

Return to the Copenhagen “Magic Circle”: First Elements of a Longitudinal Study of Large Law Firms in Denmark

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1 Introduction

Almost exactly 10 years ago from the date of publication of this article, I carried out a study of the transformation of the legal profession in Denmark (Madsen 2000; Madsen 1998). The study had a focus on the fundamental changes of the legal profession which had been triggered by the mergers of what until the late 1980s was known as *law offices* into genuine *law firms*. The move away from the model of the law office and into that of a legal firm was not only of importance for the organisation of the workplace; it was, the argument went, also of significance to the larger field of law in Denmark. As suggested a decade ago, it implied first and foremost an importation of a hitherto unknown market factor into the practice of law. This was visible in a new competition between law firms and implied an approximation of the world of business to the world of legal practice. Thereby, the large firms helped kick off a process of differentiation of the legal field, which entailed the emergence of a set of increasingly differentiated segments of legal professionals. In this respect, the large law firms sought to establish themselves as a new dynamic legal business elite by for example intensely recruiting the most talented graduates in law and creating "post graduate" training schemes. This provided these young jurists with a new symbolic and professional resource of considerable economic value, that of being a large law firm lawyer. In terms of power and social prestige, a new legal elite – although moulded on an older one of supreme court barristers – was clearly in the making.

Generally, the 1998 conclusions stand. Since 1998, the large law firms have only become progressively larger. If the largest firm in 1998 employed 110 jurists, it has increased by 100 percent by 2008. Among the other top-five law firms, the average growth is up to 200 percent. This by all means phenomenal growth rate has been achieved by both an intense merger activity and as a consequence of the specific organisational structure of the large law firm. Moreover, as predicted a decade ago, they have developed into a subfield of the legal field where they employ a distinct sub-group of lawyers who act almost entirely as counsel to large businesses. They have in other words differentiated themselves vis-à-vis the profession at large and moved away from the classic politics of professionalism (Abel 2003) and towards a new legal business culture (cf. Boltanski & Chiapello 1999). Being the "first-movers" in the transformation of the practice of law, they have come to embody a new culture of capitalism (Sennett 2006), which is only gradually making its entrance into other segments of the legal field.

The rise of large law firms in Denmark is in many ways a good example of processes of Americanisation. The relationship between the US development of the organisational model of the large law firm and its adaptation in Denmark is in fact of significance for understanding the process at large. In order to capture this basic interplay, the article proceeds in more stages. In a first section, the research methodology and data set is briefly presented in order to identify the segment of law firms covered by this study. In the second and third sections, the general theory and history of the large US law firm is introduced in order to set the stage and context for understanding the comparative development of large law firms in Denmark. In the fourth and fifth sections, an overview of the

importation of the large law firm model in Denmark is provided. In a final section, in lieu of a conclusion, I more generally analyse these developments in respect to in what recently has been named the new culture of capitalism by leading sociologists (Boltanski & Chiapello 1999; Sennett 2006).

2 Research Methodology and Data Set

As indicated by the title, this article presents only elements of a longitudinal study of the transformation of large law firms in Denmark. The data derives from preliminary findings on the changes of large law firms in Denmark and should thus be read as a "note de recherche", that is, as findings from ongoing research which might be somewhat modified at a later stage. These findings will in practice be tested and validated by in-depth qualitative empirical research which will be carried out later this year. In order to facilitate comparisons between the findings on the 1998 large law firms with the situation in 2008, the new research design is generally based upon the original inquiry. That being said, a number of new issues have emerged since 1998, for example the (sub)urbanisation of the law firms (cf. Heinz, Nelson & Laumann 2001), while other questions are now of less interest, most notably questions of multiple-partnership and the competition with other legal and quasi-legal service providers, which were high up on the agenda in 1998 (cf. Dezalay & Garth 2002).

The original 1998 study of large law firms in Denmark was carried out using semi-structured interviews. In accordance with the theory of the large law firm (see particularly Galanter & Palay 1991), the law firms in question were identified on the basis of the number of lawyers working in these firms, including associates, senior associates and partners. The number of lawyers and the ratio between the different groups of lawyers (partners and associates) in fact offers more than a simple indication of the size of the firm; it is also revealing of the organisational form, the firm's ability to generate revenue, etc. In 1998, the actual criteria established for identifying large law firm was set as firms with more than 55 lawyers employed in either of the above categories of lawyers. This criteria was established on the background of the empirical data suggesting that five law firms had more than 55 lawyers employed and there was a gap – numerically and culturally – to the next tier of law firms having up to 35 lawyers working in them in 1998. Yet another delineation was geographical as the study had an explicit interest in studying the Copenhagen game of law. In practice this geographic delineation corresponded with the size criterion of law firms as all 55+ lawyer firms were headquartered in Copenhagen.

In the 2008 study, the numerical criterion for identifying large law firm is set at 110. In accordance with the data generated on the growth of large law firms in Denmark, the lowest growth of the top-five law firm is 100 percent over the last decade. Hence, 110 lawyers represent the 100 percent growth since 1998. Due to a set of mergers which have taken place since 1998, the original top-five large law firms has been reduced to four, yet a new player has emerged employing some 165 lawyers. Consequently, there is in practice once again a top-five of

large law firms which are mainly based out of Copenhagen.¹ A sixth firm with +110 lawyers employed can be identified, yet it is the product of a series of mergers of provincial firms and is only just about to carry out a further merger in order to have some 25 lawyers – as many as at its four main Jutland offices – in the capital. As observed in 1998, there is in 2008 also a gap between this top and the next tier of law firms. The next tier of law firms have all less than 75 lawyers employed – the number 6-10 on the ranking of the top-10 largest law firms in Denmark have between 30-75 lawyers employed. This represents however an average of 100 percent growth since 1998.

The qualitative research methodology consisting of semi-structured interviews deployed in 1998 (and 2008) targeted four different levels of the organisation of these firms. Among the lawyers, the distinction between associates, senior associates and partners utilised by the firms themselves was kept and individuals from each of these categories were interviewed. With the purpose of exploring organisational issues further, in 1998 a fourth category was included which was the one of director or administrative director. In order to limit the size of the inquiry, as concerns the category partners, partners who have or had been involved in the general management of the firms were explicitly targeted. It is clear that, as Ditlev Tamm has noted, the most interesting information a lawyer can offer is often restricted by the professional confidentiality, while what can actually be revealed tend to become self-praise (Tamm 2008, 7). However, in the context of examining large law firms as social structures driving change within a larger legal field, this has turned out to be less so problematic. Moreover, by using anonymity and avoiding obvious taboo questions related to revenue and clients (cf. Smigel 1969), the interviewees have generally been willing to act as informants.

3 The Original US Large Law Firm

As suggested, the number of lawyers employed matters when it comes to understanding large law firms. What in fact matters even more so is the organisation – numerically and organisationally – of the different subgroups of lawyers. Since the beginning of the 20th century, the distinction between the owners – the partners – and the employed lawyers (associates and senior associates) has been fundamental to the firm's ability to generate turnover and revenue. The interplay of these two groups of lawyers is in fact the organisational core of the large law firm. This can be traced back to the very first large law firm, the now legendary New York firm Cravath, Swaine & Moore. The firm pioneered the idea that the company should hire a considerable number of associates who stayed at the firm for a limited time period as this provided for a fundamental organisational dynamic: It allowed for attracting a larger number of clients, servicing more specialised legal needs and, needless to say, provide better margins for the partners.

1 As in 1998, the law firm Poul Schmidt acting as the permanent Legal Adviser to the Danish Government (Kammeradvokat) is excluded from the inquiry. It currently employs some 106 lawyers.

Generally, the "Cravath-model" or simply "Cravatism" implied that the firm continuously employed a large group of younger attorneys, who were rigorously selected from the best law schools and given in-work training in order to develop specialisations. They were hired for a non-defined but limited period, unless they made partnership, which in practice was only the case for a select few. The latter is the most striking organisational feature of the large law firm, namely the battle for partnership. This so-called "to-the-top-or-out" – or simply "op-or-out" – mechanism became standard procedure in most large law firm in the US already in the middle of the 20th century. Thereby, a highly competitive environment known as the "tournament of lawyers" was created (Galanter & Palay 1991). At Cravath, Swaine & Moore, between 1906 and 1948, 454 associates were hired right after having completed their law studies. Of these, 36 made it to partnership (7.9 percent) and only 16 remained with the firm as permanent associates despite not having been offered partnership (3.9 percent). In average, the time spent from entering the firm to achieving partnership was during this period 6.8 years at Cravath, Swaine & Moore (Smigel, 1969, 116 and 137).

This data suggests some key elements for understanding the original law firm, namely the number of associates making partnership, the time spent as associate before achieving partnership and, finally, other possibilities for remaining with the firm without achieving partnership. A fourth relevant element for understanding the basic organisational structure of these firms is the ratio between partners and associates. This provides an indication of both the possibilities for making partnership for the associates and the firms' capability in terms of generating revenue. Richard Abel's data from 1984 suggests a general pattern of the partner ratios of leading Wall Street law firms which is still indicative: Cravath, Swaine & Moore 1:3.8, Davis, Pork & Wardwell 1:3.29, Weil, Gotshal & Manges 1:3.1, and Skadden Arps 1:2.6 (Abel 1989, 188-). What might be even more so interesting is that the partner ratio since 1984 has increased (Galanter & Palay 1991, 58). This has generally made it harder for associates to become co-owners of the firm and, thereby, gain a share of the profits. This, as we will see below, is further complicated by new trends towards so-called lateral hiring, that is, hiring of external lawyers directly for partnership positions.

Understanding the "pure model" of the large law firm requires a few additional remarks on its basic organisation mechanisms. As already suggested, the entrance to these firms is well guarded. Since the original Cravath firm, the main ticket to a large law firm (originally these were synonymous with Wall Street law firms) was academic excellence excelled at a top law school. The 1962 numbers speak for themselves: 71.8 percent of the partners at the top-20 New York large law firms were graduates from Harvard, Yale and Columbia (Smigel 1969, 39). And, this pattern has generally been maintained. US large law firms have until recently (see below) recruited almost entirely from the top law schools, in practice a national top-20, which includes both Ivy League law schools and elite state law schools. Yet, graduating from a top law school is not in itself sufficient. These firms have long only targeted the best 10-15 percent of the graduates. These graduates were recruited at yearly job fairs at the campuses of the top-20 law schools. Making recruitment a fair game, the top law firms had a gentlemen agreement on a fixed starting salary for graduates.

As in any other business, recruiting the elite of graduates is both costly and burdensome. To facilitate this process, the large law firms soon developed a number of schemes of pre-recruitment. The notion of summer associates, which made it into the vocabulary of Danish law firms in the mid-1990s, derive from a US tradition of summer internships (summer clerks/summer interns). The objective was to create a situation of pre-evaluation before offering permanent employment. In fact, the interviews for summer internship were been taken as rigorous as interviews for associate positions. According to Richard Abel, the top-25 US large law firms offered 88 percent of their "summer associates" permanent employment as attorneys in 1987 (Abel 1989, 216). The importance of pre-recruitment thus only inflated the importance of academic excellence for entering these companies. The real issue, that of the race to partnership, is however left for the period when the graduate has formally entered the company as associates.

It is well-known from both studies in the US and the study of CPH large law firms that academic excellence is far from the only requirement for making partnership. In any case, all recruited graduates have a proven track of academic excellence. The biggest question in relation to large law firms, when seen from the point of view of the associates, is that of how to make partnership. Paul Cravath, the founder of "Cravatism", pointed out the schism between academic excellence and ability of obtaining partnership with the following words in a 1920 Harvard Law School speech: "...Brilliant intellectual powers are not essential. Too much imagination, too much wit, too great cleverness, too facile fluency, if not leavened by a sound sense of proportion, are quite as likely to impede success as to promote it" (Swaine 1946, 226). According to Cravath, what the clients ask for in a lawyer is one who is "honest, safe, sound, and steady" (ibid). While the ability to interact with clients is of some importance, partnership is in the end of the day in most cases dependent on the ability of the associate in question to generate revenue. Partnership, in the original model of the large law firm, is thus typically offered in two cases: If an older partner is leaving a younger associate is promoted to take over his/her department, clients and revenue. Or, if a younger associate has developed a legal specialisation which is not already covered by another partner or in itself capable of generating enough additional revenue to the firm. In the latter case, which is the most typical case, this is a question of having cultivated enough new clients and consolidated this new line of business.

4 The Large Law Firm Facing the Market: Bureaucratisation and Rationalisation

The model of the large law firm presented so far is to an extent idealised. For example the relationship between partnership and revenue cannot be set at a fixed rate as different fields of law generate considerably different amounts of income. A firm might in fact have strategic interests in offering a "one-stop-shop" of legal services to their clients, even if some specialisations are less lucrative, and therefore offer partnership in those fields of law (cf. Heinz, Nelson

& Laumann 2001). However, the idealised model of the large law firm is important for two reasons. One, when the first large law firms were established in Copenhagen in the late 1980s, they imported a relatively purified vision of the organisation of the large law firm similar to what is described above. Two, it is on the background of this framework model that one can appreciate the subsequent transformations of the model. As the implementation of the large law firm model in Denmark obviously was a process of Americanisation (cf. Dezalay 1990), it is relevant to point out the recent organisational changes within large US law firms before turning to the Danish case, where these changes in fact arrived with the usual trans-Atlantic delay.

It has been argued that the 1960s was the "golden age" of the original model of the large law firm in the US (Galanter & Palay 1991). Since the 1970s, the usage of the "up-or-out"-mechanism has however been less mechanic. If it is indeed true as suggested above that the (potential) promotion to partnership constitutes both a core organisational dynamic and the main driving force of the associates, it is relevant to note that already in the 1970s a number of New York law firms broke with this principle. They committed what organisationally might be considered a cardinal sin: They started recruiting external lawyers in partnership positions. Equally, merger activities caused a considerable influx of "external lawyers" as partners. In 1991, Galanter and Palay estimated that in about a fourth of the top-500 law firms in the US some 50 percent of the partners had arrived from the outside through "lateral hiring" or through mergers (Galanter, Palay, 1991, 54). Evidently, this was the cause of unrest among the senior associates struggling for partnership. At Cravath, Swaine & Moore, for example, this implied that the associates who did not make it to partnership remained with the firm for an increasingly shorter period. In the 1970s, these non-promoted senior associates stayed at the firm for an average of 5 years and by the mid-1980 and average of 3.7 years. This in practice meant that some 20-25 of all associates left the company every year (Abel 1989, 193-194).

"Lateral hiring" is but one example of the relative break-down of the original model; more strikingly is the more general multiplication of the number of different professional positions offered in the large law firms. These changes were generally due to the impact of market forces on the organisation of the large law firm in the sense that a growing competition became increasingly visible since the 1970s (cf. Heinz, Nelson & Laumann 2001). While gentlemen agreements regulated much of the interplay of large law firms during the golden age, lateral hiring (and particularly lateral hiring of whole sections of other law firms) changed the game for good. These changes in recruitment patterns and thereby the basic organisational structure and culture of the firm is best explained by the ferocity of the competition among large law firms in the US. Behind the well-kept façade, these firms have come to face cut-throat competition. The reason for this new market force in the organisation of the practice of law is not simply the internal dynamic of the "tournament of lawyers", but probably more so the effect of "law firm shopping" by clients. As argued by Heinz, Nelson and Laumann, the enlargement of law firms and, thereby, the professionalisation and specialisation of their services has in the long-run caused a corrosion of the personal relationship with clients (Heinz, Nelson & Laumann 2001). Consequently, clients feel less so obliged to rely on

the same law firm for all referral work. Moreover, as the role of in-house legal counsel in large corporations has changed from that of a specialised legal service provider to becoming a part of the management, in-house counsels have come to have a more economic view on the referral of legal work. In other words, bonds to former workplaces or personal ties have increasingly lost its importance to economic interests.

The impact of this economisation of the practice of law, I would argue, is in the US context clearly visible in the multiplication of the forms of employment in large law firms. If the "Golden Age" law firm mainly relied on associates and partners, as well as a secretariat, contemporary law firms employ a far broader set of professionals. In the US context the fact that so-called para-legals have become one of the fastest growing professions (alongside prison guards!) is in itself telling of this rationalisation and bureaucratisation of these service firms. Para-legals basically offer cheap labour for carrying out the more routinised parts of legal work. Another, even more conspicuous indication of the same development is the turn towards hiring low-profile lawyers alongside the usual elite group described above. While the associates fighting for partnership have continuously been picked at the best law schools, a new group of so-called staff attorneys has been recruited from average law schools. This is also reflected in starting-salaries. According to Galanter and Palay, staff attorneys are in average only paid about the half of regular associates (Galanter & Palay 1991, 65).

A further indication of this new focus on the costs of legal work is reflected in the usage of "temporary attorneys", e.g. lawyers working on a contractual basis for a limited period (Berkman 1988). In fact, since the late 1980s, a growing market for subcontracted legal services has emerged in the US. A number of smaller law firms offer lawyers to the larger firms on a contractual basis. With the success of IT outsourcing and off-shoring pioneered by the large IT service companies such as EDS and IBM, the idea of outsourcing of legal work – in the context of law firms a strictly regulated form of subcontracting – has in fact made its entrance in the game of large law firms in both the US and the UK (Madsen 2005). What has been at stake so far has mainly been back-office functions and Business Process Outsourcing (BPO). Yet, there are clear indications that this new trend will eventually imply more than simply para-legal work. The US-Indian firm Atlas Legal Research, for example, offer services within the preparation of Litigation Briefs, Multi-Jurisdictional Legal Surveys, Corporate Compliance Analyses and even Litigation Support (Madsen 2005). Needless to say, these new legal service providers based out of Bangalore and New Delhi have entered the legal market due to their price-quality ratio – and with a focus on the former. The fact that a qualified Indian lawyer is only paid an hourly rate of \$ 20 makes this turn towards India – the "world's back office" – inevitably in the long run, even within the world of big firm lawyering.

A final and equally important change of the organisational structure of the large law firms concerns the very position of partner. The described bureaucratisation of large law firms by the emergence of a set of new positions has generally put pressure on the "op-or-out" mechanism. In order to avoid losing talented lawyers who are not qualified for partnership or are not interested in partnership, many companies have introduced intermediary positions such as Permanent Associates. Most remarkable is the fact that in the

largest law firms not all partners are equity partners anymore, that is, although they all share the title of partner they do not all share the firm's profits. Also, various schemes have been introduced in order to make the achievement of full partnership a longer and more gradual process (for instance Junior Partners). The bottom-line is clearly that these firms have undergone a process of rationalisation and bureaucratisation which correspond with the increased inter-law firm competition. This more relativised picture of the large law firm is also important to keep in mind when one examines the circulation of the model to Europe, Latin America as well as Asia (cf. Sokol 2007). In fact the imported model of the large law firm contains elements of both the pure large law firm and the more bureaucratised legal service firm of today.

5 The Making of "The Firm": The Evolution of CPH Large Law Firms

The emergence of large law firms in Copenhagen was the product of market demands, as well as it a transplantation of organisational know-how which a number of Danish lawyers had acquired while studying and working in the US. This implied a fundamental change of a set of barristers' chambers, which almost overnight were turned into law firms. While a group of younger lawyers provided the knowledge and know-how, the transformation was driven by more established lawyers who recognised that changes were necessary if Danish law offices were to be able to provide legal services to their increasingly larger and internationalised clients. Also, the changes in Denmark were an replication of what already had taken place in for example the Netherlands and the UK during the mid-1980s, where a series of mergers had taken place among solicitors' firms (Trubek et al. 1994).

What is curious about the Danish case is that the mergers took place simultaneously but independently at more law offices within two days in 1988. Two further mergers, creating a total of four large law firms, immediately followed this first move. This triggered a more general transformation of the business of law, seeing smaller offices merging or counter-reacting by establishing inter-firm cooperation such as chains of law offices. In 1995, a further round of mergers among the now already relative large law firms took place. This created firms which employed up to 110 lawyers (Madsen 1998). While it was assumed that these firms were now as big as the legal market allowed, yet another round of mergers took place among the larger law firms in the 2000s. By 2005, the largest law firm was now twice as big as in 1995 and the firms in the top-five group all grew at a phenomenal rate during the period. Among the second-tier law firms these changes were equally reflected and one can observe a similar growth pattern. In fact, the second-tier law firms now employ up to 75 lawyers, which is as many as the average top-five law firm employed a decade ago. Certainly, the merger activities among this group of law firms are far from over.

This "big bang" in the business of law (Dezalay 1990) was initiated by what in the mid-1980s was considered the leading barristers' chambers in

Copenhagen. These law offices had throughout the 20th century established themselves as the elite of the legal profession (cf. Krarup 1987) on the basis of their exclusive right to represent clients before the Supreme Court (Tamm 2008). These *legal honoratiores* provided however the very counter-image to what was being created by the mergers among the increasingly larger law firms. According to younger lawyers interviewed in 1998, the change from barristers’ chambers to large law firm to a large extent corresponded with the fact that the older generation of lawyers was leaving practice at the time (Madsen 2000). This further corresponded with the “homecoming” of a set of dynamic young lawyers who were interested in transplanting ideas acquired overseas in their Danish workplaces. Sociologically, it is thus important to note that the large law firms in Denmark – at least the first generation – was to a large extent built on the combined resources of the prestige of the old *noblesse de robe* and the international outlook of the younger LL.M.’s.

This also explains the ability of these lawyers of not only transforming themselves from being *legal honoratiores* to becoming corporate lawyers, but also how they maintained an elite status. In other words, the combined resources of social capital and meritocratic and business capital were the foundations of these firms. As any other social transformation, this also implied, however, that despite the air of revolutionary change which accompanied the rise of these “new” firms, they greatly relied on a structural and historical continuity in the pursuit of the “new”. In fact, it is only recently and among the second-tier firms that new-comers have managed to penetrate the social closure of this elite and challenge the status quo. Allowing market forces to play a decisive role in the practice of corporate law has however enabled a series of smaller firms to enter the game. While hardly as lucrative as the dinosaurs of the top-five, these newcomers have been good at – even better than some of the top firms – implementing an effective organisation which combines the prospects of partnership with a proportionate degree of bureaucratisation of the firm. It remains one of the challenges of the old elite that the social capital they once relied on is losing its value in respect to the dominant parameter of current corporate law: the market.

6 From the Town Square to the Harbour Front: Cultural and Organisational Transformations

As described in previous works, the rise of the large law firms in Denmark also had “demographic implications” (Madsen 2000). While leading law firms in Copenhagen traditionally had been situated in Frederiksstad, the bourgeoisie part of town built around the Royal Palace, the large law firms all sought to situate them in new more modern surroundings. In 1998, the closest to a Manhattan skyline offered in Copenhagen were the buildings facing the Town Square where neon light and (relatively) modern architecture were aplenty. In 1998, the décor of these firms was very modern by the standards of the legal profession in Denmark. While solidness and timelessness had been a trademark of the traditional barristers’ chambers, the post-1988 large law firms invested in

the symbolism of being dynamic and corporate. It is thus interesting to note that these firms since 1998 have made a further move. Whereas the 1998 large law firm was modern in respect to its own predecessors, the 2008 large law firm has opted for being market-leaders in terms of building imposing headquarters. Few, if any, large Danish companies can in fact compete with the largest Copenhagen law firms when it comes to investing in modern architecture. It is fair to say that three of the top-five law firms have erected some of the most imposing buildings along the revamped Copenhagen harbour front at Langelinie. The symbolism is plain to tell: While the 1998 large law firm was desperately seeking to catch up with the world of corporate business, the 2008 large law firm has firmly situated itself at the cutting-edge of the new economy. And, in Copenhagen the new economy has left downtown and its stuffy State institutions and opted for an unrestricted view of the sea.

While these changes can easily be observed on a symbolic level, the creation of the Copenhagen large law firms has organisationally been a much more complicated process. Substituting the timelessness of the barristers' offices with the dynamics of a market-driven organisation has been the most enduring challenge for turning the idea of the large law firm into Danish reality. While US large law firms in fact were established over a period of some 100 years, the "big bang" which created the Danish counterparts meant in practice that there was a tremendous need for organisational restructuring from day one. The fact that these firms since then have gone through a steady flow of mergers and processes of market adaption has only more so put the organisational chart under permanent pressure. In these regards, it is important to note that the predecessor of the large law firm was often mainly sets of chambers, that is, a common office for more but autonomously working lawyers. Gaining new letterheads and increasingly imposing offices were self-evidently not sufficient for building up not only a common office culture but also a corporate culture in the practice of law.

In the 1998-study, the challenge of becoming a "firm" was clearly at the top of the agenda at many of these firms. All of them had created a position as director or administrative manager in order to help this process. While these executives were recruited as corporate experts and instigators of organisational change, they remained in the shadow of the real power-holders: the partners. It is of course a curiosity of the organisation of the large law firm that all the major stockholders, the partners, are present on a daily basis. In 1998, the solution was very much to seek to develop a group of managing partners which implemented decisions made at the quarterly partner meetings, as well as took care of the day-to-day issues of running the business. To facilitate this role, the administrative manager assisted the managing partner. In 2008, significant progress has been made in this respect and most of the top-five firms have built up a structure of a board and a direction in order to imitate the structures of mainstream corporations. Besides having regular meetings in the entire group of partners, in most cases the organisation consists of a smaller board (or executive committee) of some 5-6 partners elected at the partner meetings, a managing partner and an executive management made up by non-lawyers. There is no consensus on the exact organisational chart among the top-five law firms, yet the development towards a more conventional corporate structure is plain to see.

The other key organisational dilemma in 1998 was the question of creating a corporate culture. Creating executive committees and executive management obviously was but one solution to this problem. However, the real question of creating a common business culture has been only gradually achieved. In 1998, the challenge was to get the many partners and associates to work together as one firm. This was particularly difficult due to the effect of mergers, as well as the simple fact that the older partners were accustomed to working individually. By the demise of the older generations of partners, the current bulk of partners have now worked in large law firms for up to 20 years. The associates have never known the predecessors to the large law firm and have, thus, more easily assimilated the culture of the large law firm. In 1998, the closely linked issue of specialisation was also greatly debated, but by 2008, by the mere effect of growth, specialisation has become the mainstream. As shown by Heinz, Nelson and Laumann in the US case, the general corrosion of lawyer-client relationships by the enlargement of respectively business corporations and law firms have only facilitated the process of specialisation (Heinz, Nelson & Laumann 2001). In Denmark this has certainly also played a role, but it is important to underscore that Copenhagen remains provincial in this respect. Danish lawyers have in fact very aggressively shopped for clients by becoming members of growing numbers of boards (Berlingske Tidende 2004). The situation in 2008 is that large law firms in Copenhagen have moved considerably in this regard, yet they generally remain stuck between the individuality of the partners and the general interests of the firm. Compared to the US situation, this might very well be the product of the relative provinciality of the legal market in Denmark.

7 Implementing the Model: Up-Or-Out in Copenhagen

As suggested above, one of the major characteristics of the large law firm is the organisational dynamic created by the race to partnership. When large law firms were first established in Copenhagen many of these sought to implement the purified version of to-the-top-or-out model. Ten years later, in 1998, the tide had already turned in favour of the more bureaucratised law firm. This was both due to the interest in creating genuine firm structures and as a consequence of the in-built irrationality of the original model of "op-or-out". In most firms, intermediate categories of lawyers such as permanent associates and non-equity partners were introduced during the 1990s to satisfy both employee demands and to keep the partner ratio at a sufficiently high level. In practice, however, the intermediate categories of lawyers have not played a significant role. The vast majority of associates have left these firms if they have not been promoted to partnership within a period of some 7-8 years. Instead they have moved to other jobs, typically either as in-house counsel or as partner or senior associate at smaller law firms. In these respects, there are no significant changes between 1998 and 2008. Intermediate categories of lawyers remain the exception to the "up-or-out" model.

New partners in the 1998 large law firms in Copenhagen were generally recruited internally, yet the bulk of the partners have arrived through mergers. A by-product of the hectic merger activities was the fact that many of these firms

were "partner heavy", that is, they had an disproportionate number of partners in respect to the number of associates. This generally impaired the firms' ability to generate revenue. The partner ratios of the top-five law firms in 1998 were as follows, starting with the highest partner ratio: 1:2.27, 1:2.10, 1:2.00, 1:1.14 and 1:1.01. In the 1998 analysis it was striking that the partner ratio in large law firms in Denmark was generally too low. There was also a considerable focus on this and many of the interviewed younger associates even feared for a general cease in the recruitment of new partners. The subsequent development has confirmed the need for higher partner ratios. However, the recruitment of partners through mergers has once again been the source of the biggest intake of new partners. Nevertheless, the 2008 numbers clearly indicate that the firms have now established ratios which are far more in sync with international large law firms: The partner ratios of the top-five Copenhagen law firms, starting with the highest, are as follows: 1:3.72, 1:3.40, 1:2.93, 1:2.51 and 1:2.40.

What cannot be immediately deduced from these figures is that the firms which have been through most recent merger activities have generally the lowest partner ratios. This however confirms that the organic growth, which is assumed in the "to-the-top-or-out" mechanism, favours the partner ratio. More generally, these figures indicate that the position as partner in large Copenhagen law firms have become increasingly lucrative over the last decade as a spin-off of the organisational change. The question is then, what does it take to become a member of this economic elite of large firm lawyers. Organisationally, when 2008 is compared to 1998, the road to partnership has become more streamlined; most firms have developed a partnership track in order to provide transparency to a process which obviously is on the mind of many of the associates when they reach a certain stage of their career. "Should I stay or should I go", the refrain of the Clash classic, was the question most senior associates asked themselves after some 5-6 years of work in the top-five law firms in 1998. The response from the management and board has been to develop schemes that more clearly indicate whether associates were among the happy few who were seriously considered for partnership. The actual requirements for partnership remain *grosso modo* similar to those described above: As replacement for a retiring partner or, most importantly, if a younger associate has developed a legal specialisation which is not already covered by another partner, or if covered by an existing partner, the younger associates will still be capable of generating sufficient revenue.

This inevitably leads to the next question of who are these associates? As suggested above in the introduction to the original model of the large law firm, the organisational dynamic created by the "up-or-out" mechanism is closely linked to an objective of having a flow of younger associates at the firm. At Wall Street, the recruitment of these in practice temporary associates from the top law schools have been facilitated by the fact that most students coming out of Yale, Harvard, Colombia, etc. are actively seeking a well-paid job after graduation in order to rapidly pay off their student loans which are often in the range of \$150.000. In Denmark, this is hardly the case, yet the large law firms have nevertheless managed to become the employees of many of the most talented graduates in law in Denmark. This positioning in respect to the graduates was however not achieved overnight. The fact that the top-five firms were created on the background of already well-known top law offices obviously helped the

process of branding of these firms among students. Besides sponsoring student events, the top-five law firms have all implemented various models for pre-recruitment among law students. While the 1998 law firms offered various law student positions as "summer associates" or "stipends", the 2008 law firms have more aggressively renamed these as "trainees". The objective is to more clearly indicate that law students working as trainees are supposed to eventually be hired as regular attorneys. It is curious in this respect that many partners in the 1998 law firms found the idea ineffective as it categorised the candidates as students, whereby the ladder towards partnership was made even longer (Madsen 1998). By the bureaucratisation of the 2008 firm these well-meant scruples have been put to the side and the recruitment of law students has become even more competitive among the large law firms.

The phenomenal growth rate of these firms has obviously only increased the in-take of graduates by similar figures. According to the Danish Lawyers' Association, at least 20 percent of all lawyers in Denmark work at one of the top-10 law firms, and about 25 percent of the total of lawyers are generating half of the total turn-over of the legal profession at large (Advokatrådet 2007). This basically implies that that the large law firms now have to recruit a more significant percentage of the total output of graduates in law, estimated at some 10 percent of the total output. In 1998, the number was considerable lower and the recruitment strategy was to a large extent based on *noblesse oblige*, that is, that these firms saw themselves as the natural employers of the most brilliant law students. Good academic results are clearly still a prerequisite but there is little doubt that the need for more graduates has lowered the standards, a tendency which was also indicated in the 1998 study (Madsen 1998). That being said, the ones that actually make it to partnership might very well still be the top-10 percent students. There is no data on this and the firms have little interest in revealing too much in this respect. What is certain, however, partnership is not achieved by only academic facility but more so on social abilities vis-à-vis clients (and the group of partners), as well as physical stamina as partnership in all cases requires working very long hours for long periods.

8 The CPH Magic Circle and the New Culture of Capitalism

The mere growth rates of the top-five law firms suggests that the percentage of the legal profession working in large law firms is now that high that they do not as clearly constitute a distinct elite than they did in 1998. As noted, there is no qualitative or quantitative data available on who the partners actually are and whether they despite these transformations in fact remain a small, socially discreet, legal elite. In sharp contrast to the outspoken and public Copenhagen barristers who lend their name to many of these firms, these lawyers live well by living quietly. No publicity is almost good publicity in this particular game of providing legal services to big businesses. An indication of the elite status of these firms and their lawyers is however the way in which the "rejects" of the "up-or-out" mechanism easily find employment at other law firms or large businesses. As suggested in a ground-breaking study of Chicago lawyers (Heinz & Laumann 1994), the top law firms are in fact major producers of partners in

the second-tier firms, as well as they provide many of the entrepreneurs setting up new law firms. This pattern can now also be observed in Copenhagen, where the law firms ranked 6-10 are recipients of many of the lawyers who are not fit for partnership at the top firms but very welcome at the next level. Another development, which indicates this new elite function of the top-five law firm lawyers, is the fact that the smaller firms aggressively recruit associates from large law firms. Using the uncertainty that inevitably surrounds the race to partnership at large law firms, lateral hiring (in a vertical sense) has become normal in Copenhagen, even if it remains a highly discrete strategy. Moreover, the merger fever has made whole sections of some of the large law firms move towards smaller firms. The gentleman agreement observed in 1998 that you do not headhunt lawyers from other firms seems increasingly a thing of the past in 2008.

More generally, the image of the game of large firm lawyering anno 2008 corresponds well with the studies carried out on the evolutions of the world of business at large. Leading sociologists such as Luc Boltanski has in this regard suggested the emergence of a new spirit of capitalism (Boltanski & Chiapello 1999). Building on Max Weber's famous analysis of the Protestant ethics and the Spirit of Capitalism, according to Boltanski, three stages in the development of capitalism can be observed: 1) Family capitalism where the figure of the individual bourgeois proprietor was the ideal-type; 2) The rise managerial class and the "organisation man"; 3) The new spirit of capitalism and the emergence of project-oriented work, flexibility and the multi-tasking individual. While the analysis proposed in this article is mostly concerned with organisation – indeed creating the "organisation lawyer" of the large law firm – the conclusions however tend to point towards the third category in Boltanski's analysis; that is, the big firm lawyer of the 21st century is in fact not an "organisation man" but a reflexive actor of the new economy. For the majority of associates, working for a large law firm is in fact not an end in itself but one step of a professional trajectory which might very well bring them to very different destinations. In that sense, the model of the large law firm based a steady flow of brainpower and manpower rather than a hierarchy of loyal employees signals the new economy. It even embodies the new spirit of capitalism.

Another high-profiled sociologist, Richard Sennett, has in somewhat similar ways analysed what he brands the Culture of the New Capitalism (Sennett 2006, see also Sennett 1998). Like Boltanski, Sennett takes a starting-point in Max Weber's sociology, in this case the latter's notion of the "iron cage" of bureaucratic institutions, in order to explain how the new economy's attempts to free the individual of the ills of bureaucracy has created new social and individual traumas. Clearly, employees such as associates in large law firms have to see themselves as assets in constantly transforming organisations and economies if they are to gain from the new conditions of work. Yet, what Sennett argues is that only a very limited group of human beings are in fact able to thrive under such highly unstable and risky conditions. In order to so they have to be greatly individualistic, think in the short term and first and foremost always be ready to move (Sennett 2006). If it is true, as this article suggests, that the large law firms have created a new elite of the legal field, they have in fact also created a new sort of lawyer which in many ways resembles the workforce

of the new economy analysed by Sennett. Their forerunners, a bourgeoisie proprietor class working out of relatively small offices, were the great orateurs and often saw their practice as a sort of "professional calling". In a nutshell, they were the public men in the sense Sennett has given to the term (Sennett 1977). With the exception of the select few making it to partnership, the new generation of lawyers will for the most part never be the proprietors of their workplace. Rather than building up their own businesses and organisations, their trajectories will instead be marked by questions of adaption, upskilling and moves. The rise of the large law firm does indeed endorse a species of the lawyer which could hardly be more different than the one presented in popular TV shows and novels. The "TV lawyers" are not only increasingly a creation of fiction, they are also a thing of the past.

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