Why Global Law Firms Should Care About Diversity: Five Lessons from the American Experience

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A. Introduction

Globalization has finally hit the legal services market. After revolutionizing the product and capital markets, the combined influence of the rise of multinational corporations, the spread of new information technology, and the constant quest by lawyers to be present, as Kurt Vonnegut wryly notes, any place 'where large amounts of money [are] about to change hands'[1] has pushed an ever growing number of large law firms and other legal service providers to 'go global'.[2] And lawyers around the world are struggling to determine what globalization means for their professions and practices.

Not surprisingly, lawyers in Europe, Asia and other areas who are seeking to develop competitive global firms, often look to the American experience for inspiration and ideas. US firms, after all, were the first to venture overseas. More fundamentally, Americans pioneered the large law firm, and the fast paced, entrepreneurial, and business oriented style of lawyering that is at the heart of global legal practice. Add the fact that much of the world's aspiring global legal elite either attended an American law school or interned in a domestic or foreign office of a US law form – or both – and it is predictable that what legal theorists call the 'American mode of the production of law' has become the blueprint for globally minded lawyers the world over.[3]

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1 Kurt Vonnegut, Jr., *God Bless You, Mr. Rosewater* (Delacorte Press, New York, 1965) 17.

2 See Richard L. Abel, 'Transnational Law Practice' (1994) 44 *Case W Res L Rev* 737, 764–65. As my colleague Detlev Vagts reminds us in his contribution to this volume, many parts of the legal services industry remain unaffected by this trend. Detlev F. Vagts, 'The Impact of Globalization on the Legal Profession', see above.

3 See Trubek, Dezalay, Buchanan and Davis, 'Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas' (1994) 47 *Case W Res L Rev* 407, pp. 423–426.

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The world, however, should pause before uncritically accepting the self-interested claims of the US bar about the competitive and professional virtues of American-style legal practice. For just as the American mode of manufacturing (often dubbed 'Fordism') that a past generation of US businesses proclaimed to be the most efficient mode for the production of goods proved ill-suited to a global, knowledge-based economy, so the American mode of legal production (appropriately dubbed 'Cravathism'[4] in honour of the US firm that over a century ago pioneered the practices that most US firms continue to follow to this day) contains structural and ideological biases likely to inhibit the formation of efficient and stable global law firms. To see these weaknesses, global lawyers must look carefully at what may at first appear to be an unrelated trend: the effort by women and minorities during the last 30 years to become part of and integrate into the corporate sector of the US legal profession.

Globalization and diversity are almost never expressly linked beyond the trite (albeit true) observation by diversity advocates in the US that the majority of the world's population is neither white nor male. This truism, and the corresponding claim that 'diversity is good for business', however, obscures as much as it reveals about the important connection between these two concurrent trends.[5] Whether or not the world's undeniable demographic diversity will be good for the business of global law firms depends upon whether these institutions learn how to compete in a global arena in which many of the conditions that spawned the American model of legal practice have been fundamentally transformed. The question is not, therefore, whether or not diversity is 'good for business' but rather whether global law firms can successfully adapt to a competitive environment that will by any measure be more multicultural, multidisciplinary, and multidimensional than anything that these firms have ever faced before. Those seeking to answer this fundamental question would do well to pay more attention than most American firms typically do to the structural and competitive implications of the US record on integrating women and minorities into the corporate 'hemisphere' of legal practice.[6] A careful review of this history, I submit, yields important lessons about the limitations of 19th century Cravathism as a blueprint for 21st century global law firms.

The rest of this essay provides a brief overview of the lessons global lawyers can learn from the American experience with diversity in large law firms. Section B *post* outlines the changing demographics of the American legal profession and the

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4 Ibid. at p. 423.

5 For a general critique of what I have elsewhere labeled 'self-interested diversity arguments,' see David B. Wilkins, 'Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars' (1998) 11 *Geo J of Legal Ethics* 855, pp. 858–867 (1998).

6 Heinz and Laumann argue that the US legal profession can roughly be divided into two hemispheres: one that serves corporate clients and the other that serves individual clients. See John P. Heinz and Edward Laumann, *Chicago Lawyers: The Social Structure of the Bar* (Russell Sage Foundation/American Bar Foundation, New York, 1982) pp. 319–22. As anyone familiar with recent trends knows, large law firms are not the only professional service firms competing in the corporate hemisphere.

continuing struggle to integrate corporate firms. This history, I argue, sheds important light on five issues crucial to the success of global law firms: size, culture, structure, career paths, and professional ideology. Sections C-G *post* examine each of these lessons in turn. Section H *post* concludes by emphasizing why these lessons are important for non-US based firms.

B. Diversity in the American Legal Profession: The Best of Times and the Worst of Times

In his classic study, The Wall Street Lawyer, Erwin Smigel succinctly captures the recruiting standards of America's large law firms at the height of what is sometimes referred to as the profession's 'golden age'.[7] As Smigel reports, more than academic performance, firms in the 1950s and 1960s were looking to hire 'Nordic [men who have] pleasing personalities and "clean cut" appearances, are graduates of the "right schools", have the "right" social background and experience in the affairs of the world, and are endowed with tremendous stamina'.[8]

Not surprisingly, these criteria excluded virtually everyone other than white male Anglo-Saxon Protestants from consideration. Until the late 1960s, Jews were almost completely excluded from 'white shoe' firms.[9] Catholics, particularly Catholic immigrants, fared little better. Although quotas on Jews and Catholics were beginning to weaken by the time Smigel conducted his study, the exclusion of blacks and other racial minorities was so pervasive as to be virtually unnoticed and unquestioned. Smigel reports, for example, that 'in the year and a half that was spent interviewing, I heard of only three Negroes who had been hired by large firms'.[10] The possibility that there might be Asian or Hispanic lawyers was not even considered.

The largest group excluded by the 'golden age' recruiting and promotion practices Smigel describes, however, was women. There were no women lawyers on Wall Street before World War II and many prestigious law schools, such as Harvard, did not admit women until the 1950s. And while Smigel reports that as of the time of his study 'most large law offices now do have some women in their organization, very few become partners.'[11]

In the four decades since Smigel's study, there has been a revolution in the

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[7] Erwin Smigel, *The Wall Street Lawyer: Professional Organizational Man?* (University of Indiana Press, Bloomington, 2nd edn, 1969). The quotation marks are meant to emphasize that this period was only 'golden' for the narrow range of lawyers who were allowed entry into these institutions.

[8] Ibid. at p. 37.

[9] See Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (University of Chicago Press, Chicago, 1991) p. 25.

[10] Smigel, *supra* note 7, at p. 45.

[11] Ibid. at p. 46.

demographics of large law firms. Jews and Catholics have, for the most part, been fully integrated to the point where it no longer makes sense to talk about 'Jewish' and 'Gentile' firms.[12] Women, the group most notably excluded during the 'golden age' now make up almost 40 per cent of the associates in large law firms, and nearly 50 per cent of those in the most recent entering classes.[13] Even blacks and other racial minorities have gained a toe-hold in the corporate sector. For example, over 12 per cent of the associates at America's 250 largest law firms are from racial minorities.[14]

Notwithstanding this progress, however, the hope of achieving the kind of full integration of women and racial minorities that has been achieved by America's religious and ethnic minorities remains unfulfilled. Although women enter large law firms in percentages that compare favorably with their representation in the available pool of law school graduates, the phenomenon identified by Smigel – their failure to make partner – continues. Thus, women make up just over 13 per cent of the partners in America's largest law firms.[15] Although this percentage has increased dramatically since 1980, when only 3 per cent of law firm partners were women, women's representation among law firm partners continues to lag far behind their representation in the associate ranks. Progress for racial minorities has been even slower, particularly for Blacks and Hispanics. Minorities constitute less than 4 per cent of all partners in law firms with over 100 lawyers. And while the number of African Americans in large firms has grown from a small handful in the early 1970s to over 2000 in the late 1990s, their representation as a percentage of all lawyers in large firms has remained remarkably consistent for more than 15 years, particularly at the partnership level.[16]

We are left, therefore, with a complex and contradictory record. On the one hand, American law firms have come a long way toward opening their doors to those whom they had previously excluded. On the other, these firms remain overwhelmingly white and male, particularly at the partnership level. Moreover, this condition persists despite substantial increases in the number of women and minorities in the available pool and, by almost any measure, a significant decrease in overt discrimination against both groups. Under these circumstances, the fact that large law firms have failed to make better progress in diversifying their workforces is especially striking.

There are many implications that one can draw from this record. The most obvious is that large law firms are going to have to change what they are doing if

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[12] See Galanter and Palay, *supra* note 9, p. 57.

[13] See Cynthia Fuchs Epstein, Carrol Serron, Bonnie Oglensky, and Robert Saute, *The Part-Time Paradox: Time Norms, Professional Life, Family and Gender* (Routledge, New York, 1999) 12.

[14] *See* Michael D. Goldhaber, 'Minorities Surge at Big Law Firms' (1998) *Nat'l L J,* 14 December, at A1.

[15] See Chris Klein, 'Women's Progress Slows at Top Firms' (1996) *Nat LJ,* 6 May.

[16] Compare Rita H. Jensen, 'Minorities Didn't Share in Firm Growth' (1990) *Nat'l L J,* 19 February, at 1, 28 (reporting that blacks constituted 2.3 per cent of the associates and 0.47 per cent of the partners in large law firms in 1981) with Ann Davis, 'Big Jump in Minority Associates, But ...' (1996) *Nat'l L J,* 29 April (reporting that the percentages for black associates and partners in 1996 were 2.4 per cent and 1.1 per cent respectively).

they want to increase the number of women and minorities they recruit and retain.[17] In this essay I want to make a different point: that these same institutions must learn from the lessons of their mixed record in integrating women and minorities if they are to form successful global law firms. Specifically, the thirty year old American experience with diversity in the corporate legal profession highlights five issues with which global law firms must come to terms if they are to compete successfully in the coming millennium: growth, cultural conflict, institutional innovation, fluid career paths, and the transformation of professional ideals. Careful attention to the experiences of minority and women corporate lawyers, I submit, provides valuable insight into both the nature of these five challenges and the possible range of solutions.

C. Lesson One: Size Matters

American law firms have grown exponentially since the 'golden age' of the 1960s.[18] When Smigel studied Wall Street firms in the early 1960s, there were only a handful of law firms with more than 100 lawyers (virtually all located in New York) and the largest firm in the country, Sherman and Sterling, had less than 200 lawyers.[19] By 1998, there were more than 250 law firms with 100 lawyers, and the largest now has more than 1000 attorneys.[20] As law firms increasingly face competition from the Big Five accounting firms, investment banks such as Goldman Sachs, and consulting firms such as McKinsey and Co., there is every indication that firms will get substantially larger in the coming years.

Exponential growth in large law firms cannot be sustained without making progress on diversity. This has certainly been the case in the US. The combination of the expanding demand for associates and the decreasing supply of men graduating from law school as a result of the explosion in the number of women law students meant that it was effectively impossible for firms that wanted to grow substantially during the 1970s and 1980s to restrict their hiring practices to the 'male-only' policies described by Smigel. Today, this and other similar 'golden-age' policies would quite simply be suicidal for any firm. Women now constitute almost 50 per cent of entering law students, including at elite schools such as Harvard where large law firms

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[17] I have elsewhere written extensively on this topic. See, e.g., David B. Wilkins, 'Partners without Power? A Preliminary Look at Black Partners in Corporate Law Firms' (1999) 2 *Hofstra J of the Inst for the Stud of Legal Ethics* 15; David B. Wilkins, 'On Being Good and Black' (1999) 112 *Harv L Rev* 1924; David B. Wilkins and G. Mitu Gulati, 'Why are there So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis' (1996) 84 *Cal L Rev* 493.

[18] See Galanter & Palay, *surpra* note 9, at pp. 77–87.

[19] See Smigel, *supra* note 7, at p. 29 note 9.

[20] See Goldhaber, *supra* note 14.

typically recruit.[21] Although racial minorities still do not attend law school in rates that mirror their representation in the general population, the increase in their presence among law students has nevertheless been dramatic. Racial minorities now constitute over 20 per cent of all entering law students in the US, up from 8.4 per cent just a quarter century ago.[22] A firm that refused to hire women and minorities would effectively be shutting out almost 70 per cent of the available talent pool. Clearly, no firm operating in a competitive market can afford to adopt such a self-defeating policy, least of all one that wants to grow in order to meet the demands of global competition.

The experience of the Big Five accounting firms – a group about which any aspiring global law firm ought to have more than a passing interest – is instructive. For years, these firms have fed their expansionist ambitions by luring talented women away from corporations and other competing workplaces through aggressively marketing themselves as good places for women to work. Ernst & Young has been particularly aggressive in this regard, hiring a woman from the Families and Work Institute to manage their world-wide effort to make the firm more open and accommodating to women. These efforts go beyond any comparable initiatives undertaken by any American law firm with which I am familiar. As accounting firms and law firms compete directly for both talent and clients, the Big Five are likely to put their greater commitment to diversity to competitive advantage.

Consider the following experience I had at a recent event promoting law firm diversity. In the fall of 1999, I was invited by the Chicago Committee on Minorities in Large Law Firms to address a gathering the organization was sponsoring on the failure of most large law firms to retain and promote to partnership a substantial number of minority lawyers. When I asked who else would be speaking on the programme, I was told that the other featured guest was the chair of *Arthur Andersen's* Chicago office. Needless to say, I was initially surprised to hear that the head of the largest office of one of the Big Five accounting firms would be addressing a meeting of lawyers on retention problems in large law firms. When I asked why he had been invited, the conference co-ordinator told me that she had heard the Andersen partner give the most impassioned speech she had ever heard about the importance of diversity and the need to move aggressively to ensure that minorities are fully integrated into elite professional service firms. True to her experience, the Andersen partner gave a rousing speech underscoring a number of specific initiatives that Andersen was employing to recruit and retain minority professionals – including many policies, such as tying manager compensation to retaining minority professionals, that no large law firm has yet adopted.

Why would a senior Arthur Andersen partner take time out of his busy schedule to persuade a gathering of mostly minority lawyers about his firm's commitment to

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[21] See American Bar Association, *Official ABA Guide to Approved Law Schools: 2000 Edition* 451.

[22] Ibid.

diversity? For anyone familiar with the evolving competitive dynamics of the market for providing sophisticated advice at the intersection of law and business to multinational corporations, it will be clear that the motivation for this speech goes beyond the partner's undeniable commitment to racial equality. If accounting firms are going to effectively compete with large law firms for a share of the lucrative market for advising companies on the range of issues that lie at the intersection of law, financial services, and information management – issues like tax advising, litigation management and support, and regulatory compliance and planning – then they must acquire sufficient legal expertise to credibly signal that they understand the 'law' part of the job. The easiest way to acquire such expertise, of course, is to merge with (or, to be blunt, purchase) a law firm with the requisite expertise. The American Bar Association, however, is doing its best to block such interprofessional partnerships. Baring multidisciplinary mergers accounting firms must purchase legal expertise directly in the labour market.

This is easier said than done. Until recently, talented lawyers outside of the tax area, particularly those from elite law schools, have typically had little interest in joining accounting firms. So it is not surprising that a firm like Andersen might turn its attention to minority lawyers – many of whom are the graduates of elite schools – in the hope that minorities' less than happy experiences in large firms might make them more receptive than their white peers to joining accounting firms, particularly if they believe that these institutions will be more welcoming than their previous employers.[23] Not only will Andersen reap the immediate benefits of employing lawyers who, on average, are at least as talented as the ones they are currently able to recruit, but they will also establish a beachhead into the networks of elite law school graduates from which to launch a more general bid to attract these sought after recruits.

Arthur Andersen apparently realizes that a credible commitment to diversity is a competitive tool for a firm with expansionist ambitions operating in a tight labor market for legal talent. Global law firms with similar expansionist goals would do well to follow Andersen's lead. To accomplish this goal, however, these firms must find effective ways to integrate lawyers from different backgrounds into a shared firm culture.

D. Lesson Two: Managing the Culture Wars

Women and minorities are not the only new entrants that American law firms must learn to incorporate if they are to build firms that are large enough to compete

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[23] Whether the accounting firm environment is *actually* more open to diversity remains to be seen. For a thoughtful history of the accounting profession's own problems with diversity, see Theresa Hammond, 'A White-Collar Profession: African-American Certified Public Accountants Since 1921' (unpublished manuscript on file with the author).

globally. Increasingly, US lawyers must work alongside lawyers from other countries – and other legal traditions – as well. The recent merger of London's Clifford Chance and New York's Rogers & Wells is, by most account, only the first of a series of impending trans-Atlantic mergers among the world's legal elite. Many more US firms have entered into long-term 'strategic alliances' with European partners. And virtually every firm that aspires to be a global player now employs lawyers from Europe, Asia, Latin America and other commercial centres. To be global leaders, firms must find ways to integrate these diverse lawyers into a well-functioning global enterprise.

Accomplishing this goal will not be easy. Even in the domestic context, successfully merging firms with distinct professional cultures and practices is invariably difficult. By some estimates, for example, fewer than 25 per cent of US mergers achieve the synergies that the partners envisioned when they put the deal together. Successful mergers in the professional service context are even harder to achieve since partners who are unhappy with the new arrangement are always free to leave and join a competitor firm, taking valuable clients and associates with them when they go.

The international context substantially exacerbates all of these tensions. Global mergers require melding national as well as professional cultures. Often, linguistic differences will be present as well. And because law and lawyers are intimately connected with national sovereignty and identity, the attorneys who make up these global firms will come from different normative and substantive legal traditions imbedded with differing, and potentially conflicting, notions about law, lawyering, and professionalism. Given these realities, the barriers to integrating these diverse ideas, styles, and practices into a functioning global firm are considerable indeed.

The experience of minority and women lawyers in elite corporate firms highlights both the importance and the difficulty of cultural integration. Minorities and women consistently report feeling excluded and alienated from the prevailing culture of many elite firms. Thus women lawyers often feel trapped between an 'old boys' culture that views women as unfit for demanding work assignments and an implicit expectation that women must play a demanding but unappreciated role as 'nurturers' inside the institution.[24] Minority lawyers frequently complain that they are left out of the informal social networks in their firms, thereby isolating them from the information, opportunities and relationships that invariably flow through these channels.[25] Minority women face an even greater challenge. The intersection of cultural stereotypes about gender and race combine to make it especially difficult for minority women to enter into the kind of supportive developmental relationships that are so crucial to succeeding in a large law firm.[26] The cultural barriers faced by

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[24] See Jennifer L. Pierce, *Gender Trials: Emotional Lives in Contemporary Law Firms* (University of California Press, Berkeley, 1995).

[25] See Wilkins and Gulati, *supra* note 17, at pp. 571–72.

[26] See American Bar Association, *The Burdens of Both, the Privileges of Neither: A Report of the Multicultural Women Attorneys' Network* (1994).

minority women are particularly important in light of the fact that women of color, like their white counterparts in the majority pool, constitute an increasing share of the total number of minority law students.[27]

The fact that US firms are having a hard time integrating minority and women lawyers into the culture of these institutions does not bode well for their global aspirations. These new entrants are, after all, similar in most important respects to the lawyers who have worked in these firms for generations: virtually all are American, most are graduates of the same elite schools, and many come from similar class and social backgrounds. Yet even though American firms have devoted substantial attention to this issue in recent years, and have made undeniable progress particularly with respect to the 'old boy' clubbyiness that characterized elite firms in Smigel's day, talented minority and women lawyers continue to leave these institutions because of their inability – and sometimes unwillingness – to 'assimilate' into elite firm culture. If large firms are having difficulty integrating US women and minorities into the institution's cultural fabric, how can they expect to form global partnerships with lawyers who come from substantially different national, linguistic, and professional backgrounds?

Moreover, a careful examination of the experience of minorities and women in US firms reveals that achieving cultural integration will require more than changing attitudes. For the most part, American firms that have recognized the need to make their cultures more welcoming to women and minorities have attempted to achieve this goal through programmes designed to 'sensitize' the white males who run these institutions to diversity concerns.[28] Although these initiatives may have some value, the obstacles facing minority and women lawyers are primarily *structural*, not attitudinal. These obstacles go to the heart of the 'American mode of the production of law' that US firms are now marketing to the world.

E. Lesson Three: The Real Rules of the Tournament of Lawyers

The New York firm of Cravath, Swaine & More created the template for the large law firm at the turn of the 20th century.[29] The great majority of American firms continue to follow Cravath's path. The basic structure is by now familiar. Junior lawyers, called associates, are hired directly out of law school (or after a brief stint in a judicial clerkship). These young attorneys are hired for a probationary period, typically lasting from six to ten years, during which they are expected to demonstrate

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[27] ABA Guide to Law Schools, *supra* note 21.

[28] See Demitra Kessenides, 'Dealing with Diversity' (1994) *Am Law,* July-August, at p. 40 (reporting the growing number of firms that have engaged diversity consultants to educate lawyers about the concerns of minority lawyers).

[29] See Smigel, *supra* note 7, at pp. 113–40.

their ability and commitment to the firm. At the end of this period, the firm selects the 'best' of these young lawyers to become partners. Those who are not selected are let go or, in rare circumstances, allowed to stay with the firm as permanent associates or 'of counsel.'[30]

American lawyers have long claimed that this structure is the best way to produce competent and ethical practitioners. The structure is often analogized to a 'tournament' in which associates compete on an equal playing field to demonstrate their abilities with the top performers selected for partnership.[31] It is this image of the large law firm – as an efficient, professional, and meritocratic institution that best serves the needs of lawyers, clients, and the public at large – that US lawyers like to show to the world.

Cravathism's reality, however, is a good deal more complex than this public portrait would lead one to believe. A careful examination of the recruiting and promotion policies of large law firms reveals that the organizational structure pioneered by Cravath is simultaneously both less and more like the kind of meritocratic sporting events to which it is often compared.[32]

Elite law firms are structured less like a tennis tournament in that associates do not compete on an equal playing field. Instead, only those associates who get access to good work and supportive developmental relationships have a realistic chance of becoming partners. Given the pyramidal structure of most elite firms – a small number of partners at the top supported by many associates at the bottom, particularly in the junior tiers – good work and mentoring will inevitably be in short supply. Those young lawyers who do not form working relationships with partners who take the time to train them by giving them good assignments and overseeing their progress will still work hard. Large law firms have plenty of work that can profitably be done by bright young law school graduates who have not been trained, at least for the first few years of an associate's life. But such work, although necessary, rarely allows those who do it on a consistent basis to develop the kind of lawyering skills and relationships with powerful senior lawyers that ultimately lead to partnership. Contrary to the survival of the fittest rhetoric of tournament theory, therefore, success in large law firms is less a matter of innate ability and hard work – most of those who get hired by elite firms possess these qualities – and more a function of gaining access to valuable, but limited, opportunities; opportunities that are invariably mediated through relationships. Relationship capital, not human capital, is the coin of Cravathism's realm, and relationships of the kind necessary to succeed are inherently in short supply.

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[30] See Robert Nelson, *Partners with Power: Social Transformation of the Large Law Firm* (University of California Press, Berkeley, 1988) pp. 127–159.

[31] See, e.g., Galanter and Palay, *supra* note 9, at pp. 98–102.

[32] For a detailed critique of the application of tournament theory to the internal labor markets of large law firms, see David B. Wilkins and G. Mitu Gulati, 'Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms' (1998) 84 *U Va L Rev* 1581.

Paradoxically, large law firms also operate more like a typical sporting tournament than popularly believed in the manner in which these institutions structure opportunities. Tennis tournaments such as the US Open and Wimbledon are not, contrary to their names, open competitions in which contestants compete in a free form Hobbesian war of all against all. To the contrary, these events are carefully choreographed ballets in which participants are seeded and tracked into brackets in order to ensure that top players are protected from early elimination, leaving the strongest contestants to play before a packed grandstand in the event's final round. Elite law firms, although less formal and visible in their choices, function in much the same way. First year associates from top law schools such as Harvard and Yale, or who come to the firm from prestigious judicial clerkships, are often 'seeded' by being given preferential treatment in terms of initial work assignments and partner contact. Those who receive these crucial developmental opportunities, whether by being seeded as a result of their prestigious entering credentials, or by simply being lucky enough to be assigned randomly to partners with important work and an interest in training associates, will – if they do good work – be rewarded with further plum assignments and additional mentoring opportunities. Essentially, these fortunate associates are 'tracked' by the partners with whom they work into assignments and relationships that train them in the skills they will need to become partners. Those associates, who by virtue of their less favored pedigree or bad luck in initial assignments, do not end up on this training track will continue to work hard on matters that require little or no training such as document productions, basic legal research, or reproducing form agreements. As a result, notwithstanding their hard work and diligent performance of these necessary but undemanding tasks, they are unlikely to have long term careers with the firm.

In sum, the real rules of the tournament of lawyers create a competition where certain associates have a built in and reinforcing advantage in the quest for partnership over their peers. The experiences of minorities and women in corporate firms underscores that the tournament's real rules – as opposed to the ideal rules professed by most American lawyers – pose a substantial impediment to the bar's global ambitions. One can see these impediments with respect to both recruiting and retention.

Recruiting: Conflating Signals with Skill – Compared to the recruiting criteria used by large firms in Smigel's day, today's elite firm hiring is remarkably meritocratic. Firms no longer acknowledge searching for lawyers with 'Nordic' looks and the 'right' social background. Instead, every elite firm claims that it seeks to select the most qualified men and women who have the ability to become partners in the firm. To accomplish this objective, firms emphasize two sets of criteria: 'objective' criteria such as where the candidate went to law school and his or her grades, and a 'subjective' interview to determine the applicant's personality and to judge whether he or she will 'fit' into the firm's culture.[33] This two stage process doubly

[33] I describe this process in detail in Wilkins and Gulati, *supra* note 17, at pp. 545–554.

disadvantages minority lawyers.[34] Minority candidates are frequently excluded on the basis of the objective criteria because they often do not have the markers – graduating from an elite law school, high grades, law review membership – that firms assume are strong indicia of merit. At the same time, minorities who do have strong objective credentials are often screened out in the interview process on the ground that they do not have strong leadership skills or seem unlikely to fit into the firm's culture.

Contrary to the meritocratic assumptions of the tournament analogy, the fact that minorities are less likely to pass successfully through the two stages of the recruiting process does not mean that these candidates are less 'qualified' to become successful lawyers. For this to be true, the objective and subjective criteria employed by elite firms would have to be highly correlated with the potential for future success as a lawyer. Available evidence, however, indicates that this is unlikely to be the case.

Consider first the objective criteria. The probative power of these criteria depends upon the assumption that 'signals' such as law school status and grades are good proxies for the substantive skills that are likely to make someone a good lawyer. There is little reason to believe that this is true. Law school status and grades undoubtedly provide some indication of an applicants intelligence and capacity for hard work. But they give only the roughest approximation of whether these qualities will be translated into the skills and dispositions of effective lawyering. Law school hopefully teaches students how to *think* like a lawyer, but the process of learning how to *be* a good lawyer is substantially learned on the job. Moreover, many of the qualities that go into becoming a good lawyer – the ability to work well in teams, judgment, creativity, common sense – are not only not measured by the typical law school examination process, but may in fact be selected against by a system that rewards individual achievement on stylized and highly abstract classroom exams.

A recent study by the University of Michigan law school confirms these intuitions. Michigan surveyed all of its minority graduates and an equal number of whites to determine the connection between objective criteria such as grades and test scores and future success as a lawyer measured by income, professional satisfaction, and community service.[35] Contrary to the meritocratic claims of law firm recruiters, with only one exception described below, the researchers found no statistically significant correlation between those objective criteria that are known about students at the time they apply to law school – undergraduate grades and scores on the Law School Admissions Test (LSAT) – and future success as a lawyer. Perhaps even more

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[34] In the past, the process also worked to the detriment of women candidates. As indicated, however, the fact that women now make up almost 50 per cent of the pool of potential associates has given large firms a substantial incentive to correct for the manner in which the subjective phase traditionally discriminated against women.

[35] See Richard Lempert, David Chambers, and Terry Adams, 'Michigan's Minority Graduates in Practice: The River Runs Through Law School' (2000) 25 *Law & Soc Inquiry* 395. For my analysis of the Michigan's results, see David B. Wilkins, 'Rollin' on the River: Race, Elite Schools, and the Equality Paradox' (2000) 25 *Law & Soc Inquiry* 527.

surprisingly, the study found only a small correlation (explaining less than 5 per cent of the observed variation) between law school grades and future income. The only significant correlation the researchers discovered between objective criteria and future success was a *negative* relationship between LSAT scores and future public service activity: the higher an applicant's score, the *less* public service that person was likely to do throughout his or her legal career. Needless to say, this is hardly the kind of correlation that those who argue that objective credentials accurately predict future career success have in mind.

These inherent limitations with objective criteria undoubtedly contribute to the fact that firms also place great emphasis on their subjective evaluation of a candidate's character and institutional fit. Although interviewing allows firms to supplement what they can learn from objective signals, it also introduces its own biases. There is substantial evidence that interviewers tend to favor people who are like themselves. Given that most elite firm lawyers are white, and at the partnership level, white and male, this natural tendency disadvantages minority lawyers. Thus, when whites evaluate minorities, they frequently attribute negative acts 'to personal dispositions, while positive acts are discounted as the product of luck or special circumstances'.[36] This tendency is particularly pronounced in situations such as law firm interviews, where evaluators are making subjective judgments about vague qualities like personality and fit, with very little direction and training. To make matters worse, law firm interviewers typically reach their subjective judgments only after they have reviewed a candidate's objective record; a record that most interviewers believe provides a better indication of 'real' merit than the subjective characteristics they are supposed to evaluate. In such cases, interviewers simply see in the candidate what they think they already know, thereby reinforcing, rather than counterbalancing, the bias of the objective criteria.

These limitations of the Cravathist hiring model are likely to be particularly problematic for firms with global aspirations. The fact that traditional measures such as law school status, grades, and test scores may screen out candidates who are strong in qualities such as teamwork, creativity, and the ability to adapt to new circumstances, may leave firms that slavishly follow these practices crucially understaffed in a world where global lawyers are increasingly called upon to display precisely these qualities. Similarly, the self-replicating tendencies of the traditional interview process will make it more difficult for firms to break out of the ethnocentric biases that often short circuit even the best intentions of firm leaders. Unfortunately, these negative tendencies are reinforced once lawyers join their firms.

Retention: Tracking Turnover – The *de facto* seeding and tracking policies used by elite firms guarantee that objective credentials such as law school status and grades continue to play an important role after a lawyer is hired. Because they are less likely to be seeded on the basis of their entering credentials, minorities typically do not

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[36] See Michael Selmi, 'Testing for Equality: Merit, Efficiency, and the Affirmative Action Debate' (1995) 42 *UCLA Law Rev* 1251, 1285.

receive early access to good work and mentoring opportunities. Nor are minorities and women as likely as their white male peers to form early developmental relationships with white male partners who can ensure that these junior lawyers are placed on the training track regardless of their initial seeding. For the same reasons that white men tend to favor candidates who are like themselves in the interview phase, they are also less likely to form mentoring relationships with minorities and women.[37]

The failure of minorities and women to find mentors, and therefore to gain access to the training track, is one of the primary reasons why these lawyers leave large law firms in greater numbers and at earlier stages in their careers than their white peers. According to a recent study by the National Association of Law Placement (NALP), minorities and women are significantly more likely to leave large firms after only three years of practice than white male associates.[38] Minority women have the highest overall attrition rates, with nearly 52 per cent leaving firms after only three years. Although there are many factors that contribute to this exodus, the difficulty that women and minority junior associates encounter in trying to form supportive developmental relationships with white male partners who can give them good work and training opportunities ranks among the most important – particularly for associates who are otherwise doing well at the firm.

It should be abundantly clear by now, however, that retention is not just a problem for minorities and women. Large firms increasingly are having difficulty retaining *all* of their associates. Thus, for many the most startling finding of the NALP study was not the retention rates for minorities and women but the fact that over 45 per cent of all associates leave their firms within the first three year, with almost 10 per cent exiting after only one year of practice. Although one can debate exactly when associates become profitable to a firm, there is little doubt that such a substantial early attrition rate is sub-optimal. In addition to raising a firm's recruiting and training costs, early departures also diminish the pool of senior associates. By all accounts, senior associates are a firm's most productive resource since they both handle a substantial part of the firm's workload and free up partners to generate new business. Law firms with high early attrition rates and relatively low partnership rates are in danger of losing too many of these valuable assets.

If firms had paid attention to the experiences of their women and minority associates, they would have seen this 'retention crisis' coming a long time sooner than they did. The fact that women continue to make up only 13 per cent of elite firm partners more than a decade after they began constituting 40 per cent of entering

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[37] See David Thomas, 'Racial Dynamics in Cross-Race Developmental Relationships' (1993) 38 *Admin Sci Q* 169; Cynthia F. Epstein *et al*, 'Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession' (1995) 64 *Fordham L Rev* 291.

[38] See National Association of Law Placement, *Keeping the Keepers: Strategies for Associate Retention in Times of Attrition* (National Association of Law Placement, Washington, D.C., 1998).

associate, should have alerted firms to the weaknesses of the Cravath model as a system for developing and retaining legal talent. Instead, these institutions typically attributed the failure to make women partners to the *women's* lack of ability or commitment. This 'blame the victim' strategy obscured the role that firms themselves have played in constructing the opportunities that allow lawyers to demonstrate their ability and commitment.

Similarly, firms that bothered to examine their history with diversity would also realize that the strategies that they are now employing to stem the tide of associate attrition are unlikely to be successful in the long run. Firms have primarily reacted to high turn over rates by substantially raising salaries for junior and senior associates. Entering associates in many elite firms now make more than USD125,000 a year. In some institutions, those who stay long enough to become senior associates are rewarded with substantial bonuses. Although high salaries and bonuses will undoubtedly convince some law students to join large firms and others to stay in their positions a few years longer, this bribery strategy is unlikely to succeed in the long term because it fails to address the root causes of associate attrition. Most associates are not leaving large law firms because they think they are underpaid in some absolute sense. Instead, those who are departing now are leaving for the same reason that women and minorities have been departing corporate practice for decades; they don't see a long term viable future with these institutions. The same pyramidal structure that makes it difficult for minorities and women to get access to good work and meaningful developmental relationships ensures that these opportunities will be scarce for all lawyers. In a world where young professionals have a growing number of opportunities, it should not be surprising that many find the 19th century constraints of Cravathism less appealing than careers in 21st century technology companies. A strategy that concentrates on bribing young lawyers to stay at their firms is destined to influence only the most mercenary of these young professionals – and the most shortsighted, since the rigid dictates of the Cravath model put severe limitations on the number of associates that firms are likely to admit to partnership. Indeed, higher starting salaries are likely to accelerate even further the trend to make associates more productive at an earlier stage in their career by increasing workloads and rationing the time that partners spend on uncompensated associate training; the very factors that are leading many young lawyers to abandon large firms in the first place.

If global firms are to break out of the cycle of ever higher salaries accompanied by escalating attrition rates, they must recognize that the old rules of Cravathism's tournament of lawyers are no longer suited for the dynamic and fluid labour markets of the new economy. Once again, a careful examination of how successful minorities and women have transcended the limitations of the tournament of lawyers sheds important light on what global careers are likely to look like in the coming years.

F. Lesson Four: Bypassing Boundaries in the Boundaryless Career

The retention rates cited in the last part amply demonstrate that the days of lawyers spending all or even the majority of their careers with a single employer have come to an end. Instead, lawyers, like the rest of the workforce, are increasingly forging 'boundaryless careers' in which they move frequently between employers and gain status, opportunities, and power from sources outside of their current workplace.[39] Boundaryless careers pose substantial problems for both employers and employees. Firms must find new ways to organize their workforces that do not rely on long probationary periods where junior lawyers demonstrate their loyalty by investing in firm specific human capital in return for the firm's promise of a chance to become 'permanent' members of the institution. Similarly, employees must develop new approaches to receiving the career training that they desperately need in a form that allows them to benefit from what they learn in multiple employment settings over the length of their careers. Needless to say, all of these issues are destined to be exacerbated in the global context as lawyers transcend national and professional as well as firm related boundaries.

Ironically, the careers of successful women and minorities offer valuable clues about how global firms and the lawyers that will pass through their doors might navigate this uncertain terrain. Precisely because they were often excluded or marginalized from the firms and structures that 'bounded' the traditional organizational career, these relative newcomers to the profession have had to develop alternative strategies for building successful careers. Firms that have been open to these new pathways have often reaped substantial benefits.

Consider the crucial issue of developmental support in a boundaryless environment. As I argued in Section E *ante*, in order to develop their human capital of lawyering skills, associates in large law firms must first develop relationship capital with powerful partners who will train and support their careers. For reasons discussed above, minority and women lawyers have typically had a difficult time forging these essential bonds. Consequently, these outsiders have had to find other avenues for receiving both career advice and psychological support. Often they have done so by forming relationships with other women and minorities that cut across traditional organizational and hierarchical lines. For example, minority lawyers often join minority bar associations, or when existing organizations fail to serve their needs, form new ones such as the Chicago Committee on Minorities in Large Law Firms or the Black Women's Lawyers Association. Within these identity-based organizations, senior minority lawyers from a range of organizations offer their

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[39] For an excellent discussion of the move toward boundaryless careers, see Michael B. Arthur and Denise M. Rousseau (eds), *The Boundaryless Career: A New Employment Principle for a New Organizational Era* (Oxford University Press, New York, 1996).

juniors the kind of career counseling and advice that these young lawyers often do not receive in their own institutions. At the same time, those minorities who are most likely to succeed continue to work on developing intrafirm relationships wherever they can find them. Sometimes these relationships cross or invert traditional hierarchical patterns of authority, for example when black associates forge friendships and alliances with black administrators or support personnel, who are often the only other blacks in the organization. As a result, many minority and women lawyers have developed a portfolio of developmental relationships, some inside the organization (often in non-traditional settings) and some outside the firm, from which they draw advice about their present jobs, information about new opportunities, and a stable sense of identity that transcends traditional organizational boundaries.

This kind of diversified network is precisely what is needed to navigate the treacherous waters of the boundaryless career. Social theorists who study careers emphasize the value of having a diversified network that reaches into numerous distinct social circles, called 'structural holes' to signify the social space between the different groups in an individual's network. Individuals with a network rich in structural notes have a better chance of both receiving information about new opportunities and of being thought of as a person to receive opportunities by a wide range of people, than those whose social network is confined within a relatively small group such as a homogeneous community, organization, or work group.[40] Out of necessity, successful minority and women lawyers typically develop just such a network.[41] Because they often lack identity role models and mentors in the workplace, these outsiders cultivate close ties with both senior identity-connected role models outside of their organizations and with those who share their identity in other socially distinct parts of the organization that, although less prestigious, often contain valuable information about organizational norms and practices that are indispensable to professional success.[42] At the same time, these traditional outsiders also continually work at forming relationships with white men (and in the case of minorities, white women). Although these relationships are, as I have argued, harder to come by (and even when they are forged, may not offer the full complement of career and psychological support), minorities and women know that strategic alliances with well placed individuals in the majority are indispensable to their success.

Minority and women professionals are therefore almost invariably 'bicultural' in their relationships.[43] And bicultural people are much more likely than their

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[40] See Ronald S. Burt, *Structural Holes: The Social Structure of Competition* (Harvard University Press, Cambridge, 1992) 8–45.

[41] David Thomas is the leading chronicler of this phenomenon in the corporate environment. See, e.g., David Thomas and Monica Higgins, 'Mentoring and the Boundaryless Career: Lessons from the Minority Experience', in *The Boundaryless Career*, *supra* note 39, at 262–281.

[42] Think, for example, about the importance of having good relations with the word processing pool or the mailroom clerks.

[43] See E.L. Bell, 'The Bicultural Life Experience of Career-Oriented Black Women' (1990) 11 *J. of Org. Behavior* 6.

monocultural peers to have networks that are rich in the kind of structural holes needed by lawyers working in a boundaryless global environment. Firms that recognize this fact can potentially reap important competitive advantages.

Two examples underline the potential benefits to firms of employing lawyers with the kind of networks minorities and women have, out of necessity, tended to develop. The first is a 21st century update of the too often neglected outplacement policies of 19th century Cravathism. As part of their implicit contract with associates, firms traditionally promised that they would assist those who did not win the tournament of lawyers by becoming partners in finding new jobs. Although some firms (most notably Cravath itself) continue to provide this kind of service, most have taken the view that in an expanding job market associates can handle their own outplacement needs. This abandonment of the old outplacement bargain is shortsighted. When left to their own devices, young lawyers with little information about the market and even less sophistication about career planning frequently turn to headhunters and other placement professionals for career advice. Professional recruiters, not surprisingly given how they make their money, typically counsel young lawyers to move early and often, pressing that their marketability will decrease if they honor the old Cravathist contract and stay with their firms long enough to be considered for partnership.

Firms who want to reverse this trend must reinvigorate Cravathism's outplacement promises in a manner consistent with the realities of the bourdaryless global economy. It will not do simply to promise associates that those passed over for partnership after eight to ten years will be offered help in finding another job. Most entering associates have no intention of staying with their firms long enough to see whether they will win the tournament of lawyers.[44] To be effective, therefore, firms must offer associates career planning from the moment they enter the institution. More to the point, smart global players will actively encourage associates to develop networks outside the firm and counsel them in obtaining the skills that they will need to build successful careers once they leave. Firms that allow their associates to build their human and relational capital in a wide range of settings outside the firm will not only expand the *firm's* network of future relationships but, paradoxically, will reduce some of the pressure that young lawyers currently feel to leave their firms early.

American businesses, perhaps because they have been competing for some time in an increasingly boundaryless global environment, have already learned this lesson. Thus, many Silicon Valley firms encourage their employees to plan for their long-term careers outside of the organization. As the head of Hewlett-Packard once told his employees: 'If you want to succeed here you need to be willing to do three things: change jobs often, talk to your competitors, and take risks – even if it means failing.'[45] Even the venerable Harvard Business School has decided to start a captive

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[44] See Wilkins and Gulati, *supra* note 32, at p. 1606.

[45] See Annalee Saxenian, 'Beyond Boundaries: Open Labor Markets and Learning in Silicon Valley' in *The Boundaryless Career*, *supra* note 39, at p. 23.

venture capital fund dedicated to launching student entrepreneurs as a means of keeping these bright young women and men in school instead of leaving to start their own companies. Aspiring global law firms would do well to learn from these examples.

Lawyers should also borrow a page from the other major trend in business over the last twenty years: contract work. According to one report, more than one-quarter of all employees work on some form of contract basis.[46] Law firms, however, have long resisted this trend. Although virtually all firms have experimented with part-time work, and a few such as Cleveland's Jones, Day, Revis, and Pogue have even gone so far as instituting a separate tier of contract lawyers, the rigid dictates of Cravathism's insistence on classifying all lawyers as either 'partners' or 'associates' has tended to keep these structural innovations at the margins.[47] This adherence to 19th century professional ideology has disproportionately burdened women attorneys. Women who seek alternative work arrangements are frequently branded as 'unprofessional' and lacking sufficient commitment to the firm and its clients.[48] Those who insist on going part-time often find themselves ostracized by their peers and considered ineligible for important assignments by their superiors. Predictably, many who receive this kind of treatment end up leaving large firms and going into business or entrepreneurial careers that are better suited to their needs.

Global firms that want to attract and retain workers in a boundaryless environment would do well to heed women's warnings concerning the importance of breaking down traditional boundaries that separate work, home, and career mobility. Lawyers, like their counterparts in other industries, want the flexibility of contract work, whether on a part-time or project-by-project basis. Firms would similarly benefit from such arrangements by being able to staff particular projects with talented lawyers without further expanding the pyramidal structure created by the old Cravathist tournament. Moreover, as with the revitalization of traditional outplacement services, firms that give lawyers the flexibility to create new work arrangements will both expand the firm's network of relationships and facilitate the process of bringing new information and ideas into the firm.

Global firms will only achieve these benefits, however, if they are willing to re-examine traditional understandings of lawyer professionalism that ground professional identity exclusively in the workplace. The claim that professionalism is synonymous with lawyers giving their full-time commitment to an organization owned and controlled by other lawyers is only one example of this ideology. Underlying the claim that the only 'professional' lawyers are full-time lawyers is the deeper belief that to be a true professional, lawyers must renounce *all* other aspects

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[46] See 'The New World of Work: Beyond the Buzzwords is a Radical Redefinition of Labour' (1994) *Bus Week*, 14 October, at p. 76.

[47] See Epstein, *et al*, *supra* note 13, at p. 5 (reporting that part-time lawyers account for only 2.6 per cent of the profession).

[48] See ibid. at pp. 29–37.

of their identities in performing their professional roles. If law firms are to realize their global ambitions, they must replace this all encompassing definition of professionalism with an understanding that allows an increasingly diverse pool of lawyers to develop the social and psychological support they will need in order to work collectively in a boundaryless environment.

G. Lesson Five: Unbleaching Professionalism

In the American system, lawyer professionalism is a greedy ideology.[49] Through legal education and professional socialization, lawyers are expected to adopt a 'professional self' that subsumes all other aspects of their personal and moral identity.[50] According to this standard account:

> [s]uch apparent aspects of the self as one's race, gender, religion, or ethnic background ... [are] irrelevant to defining one's capacities as a lawyer.[51]

Indeed, for many the claims of the professional self reach beyond the confines of the lawyer's official duties, to encompass his or her entire personality. As the philosopher Richard Wasserstrom observes: 'to become and to be a professional, such as a lawyer, is to incorporate within oneself ways of behaving and ways of thinking that shape the whole person'.[52] To be a true professional, in other words, is to be first and foremost a lawyer, both at work and in much of the rest of one's life as well.

'Bleached out professionalism', as Sanford Levinson has aptly labeled this traditional ideology, is a problematic normative ideal for global lawyers.[53] Once again, the American experience with diversity underscores this conclusion. As a preliminary matter, women and minorities stand as a constant reminder that bleached out professionalism's implicit claim that the current norms of professional conduct exist independent of any particular pre-professional identity are demonstrably false. Consider once again the claim that the traditional Cravathist career

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[49] See Lewis Coser, *Greedy Institutions: Patterns of Undivided Commitment* (Free Press, New York, 1974) 5 (defining greedy institutions as those 'which make total claims of their members [and] seek exclusive and undivided loyalty and attempt to reduce the claims of competing roles and status positions on those they wish to encompass within their borders'.).

[50] See Robert Nelson and David Trubek, 'Arenas of Professionalism: The Professional Ideology of Lawyers in Context' in *Lawyers' Ideals/Lawyers' Practices: Transformations in the American Legal Profession* (Cornell University Press, Ithaca, 1992) pp. 177, 183–84.

[51] Sanford Levinson, 'Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity' (1993) 14 *Cardozo L Rev* 1577, 1579.

[52] Richard Wasserstrom, 'Lawyers as Professionals: Some Moral Issues' (1975) 5 *Human Rights* 1, 5.

[53] Levinson, *supra* note 51, at p. 1578.

path, under which associates must work 60 to 80 hours a week for eight to ten years in order to be considered for partnership, is the only appropriate way to train young lawyers to be competent and ethical practitioners. Although these claims are often expressed in the neutral language of professionalism, it is clear that this system, like every social system, is a product of the historical times in which it was produced. In the case of Cravathism, this historical period was one in which there were overt discriminatory policies against hiring women. It is not surprising, therefore, that the understandings of professionalism to emerge from that period would be framed to fit the identity of those who were eligible for these positions – that is i.e., young men with wives who do not work. Given this historical pedigree, the claim that women who ask that their identities be recognized when judging what constitutes a professionally acceptable career path are engaged in an unprofessional act of special pleading, rings hollow.

Moreover, by stigmatizing as unprofessional those whose identity related commitments fail to conform to traditional understandings, bleached out professionalism stifles innovation. Many of the most important critiques of long-standing professional practices have been launched by lawyers challenging the manner in which existing standards fail to recognize particular aspects of their non-professional identities. Consider, for example, the alternative dispute resolution movement in the US. Feminist scholars have long claimed that the American adversary system, with its emphasis on aggressive winner-take-all combat, reflects a distinctly 'male' form of identity.[54] Although such claims have always been controversial – even among women[55] – many of the scholars and practitioners who leveled these charges have also been instrumental in pressing legislators, courts, and litigants to seek more consensus oriented means of resolving disputes.[56] The resulting shift towards negotiation and mediation has been one of the most important innovations in American law in the last quarter century.

The impact of the alternative dispute resolution, however, pales in comparison to the most prominent example of an identity-generated reform in American law. In the 1930s, racial segregation was the law of the land. The legal campaign to end this state-sanctioned evil was spearheaded by an elite cadre of black lawyers led by Charles Hamilton Houston, the young black dean of Howard University Law School, and his protégé Thurgood Marshall, who would go on to become the first black Justice on the US Supreme Court.[57] Houston and Marshall took an expressly race conscious approach to their work as lawyers. Thus, Houston argued that black

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[54] See, e.g., Carrie Menkel-Meadow, 'Portia in a Different Voice: Speculations on a Women's Lawyering Process' (1985) 1 *Berkeley Women's LJ* 39.

[55] Deborah H. Rhode, 'Missing Questions: Feminist Perspectives on Legal Education' (1993) 45 *Stan L Rev* 1, 547.

[56] See, e.g., Carrie Menkel-Meadow, 'Portia Redux: Another Look at Gender, Feminism, and Legal Ethics' in S. Parker and C. Sampford (eds), *Legal Ethics and Legal Practice* (Oxford University Press, New York, 1995).

[57] For a general history of the legal campaign to over through legal segregation in the US, see Richard Kluger, *Simple Justice* (Vintage, New York, 1977).

lawyers, because of their membership in an oppressed group, had unique obligation to become 'social engineers' whose primary obligation was to improve the legal status of African Americans.[58] Although this stance did not prevent Houston and Marshall from forming valuable and enduring relationships with white lawyers, it was nevertheless a direct call on black lawyers to carry their racial identity into their professional role. It goes without saying that the legal reforms produced by this dedicated band of black social engineers have fundamentally transformed American society for all Americans.

Houston and Marshall's continuing influence underscores a final weakness of bleached out professionalism as a normative ideal. Because of the towering legacy of these two figures, black lawyers understand that collective mobilization around identity-related issues can play an important role in their professional success and the success of other African Americans. Today's black lawyers no longer face the stark legal barriers successfully challenged by Houston and Marshall. Nevertheless, the statistics presented underscore that America is still a long way from fully integrating the legal profession, particularly in the corporate sector. In order to cope with the isolation and subtle obstacles that still haunt their careers, black lawyers continue to organize and participate in groups that address race-based restrictions on professional success and other issues relevant to the African-American community. These identity-specific connections, in turn, have helped many black attorneys develop an integrated sense of their own identity that rejects bleached out professionalism's stark dichotomy between personal identity and professional role. Those black attorneys who have avoided this traditional fragmentation have been able to rise within the profession while at the same time continuing to hold the bar and the country as a whole accountable for continuing inequality between blacks and whites.[59] In so doing, black lawyers have relied on their personal identity as African Americans to uphold the American legal system's highest professional ideal: the promise of equal justice under law.

Each of these lessons from the experiences of minorities and women – that bleached out professionalism stigmatizes lawyers who are different from those who created existing professional norms, that it discourages identity-related innovations in professional practices, and that it deligitimates the kind of integrated self-consciousness that promotes individual growth, collective organization, and service to others – has important implications for the success of global law firms. Lawyers from around the world are unlikely to work efficiently together if some believe that they are stigmatized for beliefs and practices that they consider to be intimately connected to important aspects of their national or legal culture. Similarly, firms

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[58] See Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (University of Pennsylvania Press, Philadelphia, 1983) 218.

[59] See David B. Wilkins, 'Social Engineers or Corporate Tools? Brown v. Board of Education and the Conscience of the Black Corporate Bar' in A. Sarat (ed.), *Race, Law, and Culture: Reflections on Brown v. Board of Education* (Oxford University Press, New York, 1997); David B. Wilkins, 'Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers' (1993) 45 *Stan L Rev* 1981.

with global ambitions will fail to respond to the rapid changes that increasingly characterize the global marketplace if they discourage innovation by those who contend that existing structures and practices do not allow them to express their own creativity or serve the needs of those with whom they share common identity-related bonds. Finally, in a boundaryless environment, firms that fail to allow lawyers to develop an integrated sense of their own identity that allows them to honor commitments and connections to groups outside of the workplace, will continue to see lawyers who are alienated from their work, isolated from crucial sources of development and support, and prone to seek more meaningful work at the first available opportunity.

Admittedly, moving beyond bleached out professionalism will be difficult. There are clearly important benefits to lawyers, clients, and the public in having a uniform understanding of professionalism that does not depend completely upon the identity of the lawyer who occupies the role. Any plausible conception of global professionalism must account for these important concerns. Although forging a new and more integrated understanding of professional identity will not be easy, it is nevertheless essential to the global ambitions of US firms.[60] Without it, these organizations will ultimately fail to navigate the issues of size, culture, structure, and career paths that increasingly characterize the global market for legal services. Moreover, what is true for US firms is likely to be equally if not more important for America's global competitors.

H. Conclusion: From the 'American Century' to the Multicultural Millennium

Dealing with diversity is not just an American problem. In most parts of the world women are entering the legal profession in ever expanding numbers. Issues of race and religion are also receiving more attention in professional circles as lawyers in various countries begin to confront the complex legacies of colonialization, immigration, and internal ethnic division. From the little that has been published about these issues, it appears that many countries around the world have made even less progress than the US in integrating women and minorities into the corporate bar.[61] More fundamentally, experience with globalization to date makes it

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[60] For a preliminary attempt to develop an account of identity-conscious professionalism, see David B. Wilkins, 'Fragmenting Professionalism: Racial Identity and the ideology of Bleached Out Lawyering' (1998) 5 *Int'l J of the Legal Prof* 141; David B. Wilkins, 'Identities and Roles: Race, Recognition, and Professional Responsibility' (1998) 57 *Md L Rev* 1502.

[61] See, e.g., Michael St. Patrick Baxter, 'Black Bay Street Lawyers and other Oxymora' (1998) 30 *Canadian Business LJ* 267.

abundantly clear that no country, system, or profession – no matter how powerful or successful – can expect to impose its vision on the world, at least not for very long. America in the 20th century was remarkably successful in exporting its institutions and practices to other countries, leading some – at least some in the United States – to proclaim the last one hundred years as the 'American Century'. Nevertheless, contrary to some predictions, other nations have not simply faded away or become carbon copies of the US. To the contrary, leaders around the globe in the both the public and private arena are increasingly insisting that transnational institutions and practices honor internal norms as well as global efficiencies. In light of law's intimate connection with issues of sovereignty and national identity, we should not be surprised that the expansionist ambitions of American, British, and other European law firms have generated as much resistance as emulation. Legal professions in Japan, China, Mexico, and other emerging legal markets continue to impose restrictions on foreign practice even as they form law firms that incorporate many of the aspects of the American model of lawyering.[62] Globalization, in other words, is being *negotiated*, not imposed. Those who want to participate in this process must find innovative ways for people from different backgrounds and traditions to work together as equals to find common solutions to complex problems.

The United States' 30 year struggle to integrate women and minorities into the corporate legal sector is a microcosm of this larger project. Global law firms would do well to study its lessons – both the success and the failures – as they embark on the complex task of building stable, competitive, and sustainable professional organizations for a multicultural and boundaryless world.

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[62] See Abel, *supra* note 2, at pp. 750–762.