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From Colleague to Employee: Determinants of Changing Career Governance Structures in Elite Law Firms

RYON LANCASTER AND BRIAN UZZI

Introduction

In contrast to research on the governance of corporations, research on the governance of professional service firms is spare (Malos and Campion 1995; Greenwood, Hinings, and Brown 1990; Sherer and Lee 2002). This lack of research is interesting because professional firms are at the center of commerce in law, accounting, and consulting. Their governance structures are distinctive in that the fundamental governance principle of separation of ownership and management found in other business firms does not exist or is blurred in professional firms that use the partnership model of governance (Hinings, Brown, and Greenwood 1991; Howard 1991; Gilson and Mnookin 1989; Maister 1982; Sander and Williams 1992). The traditional partnership governance structure of professional service firms appears to be transforming as many firms in accounting, banking, and now law are adopting corporate-based models of governance.

This chapter examines the changing governance structures in elite law firms during the late 1980s through the mid-1990s. We focus on the career structures that reflect the partnership governance system and how it is changing into a structure that is more 'corporate' in nature. This change centers on the introduction of new types of non-partner track job arrangements into the traditional partnership model that had been used by large law firms for over a hundred years. Under the traditional partnership governance system, all attorneys in the firm are either partners, who are owners and managers, or associates, who are 'on track' to partnership. The socialization, training, and monitoring of associates is accomplished under constant supervision of partners and who motivate associates to work excessive hours for relatively low pay with the deferred prospect of making partner at the firm. Associates who failed to make partner were expected to permanently leave the firm for employment elsewhere. In the mid-1980s, the introduction of new, non-partner track positions such as 'senior attorneys' and 'staff attorneys' into the traditional partnership structure altered the partnership governance structure. Like typical positions in corporation, these positions are salaried,

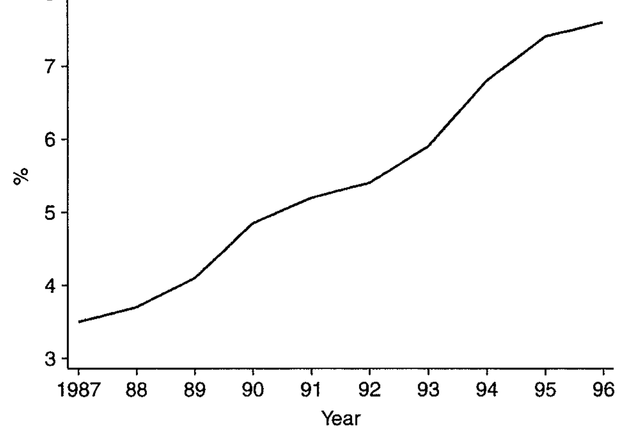


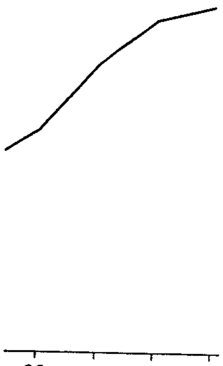
Figure 15.1 *Percentage of attorneys in non-partner track positions, 1987–1996.*
Source: NALP (1988–97).

offer no promise of partnership or even of indefinite employment, and diffuse governance over work processes to a wider and more specialized set of employees while concentrating ownership in a smaller set of partners (Sherer and Lee 2002). The increasing incidence of these new positions is seen in Fig. 15.1, which shows the spread of these new governance positions, indicating that there has been both a large percentage increase in the frequency of these positions and a steady growth trend of about 0.5 per cent a year since 1987.

In our analysis we review and test two arguments that have been offered to explain this change using panel data on the 100 largest US law firms from 1987 to 1995. First, we examine theories of the role of race and gender in law firms, which argue that law firms modified their governance structures in order to retain women and minorities disadvantaged by the traditional partnership structure of the large law firm (Hagan and Kay 1995). Second, we examine the tournament model offered by Galanter and Palay (1991) that argues that law firms modified their governance structures as a result of excessive growth and turnover, forcing firms to adopt innovative structures that expanded upon the partnership governance system. We begin with a review of the historical significance of the partnership governance model in the large law firm and how labor market and competitive changes reduced the model's traditional benefits.

Governance Structures in the Modern Large Law Firm

The large law firm is a product of the twentieth century (Nelson 1988). In the nineteenth century, the American legal profession was composed almost



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entirely of solo-practitioners. Aspiring lawyers either attended graduate school in law or apprenticed with existing lawyers to earn the right to practice. With the coming of large corporations at the end of the nineteenth century, corporate legal practice became consolidated into larger firms where partners could specialize and leverage each other's human and social capital for corporate clients with diverse legal needs.

During the beginning of the twentieth century, law firms began to provide specialized representation in different practice areas (such as banking, labor, real estate, and probate) and in the latter half of the twentieth century began to expand in size (Nelson 1992). In 1968, the largest law firm in the United States had 169 lawyers (Galanter and Palay 1990); thirty years later the largest law firm in the US, Baker & McKenzie, had 2,343 attorneys nationwide (*National Law Journal* 1999). A summary of the current composition of largest 250 US law firms from 1989 to 1997, grouped into size quintiles, is presented in Table 15.1. It shows that the largest 50 law firms in the US averaged over 500 attorneys, with roughly 187 partners and 317 associates. For all of the 250 largest firms, the average size was 273 attorneys, with 110 partners and 150 associates. The starting salaries of associates tend to be moderate relative to jobs in banking and finance or consulting, which require equivalently long hours. Most firms are headquartered in large cities but are dispersed regionally with an average of nearly seven branch offices, and predominately work for large corporate clients that possess their own large legal departments—which suggests that their markets are competitive and their clients have substantial in-house alternatives to buying legal services externally.

TABLE 15.1 *Descriptive statistics of the largest 250 US law firms, 1990–1997*

	Firm characteristics						
Size quintile	Offices	# of attorneys	# of partners	# of associates	Costs-starting salary	% with main office in major city	# in-house at clients
1	10.73	527.55	186.59	317.46	$74,171	76.8	53.3
2	6.95	297.86	119.53	161.75	$69,661	64.8	43.9
3	5.86	221.79	98.29	111.93	$65,187	56.0	49.3
4	4.69	176.72	79.20	91.02	$63,363	57.9	43.5
5	4.58	143.73	65.88	71.07	$61,722	36.8	34.4
Mean	6.56	273.00	109.68	150.31	$66,830	58.3	45.7

Note: Data are from *The National Law Journal* and the *Of Counsel 500*. The number of cases ranges from 1,052 to 2,000 due to missing data for some of the variables. Major cities include New York, Boston, Philadelphia, Chicago, Houston, Dallas, San Francisco, and Los Angeles.

To govern the skill development and administration of new talent that was dispersed widely around the firm, had specialized expertise, and was given considerable autonomy over the pacing and execution of the law, the 'Cravath system' was developed, named after the lead partner of the first firm to utilize it, Cravath, Swaine, & Moore (Swaine 1948). Under the Cravath system, law firms became organized as two-tiered legal partnerships with partners at the top and associates below them. Partners participated in all significant managerial decisions and governed their own behavior under the rule of 'jointly and severable' liability, which meant that all partners were liable for the gains and losses of all other partners—a system that tended to keep unreasonable risk-taking behavior as well as shirking to a minimum (Carr and Mathewson 1990; Gilson 1990). In return, partners were residual claimants upon the firm's income obtained after all of the firm's fixed costs had been paid (Carr and Mathewson 1990; Daniels 1992). The sharing of profits could be lockstep, with all partners at the same level of seniority receiving an equal share, or through a more complicated formula that included seniority, marginal productivity, development, and promotions (Gilson and Mnookin 1985; Daniels 1992).

While partners were free to govern their own behavior, a key governance activity of partners was the management of new recruits. Associates were recently minted lawyers who worked for a fixed salary in the firm, learning how to practice law from experienced partners (Nelson 1988). A unique aspect of the governance structure of the Cravath system was the 'up-or-out' decision for retaining new associates. Associates would be hired directly from law schools and apprentice at the firm for a fixed number of years (typically between five and nine) with the prospect of making partner. Associates that were not retained as a partner in the firm were permanently let go. The purpose of the 'up-or-out' system was to motivate associates to increase their responsibility and legal expertise through the possibility of promotion. Associates who did not make partner were asked to leave the firm, since, as Swaine (1948) put it:

> A man who is not growing professionally [i.e., did not make partner] creates a barrier to the progress of the younger men within the organization and himself, tends to sink into a mental rut—to lose ambition; and loss of ambition induces carelessness. It is much better for the man, for the office and for the clients that he leaves while he still has self-confidence and determination to advance. The frustrated man will not be happy, and the unhappy man will not do a good job. (Cited in Sherer and Lee 2002: 105)

Thus, the possibility of becoming partner motivated associates to avoid shirking, invest in their human capital, and act in the interests of the firm. However, if the associate was passed over for partner, the motivations were absent and the associate was a potential liability to the firm.

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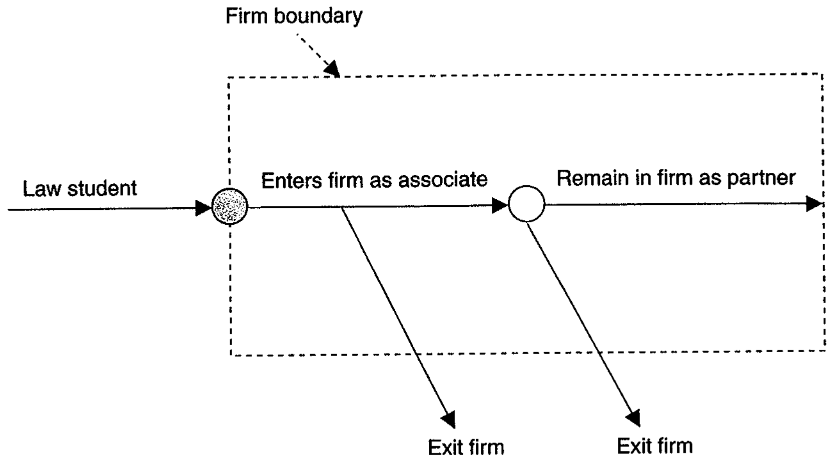

FIGURE 15.2 *Model of traditional career paths.*

Figure 15.2 diagrams the traditional governance model of law firms. Upon completion of law school, lawyers face a choice whether to join a private firm or to work in some other form of practice. Upon entering, they are an associate for a set number of years before the partnership decision. During this time, they are able to leave the firm for another firm, government or corporate work, or to leave the profession all together. At the partnership decision, they are either elected to partner or permanently leave the firm.

This governance system promoted a number of key benefits for law firms. It encouraged entrepreneurship on the part of partners and, to a lesser extent, associates by motivating partners to grow a portfolio of practice areas with numerous clients and in numerous areas of law. Furthermore, it supported the development of long-term relationship that promoted collaboration and teamwork among highly skilled specialists (Lazega 2001). Finally, the Cravath system socialized young lawyers into corporate practice and helped screen for the best performing associates for partner (Heinz and Laumann 1982).

In the mid-1980s, several factors outside the firm began to decrease the governance benefits of the traditional Cravath system. Principal among these changes were new desires in the work preferences of newly minted attorneys and an increasingly more competitive market for law firm services in which corporate clients stressed efficiency (Galanter and Palay 1991; Daniels 1992; Nelson 1988). On the side of labor, increasing numbers of lawyers wanted careers and families, which led young lawyers to see the benefits of partnership as now opposed to family interests (Hagan and Kay 1995). Consequently, new lawyers expressed less willingness to work excessive hours, what became known as the 'tyranny of the billable hour', for the slim possibility of partnership. This was especially true for women and minorities who did not see proportionate increases in their rates of making partner even though they were equally represented in new graduating classes at top law schools. Associates in corporate practice often bill up to 2,000 hours a year, forcing talented women who want to have children to choose between corporate practice and their families (Seron 1996; Hagan and Kay 1995).

The pressure on law firms to meet the new demands of top law schools graduates was exacerbated by credible employment alternatives to private law firm practice that arose during the same period. In particular, elite corporations and banks created large in-house legal departments that opened up new employment opportunities with similar status and benefits but without the excessively long hours expected in large law firms. The establishment of in-house legal departments not only created and legitimized alternative career opportunities for top graduates but meant that law firms' key clients were gaining expertise in the practice of law and in the evaluation of legal services by their outside law firms. This meant that an increasingly important aspect of law firm success was efficiency. Compared with corporations' tall hierarchies and separation of ownership and control, and the trend among investment banks and accountancies to adopt the corporate system, the traditional partnership structure of the law firm looked out of date. It also looked inefficient. How could a firm with 500 employees be efficiently managed with the same structure as the 'mom-and-pop' corner law firm? Consequently, law firms began to recognize that a movement away from the traditional partnership model could increase external legitimacy (Heinz and Markham-Bugbee 1986) and offer the firm a way to create positions for infrequently needed specialists, retain near-partner quality associates in whom the firm had already invested, and increase the division of labor in the firm (Nelson 1988; Sherer and Lee 2002).

Law firms adapted to these pressures by instituting significant changes in their governance structures. A significant change was the creation of new career paths that deviated from the Cravath system, in particular the staff attorney and senior attorney. The senior attorney position was used to retain or recruit talented associates but took them off the partner track. The senior attorney forgoes the possibility of partnership in return for salaried employment, a decreased workload, and the opportunity for greater specialization. In contrast, staff attorneys are hired fresh out of law school on one- to three-year adjunct contracts and are expected to leave at the end of their contracts. These tracks proved attractive to lawyers and firms alike, with firms retaining talented lawyers without diluting their partnership while allowing associates to stay if they were unable or unwilling to do the work necessary for becoming partner at a large firm.

These governance changes also offered new economic benefits to law firms. Because they allowed the firm to offer more flexible and less demanding work commitments, as well as an alternative to the straight 'up or out' decision, they enhanced firms' ability to compete with corporate in-house

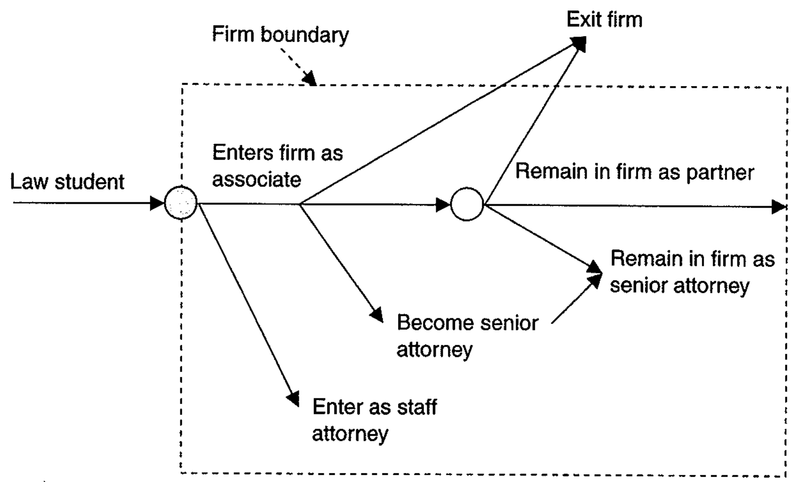

Figure 15.3 *Model of corporatist career paths.*

positions, leading to more gainful recruitment and retention of valued talent. Additional career paths also permitted the law firm to manage specialists and make reversible investments in new practice areas. Finally, these positions permitted existing partners to concentrate ownership within a smaller set of partners by increasing the size (and returns) of the firm without increasing the number of partners at the same rate as the firm grew larger.

Figure 15.3 presents a corporate governance model in law firms. The beginning of the path is the same, with the choice to enter a firm in private practice or not. Associates then face a set number of years before the partnership decision. The potential for exit is still available, but some firms allow associates to switch to alternative career tracks before the partnership decision by becoming senior attorneys. Some of these positions still leave the lawyer open for partner, while others are permanent non-partner positions, allowing the lawyer to remain in the firm without having to become a partner.

Accounting for the Spread of New Governance Arrangements

The historical review of the governance systems of law firms suggests that both demographic and economic forces explain the emergence and spread of non-partnership governance arrangements in firms. Demographic change arguments suggest that the Cravath system was designed to optimize governance arrangements in elite law firms where associates were willing to trade-off most other pursuits in the hope of making partner and that this system was supported by cultural norms in which stay-at-home spouses could specialize in domestic and child-rearing functions while associates concentrated all their energies on work (Hagan and Kay 1995). With the large influx of women into the profession, the separation of work and family life functions was difficult for women to support because they often performed both roles, creating perceptions that the standard governance model relatively disadvantaged women's chances of making partner.

Consistent with these arguments, Hagan and Kay's (1995) study of Canadian lawyers found that women had a much lower chance of making partner than did men and that the difference in partner rates was largely attributable to differences in who takes parental leave—partner-track women take parental leave whereas men do not. The tensions between the work requirements of corporate practice and of childcare responsibilities appear to put women in a disadvantaged position in the firm.

Consistent with the view that women do not proportionately advance to partner at the same rate as men, Table 15.2 presents the proportion of women and minority associates in large law firms. It indicates that, while women comprise almost half of all associates, they continue to be under-represented among partners. For example, in 1996 women accounted for 41 per cent of all associates but only 13 per cent of all partners in large law firms.

Table 15.2 also indicates that the success of minorities under the Cravath system appears to be similar to women. While minorities entered the profession in large number later than did women, their proportional representation at the partner level is still unbalanced. Of the roughly 10–13 per cent of minority associates that enter large law firms, only 3 per cent reach partner. There are several factors that account for this disparity. Minorities tend to

TABLE 15.2 *Percentage of women and minority partners and associates at large US law firms, 1986–1996*

Year	Women		Minorities	
	Associate	Partner	Associate	Partner
1986	34	7	5	1
1987	38	8	7	2
1988	41	10	6	2
1989	38	9	6	2
1990	41	10	7	2
1991	42	11	8	2
1992	41	12	8	2
1993	39	12	9	3
1994	40	12	10	3
1995	40	13	12	3
1996	41	13	13	4

Note: Data drawn from 73 large US law firms. The data are described in the data and methods section.

receive lower levels of training at the associate level and are not given the opportunities to build up a base of clients (Wilkins 2000). In addition, there are disincentives for minorities to build up the skills needed for long term success in legal practice, instead focusing on sending signals to partners that they are partner material, which leaves them less opportunities to invest in their own human capital and client networks (Wilkins and Gulati 1996). Finally, there are still indications that there are racial preferences for promoting white associates to partnership ranks (Lempert, Chambers, and Adams 2000; Wilkins and Gulati 1996).

The under-representation of women and minorities poses a number of problems for the firm. First, if human capital is randomly distributed across gender and racial lines, then losing women or minorities to other employment opportunities will diminish the overall level of talent in the firm. Second, clients are now expecting their legal counsel to be more diverse, and less diverse firms are less likely to gain new contracts. Corporate legal departments have been more favorable to hiring and promoting women and minority lawyers, leading to a more diverse client (Wilkins 2000; Hagan and Kay 1995). Many of the large US corporations and banks now require a disclosure of the demographic composition of firms who bid on projects, and use this in the hiring decision to favor firms with more women and minorities (Skolnick 1991; Silas 1984). State and local governments also require their outside counsel to be diverse, disadvantaging firms that have low numbers of women and minorities (Blodgett 1992; Knapp and Grover 1994). Finally, there are indications that more diverse firms perform better, through the ability to attract and retain clients as well as drawing on a greater pool of human capital (Pearce, Hickey, and Burke 1998; Uzzi and Lancaster 2003).

These statistics reinforce the perception that the Cravath system failed to promote equal opportunity for all competing groups and involved high personal costs that were beginning to be viewed as anachronistic with the work needs of some of the best young lawyers, creating a double bind for law firms with large proportions of women or minority associates. On the one hand, they project the perception that women are not equally represented in the firm, which limits their ability to recruit the best women associates. On the other hand, to balance gender and minority representation they would have to promote a proportionately larger number of women associates to partner relative to men, a change that would be difficult in the near term if one presumes that the proportion of men, women, and minority associates qualified for partnership at elite firm is about equal (Eaves, Png, and Ramseyer 1989; Hagan and Kay 1995; Chambers 1989; Seron 1996). This suggests that setting up new career governance arrangements would allow firms to retain women and minority lawyers with the promise of alternative and possibly more flexible work arrangements when there exist pessimistic perceptions of advancement in traditional partnership track positions.

Hypothesis 1: *The greater the proportion of female associates, the more likely a firm is to adopt non-partnership governance arrangements.*

Hypothesis 2: *The greater the proportion of minority associates, the more likely a firm is to adopt non-partnership governance arrangements.*

By the same arguments, if the lack of equal representation at the partner level increases the likelihood that a firm adopts new governance arrangements, then equal representation should decrease the probability of adoption because it promotes the optimistic perceptions that the current model is working, enabling these firms to attract the best women and minority talent without the need to invest in costly new systems of governance. Furthermore, firms with greater numbers of women and minority partners shift internal resources around, which help in the training and promotion to partner of more women and minority associates (Chambliss and Uggen 2000). This implies firms with better representation of women and minority partners could avoid pressures to change their governance arrangements to satisfy the needs of new graduates.

Hypothesis 3: *The greater the proportion of female partners, the less likely a firm is to adopt non-partnership governance arrangements.*

Hypothesis 4: *The greater the proportion of minority partners, the less likely a firm is to adopt non-partnership governance arrangements.*

In an influential article and book, Galanter and Palay (1990, 1991) proposed that changes in the governance structure of law firms can be explained by the economic factors underpinning the recent and rapid growth of law. Using ideas from transaction cost economics and from agency theory, they argued that the tournaments to make partner under the Cravath system explains the distribution of career tracks in the firm. In a tournament, associates are not given their full wages but instead are given an opportunity for a deferred bonus in the form of partnership. This aligns the associates' interests with that of the partners, removing the risk of opportunistic behavior (shirking, theft of capital, early exit) on the part of associates.

In order for this tournament to work effectively, associates must be able to estimate their chances of making partner, which creates an incentive for firms to fix the percentage of associates making partner each year. A governance problem arises, however, when the number of associates partnered each year is greater than the number of partners that retire, because, to make each new partner in the firm profitable, the firm must hire from two to five new associates—a condition known as leverage. Using this logic, Galanter and Palay reasoned that a firm using the traditional Cravath system must maintain exponential growth to optimally motivate associates and maintain profit levels. However, such rapid growth through partnership is constrained by competition for scarce top talent and a lucrative client base.

This places special pressures on fast-growth firms that need to establish other methods of growth. One strategy for growth is through the establishment of governance arrangements that increase the length of time to partnership as well as leverage over non-partner track attorneys. A greater time to partnership allows firms to better match promotions with retirements and the rate of client development, while non-partner track attorney permit partners to gain leverage without the need to increase the size of the pool of associates who expect partner. This suggests that:

Hypothesis 5: *The faster the rate of firm growth, the greater the likelihood of adoption of non-partnership governance arrangements.*

Non-partner track positions can also provide firms with an option for retaining good talent that didn't make partner but that received firm-specific training and socialization at the firm during the tournament. Similarly, these new positions could offer winning talent that had been denied partner the option of a salaried, non-billable hourly position, albeit one that was of lower status. The *American Lawyer* registered the testimonial of Richard Spizzirri, a Davis Polk partner, who gave this rationale for the corporatist structure.

> To lose someone [an associate denied partner] who's that good is crazy ... maybe some of them would prefer to stay on a somewhat different basis if we had a program ... 'Up-or-out maybe' just doesn't make sense anymore ... You've invested a lot of effort in training good lawyers, good people, nice people. All of a sudden, when they reach their highest level of proficiency, they're forced by the system to look elsewhere for employment ... Other professional service organizations such as accounting firms and the investment banks, which ten years ago were organized like law firms, have created a more fragmented hierarchy ... If it is such a good thing for them, are we missing something? (Pollock 1982, cited in Sherer and Lee 2002).

These arguments suggest that firms that bore the costs of training associates but that could not retain all qualified persons as partners would be motivated to recapture some of their socialization and firm-specific investment costs through new job categories. If firms with the highest levels of turnover are experiencing the greatest economic retention costs, then firms with high turnover should be more likely to adopt these new governance structures. This suggests:

Hypothesis 6: *The greater the law firm's exit rates, the greater the likelihood that it adopt non-partnership governance arrangements.*

The creation of new governance arrangements is not costless to the tournament model, however. In addition to significant new investments in administrative structures and job routines, they also represent a break in the traditional culture of the large law firm. The creation of these new positions can run at odds with the norms and values of the wide profession (Daniels 1992). By virtue of passing the bar, all lawyers, no matter their area of specialty or place of schooling, are deemed to have earned the same proficiency to practice law. Consequently, the corporate model introduced a new stratification system that conflicted with graduates' professional training, socialization, and mindset that law is a 'calling' (Daniels 1992).

Thus, for firms in which the organizational culture is part of professional values of equality and highest level of quality, conflict is likely to accompany attempts at changing the governance structure of the firm by adding new types of lawyers, *except* in firms that have had a culture of employing salaried support staff to do legal work. In these cases, the creation of new career paths for attorneys can more easily fit into the traditional partnership culture as an extension of the use of support staff, decreasing the conflict associated with adding these positions. In addition, the presence of a greater amount of support staff indicates the existence of governance rules and routines for managing these support staff that can be extended to managing non-partner track attorneys. Hence:

Hypothesis 7: *The higher the ratio of support staff, the more likely is the firm to adopt non-partnership governance arrangements.*

Data and Measures

To test these hypotheses, data were collected for the years 1986 through 1996 from *Martindale-Hubbell Law Directory*, *The American Lawyer 100*, *National Law Journal*, *Directory of Legal Employers*, and *Of Counsel*. The sample consists of all law firms that were included in nine years of *The American Lawyer 100* to create a balanced panel. *The American Lawyer 100* is an annual survey of 250 large US law firms that asks questions about the law firm's size, practice areas, office branches, and fiscal standing. The 100 most profitable firms (in terms of their overall profits per partner) in the US are then reported in the *American Lawyer*, along with their responses to the survey. This survey design creates an unbalanced panel, since each year asks the same items, but of different firms. To create a balanced design, we included only the seventy-seven firms that appeared in the survey in all eleven years of our study. In addition to firms that did not appear in all eleven years of our study, one firm was dropped because of missing data and one firm was dropped because of a local merger that made comparison across years impossible. This left us with a panel of seventy-five firms. Other firms were involved in mergers but with small firms or firms in another city, which did not affect our focus on the main office of each firm. We then used this sample to collect additional data from the other sources (described below). Table 15.3 presents summary statistics and correlations of the variables used in our model.

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TABLE 15.3 *Summary statistics and correlations*

	Mean	S.D.	Min	Max	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.
1. New senior Attorney	0.06	0.23	0	1	—														
2. New staff Attorney	0.05	0.21	0	1	0.14	—													
3. Growth rate	0.05	0.10	−0.67	0.52	0.06	0.06	—												
4. # attorneys (log)	5.42	0.36	3.95	6.53	0.03	−0.01	−0.13	—											
5. (# attorneys (log))^2	29.46	3.88	15.61	42.61	0.03	0.00	−0.13	1.00	—										
6. % Female partners	0.11	0.04	0.01	0.38	−0.08	−0.03	−0.06	−0.19	−0.18	—									
7. % Minority partners	0.02	0.03	0	0.51	−0.09	0.00	−0.05	−0.21	−0.20	0.23	—								
8. % Female associates	0.40	0.11	0.17	1.46	−0.02	0.01	−0.03	−0.18	−0.18	0.43	0.12	—							
9. % Minority associates	0.08	0.07	0	1	−0.07	0.04	−0.04	−0.17	−0.16	0.29	0.38	0.41	—						
10. Non-legal staff/# attorneys	1.75	0.38	0.61	3.88	0.07	0.00	0.09	0.22	0.22	−0.17	−0.11	−0.09	−0.05	—					
11. Exit rate of associates	0.11	0.08	0	0.58	0.04	−0.02	−0.05	−0.18	−0.18	0.08	0.01	0.14	0.18	0.15	—				
12. Gross revenues (log)	4.85	0.51	3.65	6.57	−0.06	−0.01	−0.13	0.54	0.55	−0.02	0.10	−0.14	0.18	0.21	−0.13	—			
13. Costs of goods sold	73.14	9.59	45	91	0.04	−0.08	−0.14	0.40	0.40	−0.02	−0.02	−0.01	0.22	0.13	0.08	0.43	—		
14. # clients	6.61	6.98	1	54	−0.06	−0.04	−0.13	0.41	0.43	0.02	0.02	−0.13	0.06	0.25	−0.09	0.62	0.21	—	
15. # in-house counsel at clients	43.74	33.32	0	206.83	−0.03	−0.04	−0.05	0.18	0.19	0.06	0.08	0.00	0.14	0.01	0.03	0.19	0.17	0.16	—
16. East coast firm	0.51	0.50	0	1	0.04	−0.08	−0.06	0.30	0.30	−0.16	−0.09	−0.07	−0.03	0.16	0.08	0.03	0.56	0.01	−0.04
17. 1989	0.09	0.29	0	1	−0.01	0.13	0.15	−0.02	−0.02	−0.14	−0.10	−0.06	−0.13	0.08	−0.02	−0.08	−0.05	−0.17	−0.10
18. 1990	0.09	0.29	0	1	0.01	0.04	0.10	0.03	0.03	−0.06	−0.08	0.01	−0.08	0.13	0.02	−0.01	−0.06	0.06	0.03
19. 1991	0.09	0.29	0	1	−0.03	−0.04	−0.08	0.04	0.04	0.02	−0.04	0.04	−0.04	0.07	0.04	0.02	−0.04	0.10	0.03
20. 1992	0.09	0.29	0	1	−0.05	−0.02	−0.21	0.03	0.03	0.05	−0.02	0.03	−0.01	−0.03	0.05	0.04	−0.04	0.08	0.05
21. 1993	0.09	0.29	0	1	−0.03	0.02	−0.22	0.03	0.03	0.05	0.03	−0.04	0.01	−0.06	−0.02	0.06	0.05	0.10	−0.27
22. 1994	0.09	0.29	0	1	−0.05	−0.06	−0.11	−0.01	−0.01	0.08	0.06	0.00	0.08	−0.06	0.01	0.09	0.07	0.06	0.09
23. 1995	0.09	0.29	0	1	−0.05	−0.02	−0.10	0.00	0.00	0.11	0.10	0.00	0.17	−0.12	−0.11	0.13	0.15	0.01	0.19
24. 1996	0.09	0.29	0	1	−0.07	−0.02	0.05	0.02	0.03	0.16	0.19	0.03	0.23	−0.20	−0.11	0.18	0.16	0.06	0.16

Dependent Variables

Our dependent variables are the adoption of the *senior attorney position* and the adoption of the *staff attorney position* in the firm. We created this variable from the *Directory of Legal Employers* when a firm indicated the presence of a senior attorney position and/or a staff attorney position when they were not present in the previous year's *Directory*. This allows us to measure the year in which the position was created, but not the actual date. This was coded 1 for adoption, 0 for at risk of adoption. The *Directory of Legal Employers* is an annual survey of law offices around the country. It provides a narrative description of the firm, data on the firm's hiring and promotion practices, employment demography, practice areas, location of branch offices, opportunities for part-time work, and starting salary for new associates.

Independent Variables

All independent variables were lagged by one year. The *growth rate* of the firm was calculated by taking the difference between the size at t and t − 1 and dividing by the size at t − 1. We calculated the *exit rate of associates* as the number of associates in the previous time period plus the number of new hires, minus the number of current associates, divided by the number of associates in the previous time period:

$$\text{exit rate} = \left(\frac{\#associates_{t-1} - \#associates_t + \#hires_t}{\#associates_{t-1}}\right)$$

The *proportion of female partners* and *associates* as well as the *proportion of minority partners* and *associates* was measured as the number of attorneys in that subclass divided by the total in that class. For example, the proportion of female partners was measured as the number of female partners divided by total number of partners. Minorities represented all non-white associates. We measured the *ratio of non-legal staff to attorneys* as the number of functional staff (paralegals, support staff, and other professionals) employed by the firm divided by the total number of attorneys in all categories at the firm (including associates, partners, staff attorneys, and senior attorneys).

Control Variables

Gross revenues measured the gross revenues of the firm. This variable was logged to normalize its distribution. To control for differences in the firms' *costs of goods sold*, we used the common measure of the yearly starting salary of the firm's associates; partners receive a share of the residual profits rather than a salary, and therefore are not part of the cost of goods sold (Hagan *et al.* 1991; Gilson and Mnookin 1985). *Size* of the firm measured as the

the *senior attorney position* and
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log of the total number of attorneys, including partners, associates, staff attorneys, and senior attorneys employed at the firm at time *t*.

To control for the market position of the law firm, we include several controls for the law firm's clients. We drew on research that has shown that the greater the *number of in-house counsels* employed by the client, the more informed the client is about, and the more carefully it can screen, the quality and internal structure of the law firm (Suchman 1998; Nelson 1988: 59). We calculated the average number of in-house counsels in a law firm's network of clients by summing the number of in-house counsel of each client and dividing it by the number of clients. To control for client's bargaining power and size, we used the *total number of* Fortune 250 corporation and bank *clients* of each law firm in the sample.

Finally, we included a dummy variable indicating whether or not the firm was headquartered on the *east coast*. Additionally, we included dummy variables for each *year*, with 1987 being the reference category. In separate analyses, we included controls for law firm practice area, but as these were not significant and did not affect the results of our other variables, they were not included in the analyses presented here.

Model

We tested our arguments using a pooled cross-section random effects logit model. This allows us to examine time-varying firm characteristics that affect the adoption of senior attorney and staff attorney positions. Firms that did not adopt by 1996 were right-censored. Once a firm had adopted a specific new position, it was taken out of the risk set for that model and did not provide further cases. Unfortunately, our data do not allow us to examine the very first cases of implementation of these positions. Nevertheless, the number of firms that adopted either position before our observation window of 1987 is small. For senior attorneys, four firms in our sample had adopted them by 1987, and two firms for staff attorneys. These firms were excluded from our analyses.

Results

Table 15.4 lists the regression results of our analysis of the adoption of the senior and staff attorney positions. The first column presents our results for senior attorneys. Most of our year indicator variables are positive and significant, indicating an increasing likelihood of adopting the senior attorney position over time, which is consistent with Fig. 15.1. East cost firms, which are generally the larger and most prestigious of the large US law firms, were significantly less likely to adopt new governance positions, while firms with higher salary costs were more likely to adopt the position. Organizational revenues and the number of clients failed to attain significance.

TABLE 15.4 *Random effects logit of predictors of adopting new governance position*

Firm demographics	Adopt senior attorney	Adopt staff attorney
% Female associates	0.157***	−0.030
	(0.046)	(0.036)
% Minority associates	0.133	0.228*
	(0.112)	(0.105)
% Female partners	−0.510**	−0.245*
	(0.184)	(0.115)
% Minority partners	−2.148***	0.872**
	(0.574)	(0.305)
Tournament model		
Growth rate	4.315	5.117†
	(4.386)	(2.950)
Exit rate of associates	−10.979†	−17.460**
	(6.178)	(6.635)
Ratio of non-legal staff to attorneys	2.181**	2.230†
	(0.964)	(1.338)
Controls		
# of attorneys (log)	0.339	3.073*
	(1.540)	(1.427)
Gross revenues (log)	2.468	0.335
	(1.792)	(1.220)
Costs of goods sold	0.081***	0.017*
	(0.019)	(0.009)
# of clients	−0.092	−0.042
	(0.095)	(0.110)
# In-house counsel at clients	0.032*	0.011
	(0.014)	(0.015)
East coast firm	−2.147†	−10.991***
	(1.277)	(2.612)
1989	1.433	10.410***
	(1.675)	(2.763)
1990	4.897***	11.610***
	(1.474)	(3.131)
1991	7.173***	9.327***
	(2.100)	(2.895)
1992	9.393***	12.956***
	(2.529)	(3.531)
1993	12.385***	15.851***
	(2.913)	(3.990)
1994	12.166***	10.488*
	(3.103)	(4.860)
1995	12.290***	16.738***
	(3.063)	(4.378)
1996	−23.795	17.475***
	(13.624)	(4.643)
Constant	−34.017**	−38.009**
	(10.854)	(11.538)
N	401	496
# of firms	73	71

Note: Data drawn from 73 large US law firms. The data are described in the data and methods section.

† $p < .10$, * $p < .05$, ** $p < .01$, *** $p < .001$.

of adopting new governance position

r attorney	Adopt staff attorney
	−0.030
	(0.036)
	0.228*
	(0.105)
	−0.245*
	(0.115)
	0.872**
	(0.305)
	5.117†
	(2.950)
	−17.460**
	(6.635)
	2.230†
	(1.338)
	3.073*
	(1.427)
	0.335
	(1.220)
	0.017*
	(0.009)
	−0.042
	(0.110)
	0.011
	(0.015)
	−10.991***
	(2.612)
	10.410***
	(2.763)
	11.610***
	(3.131)
	9.327***
	(2.895)
	12.956***
	(3.531)
	15.851***
	(3.990)
	10.488*
	(4.860)
	16.738***
	(4.378)
	17.475***
	(4.643)
	−38.009**
	(11.538)
	496
	71

are described in the data and methods

The second column presents our results for the adoption of the staff attorney position in the firm. Again, we find that the effects for our year dummies are positive and significant, indicating an increasing likelihood of adoption over time. Consistent with the findings of senior attorney position, east coast firms were less likely to adopt the staff attorney position, while firms with higher salary costs were more likely to do so. There were no significant effects for the number of clients, the size of their in-house legal staff, or the total revenues of the firm.

Consistent with our demographic arguments, we found a generally uniform relationship between the adoption of new forms of governance and the race and gender distribution of the firm—although these effects varied with the type of new position that was adopted. As predicted in hypothesis 1, we found that, the greater the percentage of female associates in the firm, the greater the likelihood of adopting senior attorney positions. The effect for minority associates was also positive but failed to attain significance. Also consistent with hypotheses 3 and 4, we found that firms with a higher proportion of either female or minority partners were less likely to adopt senior attorneys.

The results for staff attorney were less consistent. Consistent with hypothesis 2, firms with a higher percentage of minority associates were significantly more likely to adopt the staff attorney position, but there was no significant effect for female associates as predicted by hypothesis 1. For partners, the percentage of female partners decreased the likelihood of adoption, supporting hypothesis 3, but the effects for minority partners was positive and significant, the opposite of what hypothesis 4 predicted. In both models, we were concerned that our demographic variables were collinear with one another, creating these different results. In order to ensure that our results were represented in the underlying data and were not simply a statistical artifact, we ran both models with each demographic variable entered on its own. In these results, each variable had the same direction and level of significance as in the complete models reported here, indicating that the collinearity among these variables did not drive our results.

While we lack systematic data and theory to resolve this conflicting result, one explanation follows from past work and aggregate data on the distribution of women and minorities in large, elite law firms. During this period, women represented around 40 per cent of all associates, a percentage consistent with the proportion of women graduating from law schools (Abel 1989; Hagan and Kay 1995). Thus, the creation of the staff attorney position would not advantage female hires because they already have a strong presence in these firms. However, minorities are still distinctly under-represented at these firms. It is possible that the creation of the staff attorney position allows for greater opportunities for newly minted minority lawyers by providing them with membership, even if temporary, at an elite law firm, and that minority partners support these positions to advantage other minority lawyers.

concentrated all their energies on work (Hagan and Kay 1995). With the large influx of women into the profession, the separation of work and family life functions was difficult for women to support because they often performed both roles, creating perceptions that the standard governance model relatively disadvantaged women's chances of making partner.

Consistent with these arguments, Hagan and Kay's (1995) study of Canadian lawyers found that women had a much lower chance of making partner than did men and that the difference in partner rates was largely attributable to differences in who takes parental leave—partner-track women take parental leave whereas men do not. The tensions between the work requirements of corporate practice and of childcare responsibilities appear to put women in a disadvantaged position in the firm.

Consistent with the view that women do not proportionately advance to partner at the same rate as men, Table 15.2 presents the proportion of women and minority associates in large law firms. It indicates that, while women comprise almost half of all associates, they continue to be underrepresented among partners. For example, in 1996 women accounted for 41 per cent of all associates but only 13 per cent of all partners in large law firms.

Table 15.2 also indicates that the success of minorities under the Cravath system appears to be similar to women. While minorities entered the profession in large number later than did women, their proportional representation at the partner level is still unbalanced. Of the roughly 10–13 per cent of minority associates that enter large law firms, only 3 per cent reach partner. There are several factors that account for this disparity. Minorities tend to

TABLE 15.2 *Percentage of women and minority partners and associates at large US law firms, 1986–1996*

Year	Women		Minorities	
	Associate	Partner	Associate	Partner
1986	34	7	5	1
1987	38	8	7	2
1988	41	10	6	2
1989	38	9	6	2
1990	41	10	7	2
1991	42	11	8	2
1992	41	12	8	2
1993	39	12	9	3
1994	40	12	10	3
1995	40	13	12	3
1996	41	13	13	4

Note: Data drawn from 73 large US law firms. The data are described in the data and methods section.

receive lower levels of training at the associate level and are not given the opportunities to build up a base of clients (Wilkins 2000). In addition, there are disincentives for minorities to build up the skills needed for long term success in legal practice, instead focusing on sending signals to partners that they are partner material, which leaves them less opportunities to invest in their own human capital and client networks (Wilkins and Gulati 1996). Finally, there are still indications that there are racial preferences for promoting white associates to partnership ranks (Lempert, Chambers, and Adams 2000; Wilkins and Gulati 1996).

The under-representation of women and minorities poses a number of problems for the firm. First, if human capital is randomly distributed across gender and racial lines, then losing women or minorities to other employment opportunities will diminish the overall level of talent in the firm. Second, clients are now expecting their legal counsel to be more diverse, and less diverse firms are less likely to gain new contracts. Corporate legal departments have been more favorable to hiring and promoting women and minority lawyers, leading to a more diverse client (Wilkins 2000; Hagan and Kay 1995). Many of the large US corporations and banks now require a disclosure of the demographic composition of firms who bid on projects, and use this in the hiring decision to favor firms with more women and minorities (Skolnick 1991; Silas 1984). State and local governments also require their outside counsel to be diverse, disadvantaging firms that have low numbers of women and minorities (Blodgett 1992; Knapp and Grover 1994). Finally, there are indications that more diverse firms perform better, through the ability to attract and retain clients as well as drawing on a greater pool of human capital (Pearce, Hickey, and Burke 1998; Uzzi and Lancaster 2003).

These statistics reinforce the perception that the Cravath system failed to promote equal opportunity for all competing groups and involved high personal costs that were beginning to be viewed as anachronistic with the work needs of some of the best young lawyers, creating a double bind for law firms with large proportions of women or minority associates. On the one hand, they project the perception that women are not equally represented in the firm, which limits their ability to recruit the best women associates. On the other hand, to balance gender and minority representation they would have to promote a proportionately larger number of women associates to partner relative to men, a change that would be difficult in the near term if one presumes that the proportion of men, women, and minority associates qualified for partnership at elite firm is about equal (Eaves, Png, and Ramseyer 1989; Hagan and Kay 1995; Chambers 1989; Seron 1996). This suggests that setting up new career governance arrangements would allow firms to retain women and minority lawyers with the promise of alternative and possibly more flexible work arrangements when there exist pessimistic perceptions of advancement in traditional partnership track positions.

professional services, particularly in the form of specialized professionals (economists, accountants, and so on) and of paralegals. Therefore, we hypothesized that firms that were growing at high rates, had high levels of associate exits, and had a higher proportion of support staff would be more likely to adopt new governance structures.

Overall, we found strong support for our hypotheses. Firms with greater proportions of female and minority associates were more likely to adopt new governance structures, supporting our hypotheses that these new governance structures provide a way of retaining those associates who are disadvantaged under the Cravath governance system. We also found that, the higher the proportion of female partners, the less likely a firm was to adopt new governance structures. This substantiates our argument that firms that have found ways to retain and promote to partner female associates have less need to modify their governance structure. However, the effects for minority partners differed by type of governance. For senior attorneys, or permanent associates, the results were the same as for women partners, indicating a firm that has already solved the problem of retaining minority associates. However, for staff attorneys, the effects were positive. This indicates that minority partners use their position to increase opportunities for minority lawyers, even if they have no hope of staying in the firm.

We also found strong support for our hypotheses about the structure of the labor market of the firm. We found that firms with higher growth rates were more likely to adopt staff attorneys, but that this had no effect for the adoption of senior attorneys. Because high growth rates imply an immediate need for talent, and because staff attorneys are in effect temporary employees, it is easier for the firm to hire them for short-term needs. The results also supported our hypothesis that firms with higher proportions of support staff are more likely to adopt new governance structures, since these firms will experience less cultural conflict and have existing routines for managing staff. Finally, the effects of the exit rate of associates were strong and significant, but in the opposite direction of our hypothesis. While we lack the data to explore this finding, it is possible that firms with high exit rates have less of a problem retaining associates that they would like to keep but not to promote to partner, and have a greater problem retaining associates that the firm would like to promote.

An important result of this research is that the effects of our hypothesized relations often differed by the type of governance structure. This is not entirely unexpected, since the type of governance structure used is tied to different job structures. These job structures provide different types of benefits for the firm. Thus, the type of governance adopted will depend on the situation of the firm and what the specific set of problems facing the firm is. This also indicates that different governance changes solve different governance problems, and that certain factors will affect the likelihood of adopting different types of governance structures in varying ways.

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Our results speak more generally to governance research. In a number of articles and books, Williamson (1975; 1981) has argued that the governance structure of professional service firms should be structured around the nature of transactions between lawyers providing the professional services. We make a similar argument in this chapter, in that the governance structure of law firms is primarily determined by the nature of labor contracts between attorneys. However, we differ from Williamson in that the type of labor contracts used is determined not simply by transactions between lawyers but also has to do with factors external to the transaction. In particular, we find that the demographic composition of the workforce and the competitive situation facing law firms affects whether or not law firms will adopt new governance structures. Furthermore, we find that these factors have different effects depending on the type of governance structure used, indicating that these factors external to the transaction help shape the governance structure of law firms. This suggests that the environment surrounding transactions has a significant effect on governance structures independent of the nature of the transaction.

The pressures law firms are facing are not unique to law firms, nor are the governance changes. Law firms had provided one of the more important models for the governance of professional service firms during the twentieth century; and now, as they change their governance structures, they are again serving as a model. Changes in law firms are similar to changes that are affecting accounting, banking, and consulting. While changing governance structures provides better fit in many ways to changing environmental conditions, these changes are not without costs to the profession. Concentration of ownership, the ability of firms to increase their size and market share, the consolidation of elite practice, and hierarchical firm structures are all outcomes of these changes. Yet these changes challenge the very nature of professional work by making it harder to maintain professional autonomy or acquire high-level human capital (Abbott 1988; Abel 1989). What this means for professional work is unclear but, as professions come to look more like the corporations they provide services to, it becomes harder for them to maintain their distinctiveness.

Finally, it is unclear what the performance implications of these changes are. According to Williamson, the shift towards hierarchical contracts that these new governance arrangements contain should reduce the risk of opportunism, thereby increasing the overall performance of the firm. However, these governance changes challenge the culture of law and of professional autonomy in significant ways, increasing the risk of greater conflict within the firm (Daniels 1992; Abel 1989). Thus, it is possible that these new governance structures increase performance but, if a firm moves too far away from the traditional governance structures, its performance might suffer due to the increased conflict within the firm. In a related project, preliminary results suggest that this is indeed the case, where the optimal performance level for a firm is with a hybrid governance structure (Uzzi and Lancaster 2003). In this structure, the firm maintains a traditional Cravath governance system, with some elements of these new governance structures. This provides a balance between the gains in efficiency and flexibility from the new systems while maintaining the traditional culture of legal practice and prevents conflict from disrupting the operations of the firm.

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