1982, especially Mensch 1982). The increasing bitterness of divisions within the legal academy over the nature and proper function of law may have contributed to the loss of self-confidence among the leaders of the profession, for the debates make clear that there is no consensus on the intellectual content of law.

So it is that the large law firm, as the leading private institution in the legal profession, has come to embody the central paradox confronting American lawyers today. Why, at the height of their economic success, are lawyers and law firms subject to unprecedented doubts about the social value of their activities and their privileged position in society? This book attempts to explain the conditions that produced the success but that at the same time have contributed to the sense of impending decline which now pervades the corporate elite of the profession.

One of the perils of systematic empirical research and academic writing is that it takes a long time. When I began studying firms in 1979 the most significant question concerning the practicality of the research was whether I could gain access to information. Corporate law firms took pride in their function as the repository of the confidences of clients and studiously avoided publicity about firm operations, fearing that they would appear unprofessional or, worse, that clients might not feel comfortable divulging secrets to their law firm counsel. My dissertation committee thought I would be lucky to get access to one large firm, much less the four that my research design called for. Obtaining permission to gather comprehensive historical and behavioral data from four firms was at that time a significant accomplishment. Shortly after I began my research, however, the norms about the public disclosure of information by law firms changed rapidly, largely because of the rise of legal journalism. The *American Lawyer,* the *National Law Journal,* and the *Legal Times of Washington* bathed law firms in a new spotlight, reporting on such matters as who was coming and going in firms, which

firms were growing and which were declining, what associates thought of different law firms based on their experiences in summer clerkships, and, eventually, financial information about the earnings of partners and associates. The law firms, confronted with the prospect of potentially damaging and inaccurate information, reversed their traditional practice of avoiding public comment and began to cooperate with and cultivate the new legal press. Firms hired public relations consultants and began to provide the press with information on their economic and managerial practices.

In a sense I had been scooped by the very process of change I was studying. While I am not sure whether large firms today are appreciably more open to the kind of in-depth empirical investigation reported here than when I began my research, the volume of press reports about the changing managerial practices of firms has created the widespread perception that all large firms have become bureaucratic organizations. Indeed I am commonly asked by audiences of lawyers and legal scholars whether there are any large firms today that are not bureaucratically organized. The implication of the question is that six- or seven-year-old data concerning firms already are outdated.

My first response is that I doubt it. The analysis presented here goes into aspects of the structure of law firms that, at least in part, lie below the surface of press reports and public relations material. The structural tendencies I have identified here, although certainly subject to change, are not likely to be transitory in character. My reading of the continuous stream of information about law firms in the legal press has, if anything, increased my confidence in the theory of organizational change presented here. Nonetheless, I would welcome attempts to replicate my analysis with more recent data. My second response is that social research, particularly that concerned with processes of social change, is always aiming at a moving target. To more fully understand what is happening now, we must look to the analysis of data that may seem a bit stale from a popular standpoint.

I have tried to write this book so that it can be read by a broad audience, including the lawyers and law students involved with large law firms, and yet address the methodological and theoretical concerns of social scientists. Much of the data contained here are qualitative in nature and are therefore readily interpretable. The statistical analyses presented are quite straightforward, mostly involving simple cross-tabulations and analyses of variance, and should with application be understood by nonspecialists. The reader inclined to avoid statistical

analyses, however, may choose to skim chapters four and five because they rely more heavily on sophisticated statistical techniques.

The overall argument of the book, the theoretical literature I address, and the nature of the research design are discussed in the introductory chapter. The remainder of the book is organized in three parts. The first part develops the theory of social change in the large law firm. Chapter 1 draws on historical data on firms nationwide, as well as on interviews with firm elites, to develop a general theory of structural change in law firms that relates changes in the market for corporate legal services to changes in the organization of the law firm. Chapter 2 examines how these general patterns have taken concrete form in the four firms that are studied in depth throughout the rest of the book. This chapter presents historical narratives tracing the political-economic development of each firm. The second part consists of a series of chapters on particular aspects of the structure of the large law firm. Successive chapters present analyses of the survey data collected in the four firms which examine the changing nature of careers in firms, the organization of work, the income structure, and the authority system of firms. The third part analyzes the large law firm as a social institution. Chapter 7 examines the client relationships, behavior, and social and legal attitudes of the sample of large-firm attorneys to assess their autonomy from clients and their orientation toward legal and social change. Chapter 8 summarizes the results of the study and presents a general theory of the relationship between patterns of legal change and patterns of social change in the large law firm.

Earlier versions of chapters 1 and 3 appeared as articles in the *American Bar Foundation Research Journal* (1981: 95; 1983: 109); chapter 7 was published in article form by the *Stanford Law Review* [37:503].

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This book evolved from my dissertation research. My list of debts begins therefore with the people who advised me on this project while I was still struggling to finish law school and graduate school. The student who finds one good teacher to work with during his or her graduate career is fortunate. I consider myself twice blessed in that regard, having had the intellectual and institutional support of Arnold S. Feldman and John P. Heinz. I owe a great intellectual debt to Ackie, first, for instilling a sense of excitement in doing sociological work and, second, for artfully combining the role of demanding supervisor and reassuring adviser during the course of the dissertation research. I hope this book reflects some measure of what I've learned from Ackie over these years. Jack Heinz has been the ultimate mentor, colleague, and friend from the very inception of the research. Jack's own work on the legal profession inspired my interest in the field and proved to be an essential backdrop to my research. And it was largely through Jack's efforts that this project enjoyed such extraordinary institutional support. I look forward to continued colleagueship with Ackie and Jack.

I also owe a debt of thanks to several institutions and the persons who make them work. The research could not have been conducted in the fashion it was without the support of the American Bar Foundation. Spencer L. Kimball, who was then the executive director of the foundation, extended himself personally to help arrange access to the firms studied. A doctoral dissertation grant from the National Science Foun-

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The list of colleagues who helped in various ways runs to embarrassing length. The other members of my dissertation committee, Bob Bell, Howie Becker, and Kent Smith, provided useful comments and encouragement throughout the project. Other friends at Northwestern University and the American Bar Foundation made helpful suggestions at various stages of the research and writing, including Ray Solomon, Michael Powell, Errol Meidinger, Tom Davies, Janet Gilboy, Charlie Cappell, Terry Halliday, Ted Schneyer, Bette Sikes, Whit Soule, Sam Gilmore, William Finlay, Allan Schnaiberg, and Art Stinchcombe. Thanks as well to Edward Laumann, Robert Salisbury, Eliot Friedson, William Simon, Sam Krislov, Richard Abel, Richard Lempert, and an anonymous reviewer for further encouragement and constructive criticism. Marc Galanter deserves special mention for the advice and support he gave at both the beginning and end of the research. Amanda Clark Frost provided skillful editing of the manuscript, effectively curbing the penchant for jargon which afflicts both sociologists and lawyers.

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Contents

Introduction

The large law firm sits atop the pyramid of prestige and power within the American legal profession. Although comprising but a small fraction of lawyers, through its impact upon patterns of recruitment, styles of practice, and the collective institutions of the bar, the large firm has a significance that far exceeds the number of lawyers it employs (J. Auerbach 1976, pp. 22–23). It regularly recruits the best graduates of the most prestigious law schools and pays the highest financial rewards of any broad category of practitioners; its members dominate positions of status within the legal communities of major cities and many professional associations (see Carlin 1962, 1966; Ladinsky 1963; Heinz and Laumann 1982; Grossman 1965; Halliday and Cappell 1979; Powell 1982). If any group of lawyers in the increasingly complex and specialized system of American law approximates Weber's conception of the legal *honoratiore* (Weber 1978), it is those based in the large law firm. For the specialist practicing in the large firm has the incentives and resources to write new laws, either through participation in legislative drafting or through membership in court-appointed law revision committees and the like. Important as these public functions are, they may be dwarfed in significance by the functions the large law firm performs in its representation of private clients. As legal counsel to major corporations, the large law firm participates in transactions and disputes that have enormous economic consequences for society. And

if some large-firm lawyers are busy writing new laws, many more are busy devising how their clients can avoid them (McBarnett 1986).

Judging by the growth of firms in recent years, the importance of their activities has increased dramatically. The nation's 50 largest firms increased some sixfold since 1960, by 70 percent in the first half of this decade alone (*Legal Times* 1984; *American Lawyer* 1979). In 1968, when Erwin Smigel wrote the last edition of his classic study of Wall Street firms, there were only 20 firms that employed as many as 100 lawyers (1969, pp. 358–359). Today 200 firms employ 100 lawyers or more; the largest contains over 700 lawyers scattered in some 32 locations throughout the world (*National Law Journal* 1982).

Ironically, it has become clear during this recent period of dramatic success that the large law firm is an organization of profound contradictions, both with respect to its internal organization and its role in society. The very forces that provided the impetus for the economic success of the large law firm have begun to undermine the traditional basis for its privileged position within the legal profession. The transformation in size and complexity of the organization itself and the development of intense competition between firms in the market for corporate legal services has challenged the organizational arrangements by which firms were traditionally governed. Direct, ad hoc control of day-to-day operations by a few leading partners has been replaced by management structures that include long-range planning groups, professional administrators, and the division of managerial functions among department heads. As the stability of relationships between corporate clients and firms has broken down and as the demand for particular fields of expertise has undergone rapid change, the power of the generation of elites who presided over the rise of the firm has become more vulnerable. The pages of the *American Lawyer*, the *National Law Journal*, and the *Legal Times of Washington* carry a steady flow of reports of bloodletting within the once staid corridors of large firms: palace coups by younger partners, conspiracies to oust other partners, defections by whole departments, and even the dissolution of long-established partnerships. Institutional loyalty is no longer strong enough to hold firms together. With growing frequency partners bolt from one firm to another. Faced with increased competition and a constant need for additional clients, the new generation of managerial partners has sometimes cut the shares of partners who do not bring in business, reducing many to the status of well-paid employees who are partners in name only. At the same time that firms have mounted massive recruiting programs for

new associates, lavishing high starting salaries and signing bonuses on fresh law graduates, they have raised the threshold for full partnership by lengthening the number of years required before admission to partnership, inserting intermediate levels of partnership, and conferring partnership status on only a small percentage of any entering cohort.

These changes in the organization of firms have provoked a crescendo of rhetoric from leaders of the bar about the loss of professionalism in law practice. While this is hardly a new theme (see Gordon 1984), there is clearly heightened anxiety that big-time law practice is becoming little more than big-time business. Two recent past presidents of the American Bar Association, both partners in prominent firms, voiced these concerns on the President's Page of the *ABA Journal* (Harrell 1983; Shepherd 1984). The establishment of the ABA's Commission on Professionalism in 1984 was inspired in part by the fear that the commercialization of practice may have gone too far (American Bar Association 1986). The ethic of professionalism is hardly a hollow concern for the large law firm. Despite manifest changes in the relationships between firms and clients, the justification for the high cost of large-firm counsel is tied to the ideology of professionalism. The large firm must maintain its image as the ultimate professional organization whose command of knowledge and customized style of practice produces legal services of a quality not readily purchased elsewhere. If lawyers' services are seen as an interchangeable commodity, corporations are far more likely to shop for the lowest price or to internalize legal representation.

The privileged position of the large firm in the legal profession also rests on the ethic of professionalism. The inequities inherent in a legal system in which representation is allocated by a private market can be justified in part by the professional status of lawyers. A distinguishing characteristic of professional occupations, which justifies self-regulation by the professional group, is that they are committed not just to profits but to public service as well. Lawyers, as officers of the court, are obligated to serve the public interest even as they advocate the interests of their clients. Hence, although large-firm attorneys represent the most powerful interests in American society and thus enjoy a tremendous advantage in the adversarial process over lesser foes, they represent themselves as independent professionals who can check the narrow self-interest of clients. Almost from the inception of the large law firm, critics have challenged its claim to professional autonomy, arguing that firms are the captives of client interests and that their commitment to procedural fairness masks the attempt to maximize the substantive in-