Journal of Economic Geography **15** (2015) pp. 1195–1226
Advance Access Published on 1 October 2014
doi:10.1093/jeg/lbu038

Transnational corporations shaping institutional change: the case of English law firms in Germany

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Abstract

Questions remain about the factors that influence the ability of transnational corporations (TNCs) to shape processes of institutional change. In particular, questions about power relations need more attention. To address such questions, this article develops a neo-institutional theory-inspired analysis of the case of English law firms and their impacts on institutional change in Germany. The article shows that the shaping of the direction of institutional change by English legal TNCs was a product of conjunctural moments in which local institutional instability combined with the presence, resources and strategies of the TNCs to redirect the path of institutional evolution. This draws attention to the need to go beyond the TNC and its resources and to consider the way a diverse array of local actors and their generating of instability in existing institutional structures influence the ability of TNCs to become involved in processes of institutional change in particular, conjunctural moments in time.

Keywords: Institutions, evolution, law firms, transnational corporation, Germany, globalisation
JEL classifications: F60, L84, M16
Date submitted: 13 November 2012 **Date accepted:** 2 September 2014

1. Introduction

In work on global production networks (Coe et al., 2008a), evolutionary economic geography (Boschma and Frenken, 2006; Martin, 2010) and in studies of transnational corporations (TNCs) more generally (Kristensen and Zeitlin, 2005; Collinson and Morgan, 2009), questions about the role of firms in institutional change processes are of growing importance. These questions form part of an agenda to better reveal the way geographically variegated political economies are reproduced (Peck and Theodore, 2007; Martin, 2010). To date, studies have revealed the strategies deployed by TNCs while adapting to institutionally diverse markets (Whitley, 2001; Wrigley et al., 2005; Coe and Lee, 2006; Durand and Wrigley, 2009) and attempts by TNCs to drive processes of institutional change when barriers to their activities exist (Reardon et al., 2007; Faulconbridge, 2008a; Morgan, 2009; Tregaskis et al., 2010), the latter sometimes being referred to as institutional entrepreneurship (Greenwood and Suddaby, 2006; Garud et al., 2007) or institutional work (Lawrence et al., 2011). However, it has been increasingly noted that too many unanswered questions remain about the factors that

influence the strategies of TNCs and their ability to shape processes of institutional change as well as about the outcomes of such processes (Coe et al., 2008a; MacKinnon, 2012). In particular, there is in the literature (see, for instance, Whitley, 2001; Kostova and Roth, 2002; Wrigley et al., 2005; Muzio and Faulconbridge, 2013) a tendency to over-emphasize the degree of distance between home- and host-country contexts, this being 'the difference between the institutional profiles of the two countries' in question (Kostova, 1999, 316). This focus, although extremely important, potentially conceals other factors such as the role played by power relations in determining the ability of firms to adapt to and/or change institutions (Hess and Coe, 2006; Christopherson, 2007; Boussebaa et al., 2012; Ferner et al., 2012).

In this article we respond to the challenge of better understanding the conditions under which TNCs can shape institutional change processes by highlighting the central influence of *institutional instability* (and stability) in a host-country. We use the term instability to refer to a context in which existing institutions: are misaligned with the local political economy in that they promote practices that are unsuited to the realities of the economic environment and have become unsupported by actors endogenous to the institutional regime. Stability reflects the inverse of this situation. Specifically, it is suggested that the ability of TNCs to participate in and shape the direction of institutional change processes is, in part at least, the product of specific *conjunctural moments* in a host-country whereby local institutional instability combines with the presence, resources and strategies of TNCs to redirect the path of institutional evolution. In particular, in conjunctural moments of instability, actors endogenous to an institutional system begin to seek and support change and in this process may turn to TNCs as role models of alternative institutional arrangements, thus creating a window of opportunity for TNCs to influence evolutionary processes. The nature of these conjunctural moments is illustrated in this article through an empirical case study of how instabilities in the institutional regime relating to the legal profession in Germany created an opportunity in the early 2000s for change which English law firms exploited. The case study allows us to emphasize the importance of spatial heterogeneity *and* temporal contingency in analyses of the role of TNCs in institutional change.

The rest of the article proceeds by, first, outlining the approaches to and challenges faced in existing analyses of the impacts of TNCs on institutional change. Second, we introduce the case study of English law firms in Germany, our data collection methods and how Scott's (2008) 'three pillars' of institutions framework is used as an analytical device. Third, a rich empirical case study of the activities of English law firms in Germany is provided. In particular, we focus on the contrast between the early 1990s when institutional distance inhibited the activities of these firms, and the early 2000s when a conjunctural moment characterized by institutional instability opened up a window of opportunity for these firms and their activities. Specifically, we show that in this conjunctural moment TNCs participated in institutional path re-creation and that their influence was exerted both through role modelling as they demonstrated the benefits of alternative institutional arrangements, and through more overt forms of institutional entrepreneurship. We caution, however, against assuming that the agency of TNCs leads to radical changes in the institutional setups of host-countries. We show that the influence of TNCs is most significant in relation to elements of an existing institutional regime which are unstable in a particular conjunctural moment of change; this resulting in a fluid mix of continued geographical variegation and

'converging divergences' (Katz and Darbishire, 2000). Finally, we draw some conclusions on the value of this approach for advancing our understanding of the role of TNCs in processes of institutional change.

2. Institutional change and the role of TNCs

Relational and network approaches to studying TNCs and associated studies of 'strategic coupling' (see for instance, Yeung, 2005; Phelps and Wood, 2006; MacKinnon, 2012) interrogate the way that firm strategy and uneven development patterns are both influenced by institutional diversity. In particular, questions about how TNCs marshal their resources, whenever possible, to replicate home-country competencies and practices in host-country contexts (Kostova and Roth, 2002; Ferner et al., 2012; Muzio and Faulconbridge, 2013) and the impacts of such strategies on the institutions of host-countries (Kristensen and Zeitlin, 2005; Coe and Wrigley, 2007), have dominated research agendas. This has spurned two key foci for empirical investigation.

First, there is a focus on the extent to which TNCs reproduce, adapt or hybridize their home-country competencies and practices in host-markets (Coe and Lee, 2006; Phelps and Wood, 2006; Faulconbridge, 2008b; Lowe and Wrigley, 2010; Lowe et al., 2012). Second, there is growing interest in the institutional change strategies deployed by TNCs in situations when reproduction, adaptation or hybridization are not possible or not compatible with corporate priorities (Christopherson, 2007; Reardon et al., 2007; Coe et al., 2009, 2011). This article is concerned with developing this second research focus. In particular, it seeks to explore the factors that influence the participation of TNCs in institutional change processes as well as the outcomes of such processes. This, in turn, contributes to our understanding of the way processes of globalization are effecting convergence and divergence between national institutional systems (Katz and Darbishire, 2000; Peck and Theodore, 2007; Morgan, 2009).

2.1. Spatial and temporal influences on TNC-institutions interactions

The geographically variegated impacts of TNCs on institutional change have been explained in the existing literature predominantly through discussions of the degree of institutional distance separating the relevant home- and host-countries (Kostova and Roth, 2002; Wrigley et al., 2005). Exemplary of this are studies of global retailers (Coe and Wrigley, 2007). This literature documents how distance produces variations in supplier relationship patterns, consumer cultures, regulatory regimes and workplace practices (encompassing IT systems, merchandizing and customer service techniques). Such variations reflect Whitley's (2001) typology which flags governance structures, inter-firm relations, employment relations and organizational capabilities as the key forms of difference between national business systems. The main message of this work is that the greater the institutional distance between home- and host-countries, the more challenges TNCs face when seeking to engage in institutional change processes.

In addition to questions of distance, the existing literature has increasingly noted the importance of power relations in influencing the ability of TNCs to shape institutional change. The power of TNCs has been shown to take forms that broadly reflect Lukes's (1975) three dimensions of power: control of resources/assets, often related to finance, as TNCs leverage their critical mass; control over process, whereby TNCs and their

headquarters in particular have disproportionate influence over decision making within and without of the firm, for instance relating to corporate strategy and regulation, respectively; and control over meanings, in which discursive forms of power allow TNCs to set the agenda and delegitimize the activities of others (on the three forms, see Hardy, 1996; Dörrenbächer and Gammelgaard, 2011; Faulconbridge, 2012; Ferner et al., 2012). As Ferner et al. (2012, 177) note, any attempt to understand the role of TNCs in institutional change must, therefore, focus upon 'the power of MNCs as active rule-makers, engaging in ''institutional work'' to construct institutional variants of niches within the host setting'. In order to develop such an analysis, it is however crucial to recognize that whereas each form of power is in part related to the inherent characteristics of the TNC in question, the ability to effect institutional change ultimately depends on interactions between the firm's assets and the situated context of the host-country in question (Yeung, 2005; Faulconbridge, 2012). As a result, despite attempts to leverage their resources on a global scale, TNCs enjoy different forms of power throughout the various jurisdictions in which they operate. Accordingly, they also have geographically variegated impacts on institutions and change processes (Faulconbridge, 2008a; Durand and Wrigley, 2009; Ferner et al., 2012). For instance, Christopherson (2007) shows that the assets of Wal-Mart, which had rendered the firm powerful in many host-countries and capable of changing labour institutions, were ineffective in Germany due to the extreme distance between local institutions and those in Wal-Mart's home-country, the USA. This led to Wal-Mart experiencing extreme forms of illegitimacy in the eyes of unions, workers and customers, which disempowered the firm and led to its exit from Germany. Bianchi and Arnold (2004) document a parallel story using the case of Home Depot in Chile, whereas a similar explanation underlies the analysis of Coe et al. (2008b) of how transnational temporary staffing agencies invoked significantly different forms of institutional change in each of the Eastern European markets they entered (as well as in the Japanese and Australian markets—see Coe et al., 2009, 2011).

Here, we build on this work and suggest that, in addition to the importance of *spatial* heterogeneity, the power of firms to participate in institutional change processes also depends on *temporal* considerations. We demonstrate that the power of TNCs to influence institutional change is intimately related to the degree of instability (and hence also stability) in host-country institutional regimes at a particular moment in time. This draws attention to the important effect of timing on the power of TNCs in a host-country, and allows the conjunctural nature of institutional change to be better understood; something which responds to MacKinnon's (2012) call for studies to better theorize the factors determining the ability of TNCs to engage in institutional 'path creation'.

Reflecting the approach taken by a number of recent studies (see Gertler, 2010; Martin, 2010; MacKinnon, 2012; Bathelt and Glückler, 2014), our focus on the temporal dimensions of institutional change is framed by ideas developed in the comparative and historical institutionalism literature (in particular Campbell, 2004; Thelen, 2004; Crouch, 2005; Streeck and Thelen, 2005; Streeck, 2009). This literature highlights change as something that occurs at moments when institutions become misaligned with dominant political economic priorities. As a result, existing institutions begin to fail to meet the needs of the endogenous agents (workers, manager, regulators, etc.) who produce and/or are governed by them, and these agents begin to question and become unsupportive of existing regimes. Hence, Crouch (2005) suggests existing

institutional setups become 'redundant' in situations of instability. Redundancy is said to encourage agents to turn towards other institutional systems they are aware of and to incorporate elements of these systems into existing regimes so as to restore stability. As such, in situations of instability actors endogenous to the institutional regime become what Streeck (2009, 126) calls 'rule breakers' who question the status quo and seek to 'convert' existing institutions. Accordingly, in this context institutions are 'redirected to new goals, functions, or purposes . . . as a result of new environmental challenges' (Streeck and Thelen, 2005, 26).

Conjunctural moments in which TNCs can influence institutional change are, thus, moments in which instability and the openness to alternatives this generates presents TNCs with a unique opportunity to become powerful agents in change processes. This opportunity arises because endogenous agents are more likely to accept the need for change when the existing regime is unstable, and because instability renders some of the core competencies of TNCs increasingly valuable and legitimate insofar as they address unmet requirements. In these circumstances endogenous actors are, therefore, more likely to be receptive to the path of change advocated by TNCs (Crouch, 2005; Streeck and Thelen, 2005). In particular, we argue that this receptivity is tied to the emergence during specific conjunctural moments of new forms of control over assets/resources, process and meaning through which TNCs can influence the path of institutional change. Further, we develop this line of argument using the empirical case of English law firms and their influence on institutional change in Germany.

3. Methodology

The globalization of law firms has been extensively documented (see Beaverstock et al., 1999; Morgan and Quack, 2005; Faulconbridge, 2008a, 2008b; Segal-Horn and Dean, 2009; Faulconbridge et al., 2012; Muzio and Faulconbridge, 2013). In this research we focused on the 'magic circle' firms listed in Table 1—these being the largest global law firms emerging from the City of London. English firms from London's 'magic circle' seek to provide a seamless integrated worldwide service to TNC clients by using a 'one firm' business model (details of which are in Table 2). This model is used as part of efforts to align the governance of all offices, regardless of location, with a prescribed set of structures, routines and best practices that effect all dimensions of the production and delivery of legal advice as well as the organization of the firm. As Faulconbridge (2008b) notes, this suggests English law firms, albeit with varying degrees of success, have sought to adopt forms of global management characterized by greater degrees of standardization and centralization than those deployed by other service sector TNCs such as retailers (Coe and Lee, 2006).[1]

Two main data collection methods were adopted. First, we conducted an extensive search of the legal press between 1994 (the first year the archives in question were available for) and 2012 (when our final interviews were completed and intensive data

1 Incidentally, the 'one firm' model and its institutional implications is also a defining feature of English law firms that explains our choice not to study US law firms which, in the early part of the period under analysis, adopted a different globalization strategy that did not involve 'one firm' models or the employment of German lawyers but instead involved sending American lawyers to practice US law in Germany (see Silver, 2007) and adapting to the particularities of the Germany context, hence avoiding some of the institutional complications English firms faced.

Table 1. London's Magic Circle firms at the end of the period of analysis (ranked by revenues)

Firm	2011 Revenue (£M)	Lawyers	Global offices	European offices
Clifford Chance	1219	2466	34	18
Linklaters	1200	2126	27	16
Freshfields Bruckhaus Deringer	1140	2132	28	16
Allen & Overy	1120	2112	42	21

Source: *The Lawyer* (1999a, 1999b, 2000a, 2000b, 2009, 2010) and Firms' websites.

analysis begun). This involved searching key publications in England (The Lawyer, Legal Week and Legal Business) and in Germany (BRAK-Mitteilungen and JUVE Rechtsmarket). A total of 87 articles were identified as relevant to the research in that they either reported explicitly on the activities of English law firms in Germany, or developments in the institutions of the German legal profession (defined as rules, norms and cultures, as detailed below). These were coded using a framework based on existing literature on institutions (the 'three pillars' framework we outline below) and the power of TNCs (Lukes's three dimensions as discussed above). The framework was also developed inductively as themes relating to the specifics of English law firms in Germany emerged from the data (key themes being institutional distance experienced, the role of financial markets in change, responses of German firms and key events/observations about English firms' operations in Germany). This evidence was then triangulated with data gathered from our second method—interviews. Semi-structured interviews were completed in England (22 interviews) and Germany (29 interviews). The interviews included lawyers and support staff in English global law firms as well as regulators and educators. Interviews lasted between 30 and 85 min and, with permission, were recorded. All recorded interviews were transcribed and coded using the framework developed during analysis of the media articles. We compared and contrasted insights gained from English and German interviewees to check for home-country biases, and through this process identified a consistent story about the experiences and effects of English law firms in Germany.

As noted above, we adopted a neo-institutional theory-informed perspective to help interpret the data collected in terms of institutional distance and change. We also use this as a framework to structure our discussion below. The intricacies of neo-institutional theory and its relationship to other institutional literatures have been reviewed elsewhere (see Tempel and Walgenbach, 2007; Greenwood et al., 2008; Scott, 2008) and are beyond the scope of this discussion; our aim is not to contribute to neo-institutional theory itself but to deploy its method of analysis within economic geography debates. The major advantage of neo-institutional theory as an analytical strategy is its micro focus on three distinct but mutually reinforcing pillars of institutional regimes. The 'three pillars' framework connects institutional effects to three 'regulative, normative, and cultural cognitive elements that, together with associated activities and resources, provide stability and meaning to social life' (Scott, 2008, 48). The regulatory pillar is made up of laws and rules which are policed through formal sanctions for non-compliance with defined codes of conduct. The normative pillar refers to the values and norms that govern legitimate behaviour. The normative pillar is powerful because of the social expectations of legitimate behaviour that exist as

Table 2. The 'one firm' model

	Feature	Function
Management and structure	Executive international management committee	All offices expected to implement decision making about strategy, organizational structure and policies and practices made by committee
	Global practice group structures	Lawyers become part of a global practice group as well as an office allowing them to be used as a resource on projects worldwide and managed to meet practice group objectives
	Global account managers and client teams	Key clients identified and managed by global account managers to ensure global consistency in service
Advice production practices	Development of best practices and standardization of service delivery methods and arrangements	A suite of best practices developed centrally and implemented in all offices, covering issues such as recruitment, appraisal, client relationship management, etc.
	Standard templates and protocols	The process of producing legal advice routinized through common templates and procedures designed to reduce time and cost
	Firm wide deontological codes	Firm-specific ethical standards, such as the management of conflicts of interest and professional practice standards developed and enforced worldwide, even if they significantly exceed regulatory standards in a jurisdiction
	Development of strong brand identity	The firm and its name prioritized over the reputation of individuals. All work branded with the firm name not the individual delivering the advice.
	Centralized knowledge management and IT systems	Computer-based systems used to share knowledge and reduce the need for extensive analytical work when producing legal advice (economies of re-use)
	Globally integrated training programmes (Global academies)	A series of firm wide programmes that all lawyers must complete. Often delivered through worldwide events involving lawyers from several jurisdictions.
	Extensive global secondments	Lawyers encouraged to work outside of their home-jurisdiction in order to more fully integrate into the firm's culture

(continued)

Table 2. Continued

	Feature	Function
Profit allocation and remuneration logics	Integrated profit pools	All profits pooled with profit sharing by partners determined as a percentage of global rather than local profits
	Global 'lock–step' and firm wide remuneration policy	All lawyers' pay determined by a consistent worldwide model, meaning years of service and experience not location or any other variable determines pay
	Integrated career progression structures	Clear path from trainee to partner that all lawyers follow. Global assessment criteria, centres and committees to assess progression

Source: Based on Faulconbridge and Muzio (2013, 901)

well as the associated shame, guilt or dishonour cast upon those contravening these. The cultural-cognitive pillar relates to conceptual frames, schema and the taken-for-granted assumptions that individuals use to make sense of events. Mental routines, shared repertoires and taken-for-granted belief systems are said to help individuals select a culturally legitimate course of action in any particular institutional context. Of significance here is the way that an analysis informed by the 'three pillars' framework directs our attention towards: (i) the specific elements associated with each of the 'three pillars' that generate distance between home- and host-country institutions; (ii) the elements that became unstable in the conjunctural moment in question and (iii) the elements that changed (and those that persisted) as a result of the agency of English law firms. We depart, therefore, slightly from Bathelt and Glückler's (2014) interpretation that rules are not institutions and show that it is the combined effects of rules, norms and cultures that should be of interest in analyses of institutional change.

The final stage in our analysis was to relate observations about the institutions of the legal profession to those of German capitalism more broadly. This was done by reviewing literatures on German capitalism in the period in question and identifying connections between the developments noted in these literatures and the specifics observed in media archives and interviews in relation to the legal profession.

4. From institutional distance to proximity

English law firms made initial forays into Germany during the late 1980s and early 1990s, attracted by the size of the legal market and the country's strategic importance within the then emerging European Union. Entry to Germany was pursued through alliances with domestic practices. For instance, Clifford Chance formed an alliance with Gleiss Luz, whilst Linklaters entered negotiations with Schoen Nolte. However, by the middle of the 1990s no English firm had successfully secured a merger. Clifford Chance's alliance with Gleiss Luz lasted just 4 years, ending in 1993, whereas

Table 3. A chronology of key developments in Germany and their effects on the institutional context of the legal profession

Period	German capitalism	Institutions of the legal profession	English law firms in Germany
1985–1989	German economy suffers stagnating growth Pressures felt by German manufacturers as European liberalization opens them to more competition	Institutions of legal profession begin to become misaligned with realities of client needs	No activity in this period
	Reunification intensifies pressures on German economy and institutions	Regulations limiting size of law firm partnerships lifted	
1989–1999	Deutsche Bank, Dresdner Bank and Commerzbank engage in globalization strategies which re-focus priorities away from long-term funding of German companies	Institutions hostile to English firms as 'one firm' model viewed as illegitimate, despite emerging misalignment between existing institutions and new economic environment	First efforts made by English firms to enter Germany via joint ventures or mergers, which fail within a few years
	German manufacturers begin to globalize, due to greater competition domestically and to the need to find new growing markets		
	German manufacturers turn to external investment for funding as German banks re-focus as a result of their globalization (e.g. NeurMarkt established in 1996)	Towards end of period German lawyers begin to recognize misalignment of institutions of legal profession with new market reality	
	Wertpapiererwerbs und Übernahmegesetz provision allows hostile takeover and more foreign investment flows into Germany		
2000–2005: conjunctural moment of empowerment for English law firms	German manufacturers continue to globalize and role of capital markets becomes bigger Impacts on institutions of capitalism of influence of Anglo-American models begins to be felt (exemplified by effects of Finanzplatz Deutschland initiative)	Rules restricting legal practice outside of home region lifted and access to appeals court granted to all firms—this promotes larger law firms	In 2000 English firms secure mergers with German firms (Clifford Chance-Pünder, Volhard Weber & Axster; Freshfields-Deringer Herrmann & Sedemund; Allen & Overy- Schilling Zutt & Anschutz; and Linklaters-Oppenhoff & Raedler
		Limited liability partnership structure permitted for first time in Germany	
		Bucerius Law School (2000) and Institute for Law and Finance established (2002)	

negotiations between other firms faltered. The result was withdrawal from Germany by firms or the maintenance of token representative offices with a limited client base and few German lawyers. Table 3 provides a chronology of these and other key events relating to English firms' activities in Germany.

An institutional analysis provides a powerful way of explaining the initial difficulties faced in Germany. Due to the worldwide alignment principles of the 'one firm' model, from the outset the strategy was to replicate home-country practices in host-markets rather than to engage in adaptation or hybridization. Drawing on existing studies of institutional distance (e.g. Kostova and Roth, 2002; Wrigley et al., 2005), Germany can be said to be a distant host-country context, with institutions that clashed in significant ways with the 'one firm' model. This made mergers hard to accomplish.

Table 4 applies a 'three pillars' analysis to illustrate the institutional distance separating the English from the German legal professions in the late 1980s and 1990s and the impacts of this on attempts by English law firms to implement their 'one firm' model. Two important insights that emerge from Table 4 are worth reflecting upon.

First, Table 4 highlights, by focussing on the English and German regulative (rules relating to qualification and practice as a lawyer), normative (values and standards of legal practice) and cultural-cognitive pillars (logics and mind-sets of practitioners), the very different institutional pressures in the two countries. This is important because it draws attention to how illegitimacy caused by distance can take a number of different forms ranging from explicit bans on a particular practice to more informal social disdain and sanction. In turn, as it becomes clear later in the discussion, this means instability and power to influence change also vary in their forms and effects depending on which of the 'three pillars' they relate to. Second, Table 4 highlights how problems caused by institutional distance relate less to differences in rules, norms or cultures themselves and more to how these render particular *practices* associated with the 'one firm' model illegitimate (see also Muzio and Faulconbridge, 2013). Column four of Table 4 highlights this relationship between institutions and practices by discussing the particular elements of the 'one firm' strategies deployed by English firms that caused difficulties as they departed significantly from what was acceptable in the German legal field. The examples of client service teams and leveraged management structures illustrate particularly well this crucial relationship between institutions and practices and are worth unpacking in more detail.

4.1. Distance and its impacts

In Germany, institutional norms dictated that client relationships were highly personalized and informally managed, with both lawyers and clients expecting long-term personal relationships. In contrast, as Table 2 describes, the 'one firm' model assumes client relationships to be transactional, formalized, to belong to the firm, and to be best managed through account managers and client team structures. Accordingly, the 'one firm' model clashed with the institutionalized preferences of German lawyers. In the words of one lawyer:

> 'A particular client is the focus of a particular partner . . . The relationship is still quite personal. You could not say to a client that their partner cannot speak to them and pass them on to someone else. That doesn't work here. In UK firms, it is often the heads of departments who

Table 4. The German and English legal professions—an institutional comparison

Institutional context		Significant elements of context in England and Wales	Significant elements context in Germany	Examples of duality in 1990s between 'one firm' model and legitimate German law firm practices
Regulatory pillar	The production of producers (qualifying as a lawyer)	Light-touch regulation, low levels of state or professional association involvement; shorter duration (lawyers qualify in their mid 20s) and less prescriptive process (including multiple entry routes that mean a law degree is not the only means of qualification); stipulated pedagogic principles focus on legal reasoning and transferable skills; (remunerated) training contract at a firm as the key entry barrier	Highly regulated with high levels of state involvement; longer duration (lawyers qualify in their late 20s) and more prescriptive process (single entry route— law degree); stipulated pedagogic principles focus on theoretical and technical components of legal doctrine; training period paid by Ministry of Justice, involving judicial as well as law firm-based training; state exam as the key entry barrier	Client service teams—use of trainees limited by demands of qualification process and fact Ministry of Justice pays salary not firms
	The production by producers (how legal advice is delivered)	Deregulated with multiple organizational forms including large law firms allowed so long as professional partnership maintained	Highly regulated, restricted to small professional partnership as only organizational form allowed	One firm model legal governance—English global partnership not recognized or permitted

(continued)

Table 4. Continued

Institutional context		Significant elements of context in England and Wales	Significant elements context in Germany	Examples of duality in 1990s between 'one firm' model and legitimate German law firm practices
Normative pillar	Client relationships	Transactional and organizational; lawyers as providers of commercial services and legal solutions	Long term and individual; lawyers as trusted advisors/confidents to Mittelstand firms with partner-led advice	Client service teams—Client expectation for partner advice leads to resistance in Germany to leveraging and labour substitution (partner: associate ratios of 1:2 In Germany versus 1:5 in English globals)
	Mode of production	Centred around large organizations with multiple practice groups—law firms are well established; high levels of individual specialization in one area of legal practice; lawyers expect to practice as part of a firm; firm brand and its success valued above individualism; teamwork and organizational processes seen as key to producing high quality advice, quality being assessed by looking at outcome for client	Large law firms a limited reality with many hangovers (limited management structure, individualistic partners) from pre-reregulation era when firms rarely exceeded 15 partners; lower levels of specialization due to need to offer clients broad array of specialization; individual autonomy and discretion seen as key to producing high quality advice, quality being assessed by not client outcome but peer review of technicalities of advice	Practice group and client/account managers; executive international management committee and development of firm brand identity—resistance in Germany to centralization and 'bureaucracy' because of belief in the importance of the individual in developing effective client relations and legal advice; a professional seen not as an employee of an organization; tendency in Germany towards generalist practice leads lawyers to find specialized teams problematic and unsuited to generic skills of existing lawyers

(continued)

Table 4. Continued

Institutional context		Significant elements of context in England and Wales	Significant elements context in Germany	Examples of duality in 1990s between 'one firm' model and legitimate German law firm practices
Cultural—cognitive pillar	Juridical doctrine	Common law emphasizes creative use of precedents to create solutions for client problems	Civil law emphasizes the production of solutions through the faithful application of the principles enshrined in the civil code, something all lawyers must be masters of	Best practices, standard templates, centralized knowledge management—attempts by firms to minimize the amount of time an individual needs to spend analysing 'the law' by creating routinized ways of producing advice clashes with German culture in which law seen as a science that requires the individual lawyer to apply her/his expertise to a client's problem through original and rigorous, even if time consuming analysis, not analysis guided by corporate protocols
	Tolerance of inequality	Low. Compressed remuneration levels as a result of lock-step pay systems; new partners admitted to equity through timed process of promotion from which expected to begin in mid-20s. Individuals expected to conform to timings and be promoted ('up') or pressured to leave for another firm ('out')	Low. Compressed differences between highest and lowest paid lawyers; clear tracks of progression from junior lawyer in late 20s to partner	Integrated career paths and associated training programmes—longer and differently timed career spans in Germany (usual to work to late 60s and 70s) due to lengthy qualification process and importance of long-term relationships with clients makes precisely timed models of recruitment, promotion and retirement untenable. Assumption exists in Germany that all junior lawyers have realistic chance of reaching partnership, something contradicted by up or out path

Source: archival and interview data

> will find the new business and trickle it down to partners. Our partners build up their own client business' (Anselm Raddatz, cited in The Lawyer, 1999)

The distinctive characteristics outlined in the quotation above are significant not only because they result in rather different norms with regards to how lawyers should interact with their clients, but also because they affect the fundamental structure and management of the firm. As noted in one media report:

> German clients also demand a different type of service to what UK firms are used to delivering. 'There is a closer contact between partners and clients' says Aled Griffiths, editor of German legal magazine JuveRechtsmarkt. Proof of this is that the partner to assistant lawyer ratios at German firms average about 1:2—in the UK it is more like 1:5' (The Lawyer, 2000a)

The variations in leverage ratios mentioned in this quotation symbolize the fundamental organizational differences separating English law firms and their German counterparts. Higher leverage ratios, which are typical in English firms, not only imply different lawyer–client relationships but also the development of hierarchies, the formalization of work processes through the use of specialized practice groups and team structures, a growing attention to the standardization and coordination of activities and the use of staffing policies as a key source of profitability (e.g. substituting expensive forms of labour such as partners with cheaper resources such as associates) (Faulconbridge and Muzio, 2009). In contrast, German firms had historically adopted more devolved management practices and less leveraged structures centred on autonomous partners and their idiosyncratic working methods; a model that clashed with the managerialism, which was at the heart of the 'one firm' model. Thus, when the 'one firm' model was exported to the very different German institutional context and made a condition of merger negotiations, tensions inevitably arose, with mergers often failing due to disagreements over governance and management. Indeed, one lawyer argued that in newly merged firms, 'The reason lawyers choose to leave . . . is simple: independence. You are free to choose your own clients and free to manage your firm from a German perspective' (Franz-Josef Kolb, cited in Novarese and Gill, 2005). One interviewee offered a slightly different but corroboratory take on this issue by pointing out that:

> 'the English system is more suitable probably for the type of firm you have where you have very specialised people doing a specialised law part of the work . . . You do not have to be a fully educated [generalist] lawyer versed in all these different areas to grind your way through a bunch of documents and make adjustments [as is the case in Germany]' (German Law School programme leader)

4.2. The changing experience of English law firms in Germany

In many ways, then, a 'three pillars' approach allows us to understand in micro-level detail the difficulties experienced by English law firms when operating in a distant host-country such as Germany. This approach spells out both how institutions comprise multiple elements that need to be analysed, and how issues of distance relate, especially, to the way particular home-country derived practices are rendered illegitimate in a specific host-country. What is intriguing about the German case, though, and most

important for our analysis, is the apparent reversal in fortunes experienced by English law firms between the late 1990s and the first decade of the new millennium (Table 3). From a situation in the mid-1990s where no firm had secured a successful merger or a significant presence in Germany, English firms by 2010 had become important players in this market. Several high-profile mergers, all in 2000, are indicative of this: Clifford Chance's merger with Pünder, Volhard Weber & Axster; Freshfields with Deringer Herrmann & Sedemund (a merger which contributed to the firm's name change to Freshfields Bruckhaus Deringer); Allen & Overy with half of Schilling Zutt & Anschutz (the other half of the firm going to US rival Shearman & Sterling); and Linklaters with Oppenhoff & Raedler. Offices of 'magic circle' firms can now be found in cities including Frankfurt and Munich (all of the 'magic circle'), Berlin (Freshfields and Linklaters) and Hamburg (Freshfields and Allen & Overy). The net result was that, by the end of our period of analysis, 'magic circle' firms had gained 3% of the total German legal market (their revenues in Germany totalled €796m, the German legal market being worth €25bn) (The Lawyer, 2009). Indicating that this is a significant share of the market, 'magic circle' firms occupied positions one, four, five and eleven in the JUVE ranking of the top 50 law firms in Germany by revenues. This was a significant achievement. English firms outcompeted a number of traditional German firms (as indicated by their league table positions), and managed to secure a much greater market share and higher league table rankings than in other European market. For instance, in Italy, English firms managed to secure only 1.5% of the market and positions six, seven, eight and sixteen in league tables, despite entering this jurisdiction at the same time as Germany. Reflecting this relative success in Germany, The Lawyer (2000a) noted that:

> 'Only a few years ago it would have been difficult to find 100 lawyers in Frankfurt whose practices were predominantly in banking and finance. Now, Clifford Chance Pünder is aiming to have that number on its own books by the end of 2001'

Of course, the fact that the 'magic circle' firms did not occupy the top four positions in rankings in Germany reveals that some domestic firms managed to fend off threats to their competitiveness. For instance, Hengeler Mueller, ranked number two in JUVE rankings, is recognized both domestically and internationally as the leading German corporate law firm. English firms are not, then, completely dominant in the German market. However, the fact the English firms managed to survive and arguably even flourish in Germany is significant, not least because this success was secured without compromising excessively on the ambitions of the 'one firm' strategy, which had been so problematic in the 1990s. This reversal of fortunes was enabled, we contend, by a fundamental shift in the attitudes of German lawyers towards English firms and the legitimacy of the 'one firm' model. For instance, a survey in 2004 revealed that more than a quarter of German firms were open to the idea of a merger with an overseas law firm (Legal Week, 2004). This finding is indicative of how German lawyers began to embrace the idea of the large corporate law firm, something surprising considering that only 10 years earlier the very same idea had been treated with hostility. Indeed, the success of firms like Hengeler Mueller is often attributed to their willingness to remould themselves in light of lessons learned from English law firms (see, e.g. The Lawyer, 2010). How can this turnaround be explained?

The existing literature suggests the success of English law firms in Germany in the post-2000 period can be viewed as an example of how TNCs can drive and benefit from processes of institutional change. Morgan and Quack (2005, 1780), for instance reveal how international and domestic law firms in Germany were able to engage in path modification processes, as 'they reinterpreted and redefined their institutional contexts in order to seize upon the business opportunities that from the 1970s onwards emerged as a result of changes in the international political economy'. Smets et al. (2012) develop this line of thinking further through a more micro-scale analysis of the way English law firms in Germany were able to develop '*improvisations*' designed to solve practical issues while maintaining the principles of their 'one firm' model. These improvisations, they suggest, reverberated and spread throughout the broader field triggering processes of institutional transformation. Particularly important here is what Smets et al. (2012, 896) refer to as institutional distancing, 'the shielding of organizational members from the monitoring and reinforcing activities of field-level audiences'. This allowed English law firms to drive institutional change quietly and outside of the gaze of field level actors, such as regulators and other professionals, who were committed to maintaining existing institutional logics.

Our research corroborates and extends the analyses of Morgan and Quack (2005) and Smets et al. (2012) in so much as it confirms that English law firms did indeed drive and rely on institutional change processes to secure their success in Germany. However, we also develop their analyses by identifying the need for greater appreciation of the spatio-temporal contingencies that empowered English law firms in Germany and rendered them influential in processes of institutional change. Specifically, we suggest that explanations of the ability of TNCs to direct and benefit from institutional change processes need to be tied to analysis of the instability of a country's institutions and its broader political economy at a precise moment in time. Our data reveals that in favourable conjunctural moments (and not at other times) when host-country institutions are unstable, TNCs can become role models of alternative institutional setups, and can also engage in a range of entrepreneurial activities that exploit temporally contingent forms of legitimacy. It is this combination of role modelling and entrepreneurship that helps to dictate the path of institutional reform.

5. The emergence of institutional instability

Our explanation of the ascendancy of English law firms in Germany lies in a series of developments in the German political economy which begun in the 1980s and by the late 1990s had unsettled and led to the misalignment of existing institutional regimes relating to both German capitalism and the legal profession (Table 3 for a chronology). To understand the effects on the legal profession requires an initial discussion of the German economy during the period in question. As Streeck (2009) notes, the late 1980s and early 1990s were characterized by the 'exhaustion' of the German model of capitalism, with recession, growing unemployment and in turn pressure to cut the cost of social welfare, labour training and other institutions central to the German model. Such challenges were compounded by reunification in 1989, this involving the extension of the West German model to the East, something which inevitably exaggerated cost and other pressures on the system. Alongside these domestic challenges we also had the increasing effects of globalization and Europeanization processes. In relation to the

former, as Streeck (2009) notes, challenges existed in terms of both the need to reduce production costs to maintain the competitiveness of German manufacturing, and to access new markets in the context of stagnating domestic growth. In terms of the latter, liberalizations designed to create a single European market meant German firms could exploit new international trade opportunities but were also confronted by increasing international competition.

One response of German firms to these pressures was to exploit the opportunities that globalization presented, particularly in relation to accessing new markets. For Streeck (2009, 198) the most iconic example of this was Daimler's decision to merge with Chrysler in 1998 to reduce its reliance on the German market. There were, however, some important additional factors, related to those already mentioned, that contributed to the globalization of German firms. First, three of the major German banks that had traditionally being important sources of funding for German industry (via loans and shareholdings) engaged themselves during the 1990s in a sustained period of globalization. Deutsche Bank, Dresdner Bank and Commerzbank all sought to penetrate, in particular, the US and UK markets. As Fiss and Zajac (2004) note, in order to realize this strategy the three were forced to review their banking practices, especially in relation to return on investment ratios on loans and shareholdings in German firms. This review was significant as it triggered changes in the investment logics of the German banks in question and their traditional relationships with clients (see Clark et al., 2002). Most significantly, competition with US and UK rivals pushed German banks towards the logics of financialized economics (on which see Froud et al., 2006)—that is, away from long-term investments and loans and towards short-term shareholdings and a greater involvement in international capital markets. The suggestion is not that German banks, industry and the country's economy more widely re-emerged as a replica of Anglo-Saxon liberal economies. For instance, Goyer (2006) demonstrates that Germany retained distinctive characteristics in terms of relatively low levels of external investments in companies. Rather, the suggestion is that there was a subtle but qualitatively significant shift in the lending policies of German banks and as a result in the financing practices of German companies. As summarized by the managing partner of the Frankfurt office of one English law firm, 'The banks are under quite some pressure to maximize returns on their capital. They can't do that by sitting on stakes—very valuable stakes—in German companies which yield much less for them than other lines of business' (quoted in The Lawyer, 2000b). Deutsche Bank, Dresdner Bank and Commerzbank were most affected by this pressure, but inevitably the changes they made also had a wider impact on other German banks (Clark et al., 2002).

The change in investment logics by the banks had important implications for Germany's industrial sector, including both large organizations such as Daimler and a sub-set of the Mittelstand comprising companies with between €50m and €500m in revenues. For these companies, which had significant capital requirements to support new investments and which needed long-term guarantees from banks if they were to rely solely on the German market, Deutsche Bank, Dresdner Bank and Commerzbank were traditionally major sources of funding. The new financialized strategies pursued by the three major banks and the wider spin-off effects on the practices of other German financial institutions meant, however, that long-term loans or shareholding investments were less available than in the past (Buck and Shahrim, 2005). Consequently, firms began to turn to stock markets and other funding sources outside of the banking

system, and also began to globalize to offset their reliance on the German market. An example of the switch that occurred in funding sources is the NeuerMarkt, which was set up in Frankfurt in 1996 to provide a place for high-growth companies to float. Goyer (2006, 407) reports that these changes led to an increase in the ratio of GDP to market capitalization in Germany from 28% in 1995 to 61% in 2001, settling around 50% in the mid-2000s. This new landscape was populated by actors such as pension funds and private equity firms, the latter growing in activity from only two investments in 1995 to 10 by 2001 and eventually 46 by 2006 (Mietzner and Schweizer, 2011). Although the NeuerMarkt closed in 2002 in the aftermath of the dot.com crisis, and the ratio of GDP to market capitalization and level of private equity investment in Germany remain lower than in the USA and UK, the effect of this period was to introduce greater levels of capital market and non-bank-based external investment into a significant group of German industrial companies. As The Lawyer (2000a) noted when commenting on the implications for legal work in Germany:

> 'It is a sign of how far the German banking and finance legal market has developed in the past five years. Not only are these banking departments among the fastest growing in Frankfurt, but the number of banks and finance houses attracted to the region means that [law] firms have found work dropping into their laps. The three letters on everybody's lips are, of course, IPO - initial public offering. It is common knowledge that German companies have traditionally financed themselves through a close relationship with a house bank. It was only in the 1990s, when the possibilities for export and growth multiplied, and banks themselves had found more profitable ways of making money, that companies began to look to the international capital markets.'

A further important change in the late 1990s and early 2000s also reconfigured corporate governance in Germany. The Wertpapiererwerbs und Übernahmegesetz provision meant that for the first time it was possible for majority shareholders to 'squeeze out' others and accept a hostile takeover. This led to a spate of mergers and acquisitions in Germany, often involving foreign firms. The same period also saw significant privatization activity, with key organizations such as Deutsche Bundespost, the national telecommunications monopoly, being sold-off as part of privatizations driven by European liberalization agendas.

The significance of mergers and privatizations, the growing role of capital markets and private equity for financing, and the globalization of firms, is that they unsettled Germany's traditional economic and, significantly for our argument, professional institutions. Table 3 provides details of how these developments coincided temporally with the successful entry via mergers and in turn influence on institutional change of English law firms. As Streeck (2009, 154) notes, the end of the 20th century in Germany might be characterized as a period when the interrelated pressures and developments described above culminated in institutions changing from a Durkheimian form in which social logics shaped institutions to a Williamsonian form in which the coordination of market transactions was prioritized. This change had a distinctively Germanic flavour, creating 'converging divergences' (Katz and Darbishire, 2000) rather than the replication of Anglo-American models. However, as exemplified by the Finanzplatz Deutschland initiative which was explicitly designed to make capital market institutions 'more similar and compatible with Anglo-American institutions' (Streeck, 2009, 164), the changes did involve some fundamental reforms. It is to these reforms, their impacts

on the legal profession, and the way English law firms exploited and shaped them, that we now turn.

6. A new legal market with new demands

Combined, the developments outlined above led to a proliferation of new transactional legal work associated with financial operations such as initial public offerings, mergers and acquisitions and privatizations. These operations had, of course, an increasing international dimension as overseas investors poured into Germany in the late 1990s and early 2000s and German firms themselves globalized. The value of such work was 'estimated by one firm to have expanded from dm60bn (£21.3bn in 1997) to dm400bn (£142.3bn in 1999) per annum' (Bedlow, 1999). This challenged the long held assumptions of legal professionals, regulators and clients about what constituted the legitimate and appropriate way of delivering legal advice. As one interviewee put it, 'there was a big transformation of client thinking and expectations' (Previous head of global firm's Frankfurt office). In effect, by the late 1990s the institutions of the German legal profession had become 'redundant' in that they supported a type of small-scale generalist legal practice that was not aligned with the needs of a core group of clients in a changing political economy. Again, it is important to note that these issues did not affect all lawyers and law firms; they focussed particularly around corporate legal work for international and globalizing clients. Nonetheless, these changes led a number of agents endogenous to the German legal field—lawyers, regulators and key clients involved in corporate work—to question the status quo and to begin to search for an alternative institutional regime for the production and delivery of legal services. As such, changes to the institutions of the legal profession were a central part of reforms associated with Finanzplatz Deutschland and the broader transformation of German capitalism in the late 1990s and early 2000s.

To some extent, the need for a new regime had been foreseen by the German legal profession. Until 1989, regulations limited partnerships and thus law firms to a particular Lander (region); something which effectively divided up Germany into several major city markets. The largest law firms were, consequently, rarely more than 10–15 partners in size (Lace, 2001; Morgan and Quack, 2005). In 1989 this restriction was lifted, as Schultz (2005) notes primarily because of recognition that in order to compete in corporate and international markets, German law firms were already openly breaking existing regulations. This resulted in a wave of mergers and the creation of a number of national law firms such as Hengeler Mueller and Gleis Lutz. Further reforms then reinforced the trend towards larger law firms. In 2000, rules prohibiting lawyers from practicing outside of their home-region were lifted. This meant law firms could finally work for clients throughout Germany from a few key city bases. In 2002 reforms were put in place that allowed all lawyers in Germany to put cases before the appeals courts. Previously only specialist appellate lawyers were permitted to fulfil such duties, effectively handing all contentious litigation work to small specialist boutiques.

Regulatory changes pertaining to what in Table 4 is described as production by producers (how law is practiced), arose from attempts to deal with the growing misalignment of the German legal profession's existing institutional regime in the context of economic change (Schultz, 2005). They did not, however, lead to the kinds of path recreation needed to bring institutions fully back into alignment with the demands

of the wider economy. This was primarily because these reforms created a series of new instabilities. As one interviewee put it, reforms created a 'sudden moment when the German firms could merge with each other' (Previous head of global firm's Frankfurt office), but this sudden moment, while bringing large firms into existence, did not address the shortcomings of the normative and cultural-cognitive components of the German institutional regime which did not support large scale legal practice. In the next section of the article we outline how this instability empowered English law firms as agents of institutional change.

7. The empowering of English law firms in processes of institutional change

The institutional instability and resultant search for alternative setups in Germany in the late 1990s and early 2000s created a conjunctural moment of opportunity for English law firms (Table 3). As a result of an increasing disconnect between existing institutions and emerging client demands, the German institutional regime became, to use Crouch's (2005) terminology, 'redundant'. Table 5 outlines how, as a result, English law firms gained a series of advantages that rendered them powerful as agents of institutional change. A number of things noted in Table 5 are worth remarking upon. First, columns 2 and 3 of Table 5 illustrate how instability, in particular, elements of the existing institutional setup was exploited by English firms. Columns 4 and 5 detail some of the significant developments, in addition to the regulatory reforms noted above, that occurred post-2000 in Germany as a result of the institutional changes which English firms helped to shape. As columns 3 and 4 of Table 5 indicate, the impacts of the changes that did occur were 2-fold. First, the 'one firm' model became more legitimate in Germany. This facilitated the mergers and post-merger integration that acted as the bedrock for the success of English firms. Second, elements of the 'one firm' model, and particularly those associated with the logistics of organizing large firms, became attractive to German law firms seeking to grow in the context of the opportunities offered by new regulations and market conditions.

As a result, the institutional change English law firms helped to shape was significant both for the legitimacy of English firms and for logics of large scale corporate legal practice in Germany more widely. However, it is important to note that some important elements of the German institutional regime remained relatively unchanged. To give only one example, regulators maintained traditional qualification regimes whereby university students complete a series of short-term placements paid for by the state in a number of settings including not only law firms but also courts and public sector organizations; something that limited the ability of law firms to leverage their work as an economic resource (an important feature of the 'one firm' model). Thus, reflecting existing discussions that note the way institutional change always involves the reproduction of institutional diversity (Peck and Theodore, 2007) and 'converging divergences' (Katz and Darbishire, 2000), developments in Germany in the 2000s led to a modified German regime rather than a replicated English one. In the rest of the analysis we thus seek to explain why English law firms were able to drive the particular kinds of change in elements of the German legal institutional regime that did occur in the post-2000 period, and what this tells us about the determinants of their power as institutional change agents.

Table 5. Examples of how institutional instability empowers TNCs

Nature of instability in institutional pillars	Examples of instability in existing German institutional regime	Advantages of English law firms as a result of instability	Effect on power of English law firms to influence change	Changes in German institutional context occurring 2000–2010 as a result of influence of English firms	Quotation exemplifying how institutional change affected the German legal profession
Regulative—formal rules prevent or render difficult the adoption of practices or organizational forms capable of meeting market demands	Rules governing law firms (production by producers) limit the viability of large and international firms and their commercial approach to practice	Ability to demonstrate and promote alternative regulatory and governance mechanisms that allow large-scale practice but maintain logics of professionalism	Control over process—English law firms able to role model suitability of alternative regimes and lobby for appropriate regulatory reforms	Reforms to partnership laws allow one single partnership for all lawyers employed in Germany and limited liability structure	'Ten years ago the German legal profession harked back to the days of the Kaiser - regionally fragmented, bound by archaic regulations, academic rather than business-minded and insular rather than international. In a decade, small, poorly-managed practices have given way to strong national partnerships' (The Lawyer, 1997)
Normative—existing norms do not support required organizational forms and practices	Existing norms with regards to legal practice and client service render several features of the large law firm model illegitimate	Demonstration of professional norms that reconcile organizational models of practice with professional logics	Control of meanings—Large law firm model became increasingly legitimate and attractive to German lawyers and clients as exemplar of what innovative and effective firms look like	Greater acceptance of teamwork and leverage although not to same extent as in England (from 1:2 to in 1990s to 1:3 today); a new generation of 'organizational professionals' emerges that is open to corporate legal practice and the bureaucracy and specialization that goes with it	'10 years after the mergers that created the firm, the attitudes of the partnerships in its two largest jurisdictions are aligned more closely than ever. It's a generational thing', Eilers tells The Lawyer. 'We're making up partners now who've only worked in a large firm and these [partners] only know the firm after the merger. For the older generation the journey to London's still quite something.' (Hollander, 2011)
Cultural cognitive—existing cultural values and cognitive frameworks are incompatible with new approaches and methods required by the market	The civil law model of practice which conceives of production as involving in-depth analysis of legal doctrine and advice to clients focussed on the legal technicalities of their activities becomes out-of-sync with the new transactional needs of clients in the changing German political economy	Problem-oriented approaches to lawyering together with the development of sophisticated knowledge management systems allows the delivery of commercially sensitive and expedient advice	Control over assets—English firms begin to poach key clients from German firms as their approach was recognized as more effective by companies engaged in capital markets and international activities	Emergence of a new common law culture, orientated towards commercially focused advice	Dietzel is quick to praise his predecessor for his 'remarkably integrative approach' over the years. But when asked to sum up his goals for the next 4 years, the change of gear is apparent. 'I stand for a strong client-facing approach', he says. 'It's through client work that you integrate practice groups and industry groups more fully. That in turn leads to closer cooperation of the various offices, both domestically and internationally . . . It is also clear that this generation of partners—who were all made up after the merger—is not interested in the old Clifford Chance–Pünder divisions. Nor do they want to continue an uncooperative them-and-us relationship with London'. (Griffiths, 2010)

Source: interviews and archival data

7.1. Instability and the power of TNCs

In terms of the regulative pillar, causes of instability were in various ways addressed through the reforms of 1989, 2000 and 2002, which were driven from within the German legal profession. However, the new acceptance of large law firms also created further points of regulatory instability. English firms exploited this and lobbied for changes that would resolve the instability in ways beneficial to them. For instance, the Bundesrechtsanwaltskammer (the regulator of German lawyers) was encouraged to recognize the model of Limited Liability Partnership (LLP) (in German the Aktiengesellschaft) that was widely used by English firms as a way to offset the financial risks associated with extremely large law firms (see Power, 2002). English firms also engaged with the Working Party on International Law Firms (established by the Bundesrechtsanwaltskammer) as a means of ensuring regulations were interpreted or altered in ways that facilitated the financially integrated and practice group approach embedded in the 'one firm' model (see Smets et al., 2012). Such efforts to shape regulatory reform reveal how the imperative for change in light of the evolving market for legal services in Germany in the early 2000s allowed English firms to leverage their 'one firm' model as an exemplar of the required changes. This empowered the firms as role models and helped to legitimize their activities. It also helped create a regulatory context that the emergent cohort of large German law firms could exploit. Indeed, such role modelling by English firms becomes even clearer when changes in the normative and cultural-cognitive pillars are considered.

In terms of the normative pillar, Table 5 details how norms about the size of firms and divisions of labour within them changed to reflect ideas in the 'one firm' model; team work, managerialism and leverage, for instance, all becoming more common. One commentator described the situation that led to such change as follows:

> 'By 1999, the matter had become critical for both domestic German and incoming Anglo-Saxon firms. Low-leveraged, loosely managed German firms still did not appear to be up to the job of servicing the global companies growing up in or moving into their national market' (Tromans, 2003).

Two examples illustrate how the growing misalignment between traditional norms of legal practice and the realities of the German market in the early 2000s created a window of opportunity for English firms to effect normative institutional change. First, in newly merged firms, German lawyers were socialized in Anglo-Saxon lawyering practices through a series of human resource management techniques designed to challenge traditional German norms of practice. The following lawyer describes how training was deployed as one such technique to legitimize normative practices connected with teamwork and leverage:

> 'I had training which was called managing yourself which is part of our associate development programme. And the other thing is I will be the week after next in London for an international skills foundation and this is the so called international part of the training, of our skills training so these are the two parts which I am now working on. First, to manage myself [chuckles] first is to present myself to associates, to my partner, to clients and then in London the international approach of skills. So [it's useful] having associates from all over the [firm x] offices, to know how to work with different jurisdictions and how to work in a team which handles one client' (Associate, English law firm in Germany).

Such efforts were important as they facilitated the post-merger integration process. Second, English law firms formed strategic partnerships with business-oriented universities, such as Bucerius Law School (established in 2000) and the Institute for Law and Finance (established in 2002), to allow the reform of curricula and the exposure of potential recruits to Anglo-Saxon norms and practices. As one interviewee noted, the benefit of working with these schools is that they can be encouraged to:

> 'offer a more practical grounding in 'global law' for students—including presentation skills, negotiation skills as well as compulsory English language and business economics modules', something important because 'the German university system tends to create generalist lawyers [in the civil law tradition] (Recruitment manager, English law firm in Germany).

Working with law schools was beneficial, at one level, because it ensured a stream of new recruits sympathetic to the 'one firm' model that the newly merged firms could tap into. This further helped the post-merger integration process. In addition, at another level, working with law schools had a wider impact on the legal field. Large German firms increasingly also recruited lawyers graduating from these programmes. These individuals then helped to shape the development of Germany's large domestic corporate law firms in ways that corresponded with the principles of the 'one firm' model.

More generally, English firms became role models for German lawyers in relation to issues relating to firm management and organization. As one commentator described changes in the area or practice management:

> 'German lawyers evidently have little good to say about the old days. Indeed, many are almost embarrassed to admit just how outdated the previous system was . . . One of the most striking cultural changes to be seen has been in practice management. German firms in the 1980s typically had no clear business lines, with the result that even in the mid-'90s some associates did court work one day, a minor M&A deal the other and conveyancing the next. Now new associates are expected to specialise rapidly in a particular practice area . . . Law firms' attitudes to marketing have also undergone something of a revolution. In 1999, you could have counted the number of German law firm marketing people on one hand. Now . . . German lawyers now see the need to actively pursue clients and sell their services to foreign companies with which they have not had the opportunity to develop the personal relationships that were once so important in winning work in the German market' (Tromans, 2003)

As Table 5 suggests, this kind of influence over the appropriate organization of legal practice is exemplary of how English firms were empowered in the early 2000s. Specifically, this resulted from English firms gaining control over meanings, something which allowed them to define and exemplify through their practices modes of organization that became widely recognized as valuable.

Moreover, at the same time, instabilities in the cultural-cognitive pillar further empowered English firms. As Table 5 outlines, in the early 2000s the civil law model of practice and the cultural influences of this model on how lawyers produce and deliver advice became increasingly problematic. Specifically, the overly technical and academic approach traditionally favoured by German lawyers meant:

> 'German lawyers used to focus on giving opinions on legal problems. Since they were advising on matters of law, it made little difference who or how big their clients were. Recognition

> among colleagues for any opinion or commentary on the problem was the basis of a reputation. Clients' problems are now transactional—the effects of credit differentiation in Germany being particularly swift and far-reaching. Or rather the clients want transactions to be seen through without problems. A sophisticated commentary on the legal issues of the deal is not the basis for fame anymore' (Griffiths, 2000)

This is corroborated by one of our interviewees, who suggests that 'German lawyers traditionally had seen themselves as gurus of the law rather than what we [English firms] do: basically project management to get deals done' (Previous head of global firm's Frankfurt office). As a result, 'rule breaker' (Streeck, 2009) lawyers, who were seeking to 'convert' (Streeck and Thelen, 2005) existing cultural-cognitive institutions to better support the requirements of transactional and often international practice, began to search for ideas that could help with their reformist attempts. These were primarily lawyers working in the newly formed large German law firms as these were most likely to be involved in assisting German clients with their new corporate finance requirements. They were also often lawyers with work/study experiences outside of Germany, or with insights into common law institutions and Anglo-Saxon practices. In addition to those trained at commercially focused universities such as Bucerius Law School and the Institute for Law and Finance, lawyers with a LLM degree from a common law country (Silver, 2007; Quack, 2012) or 'cosmopolitans' (Smets et al., 2012) who had worked for multinational clients or employers were significant in this regard. The insights gained from such experiences made these lawyers particularly sensitive to the need for reform and to the possibilities offered in this respect by the 'one firm' model. Thus, again, institutional instability meant that English firms became an overt point of reference for Germany lawyers. Capturing this change, one commentator in Germany described the situation at the end of the 1990s as follows:

> 'The question on everyone's lips is: 'Do we want to remain lead counsel on big-ticket, cross-border transactions or are we happy just being local counsel and known in the market as a domestic firm?' The answer for most of Germany's larger firms is that they want to retain the lead counsel role. And to do this they must take on common law expertise' (Tyler, 1999)

The reference to the need for common law expertise is both substantive in terms of knowledge of international trade law and stylistic in terms of developing the appropriate work cultures and practices required to perform transactional legal work for multinational clients (Faulconbridge et al., 2012). In relation to both issues, the 'one firm' model acted as an exemplar of the kind of approaches needed to succeed and helped to shape an institutional change process that established a context in which large German law firms as well as English firms could operate.

The quotation above is also significant because it highlights another important factor which empowered English law firms. As Table 5 notes, the need for a new transactional and common law orientation was underscored by the growing defection of large German clients who, post-2000, began to turn to English law firms for assistance with financial market, international or large-scale legal issues. The result was a situation in which 'German firms were just very much in awe of the Anglo Saxon firms, partly because we had very deep established relationships with lots, pretty much all the major German financial institutions and corporations' (Previous head of global English firm's Frankfurt office). Hence in line with existing work on the power of TNCs, English firms gained control over a key asset—clients and large scale transactional work. This

rendered English law firms influential and encouraged 'rule breaker' German lawyers who wished to service such work to turn to the 'one firm' model as a useful reference point. Reflecting the significance of this advantage, one lawyer described how:

> 'In 1999 we talked to McKinsey Consultants about what we should do about the future', says one senior German partner whose firm eventually merged with a top UK practice. 'They analysed the firm, gave us 10 modernising principles to follow and then said we had two choices: we could try and do it on our own, or we could just merge with an Anglo-Saxon firm' (anonymous lawyer cited in Tromans, 2003)

This quotation is important because it reveals how when combined with instability in the regulative and normative pillars, instability in the cultural-cognitive pillars increased the ability of English law firms' to shape the direction of institutional change in the German context. Specifically, in this context, English law firms through their role modelling of alternatives ensured that the instability which emerged was transformed into favourable institutional change that helped them to legitimize their 'one firm' model. The wider spin off effect was to also reconfigure understandings in the broader German legal field of legitimate ways of organizing large law firms. Thus, by simply demonstrating through their work how the regulative, normative and cultural-cognitive institutions underlying the 'one firm' model provided advantages in the new market context, English firms were able to influence institutional change. 'Rule breaker' lawyers became aware of not only the problems of the existing regime but also of viable alternatives that were being successfully demonstrated on a day-by-day basis by their English peers. As such, the quiet everyday institutional work that Smets et al. (2012) highlight was certainly important in effecting change, but only because of the opportunities afforded by the conjunctural moment of the early 2000s. This highlights the importance of spatio-temporal sensitivity in analyses of the influence of TNCs on institutional change processes.

8. Discussion

This article highlights how the impact of English law firms on institutional change in Germany was closely related to the degrees of instability that existed within the incumbent institutional regime at a particular moment in time. Degrees of instability emerge in a context in which existing institutions: are misaligned with the local political economy in that they promote practices that are unsuited to the realities of the economic environment; and have become unsupported by actors endogenous to the institutional regime. Figure 1 summarizes a number of key ideas that we have developed here about the nature of instability and conjunctural moments of change, and their implications for the power of TNCs. Three key points deserve further reflection.

8.1. The importance of temporality and conjunctural moments

Gaps in understanding of the determinants of the power of TNCs to shape institutional change, as highlighted by MacKinnon (2012), can only be filled by taking into consideration the temporal as well as the spatial contingencies of host-country institutional contexts. Specifically, TNCs are affected not only by the way institutional distance determines the legitimacy of their strategies and practices in a host-market, but

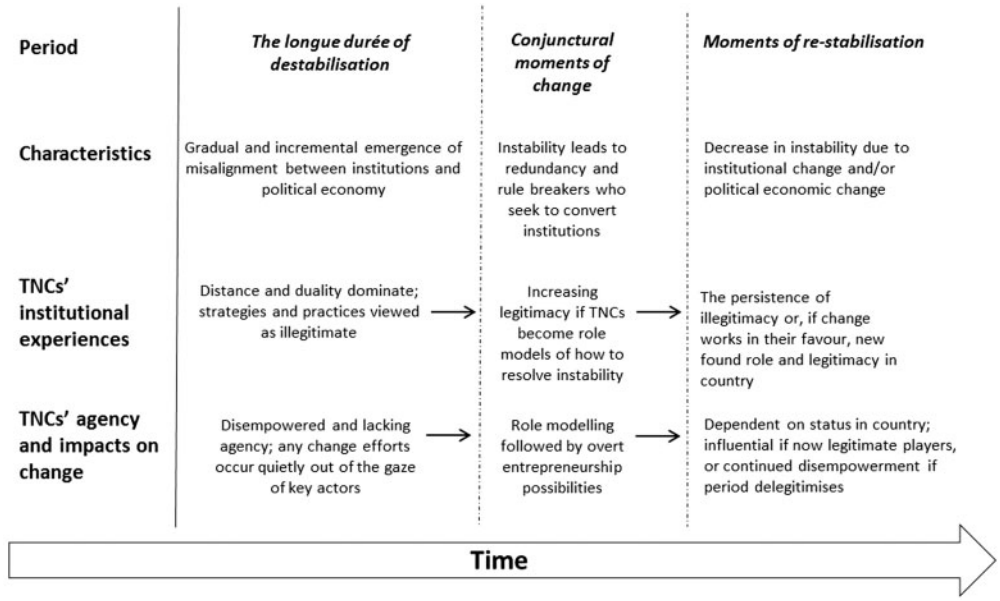

Figure 1. The conjunctural nature of the influence of TNCs on institutional change.

also by the way particular assets such as knowledge, financial resources, client relationships and political influence emerge and/or gain value during specific conjunctural moments in a host-country. Drawing on existing work on the role of power in enabling TNCs to drive institutional change (Hardy, 1996; Dörrenbächer and Gammelgaard, 2011; Faulconbridge et al., 2012; Ferner et al., 2012), this has been conceptualized here as a process of empowerment that allows control over assets/resources, processes and meanings. In the discussion above and in Table 5 we provide examples of how these forms of control allowed English firms to influence regulatory processes, normative frameworks and cultural-cognitive models of practice. It is important to note, however, that the suggestion is not that the three forms of power are associated exclusively with one of the 'three pillars'; all three forms of power can relate to any of the 'three pillars'. Exemplifying this, arguably our examples show not only control over meaning in relation to the normative pillar but also control over process (e.g. the education process through engagement with universities).

The implication of our focus on how English firms become empowered is that, in line with thinking in the historical and comparative institutionalism school of thought which argues that endogenous sources of change are as important as exogenous ones (Thelen, 2004; Crouch, 2005), much more attention needs to be paid to the way that degrees of stability and instability in host-country institutional systems are responsible for rendering, in somewhat unpredictable ways, endogenous agents more or less responsive to the influence of TNCs. As noted in our analysis, instability emerges at the level of the micro-foundations (regulative, normative and cultural-cognitive) of the institutional system in question, while the agency of TNCs also targets specific elements of an institutional system through their ability to control meanings, resources and processes. Instability leads to change which involves complex forms of path re-creation

as stable elements remain in place and unstable elements are changed in ways affected by TNCs. This generates the continued variegation in institutional regimes (Peck and Theodore, 2007) and 'converging divergences' (Katz and Darbishre, 2000) others have noted. When instability exists, it allows TNCs to realize desired institutional change because, at certain moments in time, it helps to transform key agents endogenous to the host-country system into 'rule breakers' (Streeck, 2009) who actively seek alternative institutional arrangements. These 'rule breakers' turn to TNCs as sources of inspiration for change as they seek to 'convert' (Streeck and Thelen, 2005) existing institutions to better fit with the demands of the new economic environment. This is demonstrated in our case study by how English law firms and their 'one firm' models became role models for lawyers looking for ways of dealing with the instability in the institutions of the German legal professions around the start of the new millennium.

8.2. Role modelling and legitimacy in conjunctural moments

The analysis here also shows that TNCs are likely to be treated as role models only if there is alignment between their home-country-inspired competencies and practices, the forms of instability that exist in host-country institutions and the new requirements generated. Hence, it is not just instability *per se* that benefits TNCs and determines the path of change. It is instability alongside the possession by TNCs of advantages that actors endogenous to the host-country institutional regime view as better alternatives to the 'redundant' host-country system. When all of these contingencies are met, TNCs become role models for the kinds of change needed. As Figure 1 describes, the influence on institutional change of TNCs is, therefore, spatially *and* temporally contingent in complex and unpredictable ways. Illustrating this, it was the broader transformation of the German political economy which culminated in the late 1990s and early 2000s that caused institutional instability in the German legal field. This empowered English law firms because their 'one firm' models were well aligned with the resultant growth in transactional and financial market work. Outside of this specific conjuncture, English firms would not have been able to overcome their initial difficulties, to influence the evolution of existing institutional setups in the (selective) ways they did, and to establish a leading presence in the German market. This reveals that snapshots at any moment in time are, therefore, likely to miss the way the agency of TNCs and their ability to drive institutional change evolve over time.

8.3. Conjunctural constraints on TNC-driven institutional change

The implications of the temporally sensitive approach put forward here are profound because they reveal the centrality of questions about the triggers of conjunctural instability and the role of TNCs in producing and exploiting such moments. In relation to the former, our analysis suggests conjunctural moments emerge in an incremental way over time (Figure 1). In the case of Germany, instability developed over a 15–20 year period between the 1980s and the first years of the new millennium, as illustrated in Table 3 by the protracted regulatory reforms in the legal profession that began in 1989. Such a longue durée interpretation is in line with suggestions that institutional change is often a generational process and involves the gradual erosion or unsettling of exiting regimes. In this context, change which may at first glance appear as a form of punctuated reform, on closer inspection turns out to be an incremental process

(Campbell, 2004). This means conjunctural moments may have a process of emergence that is potentially much longer than the actual moment of opportunity itself. In the case of English law firms, the moment of opportunity arose at the beginning of the 2000s and arguably lasted until the onset of the credit crunch and the associated downfall of financialized logics. Indeed, there was a widely reported sense of irony in the German legal profession in the period post-2007 that many of the models promoted by English law firms had become unsustainable as a result of the economic downturn and that some of the principles of the 'old' German regime (such as low leverage and long term client relations) suddenly became once again attractive (see Griffiths, 2009). Arguably, then, the conjunctural moment of empowerment ended post-2007 and a moment of re-stabilization began in Germany, something others might suggest is simply the beginning of the next longue durée of instability emergence (Streeck and Thelen, 2005).

In terms of the role of TNCs in producing conjunctural moments, the analysis presented here suggests TNCs cannot produce these moments alone. English law firms relied upon wider political-economic reforms, driven by both regulators and banks, to destabilize existing regimes. Of course, arguably through their role as advisors to regulators and banks and as role models showcasing alternative logics of legal practice, English law firms did help to destabilize the existing institutional system. Questions of agency are, therefore, complex and involve issues of recursivity. Nonetheless, an important insight from our analysis is that without the wider political-economic instability we have described, and simply by entering a host-country market, TNCs appear not to be able to transform existing regimes. Only once instability emerges, assuming the TNCs in question have core competencies and best practices that offer solutions to the problems caused by this instability, are these firms empowered and able to shape institutional reforms. The wider implication is that, in terms of internationalization strategies, it seems that TNCs face the conundrum of when to enter a host-market that is institutionally distant. If the firms are to act as role models in periods of instability and influence institutional change, it is crucial that they are present in a host-jurisdiction during the appropriate conjunctural moment. But, entering too early will lead to the problems English law firms faced in the early 1990s in terms of institutional distance and illegitimacy. TNCs need to act, then, within specific windows of opportunity that are not easy to identify. Accordingly, one potential strategy is to maintain a low cost and low profile presence as a way of observing and waiting for a conjunctural moment of opportunity to emerge. Arguably, this is what English law firms did in Germany in the early 1990s.

9. Conclusions

This article provides an important starting point for further specifying the particular spatio-temporal contingencies that determine the role of TNCs in processes of institutional change. We have suggested that the influence of TNCs on institutional change needs to be understood through two related concepts. First, *instability* in existing institutional regimes is crucial. This leads endogenous actors to gain awareness of the inadequacy of existing institutions and encourages them to act as 'rule breakers' seeking alternative setups. Instability is produced by wider political economic change alongside the role modelling of alternatives by TNCs. Second, *conjunctural moments*

matter because these are when TNCs are influential, so long as their core competencies are viewed as solutions to the problems that have generated instability.

To further test and refine these ideas as part of the reconstituted institutional economic geography that Gertler (2010) calls for, comparative research that considers the impacts of the same TNCs in different places should be prioritized (see also MacKinnon, 2012). Comparative research could, for instance, further explore questions about the extent to which the degree of maturity of a host-county context determines the ability of TNCs to engage in institutional change. The analysis of Germany presented here suggests such research might problematize assumptions that TNCs have more impact on institutional change in emerging markets. As the German case illustrates, the constant flux that characterizes all institutional systems generates, even in the most developed regimes, conjunctural opportunities which empower TNCs. Comparative work might also seek to further examine the extent to which instability is always associated with the longue durée. For instance, are there examples of instability that emerge more quickly but still empower TNCs? Are there any examples of TNCs inspiring instability without support from wider political economic processes? Finally, it may be fruitful to consider whether the presence of actors with particular interests and identities within host-countries is important in producing 'rule breakers' that are particularly likely to turn to TNCs as role models in moments of instability. Here, we have noted that lawyers with international experience through practice or via LLM training were present in Germany and may have been particularly sympathetic to English law firms. Further exploring the extent to which the presence of 'cosmopolitan' (Smets et al., 2012) 'rule breakers' helps empower TNCs would thus seem useful.

Acknowledgements

The authors are grateful for the research assistance provided by Andrew Cook. Leo McCann and Matthew Allen provided useful advice in relation to some of the literature drawn on in the article. Earlier versions of this paper were presented at events at the Universities of Southampton and Newcastle, at the Leibniz Institute for Regional Development and Structural Planning, and at the University of Technology Sydney. Feedback received at these events helped the authors develop the paper considerably.

Funding

Data upon which this article is based on was collected as part of a project funded by the UK's Economic and Social Research Council (grant reference RES-000-22-2957).

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