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# Megalaw in the U.K.: Professionalism or Corporatism? A Preliminary Report

JOHN FLOOD\*

## INTRODUCTION

The large law firms in America have become behemoths. Baker and McKenzie is the largest firm in the world, scattering over 1,200 attorneys in forty-four offices throughout the globe; Skadden, Arps, Slate, Meagher and Flom is the largest domestic firm in the United States, employing roughly 900 lawyers.<sup>1</sup> Others are not far behind. The only professional organisations equivalent in size are the Big Eight accounting firms.<sup>2</sup> Although large law firms have been in existence since the 1870s,<sup>3</sup> the behemoth law firm is a comparatively recent development on Wall Street.<sup>4</sup> These megafirms are a facet of contemporary legal systems, their development fueled by an active and expanding economy.<sup>5</sup> Indeed, megafirms now resemble their corporate clients more than other types of law firms.

Elsewhere large law firms have been noticeably absent from legal cultures. In England and Wales, partnerships of any kind were prohibited

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Peter Berryman of Cummins Engine Company kindly eased the fieldwork.

And finally, I am most grateful to those solicitors, accountants and others who allowed me to interview them.

1. *The AM LAW 100: Pullout Management Report*, AM. LAW., July-Aug., at 36.

2. See generally M. STEVENS, *THE BIG EIGHT* (1981); M. STEVENS, *POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS* (1987); Montagna, *Accounting Rationality and Financial Legitimation*, 15 *THEORY & SOC'Y* 103 (1986).

3. See Hobson, *Symbol of the New Profession: Emergence of the Large Law Firm, 1870-1915*, in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA* 3 (G. Gawalt ed. 1984).

4. See E. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* (1st Midland Book ed. 1969).

5. Galanter, *Mega-Law and Mega-Lawyer in the Contemporary United States*, in *THE SOCIOLOGY OF THE PROFESSIONS: LAWYERS, DOCTORS AND OTHERS* 152 (R. Dingwall & P. Lewis eds. 1983).

from exceeding twenty members until the passing of the Companies Act of 1967.<sup>6</sup> At the turn of the century, the English equivalent of the Wall Street firm—the City firm—possessed less than a handful of partners. Even after World War II, English law firms were small. As Judy Slinn writes, “[T]here were seven partners [in the law firm Freshfields], fewer than at least two of the other partners leading City firms, Linklaters & Paines, and Slaughter and May, each of whom had twelve partners.”<sup>7</sup> In civil code countries such as Italy or Germany, law firms of ten or so lawyers still tend to be small by Anglo-American standards.<sup>8</sup>

Marc Galanter argues that the types of lawyering performed in large law firms are qualitatively different than ordinary lawyering. He contrasts the differences thus:

*Table 1<sup>9</sup>*

Contrasting Styles of Lawyering

	<i>Mega-Lawyering</i>	<i>Ordinary Lawyering</i>
<i>Organisation</i>		
Size of units .....	Larger	Smaller
Specialisation .....	More	Less
Coordination .....	More	Less
Internal stratification.....	More	Less
Supervision and review .....	More	Less
Training inside firm .....	More	Less
<i>Span of Operation</i>		
Range of settings (in which services are provided) .....	Many	Few
Scope of operations .....	(Inter)national	Local

6. The Companies Act of 1948 had decreed that “[n]o company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business . . . .” Companies Act, 1948, 11 & 12 Geo. 6, ch. 38, § 434. That section of the Act was amended to eliminate the limitation with respect to solicitors in 1967. Companies Act, 1967, ch. 81, § 120(1)(a).

7. J. SLINN, A HISTORY OF FRESHFIELDS 159 (1983).

8. See M. CAPPELLETTI, J. MERRYMAN & J. PERILLO, THE ITALIAN LEGAL SYSTEM (1967); S-P. LAGUETTE, LAWYERS IN THE EUROPEAN COMMUNITY (1987); D. RUESCHEMEYER, LAWYERS AND THEIR SOCIETY: A COMPARATIVE STUDY OF THE LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES 41-42 (1973); Abel, *Comparative Sociology of Legal Professions: An Explanatory Essay*, 1985 A.B.F. RES. J. 5.

9. See Galanter, *supra* note 5, at 154.

Site of operations .....	Multiple	Single
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*Relation to Clients*

Identity of client .....	(Larger) organisations	Individuals (and smaller organisations)
Client control .....	More	Less
Frequency .....	More continuous	Episodic
Duration .....	Longer	Shorter
Range of services .....	Wider	Narrower
Entry into problem .....	Earlier	Later

*Operating Style*

Research .....	More elaborate	Less elaborate
Investigation .....	Painstaking	More perfunctory
Long-term strategy .....	More often present	Less often present
Tactics .....	More innovative	More routine
Exploration of options .....	More exhaustive	More stereotyped
Cost .....	Higher	Lower

Corporate clients demand, and pay for, creative and thorough lawyering because the corporate business world faces complex issues as part of its normal routine. Individuals and smaller corporate clients are rarely in a financial position to compete for such high-quality service, but rather, must rely on less-than-thorough and more standardised lawyering.

During the last decade, primarily the years of Margaret Thatcher's three Conservative administrations, British business, and consequently its law firms, has undergone tremendous change. In adopting Galanter's plan of contrasts, I will briefly sketch the forms in which English megalaw have emerged during this period. This sketch is based on a series of interviews I conducted with English City lawyers and documentary research performed in 1988. I mention the year because commerce and the professions, especially accounting and law, are in a period of rapid change, and so this preliminary report needs to be fixed in time.<sup>10</sup>

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10. Since this article was drafted in late 1988, the Lord Chancellor's Department has issued a set of wide-ranging proposals, in the form of three Green Papers, that, if implemented, will radically alter the English legal profession. Under the banner of improving efficiency and cost-effectiveness, the Lord Chancellor is proposing the end of the functional division between barristers and solicitors, and the introduction of contingency fee arrangements. The results of the first proposal would be to allow solicitors full rights of audience in the court system, much of which has been denied to them because of the barristers'

This article will first outline some aspects of the so-called Thatcher revolution and describe City law firms within the general context of the English legal profession. The potential changes that law and the other professions face over the next decade and how these changes compare to the development of American professions will then be discussed. Finally, I will indicate some of the problems in trying to explain these institutional changes within the present theories of professions.

One complaint often heard outside the United States is that local cultures are becoming increasingly Americanised. The thrust of this statement usually refers to lowbrow culture such as the preponderance of American television programs, movies, food and clothes. The Americanisation of high culture, however, is scarce. Yet within the professions there is a striking resemblance emerging between contemporary British professional institutions and those in the United States that have been developing in the twentieth century. It is possible to speculate that in the future one could begin to talk of the Anglicisation of professions in other countries. I will expand this point in the final section of the article.

## I. THE THATCHER REVOLUTION

A year before President Ronald Reagan was elected into his first term of office in 1980, Margaret Thatcher, as the first female Prime Minister

monopoly over appearances in the High Court. And barristers would be permitted to transact business with clients directly, instead of using solicitors as intermediaries. The second proposal would modify the fee-shifting rule that penalizes the loser (who pays the winner's costs) in litigation. Lohr, *British Legal Profession Faces Overhaul*, N.Y. Times, Jan. 30, 1989, § 1, at 1, col. 3. See also *Forum: The Future of the Legal Profession*, The Times (London), Mar. 16, 1989, § 1, at 13, col. 1.

The Master of the Rolls, Lord Donaldson (the chief judge of the Court of Appeal), has also demanded that the barristers' monopoly over appointments to the High Court bench be ended, and that solicitors and law professors be considered eligible to sit. Gibb, *Donaldson Criticizes Bar Monopoly on High Court Judges*, The Times (London), Jan. 25, 1989, § 1, at 2, col. 2.

If these changes are introduced, and they are probable, there will be dramatic shifts in the way legal business is conducted. As one solicitor in a medium-sized firm said:

We've already had discussions with two sets of [barristers'] chambers—at their prompting—about the entire lot disbarring themselves and joining our firm as our in-house advocacy department. I think it's a great idea. The idea of having two separate groups is an intolerable restrictive practice. It's difficult explaining to clients that their case has to be told over again to another lawyer. Litigation is a growth area that can't be slowed down by these anachronisms.

Interview with City solicitor, in London (July 1988). (When conducting interviews, the respondents were promised confidentiality, hence the omission of names and precise dates.)

The legacy of the philosophy of Big Bang is enduring. Now that the law business is experiencing proposed rationalisation, the Thatcher government has turned the eye of efficiency on the health business. Doctors and hospitals under the National Health Service are being told they will have to face the exigencies of the open market. Sherman & Wood, *Health Service Reform the Most Sweeping in its History*, The Times (London), Feb. 1, 1989, § 1, at 1, col. 1.

of Great Britain, was laying down her Conservative vision of the economic and social future of the country. It was to be a radical break from the previous years of socialism. To Mrs. Thatcher, the inception of the welfare state following World War II was a malign boon that had sapped the innate strengths and creativity of the British people.<sup>11</sup> They had been insulated from the realities of economics and were no longer able to distinguish real from imagined benefits. She believed this insulation had wrapped itself around all strata of society.<sup>12</sup> The trade unions possessed an overweening political and economic power that had enabled them to dominate the previous Labour government of James Callaghan and to overstaff industry; the financial institutions of London protected themselves with a variety of restrictive practices which presented many obstacles to any outsider trying to enter. Following the writings of Hayek<sup>13</sup> and Freidman,<sup>14</sup> Mrs. Thatcher introduced policies that would ineradicably alter the national consciousness—every vestige of socialism would disappear, forever.

Adopting a monetarist, supply-side view of economics, Mrs. Thatcher reduced progressive income taxes and increased regressive taxes on expenditures; spending on public welfare was scaled down dramatically. Pensions for senior citizens were held down, benefits for the unemployed were restricted, and one of the largest consumers of state funds—the National Health Service—was subjected to radical surgery on its budget. Mrs. Thatcher and Sir Keith Joseph argued that the overmanning of industry as a result of a politicised trade union movement had reduced Britain to the status of the “Sick Man of Europe,” weak and uncompetitive.<sup>15</sup> The solution, Thatcher believed, lay in industry restructuring itself. Two effects flowed from her economic policies. First, some of the older industries, such as shipbuilding and textiles, simply died out while others, steel for example, were drastically reformed, bearing little resemblance to their former selves. Second, the percentage of unemployed in the labour force soared with no expectation that those made redundant would ever be reemployed.<sup>16</sup> The virtual division of Great Britain into two opposing halves—the poor smokestack North and the prosperous, financially-based South—has been a consequence of these effects.

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11. M. HOLMES, *THE FIRST THATCHER GOVERNMENT, 1979-1983: CONTEMPORARY CONSERVATISM AND ECONOMIC CHANGE* 7-26 (1985).

12. *Id.* at 84-104; see also G. MAYNARD, *THE ECONOMY UNDER MRS. THATCHER* (1988).

13. See generally F. HAYEK, *ECONOMIC FREEDOM AND REPRESENTATIVE GOVERNMENT* (1973); F. HAYEK, *THE ROAD TO SERFDOM* (1944).

14. See generally M. FRIEDMAN, *CAPITALISM AND FREEDOM* (1962); M. FRIEDMAN, *TAX LIMITATION, INFLATION AND THE ROLE OF GOVERNMENT* (1978).

15. See M. HOLMES, *supra* note 11, at 37.

16. *Id.* at 89-96.

In order to help create wealth, Mrs. Thatcher both deregulated and reregulated Britain's financial services' providers. She abolished all exchange controls to ease the flow of capital in and out of British capital markets. And in October, 1986, she ignited the "Big Bang" in the City of London, which swept away the artificial restrictions on the provision of a variety of financial services.<sup>17</sup> There were two moves at the core of the Big Bang: the removal of fixed commission on Stock Exchange trades and the abolition of the distinction between jobbers (market makers) and brokers.<sup>18</sup> These moves allowed banks, domestic and overseas, to buy into jobbing and brokering firms. Banks were thus able to offer one-stop financial shopping for their clients. Foreign banks and support services began to establish branches in London in increasing numbers.

Since new entities (banking-brokering-jobbing) were coming into existence, the question of how to regulate them arose. The City of London had always prided itself on its ability to govern its own activities,<sup>19</sup> but scandal among some City institutions—for example, Lloyd's insurance market<sup>20</sup>—had begun to contaminate that pride, which prompted the government to introduce the Financial Services Act of 1986.<sup>21</sup> The Act imposed a statutory framework of regulation on those engaged in investment business. Amongst other things, a weak version of the Securities and Exchange Commission was established, namely, the Securities and Investments Board.<sup>22</sup>

The City of London, though small, has been and continues to be the center of the financial services industry in Great Britain. No other city in the country financially competes with it. Moreover, its smallness—it measures one square mile—accentuates the importance of face-to-face interaction in business transactions. Virtually all major corporations, banks (investment and clearing), insurance companies, accounting firms, law firms, and the various exchanges in stocks, futures, shipping and insurance are based there. *Figure 1* emphasises this element of proximity in the City of London. As one senior partner of a large London law firm said, "The Bank [of England] is very concerned that the key financial players be close to each other and the Bank."<sup>23</sup>

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17. See V. McCULLOUGH, *ECONOMIST POCKET GUIDE TO THE NEW CITY* 18-19 (1988). The City of London is traditionally that area of London within a mile of the four corners of the Bank of England.

18. P. COGGAN, *THE MONEY MACHINE* 32 (1986).

19. *Id.* at 154-55.

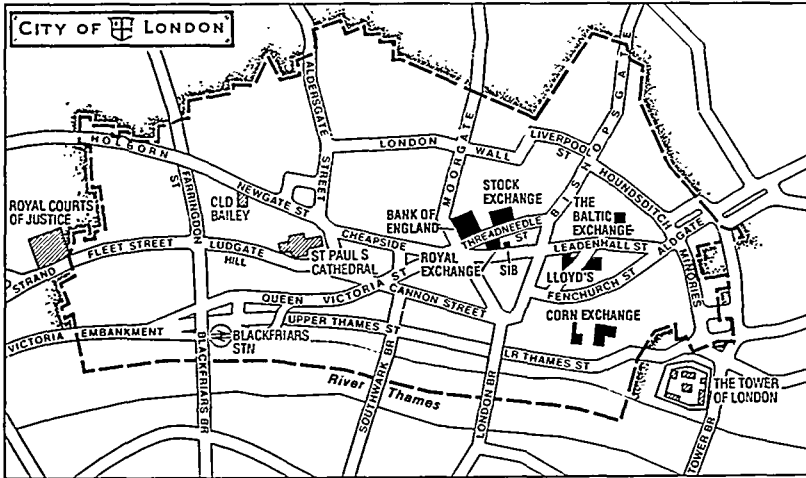
20. *Id.*

21. Financial Services Act, 1986, ch. 60; see generally Gower, *Big Bang and City Regulation*, 51 *MOD. L. REV.* 1 (1988); Note, *Recent Developments in Insider Trading Laws and Problems of Enforcement in Great Britain*, 12 *B.C. INT'L & COMP. L. REV.* 265 (1989).

22. V. McCULLOUGH, *supra* note 17, at 102.

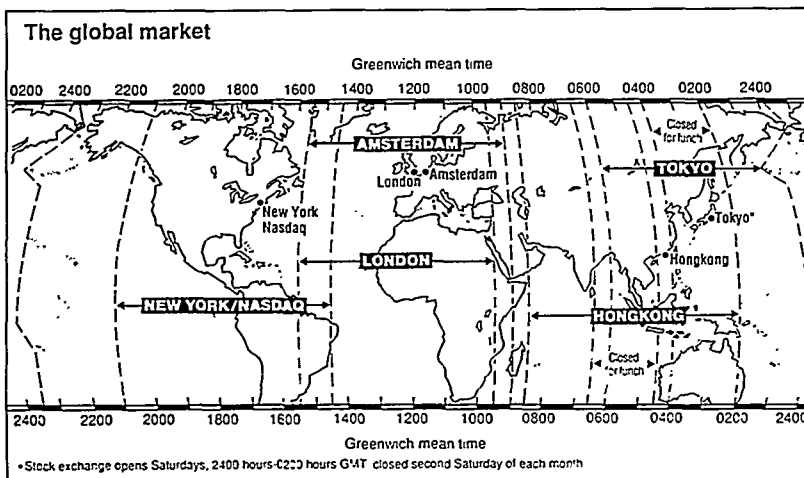
23. Interview with City solicitor, in London (July 1988).

Figure 1<sup>24</sup>  
The City of London



The City of London also takes advantage of its midway position between the financial centers of New York and Tokyo. Satellite communications allow investors and securities and futures traders to be active in a number of markets, especially where there is significant temporal overlap (as in the case of New York and London). *Figure 2* shows how London is situated in the global market.

Figure 2<sup>25</sup>  
The Global Market



24. V. McCULLOUGH, *supra* note 17, at 33.  
25. *Id.* at 56.



The expanding securities industry created a huge demand for trained professionals in banking, investment, accounting, law and so forth. Even when the success of Big Bang received a slight setback on "Black Monday" in October, 1987, when the securities markets suffered a partial collapse,<sup>26</sup> only some of the demand abated, and not in accounting and law.

This, then, is the context for the development of megalaw in Great Britain. In the next section I describe the structure and work of the City law firms.

## II. THE CITY LAW FIRMS

In general terms, the English legal profession is comprised of two branches: barristers and solicitors.<sup>27</sup> There are approximately 5,642 barristers and 47,830 solicitors.<sup>28</sup> Barristers act as advocates; solicitors are primarily office lawyers. The former are basically solo practitioners who share office space and expenses; the latter usually form partnerships. This crude contrast, however, hides many points of similarity and difference between and within the two branches.

Applying Heinz and Laumann's division of the bar into the hemispheres of corporate and individual,<sup>29</sup> the great majority of corporate lawyers are solicitors based in London firms.<sup>30</sup> The composition of a solicitors' firm is similar to that of an American attorney's. The firm's partners own the firm and the assistant solicitors are the functional equivalent of associates. An additional stratum is found in the English firm: the articulated clerks, who are an advanced functional equivalent of law student clerks.<sup>31</sup>

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26. *Id.* at 19.

27. See generally B. ABEL-SMITH & R. STEVENS, *IN SEARCH OF JUSTICE* (1968); R. ABEL, *THE LEGAL PROFESSION IN ENGLAND AND WALES* (1988); Q. JOHNSTONE & D. HOPSON, *LAWYERS AND THEIR WORK: AN ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND* (1967); Royal Commission of Legal Services, Final Report, Cmnd. 7648 (1979).

28. THE LAW SOCIETY, LONDON, *A TIME FOR CHANGE, COMM. REPORT ON THE FUTURE OF THE LEGAL PROFESSION (THE MARRE COMM.)*, July 1988. Note that the figure for barristers refers to the *number* of barristers, whereas the figure for solicitors refers to the *number of practising certificates*. The latter excludes articulated clerks and those qualified as solicitors but not currently practising or employed in organisations where a practising certificate is not required.

29. J. HEINZ & E. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982). The division between the corporate and individual hemispheres that Heinz and Laumann draw is exemplified by the securities lawyer in the former and the personal injury plaintiff's lawyer in the latter.

30. For the moment I exclude the considerable number of lawyers who are employed in the large accounting firms.

31. The only state bar in the United States to require an analogous apprenticeship (of six months) is Vermont. See RULES OF ADMISSION TO THE BAR OF THE VT. SUP. CT., §§ 6-7 (1986).

English legal education occurs mainly at the undergraduate degree level, followed by a year's postgraduate vocational training either in a school run by the Law Society, or in a polytechnic.<sup>32</sup> Upon successfully passing the Law Society's examinations, the graduate must participate in a two-year apprenticeship (articles) with a law firm before being admitted as a qualified solicitor. Articled clerks constitute the main source of a firm's assistant solicitors.

The population of large law firms is small in comparison to the total number of solicitors' firms in England and Wales, but their contribution to the economy is enormous. *Table 2* shows the rank order, by numbers of partners, of the twenty largest firms in England and Wales for 1988, all of which are located in London.<sup>33</sup>

*Table 2*<sup>34</sup>

The Twenty Largest Law Firms in England, Wales and Scotland

<i>Firm</i>	<i>Partners</i>	<i>Assistants</i>	<i>Articled Clerks</i>
Clifford Chance	168	386	123
Lovell White Durrant	106	200	75
Linklaters & Paines	95	230	73
Simmons & Simmons	81	146	74
Allen & Overy	77	132	72
Herbert Smith	76	153	59
Slaughter and May	74	271	89
Freshfields	73	227	59
Norton Rose	69	137	62
Denton Hall Burgin & Warrens	60	66	27
Richards Butler	57	84	27

32. See generally R. ABEL, *supra* note 27. If a non-law graduate wishes to enter law, then he or she must spend two years in postgraduate training.

33. Not all large law firms are within the confines of the City of London. A few have offices just beyond the western limits of the City in an area known as Holborn—in the neighborhood of the Royal Courts of Justice in *Figure 1*, *supra* text accompanying note 24. (As midtown Manhattan is to Wall Street, so Holborn is to the City of London.) The area adjacent to Holborn is called the West End of London, and one or two large law firms are situated there.

Traditionally, there have been differences between the practices of City, Holborn and West End firms. Whereas the City firms concentrated on financial work, the other firms, partly because of their remoteness from the Bank of England and partly because of ethnic differences, focussed more on property work. However, these distinctions are collapsing rapidly. Among other things, high office rents are forcing law firms to consider alternative, non-traditional sites.

34. J. PRITCHARD, *THE LEGAL 500: THE MAJOR LAW FIRMS IN ENGLAND WALES AND SCOTLAND* 54 (1988).

Clyde & Co	57	50	15
Nabarro Nathanson	55	67	31
McKenna & Co	54	96	28
Holman Fenwick & Willan	51	54	7
Stephenson Harwood	47	72	25
Cameron Markby	46	62	30
D J Freeman & Co	45	44	13
Penningtons Ward Bowie	41	33	20
Theodore Goddard	40	59	24
Berwin Leighton	40	45	11

The first two firms in *Table 2* are the result of mergers. Some of the remainder have grown by taking over smaller law firms, but on the whole most firms are "grown organically" from within.<sup>35</sup> Occasionally, however, change can be forced from without, as in the case of two medium-sized firms which were told by their major clients to merge or lose their business. Clifford Chance, the largest British law firm, has more overseas offices than any other firm in the world except for Baker & McKenzie.<sup>36</sup> The clear objective of the merger between Coward Chance and Clifford-Turner was to produce a law firm that could compete in the international legal markets. As one senior partner in the firm said, "In a few years time there will only be room for about half a dozen big international law firms. We intend to be one of them."<sup>37</sup>

With the prospect of the European Community becoming a single market of 320 million people in 1992, more law firms are establishing Paris and Brussels offices. Many City firms already have overseas branch offices. The traditional centers are Hong Kong, where English solicitors can be easily admitted to the local bar, and the Gulf region. Within Britain itself, however, only a few City firms have branch offices in other cities.

#### *A. The Composition of City Law Firms*

Rank ordering of the firms by numbers of partners can be misleading because a substantial number of law firms in the City operate two-tier partnerships: equity and salaried. Under the Partnership Act of 1890,<sup>38</sup> an

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35. The firm of Berwin Leighton had just associated with Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey at the time the Finley partnership was beginning to disintegrate. Berwin Leighton had to disassociate from it and so declare.

36. In Europe, Clifford Chance has offices in Brussels, Amsterdam, and Madrid, and its Paris offices make it the third largest firm in France in its own right. In Asia there are offices in Hong Kong, Tokyo and Singapore. It currently has the largest foreign law presence in Tokyo of any nationality. In the Middle East the firm is represented in Saudi Arabia, the United Arab Emirates and Bahrain. There is also an office in New York.

37. Interview with City solicitor, in London (July 1988).

38. Partnership Act, 1890, 53 & 54 Vict., ch. 39.

equity partner is a person who shares in the profits and is responsible for the debts of the partnership. Salaried partners are entitled to attend partners' meetings and examine the partnership accounts, but are not entitled to receive a share of the profits, although they can be liable for the partnership's debts, or to vote at the meetings. If these salaried partners were subtracted from the totals in *Table 2* above, the numbers would shrink substantially, especially for the firms in the bottom half of the table. For example, some firms have a ratio of 2 to 1, equity to salaried partners. Even those firms that claim to disdain salaried partnerships are making salaried appointments.

In part, the ambiguity surrounding salaried partners is caused by a current shortage of assistant solicitors and articled clerks. *The Recruitment Crisis*,<sup>39</sup> a report by the Law Society, notes that the number of solicitors holding practising certificates is rising by 1,500 to 2,000 per year.<sup>40</sup> This statistic, however, must be interpreted against a decline in the number of people under twenty-one years old.<sup>41</sup> Thus, demand is outstripping supply and is likely to continue. The key factor is the perceived rise in the demand for legal services. Commercial enterprises are contributing heavily to this trend and are expected to continue; financial services, the European Community, pollution—all of these are creating new problems and questions that lawyers and the legal system are being asked to solve.

At present, the larger City firms operate an informal cartel that fixes articled clerks' starting salaries. These salaries rarely vary more than a few hundred pounds by firm. The current range is £12,500 to £13,000 to start, rising to roughly £16,000 by the end of articles. Bids for articled clerks are made using mostly non-monetary inducements such as the opportunity to work in an overseas office, participation in in-house training in negotiation or in the esoteric aspects of mergers and acquisitions work,<sup>42</sup> a private office,<sup>43</sup> and a promise of funding during postgraduate training. Once an articled clerk is qualified, he or she is free to move to other firms; competition for assistant solicitors among the firms is intense. During my interviews, one comment was constantly repeated: "There aren't enough good solicitors going around." Here the bidding over salaries

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39. THE LAW SOCIETY, *THE RECRUITMENT CRISIS, TRAINING COMM. REPORT* (May 1988).

40. *Id.* at 2. A practising certificate is a licence to practice issued to each solicitor annually upon payment of a fee to the Law Society.

41. *Id.*

42. To accomplish in-house training systematically, firms are enticing law professors out of the universities with promises of salaries often two to three times those they could receive in academia. And the policy has been successful. One former law professor is now a headhunter for law firms requiring in-house educators.

43. Most articled clerks either share offices with each other or with a solicitor in the firm. The idea is that the articled clerk takes a participant-observer role learning by watching and doing; it is redolent of the master-apprentice relationship in the medieval guilds.

exists in a very attenuated form, unlike the salary wars unleashed by Cravath, Swaine & Moore in 1986.<sup>44</sup> Starting salaries for an assistant are in the region of £20,000,<sup>45</sup> with some firms offering up to £25,000 (i.e., a possible jump of £9,000 over an articulated clerk's salary), rising to around £50,000 as a junior partner.

The career track in an English law firm is essentially the same as that in an American one. Putting aside the category of articulated clerk, assistant solicitors (associates) hope to achieve partnership status after a number of years as a salaried employee. One difference is the greater length of time taken to make partner in America; the period ranges over five to ten years.<sup>46</sup> And those American law firms which are introducing two-tier partnerships effectively lengthen the track by another three to four years. In London, demand for assistants is greater than the supply, so firms are being compelled to offer partnerships earlier than they have done historically.<sup>47</sup>

At present, the track has shortened to about four or five years. Many City law firms cope with this surge in the growth of partnerships by installing the intermediate step of salaried partner, which in Britain's present economic climate is risky as the prospect of an equity partnership elsewhere becomes a bargaining chip in favour of the assistant/salaried partner. The risk is tolerated by the firm because the creation of salaried partners offers a respite before having to commit completely to a new partner. Some law firms control growth by operating a strict lockstep system within the partnership that takes no account of business-getting. Thus a new partner is given so many points according to seniority. These points increase each year until a plateau is reached in the partner's mid-forties. At this stage partners' incomes rise as the firm's business increases. When partners reach their mid-fifties, their points are reduced year by year and are given to the new partners entering the firm. In addition to acquiring points, new partners have to contribute a portion of their draws,

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44. See Adler and Baer, *Headnotes*, AM. LAW., June 1986, at 1. In 1986 Cravath, Swaine and Moore in New York City offered its incoming class of associates \$12,000 over the going rate, ostensibly as a housing allowance. The real reasons were to persuade associates to stay longer on average than they had been doing hitherto and to exterminate a stratum of law firms that would find it difficult to compete for the most highly qualified law school graduates. This salary war has since spilled over into other cities and down to smaller firms.

45. During the period of research for this article—the summer of 1988—the exchange rate varied between \$1.70 to \$1.90 to the pound. Thus, for example, a salary of £20,000 could be the equivalent of \$34,000 to \$38,000.

46. Abel, *Lawyers*, in *LAW AND THE SOCIAL SCIENCES* 369, 395 (L. Lipson and S. Wheeler eds. 1986).

47. Note that until the Companies Act, 1967, partnerships were not allowed to exceed 20 members. See *supra* note 6.

or incomes, to fund the firm's capital. This investment is returned on retirement, which is mandatory at most firms.<sup>48</sup>

### B. The Work of City Law Firms

Most City firms group their work into the following four broad categories: corporate and commercial, property, litigation and tax.<sup>49</sup> The bulk of a typical City firm's work falls into the first category of corporate and commercial. This work includes, for example, public issues of stocks on the Stock Exchange and on the Unlisted Securities Market, privatisations, mergers and acquisitions, management buy-outs, venture capital financings, commercial paper issues, credit transactions in sterling and euro-currencies, and interest rate swaps. The Big Bang of 1986 unleashed a dramatic call for specialised legal services as the securities industry expanded. For example, one type of boutique, or niche, firm traditionally found in the City is the shipping law firm, which handles the commercial aspects of shipping and aviation.

As the City has enjoyed the fruits of the economic boom during the last several years, so has its property market expanded. To the east of the City, the disused docklands are being redeveloped into a potentially competing financial center; to the west of the City the M4 motorway has become a high technology corridor.<sup>50</sup> The property work of law firms, including advising on the leasing, selling, and purchasing of commercial property, and advising insurance companies and pension funds on property development, has risen. Increased planning regulation has involved lawyers in the earlier stages in development projects.

Litigation, the third category of City solicitors' work, covers court, arbitration, and administrative hearings.<sup>51</sup> The City firms keep very close

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48. Not all firms subscribe to the lockstep system. There are many that believe in solely rewarding lawyers who get business, i.e., the "eat what you kill" philosophy.

49. These categories are derived from an analysis of approximately 50 City law firm brochures which are on file with the author. The marketing of law firms has become a lucrative business in Great Britain. Law firms of all kinds are spending thousands of pounds on the production of glossy brochures, which many lawyers admit probably have little impact. But the game is such that no one wants to be known as the firm that does not produce a brochure.

50. V. McCULLOUGH, *supra* note 17, at 26. The docklands is an area in the east of London that has lain in desuetude for decades. Since there was no possible way the docklands could be revived in its original form, the government created a docklands enterprise zone. The enterprise zone has facilitated the development of new homes, offices and an airport. The development of Canary Wharf, for example, will result in the largest commercial project in Europe.

The M4 is one of the major arterial highways in Great Britain. It connects London with Wales and the southwest of England.

51. As lawyers, solicitors have a statutory monopoly on starting litigation. See Solicitors Act, 1974, ch. 47, § 20.

contact with the Commercial Court, a branch of the High Court staffed by a select corps of judges who hear complex commercial cases. In litigation, City firms confer regularly with barristers who work in elite commercial chambers and act as advocates in the hearings. But the role of the barrister as *primus inter pares* in the litigation team is declining.<sup>52</sup> City solicitors expect to shape the course of the litigation, and, with the rise in the use of written briefs in English courts, solicitors compile the first drafts to be edited by the barrister. In most matters attached to litigation, it is the solicitor who has ultimate command.

Finally, tax tends to be the smallest department in City firms because tax work has traditionally been carried by accounting firms.<sup>53</sup> But with the important role that tax questions play in general corporate, commercial, and property matters, City firms are increasing their numbers of tax lawyers and are beginning to win back some of this lucrative work from accountants.

International work, although not placed in the above list, traditionally has been and continues to be of increasing importance. Because of the City's standing in international financial affairs, City firms have long been involved in work for overseas clients. For example, the firm of Freshfields acted for the Kuwait government in the 1960s "for the negotiation with British Petroleum and Gulf Oil of the first major reorganisation of the Kuwait oil concession."<sup>54</sup> In addition to the Middle East, City firms have opened offices in the Far East, especially Hong Kong, where English lawyers can be admitted to the local bar without examination. The firm of Denton Hall Burgin & Warrens, for instance, advertises itself as an international law firm and has translated one of its firm brochures into Chinese. As the Middle East and Hong Kong are subject to the winds of political change and the instability they cause, English and American law firms are competing over what they perceive as a safe haven: the Japanese legal market. Until recently, the Japanese bar excluded any foreign lawyer from joining the local bar, although foreigners could "practise" as advisers on their own varieties of domestic law. But with the rising stature of

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52. Barristers have traditionally maintained the view that they are the senior branch (collectively known as the Bar) of the profession, even though their importance vis-à-vis solicitors has and continues to diminish. See R. ABEL, *supra* note 27. A number of interviewees confirmed this perception of the declining Bar.

53. For example, the Big Eight accounting firms have large tax departments. Given the number of lawyers they employ and recruit each year, it is reasonable to consider accountants another branch of the legal profession. Cf. Baker, *The English Legal Profession, 1450-1550*, in *LAWYERS IN EARLY MODERN EUROPE AND AMERICA* (W. Prest ed. 1981) (on fifteenth century legal professions).

On the battle over who should be the master of tax work—accountants or lawyers, see A. ABBOTT, *THE SYSTEM OF PROFESSIONS* (1988); Abbott, *Jurisdictional Conflicts: A New Approach to the Development of the Legal Profession*, 1986 AM. B. FOUND. RES. J. 187.

54. See J. SLINN, *supra* note 7, at 163.

Japan as a player in the world's financial and commercial markets, Japanese business has created a demand for foreign legal expertise, especially in the fields of mergers and acquisitions and securities.<sup>55</sup>

The real competition in megalaw, then, will take place in the international market between the English and American law firms. The venues of the competition have been established—the Pacific Rim and Europe. Which legal system, and so its lawyers, predominates will depend upon the state of the international economy and domestic economies.

As Galanter's contrasts between megalaw and ordinary lawyering show,<sup>56</sup> the former in both the United States and Great Britain concentrate on advising corporate clients, not individuals, in complex and often large business deals. This type of work requires highly developed skills wrought in a specialist environment, such as that provided by City firms.<sup>57</sup>

### III. THE FUTURE

Despite the burgeoning of megalaw in the United States, its large law firms retain a slightly old-fashioned atmosphere. I use the qualifier "slightly" because Fitzpatrick's analysis of the future of large law firms in the U.S. economy in the twenty-first century,<sup>58</sup> demonstrates that American lawyers can be and are on occasion radical. However, I argue that English City lawyers are displaying a greater imaginative creativity about the future of their profession than are their American counterparts.

However they face the future, large law firms in the United States are subject to ties of tradition that do not affect City firms.<sup>59</sup> The large American law firm has been in existence for more than a century, and the concept is embedded in corporate lawyers' consciousness. Corporate law in England, however, never had the benefit of a Cravath to develop a system for controlling and organising a law firm,<sup>60</sup> nor was it stirred by Langdell's ideas on educating lawyers.<sup>61</sup> In contrast, City firms have been

55. See *U.S. Law Firms Expand to Reach Global Clientele*, N.Y. TIMES, May 12, 1988, § 1 at 1, col. 3; *The Far East: High Costs, Higher Rewards*, THE LAWYER, July 14, 1988, at 14; White, *Opening an Office in Tokyo*, 7 THE CITY OF LONDON SOLICITORS' COMPANY NEWSLETTER (n.s.), Dec. 1988 at 2 (on file with the author).

56. See Table 1, *supra* at text accompanying note 9.

57. In 1985 the estimated overseas earnings of the English legal profession was £88 million, compared to £19 million ten years earlier. *Overseas Earnings of Legal Profession*, 136 NEW L.J. 1018 (1986).

58. Fitzpatrick, "Legal Future Shock: The Role of Large Law Firms by the End of the Century," 64 IND. L.J. 461 (1989).

59. See R. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988); R. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSORS 1819-1947 (1946); E. SMIGEL, *supra* note 4.

60. See R. SWAINE *supra* note 59.

61. See R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s (1983); Chase, *American Legal Education Since 1885: The Case Of The Missing Modern*, 30 N.Y.L. SCH. L. REV. 519 (1985).



in existence for hundreds of years and, until recently, have always been small. It has only been during this recent period of rapid growth that City firms have been forced to consider radical measures to overcome barriers to growth, for example, changes in recruitment and those on generating sufficient capital for the firm without incurring burdensome tax liabilities. For the City of London at large, tradition is functional but not sacrosanct.

The abandonment of tradition and the radicalisation of the legal profession is encapsulated in two measures under active discussion with City firms and their professional associations. Lawyers are adopting the principles of incorporation and limiting liability and are considering forming multi-disciplinary partnerships. At present the statutory framework for permitting incorporation already exists, although the regulations have not yet been drafted.<sup>62</sup> The topic causes opposing feelings among members of the legal profession. Some senior solicitors believe that such incorporation will have to be made under conditions of unlimited liability—to be otherwise would be considered unprofessional. However, there are indirect pressures to allow limited liability. The European Economic Community has issued its eighth company law directive granting accounting firms the right to incorporate with limited liability and permitting outsiders to hold minority interests.<sup>63</sup> Furthermore, the City of London Law Society (the local bar association), conducted a survey among its members in which 78% of respondents favored incorporation with limited liability.<sup>64</sup>

Multi-disciplinary or mixed partnerships is an idea consonant with the philosophy behind the Big Bang. Producers should not be restricted from adopting whatever organisational form is most suitable for the efficient delivery of services. The philosophy could be given substance in a number of ways. Law firms could admit such others as accountants and chartered surveyors to their partnerships; lawyers could join accounting or banking partnerships. Law firms could merge with accounting firms or banks, or law firms in the City could merge with firms in other countries.

There is evidence that professionals are ready for organisational change. In a survey carried out by Gouldens, a City law firm, 77% of respondents believed mixed partnerships would form.<sup>65</sup> Gouldens administered its questionnaire to a sample which included London and provincial (outside London) solicitors, accountants, merchant (investment) bankers, chartered surveyors, stockbrokers, Goulden's clients, and lawyers from the London

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62. Administration of Justice Act, 1985, ch. 61 (*amending* Solicitors Act, 1974, ch. 47).

63. Lewis, *City Comment After the Feast...*, 85 L. Soc'y's GAZETTE 9 (1988).

64. THE LAW SOCIETY, LONDON, SURVEY OF CITY SOLICITORS, Appendix I, Table 1 (1987) (5,000 recipients, 2,100 respondents) [hereinafter SURVEY OF CITY SOLICITORS] (on file with author).

65. Goulden Solicitors Press Information: Mixed Partnership Survey 2 (London 1987) (on file with author).

*Times* Top 100 Companies. Accountants were in favour of mixed partnerships (88%), as were 43% of merchant bankers, but 45% of stock-brokers were against mixed partnerships.<sup>66</sup> The *Times* Top 100 companies sampled were almost evenly divided, with 31.5% in favour and 36% against.<sup>67</sup> In the survey conducted by the City of London Law Society, 66% of respondents—City lawyers—were in favour of mixed partnerships and 86% wanted to allow practice with foreign lawyers.<sup>68</sup>

As the division of labour intensifies in our postmodern society, the need for coordination also grows.<sup>69</sup> Specialisation without coordination can lead to chaos. Fitzpatrick's answer is that American lawyers will assume the role of coordinator *par excellence*<sup>70</sup>—a position American lawyers will have to fight for against competing professions. The English solution attempts to avoid the battles over territory or jurisdiction that will follow a group's attempted arrogation of power by proposing instead an alliance between former opponents. This approach displays a remarkable flexibility and creativity in the world of professional rivalries and monopolies.

As one might expect, the picture of what might happen is blurred, but even though no formal sanction for mixed partnerships yet exists, informal arrangements have already been made. Law firms and banks, law firms and accountants, law firms and sets of barristers' chambers have discussed the potential for merging across disciplinary boundaries. Much of the wooing and courtship has occurred: It remains only for the Law Society to sanction the marriages.

Megalaw has taken hold in the City and is beginning to grip areas outside London. Law firms beyond London are adopting megalaw in order to compete with City firms. The first national law firm, now the largest firm in Britain, was formed in 1988 and is based in Birmingham, Britain's second largest city. A group of law firms loosely situated along the M5 motorway have come together in a confederation, with each firm retaining its separate identity while sharing resources, such as the training of articulated clerks and access to data banks.

In July 1988, a joint committee of the Law Society and the General Council of the Bar published a report on the state of the legal profession, a report which attempts to determine the future configuration of the profession.<sup>71</sup> The Marre Report, named after its chairwoman, is interesting in several respects, not the least in that it attempts to revitalise and

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66. *Id.*

67. *Id.*

68. SURVEY OF CITY SOLICITORS, *supra* note 64, Appendix I, Table 3.

69. E. DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (G. Simpson trans. 1947).

70. Fitzpatrick, *supra* note 58.

71. See *A TIME FOR CHANGE*, *supra* note 28. But note the Marre Committee's report has been, to some extent, superseded by government proposals. See *supra* note 10.

reaffirm the ideology of professionalism among lawyers. In a chapter entitled "The Special Characteristics of the Legal Profession," the Report says:

In certain respects the legal profession occupies a position which differs from that occupied by other professions. Lawyers must always act in their clients' best interests and must refuse to act if a conflict of interest occurs; lawyers have a duty to the court; they are sometimes required to represent clients in unpopular causes; they have a duty to uphold the rule of law; *for all these reasons the ordinary commercial considerations cannot always be decisive if the traditional character and functions of an independent legal profession are to be preserved.*<sup>72</sup>

While most of the sentiments expressed by the Marre Report are laudable, they deny the recharged, competitive environment which now exists in London (including some smaller financial centers in Great Britain) and hence in the global economy. The Report emphasises the delivery of legal services to the individual as the paradigm for the profession.<sup>73</sup> And despite the strictures discussed above, law firms have already adopted creative, commercial approaches to their survival and, unless the Report's exhortations match economic realities, it will be ignored by the profession.<sup>74</sup> The various forms of megalaw, which are promoting the most radical changes in the legal profession, are responses to competition from within and without in the corporate hemisphere, not in the individual hemisphere.<sup>75</sup>

### CONCLUSION

To conclude, I consider it important that the content of this article be placed in the context of the debates surrounding the sociology of professions. There has long existed the idea that professions are an important, civilising component of society. Their members mediate on society's behalf,

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72. *Id.* at 39 (emphasis added). Cf. J. FLOOD, BARRISTERS' CLERKS: THE LAW'S MIDDLEMEN 69-76 (1983); ABA, ". . ." *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (1986), the American Bar Association's recent attempt to revitalise the legal profession.

73. See A TIME FOR CHANGE, *supra* note 28, at 45.

74. Joseph Flom, senior partner of Skadden, Arps, has responded to these precepts, in the American context, as follows:

It is true that the large law firms are not as gentlemanly today as the practice of law was in 1948 when I got out [of law school]. I maintain that is a very good thing because we have to remember that gentlemanliness is often a euphemism for the club syndrome. It is also an excuse for keeping things the way they were and is also very often an excuse for maintaining inadequate standards or incompetence.

Flom, *The Changing Nature of the Practice of Law*, FED. BAR COUNCIL BENCH AND BAR CONF. PROC. 94 (1984).

75. See J. HEINZ & E. LAUMANN, *supra* note 29.

it is said, the realms of pure thought and applied knowledge.<sup>76</sup> According to the members of the Marre Committee, the duty is greater for the legal profession because of its multiplicity of roles and allegiances in modern society, namely, to clients, to the courts, and to the rule of law.<sup>77</sup> What does it mean when the discourse of a profession's governing body, e.g., the Law Society, fails to reflect that of its members, that value orientations fragment?<sup>78</sup> Using the theories we have at hand, can we account for and explain the activities of these groups that claim the symbolic status of professionalism?

The functionalist explanation of professionalism has emphasised certain core traits as the indicia of professions: a body of theoretical knowledge, extensive formal training, self-regulation over entry into the profession and over discipline, and a bias towards altruism.<sup>79</sup> These were the indicia of deserved privilege. The opposing conflict explanation posits the professions as occupations engaged in a struggle to maintain professional status and to achieve monopoly power over a segment of the marketplace.<sup>80</sup> What, then, are we to make of the development of the large law firm in the City of London? Is it a simple response to market demands, or is it part of the process of rationalisation that Weber described as inevitably accompanying the unfolding of capitalism?<sup>81</sup>

The large London law firm is a recent innovation compared to its American counterpart, and is consequently less bound by tradition. It might appear contradictory to speak of law firms that have been in existence for up to 250 years as unbound by tradition, but only if one perceives the form of the firm to have remained constant over time. The ferment of economic activity stirred up by the Thatcher government has forced many economic institutions in London to abandon their former gentlemanly ways: The notion of "my word is my bond" has been irreparably damaged by the financial scandals that have emerged from these economic changes.<sup>82</sup> The new economic order has brought into sharper conflict institutions that previously fought only at the margins of their territories.<sup>83</sup> For example, accounting firms are so large and diversified that they now compete with law firms and investment banks, not

76. See A. CARR-SAUNDERS & P. WILSON, *THE PROFESSIONS* (1933).

77. See *A TIME FOR CHANGE*, *supra* note 28.

78. *But see* T. HALLIDAY, *BEYOND MONOPOLY: LAWYERS, STATE CRISES, AND PROFESSIONAL EMPOWERMENT* 370 (1987).

79. Abel, *supra* note 46, at 370.

80. *Id.*; *see also* M. LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977).

81. M. WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* (G. Roth & C. Wittich eds. 1968).

82. V. McCULLOUGH, *supra* note 17, at 59-60, 104.

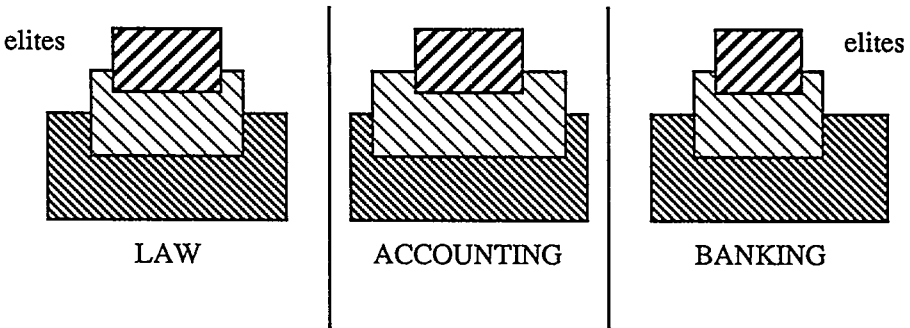
83. *Cf.* Abbott, *supra* note 53, at 213.

just for business but also for recruits. Law firms are thus stretched two ways: On the one hand, they are beset by a strong demand for their services; on the other, they are faced with a shortage of suitably trained personnel. One solution to what appears to be a zero-sum game is to join forces across disciplinary boundaries and amalgamate rather than continue to remain separate and compete against each other and suffer.

Structurally, there are new professional formations emerging. As I suggested earlier, the introduction of incorporation with limited liability and multi-disciplinary partnerships will radically alter the ways in which we depict the contours of professionalism. The problem is based in part on the tendency of students of professions to identify each profession as a singular entity only loosely coupled to other cognate groups. Professions, in this light, are analogous to stepped pyramids, arranged side by side, with the elites occupying the summits and the middle and small-firm classes occupying the lower steps. There is, however, some overlap between the classes. But each group (pyramid) is distinct, attempting to exercise monopoly control over its sphere of activity. *Figure 3* illustrates this pattern with law, accounting and banking. The elites here would be the megalaw firms, the Big Eight accounting firms and the major investment banks.

*Figure 3*

A Conventional Model of Professions



Each profession is thus characterised as a *vertical* or paradigmatic constellation of actors producing new producers supposedly sharing the same set of values, symbols and norms. As I have described in this article, this model, even with recent modifications,<sup>84</sup> is unduly restrictive for analytic purposes in this period of late capitalism.

84. See A. ABBOT, *supra* note 53; T. HALLIDAY, *supra* note 78.

Instead, I propose a different model of professions, one that is context sensitive and takes account of the changing contours of professionalism—a postmodern model of professionalism. Johnson has argued that the functionalist portrayal of professions is fundamentally ahistorical, that in order to comprehend the structure of an occupation we need the framework of the temporal process.<sup>85</sup> Following his approach, the early distinctions between professions become apparent. Professional categories are not fixed and impermeable enduring over time—the illusion, for example, of the “holy trinity” of law, medicine and the church. Rather they are flexible, even fragile, permutations dependent on economic and political structures. For example, according to Baker, there were in the fifteenth century six distinct elements composing the “legal profession”:<sup>86</sup> barristers, serjeants and judges, clerks and officers of the central courts, apprentices, attorneys, and solicitors and accountants. By the nineteenth century the first five of these groups had dissolved into three—judges, barristers and solicitors—and accountants had become a separate group, which demonstrates the fragility of occupational structures. In addition, the fragility thesis is underpinned by the nature of the development of the state. The modern capitalist state itself underwent dramatic and sudden changes affecting the growth and development of various institutions within it. Picciotto argues that:

[T]he modern capitalist state was born within an international framework. Although it was primarily national socio-economic forces that defined its socio-geographical boundaries, its forms and functions developed internationally. It was not until the second half of the nineteenth century that many of the leading states taken for granted today—notably Germany, Italy, and the United States of America—were actually established in their modern unified forms. It was in this same period that the main institutions of property ownership were modernised in the major capitalist states. This process was both conflictual and international. It took place in a world which had been simultaneously united and divided by several centuries of mercantile capitalism, but where the old rigid mercantilist regulatory structures had crumbled or were being dismantled.<sup>87</sup>

One point to be derived from Picciotto’s argument is that the growth of capital is the engine that drives many changes, and in the last decade or so change has been a constant element in the careers of the professions. The globalisation of markets, especially, has had profound effects. Professions are adopting new structures and modes of working, both of which transcend national boundaries. A result of these changes is that it has

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85. T. JOHNSON, *PROFESSIONS AND POWER* (1972).

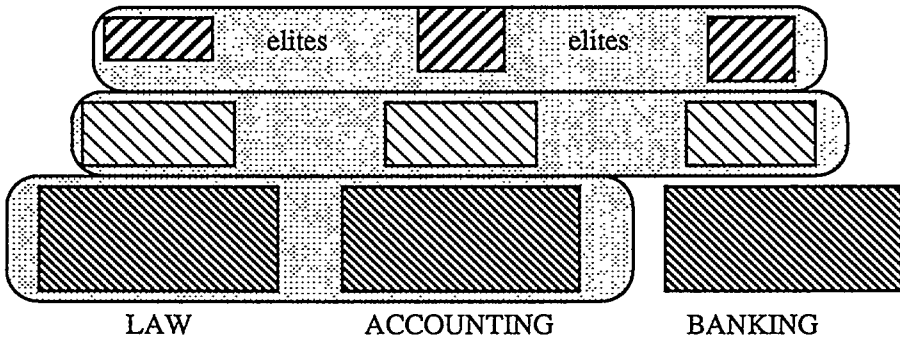
86. See Baker, *supra* note 53.

87. Picciotto, *The Control of Transnational Capital and the Democratization of the International State*, 15 *J.L. & Soc’y* 58, 59 (1988).

become impossible to conceive of each profession as an independent, unitary system. Instead of viewing them vertically or paradigmatically, we need to consider them *horizontally* or syntagmatically. When multi-disciplinary partnerships or joint corporate ventures form, they are not merely connections made across professional boundaries between entire professions, but rather alliances formed between particular classes in professions. Thus, for example, a probable conglomeration would be a corporation composed of corporate lawyers, accountants and investment bankers. Similarly, in the small-firm classes of the professions, other kinds of amalgamations are taking place; for example, mergers between main street solicitors and estate agents (realtors). It makes empirical sense, then, to depict postmodern professions as combinations of purposive groups forming across disciplinary boundaries rather than within them.<sup>88</sup> The final step in the new form will occur when the production of new producers acknowledges these changes and creates a professional who no longer identifies with the old unitary forms. *Figure 4* illustrates the possible forms such groups might take.

*Figure 4*

A Postmodern Model of Professions



In *Figure 4* the classes have become discrete elements in recognition of their desire to merge across boundaries than within them. The elite stratum here might be a conglomerate of an international law firm, a Big Eight accounting firm, and an investment or merchant bank. In the small-firm class, there might only be a merger between lawyers and accountants,

88. See J.F. LYDTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* (1984).

since here banks are generally much larger institutions (in the U.K.). So each class finds its own feasible theory of combination.

The transformation from a unitary profession into a complex one calls for a new rationale to justify extending the privileges of professionalism. If the move into a complex professional institution is made concurrently with the move into limited liability, then the traditional defences of professional privilege will be effectively undermined. The hallmarks of a profession are that its human capital is placed at risk—in a partnership, for example, one's assets are exposed and unprotected—and it gives centrality to the fiduciary relationship. Functionalism has emphasised the bargain entailed in giving professions power over their own domain: Self-regulation, including freedom from publicly disclosing financial information, is granted by the community in exchange for the professional's agreement not to hide behind the corporate veil.<sup>89</sup> The professional conglomerate—composed of several different occupations, each with different normative perspectives—with its limited risk exposure and global base, is a vastly different creature than that described and prescribed by the functionalist paradigm. If the legal profession, in conjunction with others, changes in the directions described, will it be able to justify its independence from state regulation?<sup>90</sup> With professions regulating themselves, the state acts as guarantor for their monopolies. In the domain of corporate enterprises, the state generally acts as regulator—e.g., antitrust and upholding warranties—rather than sanctioning monopoly power. As the corporate professions become more similar to their client organisations, the state may shift its role from guarantor to regulator. In the United States, for example, incursions into the monopoly of the legal profession's power to regulate itself have already occurred. The Internal Revenue Service and the Securities and Exchange Commission impose requirements on and punish infringements by those who practise within their bailiwicks.<sup>91</sup>

Professional boundaries are blurring and collapsing and new ones are rising; work practices are changing;<sup>92</sup> the state is being compelled to

89. Parsons, *Professions*, in 12 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 536, 541 (1968); R. ABEL *supra* note 27, at 29.

90. In the area of investment business the legal profession is already indirectly regulated by the state. Under the Financial Services Act, 1986, ch. 60, the Securities and Investment Board has granted the Law Society the power, as a Recognized Professional Body, to regulate solicitors to undertake investment business which is incidental to the carrying on of the profession. Firms have to advertise this fact. Lovell White Durrant, for example, has at the bottom of its notepaper, "The firm is regulated in the conduct of its investment business by the Law Society."

91. Routh, *Liabilities of a Tax Preparer: An Overview*, 13 CAP. U.L. REV. 479 (1984); Wilczek, *Rulings Tend to Confuse Duties, Responsibilities of Corporate Attorneys*, in SEC '82 VOLUME X (H. Schlagman & N. Hirsch eds. 1982).

92. In the field of law practice, see E. SPANGLER, *LAWYERS FOR HIRE: SALARIED PROFESSIONALS AT WORK* (1986); Cf. Gordon, "The Ideal and the Actual in the Law": *Fantasies and Practices of New York City Lawyers, 1870-1910*, in *THE NEW HIGH PRIEST: LAWYERS IN POST-CIVIL WAR AMERICA* 51 (G. Gawalt ed. 1984).



reappraise its relationship with these groups. Megalaw is part of this bundle of changes taking place in the division of labour, and it forces us to change our conceptions of ideal types of professions. In order to account for the emergence of occupational types such as megalaw, we can no longer rely on the traditional, discrete categories—law, accounting and banking—within single cultures. Comparative analyses across occupations and cultures are necessary in order to understand the elements of the work undertaken by these emerging formations.<sup>93</sup>

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93. *But see* T. JOHNSON, *supra* note 85; Brante, *Sociological Approaches to the Professions*, 31 ACTA SOCIOLOGICA 119 (1988); Freidson, *Theory and the Professions*, 64 IND. L.J. 423 (1989).