

# Introduction to Symposium on the Corporate Law Firm

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The papers collected in this symposium issue were delivered in preliminary form at a conference held at Stanford Law School in February of 1984. Together, they amount to a series of excited reports from explorers returning from journeys into the heart of a vast, mysterious, and almost unmapped interior of American society, its large metropolitan law firms. Rather unusually, these explorers' reports are further supplemented by the comments of some eminent natives of that heartland, the practicing lawyers themselves. The hope of the conference's arrangers was that if most of the small band of legal scholars who have investigated the corporate law firm could be brought together with a few exceptionally reflective practitioners, some progress might be made toward shaping these hitherto relatively isolated and fragmentary efforts into a field of study. This hope, I believe, these papers and the comments on them abundantly fulfill. They make a start at identifying some of the major questions to be asked, and at intelligently guessing the probable contours of the answers. They also show how little is reliably known about these institutions and what they do. Best of all, they suggest how exciting it might be to try to find out more.

When one thinks about it for a moment, it seems astonishing that law firms should have for so long remained almost unexplored in legal scholarship. These are, after all, social institutions of some prominence. They have a significant place in the economy, billing some \$38 billion annually. Their members serve as a class of generalist-intermediaries, linking together diverse segments—manufacturers, investors, bankers, insurers, underwriters, brokers, fund managers—of the business world. They are important in the political economy, as negotiators between business corporations and the taxing and regulatory state,

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and as the primary interpreters to business of the mysteries of bureaucratic government. They have some function (exactly what resists easy description) in the symbolic economy, as producers of the symbols of legality, reassurance to the world that their clients' transactions fit somehow into the framework of social legitimacy. They have a place in the social structure, as a provider of careers (and often considerable wealth) for young people who get high grades at school, and as a means of certifying to their parents and to society arrival into or maintenance of authority, power, and status. They are avenues of mobility into high ranks of business and public office.

At law schools such as Stanford's, law firms are looming, indeed dominating presences in the life of the school, claiming the obsessive and (as it sometimes seems) nearly exclusive attention of almost all the students in the school from the middle of the first year onwards. Yet the legal academy from its inception has on the whole made a determined decision to remain aloof from the institutions where most of its students will spend their careers. We do a reasonably good job preparing our students to become common law judges, and a respectable though not quite so good job preparing them to become legislative and bureaucratic policymakers. Scholars have also performed useful services for students interested in criminal, welfare, family, or personal injury law: Thanks to legal sociologists and anthropologists, a lot of good research now exists about how courts, lawyers, and other legal institutions (for example, welfare bureaucracies, court clerks, and the police) handle the problems that arise in such practices. As far as I know, we have never produced, for teaching purposes, *any* good descriptions, much less scholarly analyses, of what it is that corporate lawyers spend most of their time doing. Without such descriptions, the prospect seems hopeless of accomplishing what law schools (like any other professional schools) ought to be doing: teaching a theoretically informed, critically reflective set of approaches to professional practice tasks.

In recent years, to be sure, writers outside of the academy have been busy tearing off the veils that discreetly screened law firms from vulgar curiosity. I mean of course the writers for such papers as the *American Lawyer* and *National Law Journal*, who have astonishingly contrived to turn corporate practice—which even the lawyers most devoted to it have to admit contains some of the

world's dullest jobs—into material for gossip columns. They keep track of the suddenly volatile employment and reputational markets of the legal elite: which firms are in hot demand and which are in serious financial trouble, who has triumphed and who has failed in handling a big transaction or litigation, who is splitting with his partners and taking major clients with him, which firms best train and sybaritically indulge their summer clerks, and what everyone gets paid. Sometimes this reporting results in wonderfully thorough, detailed, blow-by-blow accounts of litigation strategy, the negotiations behind a major deal such as the Chrysler bail-out, or the quarrels leading to a client's desertion or firm's dissolution. (The stories collected in James Stewart's *The Partners*<sup>1</sup> are among the best examples of the genre.) The new legal journalism has its weak points, mostly those inherent in the form: the natural tendencies to dwell on personalities at the expense of structures, to be unable to resist repeating any quotable remark, and to glamorize its subjects sometimes to the point of absurdity.<sup>2</sup> Its exhaustive reporting has nevertheless shrewdly identified—indeed has been the first source anywhere to identify—some of the main causes and symptoms of the current revolution in the organization of corporate firm practice: corporate clients' newly intolerant awareness of high legal costs and consequent decisions to shift much legal business in-house, to spread outside business among several firms, and to be quick to take it elsewhere if dissatisfied; the intense competition for clients, which leads firms to adopt novel techniques to control costs and increase output—pressuring associates to bill more hours, raising the ratios of lower-paid (associates, paralegals) to higher-paid (partners) staff, standardizing routine transactions, converting to capital-intensive technologies and to compensation systems that reward high billings, weeding out unprofitable clients or transactions; the sudden mobility of lawyers among firms that until recently expected their life-long loyalty; and the gradual acceptance of the profit-maximization principle as the guiding norm of firm life.

It is the great merit of this symposium that it tries to give these trends an examination both more sustained and more criti-

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1. J. STEWART, *THE PARTNERS* (1983).

2. Stewart, for example, combines a tough-guy muckraker's tone with a star-struck awe at how smart and hardworking the corporate lawyers he writes about are, and how important the deals are that they handle.

cal than the new legal journalism has been able and willing to do. Abram and Antonia Chayes analyze in some detail the novel functions that expanded in-house counsel's office has assumed, and suggest that the shift of functions has unalterably wrested from the outside law firm the capacity to dominate direction of traditional clients' legal affairs. Robert Kagan and Robert Rosen's essay on the social functions of firms, Robert Nelson's study of big-firm—big-client relations, and John Heinz and Edward Laumann's more specialized study of Washington lawyers, are all concerned with the issue of lawyers' "autonomy," that is, with the extent that lawyers are able to influence the conceptualization and preferred solutions to their clients' legal problems: Each arrives at the tentative conclusion that outside lawyers on the whole have neither the opportunity nor the desire to reshape their clients' business or political goals and chiefly confine their role to that of technical execution. Ronald Gilson and Robert Mnookin explore another aspect of the changing organization of practice, that of partner compensation systems; they suggest both economic and cultural explanations for differences in systems, and speculate on the strengths and weaknesses of the different types. In contrast to a journalistic literature that has celebrated the efficiency gains from the new competition in law practice, Deborah Rhode and William Simon point up the darker sides of these changes: the potential for the competitive pressure to make it even more difficult than it has usually been for the bar to cartelize ethical standards (Rhode), and for the aggressive emphasis on profit-maximizing norms to dissipate still further the "Brandeisian" or "progressive" ethic that professionalism entails collegial solidarity in the organization of work and the coordination of private practice with a vision of the public good (Simon).

Taken together, these essays and the comments on them make up a fascinating, if also disturbing, set of portraits of modern practice. They also make us realize how little about this world we really know. Here, for instance, are a few fairly basic questions about corporate lawyers on which very little work offers reliable answers: (1) What does a law firm actually accomplish for its clients, anyway? In a well-known recent speech, Derek Bok has suggested that the answer is often, "Nothing of much social or economic value," that much corporate practice simply wastes corporate assets and educated talent that could be turned to more productive, Japan-shaming purposes. The ques-

tion has real bite because nothing lawyers do is “functionally necessary,” since alternative occupations, practices, or institutions are always available as substitutes. Litigation can give way to settlement strategies, simply to “taking one’s lumps,” or to “non-legal” dispute-processing forms; the role of lawyers as intermediaries or problem-solvers can be pre-empted by others—lobbyists, tax accountants, title insurance companies, bureaucratic staffs; work calling for a high degree of specialized intellect or judgment can be standardized to be performable by semi-automatic routines. One of the participants in this symposium has recently suggested some ways to think about how business lawyers add value to the transactions they work on, but this is a rare piece of serious work on an issue mostly addressed through clichés and polemics.<sup>3</sup> (2) What effects does the intermediation of the corporate bar have on the implementation of public policy? One stock answer is that elite lawyers are important agents of the policy goals embodied in law both because they play an active role in helping to formulate those goals and because they educate their clients to the long-run benefits of compliance. A contradictory answer, heard just as often if not more so, is that corporate lawyers systematically frustrate public policy objectives through adversary tactics and technical evasion.<sup>4</sup> Quite aside from lawyers’ *intended* effects upon regulatory strategies, what are the *unintended* effects—the ways in which the structures and cultures of law practice filter and transform both legal enactments and client’s preferences? (3) What do corporate lawyers actually do, besides practicing (in the narrowest sense) law? Traditionally, of course, lawyers have used their practices as home bases for participation in a great variety of political and business ventures. What would one discover if one looked at firms primarily as nodes within networks of political influence, rather than as performers of functional tasks for clients? Might one find, for example, that the new competition for legal business has reduced the tolerance of major firms for partners who use the firms mainly as way-stations for politics or public office? (4) What is the internal sociology of firm practice? What kinds of people are hired; who stays and who leaves; are the old ethnic and gender

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3. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 (1984).

4. See Clune, *A Political Model of Implementation and Implications of the Model for Public Policy, Research, and the Changing Role of Law and Lawyers*, 69 IOWA L. REV. 47, 98–122 (1983).

hierarchies breaking down; what have the new conditions of practice done to the 1960s- and 1970s-derived movements for flexible work and pro bono opportunities?

These are only a few areas of the dark interior continent that the participants in this symposium have begun to explore. At the moment our understanding looks like an ancient map. The shorelines are clearly outlined, and some of the major rivers. But the rest of the heartland is drawn as blank spaces, with the occasional mysterious notation, "Diamond Mines," or warning, "Here there be Tygers."