



ATTORNEY SEARCH

by A. Harrison Barnes, Esq.

### The industrialization of law firm

In the early 1800s during the Industrial Revolution in England, laws and customs which had been designed to protect workers were first ignored, and then abandoned. In 1808, for example, a bill passed that decreased the minimum wage and the Combination Acts outlawed trade unions. High food prices and decreasing wages during this time also served to require more of each person's wages and make life very difficult for workers.

A group of skilled artisans in the textile industry who came to be called the "Luddites" became very discontented by these conditions, which were rapidly worsened by the introduction of machines designed to replace them. With the advent of machines, employers could pay skilled textile workers like the Luddites even less. Faced with the loss of work to the machines, the Luddites began rioting and breaking into factories and destroying the machines. The government eventually made the smashing of machines a crime punishable by death and the Luddites activity stopped and their organization fell apart.

This article examines the industrialization of the American law firm over roughly the course of the past thirty years. While industrialization in the legal profession was over 150 years behind industrialization of trade jobs in England, this recent industrialization has the same lessons of industrialization in England nearly 200 years ago: the interests of capital and efficiency have the power to overwhelm organized groups and bring profound changes on a profession. In the case of the American law firm over the past twenty years, the interest of capital and efficiency have served bring profound changes to the profession, making the traditional law firm we once knew a faint memory. The most significant event in American law firms over the past thirty years has been the industrialization of the law.

#### A. The Pre-industrialized Law Firm

The pre-industrialized law firm was an insular and predictable social organism. Traditionally, a young associate (1) entered a law firm out of law school, (2) made partner after a set number of years and (3) remained with the law firm until retirement. It was exceedingly rare that an attorney would ever leave his law firm, just as it was rare that an associate would not make partner at the law firm he joined.

Law firms were generally considered quite insular places. Because leaving the law firm was quite rare, law firms were generally quite protective of their own and carried a certain amount of suspicion for outsiders. Inside the law firm, individual differences and factions between attorneys in the firm could certainly arise, but the concept of leaving the group might be likened to leaving a close-knit tribe.

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One of the better-known attorneys in the United States left one of the top law firms in the nation at the time in the early 1970s and moved to another city. Despite Ivy League credentials and experience with one of the top law firms in a major city, this individual could not find a job. I am told it was because at the time law firms simply did not hire laterals. In fact, firms looked at attorneys seeking to join their firm as untrustworthy and suspicious. While this particular attorney subsequently set his own practice up and became incredibly successful, it does demonstrate the importance that law firms at the time attached to loyalty and the insular nature of their social structures.

## **B. The Industrialization of the American Law Firm**

There are roughly two periods that define the industrialization of the American law firm (1) early industrialization which occurred between the 1950s and the early 1970s and (2) industrialization which has been occurring between the 1980s and the present.

### **1. Early industrialization of the American law firm**

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Between the 1950s and the 1970s, law firms had begun to realize the importance of organizing themselves to better serve large businesses. Throughout the 1950s and the post World War II boom, American business experienced an unprecedented period of growth. Law firms were eager to respond to this new business and began growing to accommodate these interests. Prior to the 1950s, it was exceedingly rare for a law firm to have more than 20 attorneys. As law firms grew to accommodate major American corporations, significant changes in the organization of American law firms began to occur.

As law firms rapidly grew to accommodate American business, the partners inside these firms began to realize that with such large classes of junior associates, it would be in their best interests if not all of these associates made partner, as there would be greater profits for the partners at the top of the pyramid. In addition, it has been said that many partners inside law firms at the time were becoming envious of the large salaries many executives were making and were looking for means to increase their own incomes to that level.

Cravath Swaine and Moore ("Cravath") was the first law firm on record at the time to openly recruit associates at law schools with a shared understanding that the associates would likely never make partner. In order to get the best talent, Cravath in turned paid the highest salaries at the time-so high that they initially were virtually incomparable to those being paid by other similar firms of the time. Cravath also developed a system of sending the associates who did not make partner to work for its clients to thereby increase the work it was receiving. In some sense, Cravath helped usher in the "in house attorney" as we know it because most American corporations had almost all been dependent upon outside counsel.

By the early 1970s, law firms were also rapidly moving toward a billable hour method of charging their clients. Prior to the early 1970s even, the majority of the attorneys in the United States at even the largest firms were not using the billable hour. I recall a story from an older attorney who stated that he would grab a file, feel its weight by holding the file in his hand and say something to the effect of "that looks like about \$1,000. Send them a bill for that." Several studies were done in the 1950s and 1960s that concluded that lawyers made more money when they calculated their time on an hourly basis. Due to these studies, law firms began increasingly adopting the billable hour method for their clients. Today, this is something that is commonplace.

The introduction of associates who were unlikely to make partner, the billable hour and the movement of lawyers from law firms to corporations are the defining characteristics of the early industrialization period of American law.

### **2. Industrialization of the American Law Firm**

In the 1980's law firms began hiring consulting firms who came in and started dividing tiers of partners into income and equity partners. What had at one time been a very insular profession, where groups of partners made decisions among themselves without outside guidance, changed. Business structures and forces were brought inside of a profession that had historically been very distrustful of outsiders.

Under the equity and income partner model introduced by consulting firms, certain partners receive a salary and other partners get voting rights in the firm and a percentage of the firm's profits. Prior to this time, most law firms had only equity partners. Under the equity and income partner distinction, in practice it is generally the partners who contribute the most to the firm's bottom line in terms of business origination and hours billed who become equity partners. Other contributions to the firm such as the training of associates, community activities and more become less emphasized under this model. Partners therefore become more concerned with their individual financial contributions to the firm and not other activities which might strengthen the group but do not have an immediate economic impact. Firms, of course, can decide to demote partners from equity to non-equity status to increase the individual profits of the partners who are generating the most income.

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The change from one class of partners to more than one class of partners has increased dramatically over the past twenty five years at a rapidly increasing clip. Not surprisingly, the wages of equity partners has increased dramatically during this period as well. It has also become much more difficult to become an equity partner. What once was an environment more or less of equals has become increasingly stratified.

Corresponding with this change in the early 1980s was a movement towards stratifying the income of partners beyond that equity and income distinction even more through the use of new methods of measuring each individual partner's performance. This movement has also rapidly increased in momentum. All sorts of compensation systems began to be designed where the productivity of partners was measured by various systems. Some of these systems relied on point calculations whereby partners were awarded points and a percentage of profits based on various contributions they made to the firm. Some firms moved to systems which awarded partners simply based on how much business they brought into the firm and how much work they did. Before this time many law firms had simply followed "lock step" compensation systems whereby a partner's income increased a fixed percentage amount of the firm's overall profits as the partner became more senior.

Throughout the 1980s and until the present, the attorneys and partners inside law firms have become increasingly mobile and the loyalty on both sides has deteriorated between employer and employee dramatically. Before the early 1980s, it was almost unheard of for a partner to leave one large law firm to join another. It is likely not coincidental that with the introduction of new classes of partners and compensation systems, partners are more apt to leave for a better compensation system or because they feel they have been shorted by their law firm.

Since the 1980s, law firms have also increasingly turned to outside vendors for support with document management, paralegals, contract attorneys and more. In the past decade, the staffing functions inside law firms have even caught the interest of public companies who, through "roll ups," have consolidated many staffing and legal support companies working for law firms. This movement also emphasizes the increasing influx of outside business interests into what was formerly a very insular environment.

Since the 1990s, a massive wave of law firm mergers has occurred and many large scale law firms have gone out of business, or dissolved. These events sound more like the events of large corporations than law firms. One of the more notable events has been the spectacular failure of some large law firms such as Finley Kumble in the 1980s. This upstart law firm took the nation by storm with its business-like approach to the practice of law in the 1970s and grew into a national powerhouse by the 1980s. The law firm enticed big-name partners to join its ranks by using high salaries and inflated promises. Finley Kumble failed when it could not pay the enormous loans it had

taken out to pay its partners and high overhead. This sort of borrowing to pay partners is the sort of thing that would have been unheard of in a law firm less than a decade before its demise.

Attorneys at this law firm around the country all arrived at work one day to find the doors locked and a sign on the door stating the firm was out of business. Finley Kumble was built on business practices and crashed on business practices and risk models that have traditionally characterized large businesses. More recently, the crash of tech star Brobeck Phleger & Harrison, one of San Francisco's oldest and most venerable firms came when the firm could not meet its loans. This sort of instability-crushing outside debt loads, a lack of conservatism with finances and other practices-is something that at one time could not be imagined with law firms. Today it is becoming increasingly common.

The increase in law firm mergers has accelerated at a rapid clip since the 1990s. The growth of law firms combining partnerships is something that also would have been hard to imagine not too long ago. During such mergers, it is now almost a given that the merger occurs contingent upon the financially unproductive attorneys from each merging firm leaving before the merger occurs. Combining for geographic expansion, practice area additions and financial might, the loyalty between individuals who are ostensibly partners all but disappears in pursuit of the biggest and more profitable business. These mergers are generally done for business purposes and the self-serving interests of the strongest partners from a financial standpoint at both firms.

Practice groups frequently leave one firm for another in today's industrialized law firm market. In Los Angeles, where I am based, I routinely see announcements of five or more partners leaving one firm to join another every week. Again, this sort of activity is something that would have been hard to imagine not too long ago,

In the late 1990s and into 2000, Internet chat boards calling themselves things like "Greedy Associates" rose up (ironically, the largest one, [www.infirmation.com](http://www.infirmation.com), was bought and is owned by Thompson Publishing, a publicly traded company that also owns WestGroup). These associate chat boards grew to prominence during the late 1990s and early 2000 as associates started leaving law firm in droves to go in house at companies promising stock options and potential riches.

The traffic of these chat boards peaked in 2000 when law firms began raising salaries in an attempt to curb mass defections to corporations. Associates on the chat boards gossiped about the next big salary increase, what bonuses firms were paying and more. Associates also began posting memos from their law firms on the chat boards (such as the infamous Clifford Chance memorandum) detailing information on firm working conditions, salaries and bonus structures. Associates griped about their treatment by partners, complained about compensation levels and spread good and bad gossip about their firms.

The rise of these chat boards is significant. Even the name of these chat boards, Greedy Associates, demonstrates that the law had moved to something where individual money-and not the practice of the profession of law-became the primary motivating concern of young attorneys. This, in fact, is how most people view the modern American businessman. Here, with the Greedy Associate boards, I believe that the American law firm was announcing to the world in no uncertain terms that it had become industrialized.

The chat boards also underscored that the law had become something where values such as loyalty were no longer emphasized and where individual associates were out for their own self interests. Instead of a group of fellow associates sitting in the same law firm socializing, the "group" for the associates had become an anonymous computer discussion board of alienated attorneys on the Internet. The alienation of these attorneys is reminiscent of arguments made in the industrial revolution about workers becoming alienated as well.

In early 2000, the law firm has started changing even more. We are currently witnessing massive growth in the outsourcing of legal services to India, where fresh lawyers from top law schools educated in English common law

will work happily six days a week for \$300 a month. While this trend is relatively recent, case law editors at West Publishing are now in India, American law firms are now having patents written and researched in India, legal research is now being done in India by several concerns and the businesses that are providing these services are growing by leaps and bounds.

While this movement is certainly in its early stages, it is gaining steam fast-very fast. Just as computer programming jobs have gone by the millions to India, China and other developing countries putting untold numbers of Americans out of work-so too will legal jobs.

In thinking about this issue, I cannot help but be reminded of the attitude of computer programmers in the 1990s and until 2001. These programmers were arrogant, would switch between jobs at the drop of a pin, demanded outrageous salaries and hourly rates and would only work on projects which interested them and (if not) demanded stock options. When I put out an ad for a computer programmer recently for BCG Attorney Search, I believe we received of 2,000 application in less than 48 hours. In fact, I received so many applications I had to call Monster and ask the ad be pulled because I could not operate my email effectively since applications were arriving so rapidly.

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Similarly, the patent attorney is under assault from the developing world and I can envision a time in the near future when a slew of applications will come for those jobs too-in a lighter sense, this is already occurring. Three years ago, firms would kill for a patent attorney in the United States. Patent attorneys were sometimes receiving bonuses of \$50,000 or more and were, in many cases, extremely arrogant about their prospects. So too it will be with other practice areas of the law-these areas of the law will be under assault as soon as lower cost service providers are identified.

## **B. Conclusions**

In book 4, chapter 2 of Adam Smith's 1776 book, *The Wealth of Nations*, Smith argues that every individual in society employs their capital so that it promotes the greatest value. In employing his own capital, an individual intends only his own security and gain. Adam Smith's "invisible hand" theory states that by pursuing his own interest in the employment of capital, an individual frequently promotes the ends of society more effectively than he really intends to.

Today's law firm environment is, in a sense, now being controlled by Adam Smith's "invisible hand"-- for better or worse. The law firm environment has industrialized and become a very tormented place, where loyalties have been eroded and financial contributions are paramount and where outsiders and business interests transformed the profession. The American law firm has become industrialized.