Financialization by Proxy:
The Case of Large City Law Firms

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April 2009

Working Paper no.3
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CERIC Working Paper 3
Series editor Ian Greer
Centre for Employment Relations Innovation and Change
Leeds University Business School
April 2009
ISSN 1758-3136
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Abstract

This paper identifies financialization as a new trend which may be reorganizing the legal profession and its largest firms with important consequences for professionals, clients and society as a whole. Of course, financialization is a well know feature of the contemporary economy, yet our case study of large English law firms documents its presence and impact in a somewhat unexpected domain: privately owned professional firms, which so far have been outside of the scope of the shareholder value culture and which have historically been exposed to cultures of autonomy, discretion, quality and client if not public service. In this paper we analyse the mechanisms and vectors through which financialization logics are been reproduced in this new and unexpected domain. In the absence of stock-market pressures, financialization acts by proxy through increasingly influential metrics of success such as Profit per Equity Partner. We connect the spread of these new logics and practices to the interests of key actors within and outside these firms: senior partners in large firms and a cultural circuit of consultants, gurus, and editors of specialist publications. We explore some of the expected and unexpected consequences of such new pressures for practice management, for the lived experiences of lawyers as well as for consumers and the wider public.
1. Introduction

“Lawyers have a primary duty to the courts and a secondary duty to their clients. These duties – including the attendant responsibilities such as client confidentiality and the rules relating to legal professional privilege – are paramount”

This quote, taken from the publicity material of a corporate law firm, seems innocuous enough on the surface. Indeed, it reflects the principles of the professions that are enshrined in their codes of conduct. However, as becomes clear when we return to this quote later in the paper, such long-standing principles are increasingly exposed to new pressures associated with the financialization of legal practice. Indeed, as illustrated by our analysis of large law firms, the penetration of financial logics into the management of professional firms is an important and so far relatively undocumented trend which may have some unexpected yet significant implications for professionals as well as consumers.

Of course, outside of the professions, the inflection of economic practice by the rubrics of financialization is now a well-documented trend (see Feng et al. [2001] and Froud et al. [2006] for theoretical explanations and Froud et al. [2002], O’Neill [2001], Pike [2006] and O’Neill and McGuirk [2003] for empirical case studies). Uniting all of these studies is a concern with the way the involvement of firms in capital markets and the rise of shareholder value logics have influenced strategy, firstly in the USA and latterly in the UK and increasingly in other parts of Europe and Australia (Clark et al. 2002; Lazonick and O’Sullivan 2000; O’Neill 2001). It has then become increasingly obvious that the logics of financialization pervade economic life and that we are witnessing the ‘capitalisation of everything’ (Leyshon and Thrift 2007).

In this paper we develop debates about financialization using the example of large English corporate law firms. We show how privately held organisations, not listed on stock markets, have become enchanted by the logics of financialization, mirroring the behaviours of market-listed, shareholder value driven firms. In particular we consider how the idea of ‘financialization by proxy’ can be used to explain the way the values and ideals of financialized practice inflect the management of law firms leading to structural reconfigurations designed to align firms with increasingly hegemonic performance-led, metric driven models of business management.

As well as the introduction of the idea of financialization by proxy, the contribution of this paper is to show how the example of law firms is not only interesting insofar as it extends the analysis of financialization to privately owned organizations but also because it explores these processes within a professional context, a context traditionally assumed to be separate from the world of business, commerce and entrepreneurship (Larson, 1977). In doing so, we highlight the peculiar proxy metrics and mechanisms through which these logics are being stretched, in another example of the ‘capitalization of everything’ (Leyshon and Thrift 2007), into new and
unexpected domains. This colonization is inevitably a process fraught with tensions as the intended and unintended consequences of financialization (by proxy) collide with the fundamental principles and long standing practices of professional service firms. Thus, we consider the wider societal implications arising from the financialization of supposedly public safeguard services (Broadbent et al. 1997). In particular we suggest that this drive towards fitter, leaner and meaner organisations and towards financial excellence might actually only benefit ‘elite’ professionals who are able to extract significant surplus from expanding subordinate groups as an increasingly elongated and reformulated division of labour emerges. This is something that is in the long term likely to threaten public interest as well as professional cohesiveness (Ackroyd and Muzio, 2007; Muzio and Ackroyd, 2005).

2. The financialization debate: Some key issues

Theories of financialization are now well-rehearsed and it serves little purpose to subject these to another comprehensive review (see Pryke and du Gay [2007] and Froud et al. [2006] for reviews). Instead, we focus upon the four main components of existing arguments: trends, agents, outcomes and critiques of financialization and use these to understand recent changes in large corporate law firms in England.

The trend of financialization is not a particularly new one. As Feng et al. (2001) describe, the ‘model’ has existed since the 1990s but has received most attention since the dot.com bust of the early 2000s and the subsequent revaluation of high-tech firms using actual rather that potential performance metrics. A central component of such evaluations is, of course, the logic of shareholder value and measures such as Economic Value Added (EVA), Market value Added (MVA), Total Shareholder Return (TSR) and Cash Flow Return on Investment (CFROI). As Froud et al. (2001, 2006) point out, whilst such shareholder value logic is as much a discourse as a stable, agreed-upon model of economic practice, it has come to dominate contemporary assessments of the success of firms. Crudely put, successful firms should deliver value by paying high dividends to shareholders and increasing their market value so as to offer substantial yields on investment.

The agents promoting this phenomenon are diverse. Froud et al. (2000) describe how consultancies, such as Boston Consulting Group and Stern Stewart, propagated logics initially formulated by management gurus such as Rappaport and Stewart. This reminds us then of what Thrift (1997) describes as the circuit of soft capitalism in which management gurus, the media and business schools advance economic practices claimed to optimise performance in the ‘new’ knowledge economy (see also Clark et al. [2004] and Greenfield and Williams [2007] on the role of the media in producing and disseminating the discourses of financialized practice). In addition, pension fund managers who are now some of the most active investors also vigorously promote the logics of shareholder value, through direct interventions at shareholder meetings (Ackroyd, 2002; Clark, 2000).
The outcomes of this are, according to Lazonick and O’Sullivan (2000), a series of important structural changes, including a shift away from a ‘retain and reinvest’ allocative regime where growing the firm through the recycling of profits is the main priority, to a ‘downsize and distribute’ regime where cuts in the labour force and divestures shrink the size of the firm but allow more profit to be distributed to shareholders. This has, according to Lazonick and O’Sullivan, a number of effects. First, contrary to expectations, there are lay-offs during periods of boom. Second, differentials between chief executive and worker remuneration are increasingly stretched. Third, and as a result of the previous two tendencies, returns to shareholders in the form of dividends and share buy-backs are significantly inflated.

Most would accept that there has been a discernible trend in this direction. But a number of critiques of financialized logics and analyses of their effects have emerged that force us to look carefully at the wider implications. Perhaps most significantly it has been suggested that academics need to be more critical of the rhetorics of financialization. As Froud et al. (2002, 2006) have argued, financialized logics and the discourses underlying them are varied, mutable and fluid, being enacted differently by both the consultants and firms that promote and employ them. Consequently, according to Froud and colleagues, assumptions that a linear logic exists between corporate restructuring, increased ‘shareholder value’ and efficiency and effectiveness improvements are questionable, with existing evidence being unequivocal at best. Instead these authors promote a cultural economy perspective that recognises the power and legitimising effect of financialized discourses over the delivery of tangible results. Indeed, as they show using the car industry, it is far from clear that financialized practices lead to more successful companies as weaker players can often deliver better shareholder value on paper, despite their shaky market position.

Our point of departure is to draw on these literatures and argue that they can be useful in analysing current trends in the organisation of large law firms in England. As already noted, existing studies of financialization focus upon capital market listed corporations in which the chief executive’s primary role is to satisfy institutional investors and realize their demands for shareholder value. Law firms, with one Australian exception that we refer to below, are not market listed as of yet but seem to be increasingly displaying archetypal financialized logics. We attempt to explain this trend using insights from the literatures described above so as to reveal some of the unexpected, troubling and potentially unsustainable consequences of recent financially focussed practices.

3. Methodology

Our analysis is constructed using a triangulation of secondary data collected from various sources and primary interview data gained through discussions with associates, partners and managing and senior partners in a number of large English law firms. Quantitative material charting the behaviours of large English law firms was taken from The Lawyer’s Annual Surveys of the UK’s 100 largest firms by revenue. This provides detailed insights into both the financial performance of law firms and their structure. Within this dataset, we focused on the top 10 firms which
due to their size and range of activities were expected to be at the forefront of process of financial reorganization. The historical analysis of these surveys (from 2003 to 2008) allowed us to extrapolate recent trends in financial performance and organizational structure as well as providing insights into changing work practices (e.g. leverage) that are, associated with the financial changes in question.

We also completed an extensive survey of legal publications aimed at practitioners in the UK (The Lawyer, Legal Week). This provided further detail of the changing financial performance and strategies of firms as well as insight into media reactions to the changes. Finally we undertook twenty interviews during late 2006 and early 2007 in large corporate law firms in England. Large is defined in terms of revenues with all firms being listed in The Lawyer’s survey of the UK’s top 100 practices. Interviewees were drawn from firms representing different segments of the table, ranging from the largest, multi-office international practices through to nation-wide firms and single office practices. In taking such a broad sweep we in no way claim to be representative and to reveal the nature of changes in all firms. Nor do we claim to represent the opinion of all practitioners in UK law firms. Instead, and following an orthodoxy established by previous research on professional service firms (Beaverstock, 2004; Empson and Chapman, 2007), we simply claim to offer an insight into some of the most important trends in recent years, as seen from the perspective of a select group of practitioners. Interviews all lasted between 40 and 70 minutes, were recorded, transcribed and then analysed using the logic of grounded theory (Glaser and Strauss 1967). All interviewees were questioned about the strategy of the firm they worked for, recent changes to the organization of the firm, working conditions and practices within the firm, managerial structures and styles, and the impact of commercial (financial and client-driven) pressures on their day-to-day work. By the end of the series of interviews it was felt that theoretical saturation had been reached. In the analysis below we use anonymised quotations from interviews to detail the argument made.

4. Financialized law firms?

Perhaps what makes the suggestion that law firms’ behaviour is increasingly inflected by financialized logics so significant is the radical break such a change would imply from traditional notions of a professional firm. Law, as one of the few state sponsored professions, has like accountancy a fiduciary duty and, historically at least, is supposed to represent a public safeguard service (Broadbent et al. 1997). As part of this duty lawyers, as trustees of valued forms of skill and expertise (Brint, 1994), are supposed to put the interests of their clients and of the public before their own. In this sense law firms have not been traditionally seen as organisations in which commercial logics prevailed.

Of course, as Hanlon (2004) describes, such idealistic visions of what lawyers and law firms are and do, if they were ever accurate, have certainly been diluted by the rise of mega-law firms with their business orientated, commercial outlook. Indeed, today large corporate law firms are professional business services firms, increasingly designed to lubricate the activities of global capitalism rather than to provide
commercially disinterested public safeguard services (see also Cooper et al. [1996] on the rise of ‘Managerial Professional Business’).

What these studies of the rise of the legal business service firms do not directly predict, however, is an outright obsession with financialized performance metrics and the unprecedented impact that these are having on the reorganization of the legal profession. This is not to suggest that lawyers have not always been keen to make money (Hanlon, 1999; Sugarman, 1996). However, in recent years there seems to have been refocusing around financial performance underscored by new discourses and metrics of profitability that inevitably promote different types of values, practices and structures (Empson 2007). This, we argue, is symptomatic of the 1990s and 2000s and curiously coincides with not only the growing size of corporate law firms but also with the rise of the shareholder society and the ‘capitalization of everything’.

5. The performance era and new metrics of success

The 1990s and especially the 2000s heralded a new period for law firms characterised by a new discourse: profits per equity partner (PEP). Whilst not as familiar as its big brother shareholder value and the associated metrics of EVA, MVA, SVA and CFROI, PEP has come to replace turnover as the measure of the success of a law firm. The Lawyer, one of the most influential legal publications in England, trumpeted the announcement that it would produce a ‘Top of the PEPs’ table in 2007 to provide “the definitive inside track on the performance of the UK's biggest law firms” (The Lawyer 2007a). For firms the race was very much on to reach the top of this table as partners recognised the embarrassment associated with low levels of PEP in a hyper-competitive marketplace. As the managing partner of Freshfields Bruckhaus Deringer commented about their past performance after restructuring delivered a massive rise in PEP, “we did not have the financial performance that is necessary or appropriate for a firm of the calibre of ours” (Lawyer Podcast, February 2007. Available from www.thelawyer.com). Similarly the managing partner of Eversheds commented after the announcement that they had broken the £500,000 PEP barrier, “profitability has been one of our key targets over the past year, and with PEP breaking the £500,000 barrier, we have proven our ability to deliver on our promises” (The Lawyer 2007b).

Of course, the result of the new obsession is a devastating critique of firms failing to increase PEP. These firms are seen as poorly managed organisations in need of refurbishment. So when the firm Shoosmiths reported a 27 percent increase in turnover but only a three percent rise in PEP, these results were described as ‘mixed’ and blame was placed on “a period of sustained expansion and a major recruitment drive across seven UK offices [that] have taken their toll on the firm’s profitability” (The Lawyer 2007c). It would seem, then, that in the new epoch of financialization, long-term investments associated with growth, which are typical of a ‘retain and reinvest’ regime (Lazonick and O’Sullivan, 2000) are not necessarily seen as wholly positive. Indeed, such has been the focus of managing partners on the new PEP metric that, over the period under consideration, PEP in our sample of the top 10 law
firms in England has risen by 72 percent. As indicated by Table 1, this significantly outstrips all other financial indicators (The Lawyer 2003; 2006d). In the eyes of The Lawyer, this growth is a reflection of a series of unprecedented and controversial interventions on the organizational structure and division of labour in law firms, including the increasing recourse to “brutal cost-cutting” (The Lawyer 2007a) and the redefinition of the very notion of partnership. This is something which strikes a remarkable resemblance with the ‘downsize and distribute’ regime, which according to Lazonick and O’Sullivan (2000), is characteristic of processes of financialization.

Table 1. ‘Top ten’ Firms: Key Financial Indicators 2003-2006

<table>
<thead>
<tr>
<th>% Turnover</th>
<th>% Net Profit</th>
<th>% PEP</th>
<th>% Profit Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>+53</td>
<td>+72</td>
<td>+82</td>
<td>+12.5</td>
</tr>
</tbody>
</table>

Source: The Lawyer 2003 and 2008d.

6. Restructuring in the law firm

We can begin our explanation of the restructuring associated with PEP fetishes in the 1990s when the first significant period of change was noted (Ackroyd and Muzio, 2007; Hanlon 1999). This was in many ways a period of unprecedented change as the structure of firms, which had been relatively static throughout the 20th century, began to evolve. Indeed, as Ackroyd and Muzio (2007) report, throughout the 1990s a rapidly growing number of solicitors entered salaried employment as part of the first attempts by partners in law firms to drive up profitability and deflect the impact of a more hostile business environment by leveraging the performance and contribution of a rapidly expanding cohort of subordinates (non-partners) who did not share profits. This stage is, however, the thin end of the wedge. As indicated by figure 1, even more significant changes have occurred since 2000 with, by the year 2006, the associate to partner ratio in the legal profession climbing to around 1.8:1, an almost complete reversal of the ratio in the mid 1980 (1:2), as firms attempted to adopt what might be described as a leaner, more profitable model.

This monumental transformation of the law from a predominantly self-employed to a predominantly employed occupation is underscored by a series of additional and drastic interventions on the profession’s labour process and career structure. In particular, these interventions include the toughening and lengthening of promotion times and criteria. These have been extensively discussed elsewhere (Ackroyd and Muzio, 2007; Bolton and Muzio, 2007; Muzio and Ackroyd, 2005); yet we want to focus on one particularly recent and important development: the case of the salaried partnership.
Figure 1. Ratio of associates to principles in the legal profession in England and Wales – 1985-2006

* Principles includes both equity partners and sole practitioners

Source: Ratios calculated from the Solicitor Indemnity Fund (SIF) and the Law Society's Regis Database, as published annually in Trends in the Legal Profession: Annual Statistical Report, by the Law Society Strategic Research Unit (www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law)

The salaried partnership is a significant innovation which stretches the meaning of partnership. The ‘traditional’ legal partnership was made up of equity partners only - individuals who owned a share of their firm and, therefore, took a share of the profit it generated. Hence profit per partner measures in the past were effectively the same as PEP measures. Increasingly, though, we are seeing salaried partners, whose remuneration is not linked to profits (besides the effect of bonus schemes), operating as a new tier in organisational hierarchies. Indeed, not only are salaried partners found in most firms now but their numbers are growing significantly. As suggested by table 2, salaried partners are, in our sample, by far the fastest growing section of the professional labour force. Thus, salaried partnership, from an anomaly found only in a minority of firms, has been recast as a formal step in an increasingly elongated professional career structure. This introduction of new steps in the career ladder together with the broadening of existing ones has implied the elongation of hierarchies and the stretching of career spans. Writing in the 80s, Richard Abel (1988) estimated an average wait of 5.5 years; today, once that an increasingly common stint as a salaried partner is factored into the equation, this has almost doubled to 10 years.

The above changes to partnership and labour force structures, more generally, responds to a financialized logic. A salaried solicitor can generate substantially more fees than her labour costs (this surplus can oscillate between 2.5 and 4.8 times wage costs according to Abel [1988]). Thus increasing the number of salaried staff relative to profit sharing partners leads to an increasing volume of surplus which can be used to maintain and expand partner income levels. Indeed, according to Hanlon (1999),
large firms have operationalized this logic by considering for partnership only those solicitors which generate three times more income than their remuneration costs. The rule of the game is simple: increase the number of people who bake the cake whilst stabilising or reducing the number of people who can share the cake (Maister, 1993). Larger helpings will inevitably follow. Salaried partnership contributes to this strategy by increasing leverage whilst providing at the same time an expectation management tool.

Table 2. Very large firms (80+ partners): Key staffing indicators 2003-2008

<table>
<thead>
<tr>
<th>% Lawyers</th>
<th>% Equity Partners</th>
<th>% Salaried Partners</th>
<th>% Associates</th>
<th>Leverage Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>-5</td>
<td>+35</td>
<td>+11.5</td>
<td>5.2:1 (+14%)</td>
</tr>
</tbody>
</table>

Source: The Lawyer 2003 and 2008d.

The financial logic associated with these developments emerges clearly in table 3. As it shows, the majority of PEP is now actually produced through the appropriation of surplus generated by subordinate workers, including this new category of ‘lesser’ partners. In this context, the manipulation of staffing ratios becomes a preferred route for sustained profitability and a standard aspect of law firm management.

Table 3. Leverage in action: An illustration

<table>
<thead>
<tr>
<th></th>
<th>Partners</th>
<th>Senior Fee Earner</th>
<th>Junior Fee Earner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hourly Rate (&quot;HR&quot;) £</td>
<td>220</td>
<td>190</td>
<td>140</td>
</tr>
<tr>
<td>Notional Hours pa (HH&quot;)</td>
<td>1,300</td>
<td>1,300*</td>
<td>1,300*</td>
</tr>
<tr>
<td>Notional Income pa (&quot;NI&quot;) (HR x HH) £</td>
<td>286,000</td>
<td>247,000</td>
<td>182,000</td>
</tr>
<tr>
<td>Remuneration &quot;R&quot; £</td>
<td>450,000</td>
<td>90,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Income/Remuneration Ratio NI/R</td>
<td>0.63</td>
<td>2.74</td>
<td>3.64</td>
</tr>
</tbody>
</table>

Data provided by Muzio (2004)

Most radically, recent interventions have also sought the reduction of equity partner headcount in a period of boom for legal services. Indeed, as indicated by table 2, between 2003 and 2008 the number of equity partners employed in the 10 largest firms in the UK contracted by 5% despite revenues growth of 53%. Although a proportion of this reduction will be accounted by retirements and promotion freezes, these trends corroborate growing anecdotal evidence of de-equitization (redundancy of equity partners). This is a momentous development which according to some (Flood 2007) strikes at the heart of the very nature of the legal profession, as, in a
The recent changes discussed here suggest, then, that developments in the profession’s labour process which originally emerged in the 1990s as defensive moves introduced by an embattled profession (Muzio and Ackroyd, 2005) have been carried through and indeed intensified in what for law firms has been a period (between 2002 and 2007) of unprecedented growth and profitability. This parallels trends identified by Lazonick and O’Sullivan (2000) in the corporate sector and in particular the shift towards a ‘downsize and distribute allocative regime’, whereby even financially successful firms continuously reorganize their activities and turn to their labour process as an avenue for sustained profitability and shareholder return. Thus, the growing attention for financialized metrics and practices and the unprecedented impact that these are having on the structure of the legal profession is certainly tied to the self interested agency of those who stand to benefit from these changes: equity partners. Yet, there are other significant vectors of change beyond self-interest. It is to these other vectors of financialization that we now turn our attention.

7. Vectors of financialization

7.1. Political-economic realignments

The legal ‘Big Bang’ that took place in 1990 opened the English legal market to overseas law firms for the first time (Cullen-Mandikos and MacPherson 2002). Previously many US firms had entered London to provide advice on US law to transnational corporations. After 1990, however, these firms increasingly began to provide English law advice and compete with the Magic Circle firms Clifford Chance, Linklaters, Freshfields, Allen and Overy and Slaughter and May. This created new competition and, most significantly for our argument here, positioned English incumbents against competitors with significantly higher levels of profits. This had two effects.

First, it created reputation problems for English firms. Law firms live and die on their reputation and, in a financialized world where profitability is the only accepted measure of success and the quality of the firm, being less profitable than your US counterpart causes reputational problems. Second, and more pragmatically, the more profitable US firms were able to pay solicitors significantly more money and,
therefore, poach star players from English firms. As one senior partner commented about this dilemma:

"I think it's fair to say that they [reports of PEP] must have some impact. For example potential recruits may regard them as significant. Perhaps some clients make a judgment on the quality of a law firm by how well it seems to be doing in those terms. So you cannot completely ignore the league tables...What we do have is a sense of a need for comparability purposes to know that we are not lagging behind on competitors, that we're not making our partners or our staff work harder for less benefit...And so if you were not financially success you would have to find some other means of retaining or attaining staff and that could be more difficult" (Senior partner, top 10 firm)

It could, then, be argued that US law firms themselves were vectors of financialization. And undoubtedly this is true to some extent as English firms copied their rivals who had begun to leverage higher numbers of solicitors to partners, used up-or-out promotion mechanisms (Galanter and Palay, 1991), deployed dual tier partnership arrangements and crucially enjoyed better profitability levels at an earlier stage. But convergence around best (in this case intended as most profitable) practice is not the only relevant trend at play.

In the post 2000 era we must also turn our attention to the enabling role of the regulatory ‘Big Bang’ connected with the UK Legal Services Bill which has recently been approved and is expected to come in force by 2010/2011. The bill, which emerged from the wide ranging criticisms of the Clementi Review, paves a way for the potential overhaul of the governance, regulation and structure of legal practice. A key provision, here, is the acceptance of outside (meaning non lawyer) ownership of law firms. This means issues associated with ownership and operational control relationships will emerge (Berle and Means, 1932) as, most radically, law firms may be able to attract external investors as shareholders and to ‘go all the way’ with a full stock-exchange flotation. Indeed, it is anticipated that up to fifty percent of the firms in The Lawyer’s UK 100 survey might seek outside investors and even stock exchange listing (The Lawyer, 2007f).

Whilst the Bill has not taken affect yet and its implications are still emergent and not properly understood, the bill’s provisions seem likely to be fuelling the financialized logics and practices described here. Indeed, part of the logic of the new financial metrics such as PEP is to provide an acceptable basis for the valuation of law firms so as to facilitate investment decisions (Mayson, 2007). Partners may, therefore, be keen to maximise the value of their partnership equity by enhancing PEP and ultimately the supposed value of the firm to outside investors. Indeed, in preparation to the new opportunities connected with the Legal Services Bill, we are beginning to see in the specialist legal press proxy (multi-billion pound) stock-market valuation for the UK’s leading firms (see for example The Sunday Times, 2007).

Legislation, therefore, seems to have acted as a powerful vector in facilitating the shift from financialization by proxy to ‘real’ financialization. In addition, of course, the very centrality of law firms as intermediaries in the newly emergent ‘economy of permanent restructuring’ (Froud et al. 2006) has also exaggerated the willingness of
law firms to change their structure. Large corporate law firms now service clients that are constantly merging, de-merging, reorganizing and refinancing their operations. They produce the legal structures that facilitate ‘downsizing and re-distribution’ (Lazonick and O’Sullivan 2000) and inevitably these logics have caught the attention of senior partners. This is, then, an important component of this process of financialization by proxy. Law firms have become so embroiled in the ideals and practices of financialized performance that they have begun to absorb and mimic them in a way that mirrors processes of institutional isomorphism (see Cooper et al. 1996). In addition, other actors have also been important in driving change.

7.2. Cultural economy and law-firm management

As described in the opening sections of the paper, various agents of financialization have an important role in reproducing the discourses that influence corporate actors. In particular management gurus and consultancies have in recent years increasingly turned their attention to advising law firms. Perhaps the most important guru for law firms, and for management consultants too, is David Maister. His books which include ‘Managing the professional service firm’ (Maister 1993) and ‘First among equals: how to manage a group of professionals’ (McKenna and Maister 2002) are best sellers, having sold over 2.5 million copies on Amazon alone. In these books Maister offers various prescriptions for managing everything from partner motivation to overseas office networks. Significantly, profitability is a key issue in all of these texts. In ‘Managing the professional service firm’ a whole chapter is dedicated to this issue early on in the book. Here readers are reminded that:

“In a partnership, the ultimate measure of profitability is (or should be) profit per partner, which is driven by three main factors, margin, productivity, and leverage... ‘profit per partner’ should be viewed as the professional firm equivalent of ‘return on equity’” (Maister 2003, 31 original emphasis).

Leaders of law firms have listened to such advice and used it as a cue for the adoption of the types of structural changes occurring in market-listed firms as a response to financial pressures.

The media also deserves careful consideration because of the central role some publications have played in championing financial logics. This has taken place both in the financial press (e.g. Financial Times) and professional publications such as The Lawyer. The Financial Times now awards annual ‘innovative lawyers’ awards, one category being management where the focus “could include, for example, issues such as international expansion and rising profitability” (see http://media.ft.com/cms/d1fbb852-ce3a-11db-b5c8-000b5df10621.pdf [last accessed October 2007]). The winner in 2007 was Eversheds for its partner profit sharing scheme. The influence of such publications because of the way they analyse, rank and publicise the PEP performance of firms should also not be underestimated. Mirroring the findings of Clark et al. (2004) and Greenfield and Williams (2007), it seems that the way the media portrays certain types of action has helped sway the behaviours of managing partners in law firms. Winning an award from the FT or being top of the PEPs in tables produced by The Lawyer and others is a major
concern of law firm leaders. Senior and managing partners watch reports carefully to analyse their relative performance and to discover the best way to obtain favourable write-ups and enhance the firm’s image. As one interviewee commented:

“Whether we’re first, second or third has a cosmetic benefit sometimes but frankly we want to be towards, well we want to be at the top end of these tables. If we’re at the top end of the tables we’re happy” (Senior Partner, top 10 firm).

8. Problematizing financialization in the law firm

It seems, then, that various factors have resulted in significant changes in the structuring of law firms over recent years. Of course, as Lazonick and O’Sullivan (2000) and Froud et al. (2002) amongst others show, the adoption of financialized practices is not without consequences for the core workforce of firms, for clients, for society at large and, somewhat paradoxically, for the long-term performance of the firms in question. These issues form the focus of the discussion below. As we show, the changes law firms have initiated have both intended and unintended consequences worth further examination.

8.1. Professional lives: Towards the law factory?

As reported, recent changes have involved the elongation and formalization of professional hierarchies and the emergence of two-tier partnerships with associate lawyers being asked to wait longer before they are offered partnership (see also Henderson, 2006). The ‘tournament of lawyers’ (Galanter and Palay, 1991) is also becoming increasingly contested as promotion is decoupled from seniority and technical competence (Hanlon, 1999) and subjected to the requirements of the business case (will the lawyer generate profits) and ultimately to the necessities of retaining and improving satisfactory financial ratios.

Perhaps one of the most justifiable logics connected with the proliferation of salaried partners is, then, that the role of this new position in helping to manage career expectations and combating attrition by offering associates who otherwise would not be promoted the title and status of being a partner. However, paradoxically, despite the intention to provide an expectation management tool, frustration is often caused by the fact that on many occasions the profit generating threshold for admittance to any form of partnership places substantial, some might say unreasonable, demands on lawyers. At the same time the temptation to use more salaried partners to expand the firm’s revenue base without decreasing individual partner takings becomes irresistible, further reproducing the problem as there is actually an incentive not to promote people beyond salaried partnership level. As one interviewee described his experience of this process:

“I’ve got a lot of friends at [firm x] and they have really squeezed partnership and it’s difficult to get partnership at [firm x] now because they
want to, you’ve probably read it in the Lawyer if you read that, they want to get to four hundred thousand pounds per equity partner. The only way they are going to do that is reduce the partners. [Lawyer x] is a guy who has come across here from Eversheds, he only joined us a month ago as partner, fantastic bloke, very able, corporate lawyer and he was told by his immediate boss [at firm x] that “we want you to be a partner because you are capable but if we squeeze the numbers to make the PEP target you won’t make it for a few years” (Lawyer, top 25 large English law firm).

For those stuck in the middle, the new profit focus has potentially significant consequences. Whilst the ‘elites’ of law firms, the equity partners, reap handsome rewards from rising PEP, non-equity partners and especially the rafts of leveraged associates face new challenges as they fulfil the role of cogs (profit generators) in increasingly large law machines. Consequently, as the income gap separating junior solicitors and partners from their profit sharing equity partner seniors widens, and as promotion tracks become more competitive and tortuous, workloads increase, work-life balance deteriorates and promotion tournaments become more fractious. Sixteen hour days and six or seven day working weeks are now not uncommon as lawyers strive for promotion and are leveraged to deliver rises in PEP. These tensions reap a personal as well as a professional toll. Horror stories such as the solicitor from Freshfields Bruckhaus Derringer who, according to the coroner’s report, died accidentally when he fell from a balcony at the Tate Modern gallery in London but who many believe to have committed suicide, are indicative of the rising stress levels confronting associates (The Lawyer 2007e). Firms don’t deny that their strategy is to leverage maximum value from associates. As one senior partner in a top ten English firm admitted:

“So on the face of it we’ve staffed transactions more efficiently. We’ve perhaps had less lay time between the transactions or between advisory roles. So there’s been more work done with little incremental cost”.

However, the combination of extended partnership tracks and growing stress levels are said to be the cause of the now significant attrition rates experienced by large English firms which run at up to 50%, despite unprecedented financial success. Indeed, many firms are now asking whether it is possible to extract profits from an already stretched group of workers:

“You get to a certain level – say the £500,000 partner profits point – and the squeezing more out of the machine becomes increasingly difficult; particularly if you are not going for the big de-equitisation push. You cannot ask associated to do much more than they are doing” (quoted in Legal Week 2007a).

8.2. Public interest

All of this may seem of little concern beyond the confines of the law firms’ walls. But, in theory at least, professionals such as lawyers ‘heal our bodies, measure our profits and save our souls’ (Abbott, 1988). Professional projects (Larson, 1977) have historically justified their claims, privileges and rewards on the basis of rhetorics of
altruism and public service. This is what Brint (1994) refers to as the social trusteeship ideal of professionalism whereby the professions have consistently highlighted their role as depositories of socially relevant forms of knowledge, thus giving them the ability to solve problems of great public and personal importance.

In today’s post-Enron context, many would be rightly sceptical of suggestions that professionals and corporate lawyers in particular provide publicly spirited services. Nevertheless, despite the new realities of commercialization, corporate lawyers do still maintain important statutory roles and ethical responsibilities, which inevitably clash with the unfettered pursuit of economic return. As officers of the court lawyers have a duty to serve justice and uphold the law, whilst the nature of their fiduciary relationship with clients implies that they have to prioritise the clients’ best interest (in the sense that they do not step outside of the law), sometimes at the expense of their own profit maximization. For example, if a client has to be advised not to pursue a particular deal or form of restructuring for legal reasons the law firm will potentially lose income. New financialized models which emphasize profitability and success in the PEP league tables raise questions about the ability of lawyers to maintain this ‘disinterested’ position and their fiduciary duties.

Indeed, in May 2007 when the Australian firm Slater and Gordon floated on the Australian stock exchange the profession entered a new era where profit making has to have a formal place in management decisions. This is where the paper’s opening quote, taken from Slater and Gordon’s initial public offering brochure, becomes significant:

“Lawyers have a primary duty to the courts and a secondary duty to their clients. These duties – including the attendant responsibilities such as client confidentiality and the rules relating to legal professional privilege – are paramount given the nature of the company’s business as an incorporated legal practice. There could be circumstances in which the lawyers of Slater & Gordon are required to act in accordance with these duties and contrary to other corporate responsibilities and against the interests of Shareholders and the short-term profitability of the company” (Slater & Gordon 2007, 84).

The quote captures the inherent tensions between the profession’s duties and the new preoccupations connected with financialization, flotation and the expectations of outside investors. Can lawyers maintain this balance effectively? Are overworked associates and partners capable of fulfilling their duties and of managing conflicting demands to the best of their ability? Furthermore, does the consumer and indeed society benefit from such changes in emphasis and practice even when these are justified in the terms of client focus and value-added?

In many ways such questions take us back to the work of Berle and Means (1932) who studied the dangers of separating ownership and control in firms because of the moral hazard it creates. Similarly the work of Aglietta and Rebérioux (2005) on the problems of CEO share options as a mechanism for ensuring the performance of firms also seems relevant here. In short, this work suggests that financialized performance metrics might create a conflict of interest with partners and those managing law firms potentially prioritising their own and the firms gain – i.e.
profitability – in lieu of fiduciary duty and at the client’s best interest. Staffing transactions with cheaper forms of less qualified professional labour such as a legal executives and trainees, using computerised case management systems to reduce the number of solicitors needed, and having solicitors simply sign-off paperwork associated with a case rather than actively work on the case are all examples of the outcomes of profit-driven strategising. As the factory system replaces craft production, costs are reduced but clients may be potentially deprived of the benefits associated with bespoke, solicitor-led advice.

Whilst we are hesitant to make too many claims at present because of the ongoing nature of developments, clearly such issues should be considered in future debates. Indeed, an intensification of financially-driven restructuring is possible in the English context over the forthcoming years as firms further seek to improve PEP in preparation for floatation on stock exchanges or the attraction of external investors. As Mayson (2007) argues, those firms with high PEP are likely to be more attractive to investors and so PEP rates and league tables are likely to be scrutinised even more in the English post-legal services bill context. However, our interviewees did argue that few large firms were likely to rush to find external investors because of concerns about the reputational dangers associated with the demise of partnership governance (see also Empson and Chapman, 2007). Indeed, reassuringly some practitioners are even beginning to ask questions about the dangers of the PEP ‘game’. As Guy Beringer the managing partner of Allen and Overy commented in an editorial placed on his website:

“I argue that PEP is not an appropriate measure of the success of a law firm and should be replaced with measures which take account of sustainable profitability, client satisfaction and staff motivation” (see http://www.allenovery.com/AOWEB/Knowledge/Editorial.aspx?contentTypeID=1&itemID=34073&prefLangID=410).

Similar comments were made by the Editor of Legal Week (see Legal Week 2007b), suggesting that the financialized model of the law firm is already contested.

9. Conclusion

In this paper we have sought to do two things. First, explore the way the logics of financialization have penetrated large English law firms in recent years. We have described this as a process of ‘financialization by proxy’ because of the way ideals and discourses have moved into the world of legal services from the world of the stock market through newly created metrics and mechanisms (PEP league tables). In doing this we have examined both the nature of the changes associated with but also the agents of the financialization process in law firms. Second, we have begun to unpack some of the most striking consequences of this process of change and how this connects with other key trends identified in the literature. It is well known that financialized management has implications for the workers (Lazonick and O’Sullivan 2000) and consumers (Froud et al. 2006) and here we have begun to examine this from the perspective of law firms. These changes are radical in the sense that they
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reconfigure the ways law firms are organised. They also affect the personal experiences of lawyers as professionals and may challenge the fiduciary duty of firms.

In relation to broader theoretical issues, two of the findings from the discussion above are especially significant. First, our description of ‘financialization by proxy’ shows just how widespread financialized discourses have become and the way such models are able to penetrate perhaps unexpected domains of economic activity. It would seem, then, there is a particularly pressing need to further expand the study of processes of financialization and to conceptualise their increasing impact on new occupational domains often not considered in existing literatures. Second, we have highlighted the way the application of financialized models to professional industries can have similarly corrosive effects as have been described in other areas of economic activity (Froud et al. 2006). In particular the uncertainties surrounding both the short- and long-term impacts of new organizational structures and practices raises a number of questions that need to be addressed through further research. This, then, is not simply an issue of whether law firms should be allowed to received external funding or float on the stock exchange. It is a more fundamental question about how to structure law firms to best meet the need of lawyers, clients and society generally.
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Legal Week 2007a. Associate fears grow as firms stretch leverage. *Legal Week* 19th July

Legal Week. 2007b. End of the road for PEP. *Legal Week* 19th July


The legal profession constitutes a broad and diverse occupational group. Even if we leave barristers aside, whose practice continues to be bound by a series of traditional restrictive arrangements, the solicitor branch of the profession is fragmented along multiple cleavage lines, with size, location and above all type of work/clients being the principal differentiators. Indeed, Heinz and Lauman (1982), in an old but influential classification, distinguish between a corporate and a personal hemisphere of the law, with the former focused on supporting the transactions of corporate capitalism and the latter tending to the needs of physical persons. Of course, these hemispheres and the many subsections within them present significantly different realities, interests, concerns and for the purposes of this paper exposures to financialization processes. Here, we are concerned not only with firms firmly rooted in the corporate hemisphere of the law but with a City-based elite of international law practices which is orientated towards capital market and transnational corporate work. In particular, the top 10 firms, here considered, generate almost half of the professions’ turnover despite employing just over 15% of its professionally qualified labour force. These firms given their size, complexity and the markets they serve are the most exposed to the financialization processes here described. 

1 We use the definition of large law firms set by the Law Society: i.e. those firms with 80 or more partners.
Indeed, Freshfields Bruckhaus Derringer recently won an employment tribunal where a former partner claimed he was unjustifiably de-equitized because it was deemed that the firm had taken proportionate steps in pursuit of a legitimate (profit enhancing) goal (The Lawyer 2007f).

As even the most senior partners in London’s law firms are paid significantly less than many of the bank clients they work for, this trend is likely to have further driven the desire of partners to optimise their own profits so to affirm their elite status.

For example, in the large English ‘magic circle’ firms (Clifford Chance, Freshfields Bruckhaus Derringer, Linklaters and Allen & Overy, the ratio of starting salaries to ‘top of equity’ pay is approximately, on average, 1:17 or £65,000 to £1,105,000. Even starker is the ratio between those at the bottom of the partnership ladder in 2006 and those at the top which was, on average, 1:4.8. In 2001 the ratio of top of equity to bottom of equity was 1:2.4 (based on data in The Lawyer (2003; 2006).

Many also expect the changes associated with the Legal Services Bill to be replicated elsewhere meaning discussions of financialization may have relevance outside of the English context of this paper.