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WHAT'S WRONG WITH LAW FIRMS? A CORPORATE FINANCE SOLUTION TO LAW FIRM SHORT-TERMISM

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Lawyers and clients are unhappy with the contemporary law firm. Associates complain of being treated like "leverage tools" and given inadequate opportunities for mentoring, training, client contact, and career advancement. Clients feel overcharged and underserved, and are constantly searching for a better deal from a different firm. Even partners—the ones who profit from associate hours and client billings—have grown tired of a "what-have-you-done-for-me-lately" culture in which they have to bill and earn as much as possible during their productive working years and who, like clients, are all too willing to chase a better deal at another firm.

What is to blame for this discontent? This Article suggests that the cause is law firm short-termism. Law firms place too much emphasis on current revenue generation—the annual "profits-per-partner" numbers—and not enough emphasis on building long-term value. At core, it is this short-term outlook that leads law firms to squander valuable opportunities

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to build long-term loyalty among their clients and lawyers.

The Article further argues that the most promising solution to law firm short-termism is a simple one: change the law firm's capital structure. Law firms focus exclusively on the short term because the people in charge of law firms are compensated based solely on short-term performance; they do not hold permanent equity interests that would compensate them for creating long-term value.

Law firm partners share in a firm's profits only for so long as they are employed and generate revenues. Upon retirement, they may receive a declining draw that resembles an employee pension, but their equity interest vanishes. It is no wonder that law firms favor current revenues at the expense of long-term value. Law firms are structured to be nothing more than transitory associations of individuals who happen to practice law under the same roof for a particular period of time.

The Article explores how an alternative capital structure—one with conventional permanent equity—would change lawyer incentives and improve both the economics of law practice and the cultural experience of all of a law firm's constituencies. The proposed reforms offer the promise of marked improvements for law firm partners, associates, and clients.

In a permanent equity model, senior lawyers would be rewarded for building lasting businesses, not just for current billings, and their equity interests could grow to be worth many times their annual compensation, thus providing a significant nest egg for retirement. Junior lawyers would no longer be merely a source of leverage in a harsh, up-or-out culture, but rather would be embraced as the future of the firm and the key to its equity value. Finally, clients would benefit because the value of the firm would depend more on the sustainability of future earnings then on billings in any single period, and law firms would have every incentive to win and retain their clients' continuing loyalty, even if that means accepting alternative billing arrangements and lower current billings.

I. INTRODUCTION

Plenty of ink has been spilled on the dramatic changes that have taken place at law firms over the last couple of decades. In a remarkably short period of time, we have gone from a world in which lawyers spent their entire careers at a single firm and enjoyed lockstep compensation,[1] to a

1. *See* Jack A. Guttenberg, *Practicing Law in the Twenty-First Century in a Twentieth (Nineteenth) Century Straightjacket: Something Has to Give*, 2012 MICH. ST. L. REV. 417, 421 ("Until fairly recently, there was the definite perception that lawyers in large law firms were likely to spend

world in which jumping between firms is commonplace[2] and lawyers' compensation typically depends on their business generation and billings.[3] Over the same time period, clients have shifted from relying on a single law firm as their long-term trusted advisor to instead relying on in-house legal departments and shopping their outside work among a number of different law firms.[4] Lawyer and client alike increasingly view the law firm as a loose association of economically motivated free agents who happen to practice law under the same roof.[5]

Unfortunately, this increased fluidity has not been received positively; clients and lawyers tend to be dissatisfied with the demise of long-term loyalty in law practice.[6] As law firms work to maximize profits and cut costs, partners and associates complain of low morale and poor quality of life,[7] and corporate clients complain of exorbitant costs and unattractive billing practices.[8] Scholarly and popular writers have thoroughly

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their entire careers with one firm."); Bernard A. Burk & David McGowan, *Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 34 ("Until recently, the vast majority of large firms paid associates' salaries, and often their bonuses as well, in a strictly seniority-based 'lockstep' system.").

2. *See* Deborah L. Rhode, *Foreword: Personal Satisfaction in Professional Practice*, 58 SYRACUSE L. REV. 217, 220 (2008) ("Almost half of all associates leave law firms within three years; three quarters leave within five years.").

3. *See* Burk & McGowan, *supra* note 1, at 34–35 (explaining the "tiered" system, which allows firms to "concentrate resources and retention efforts on associates who appear to be advancing in skill and value, while paying (and possibly charging) less for those who may not be").

4. *See* ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 284 (1993) (discussing the reasons for the shift); Robert K. Vischer, *Big Law and the Marginalization of Trust*, 25 GEO. J. LEGAL ETHICS 165, 178 (2012) (same); Burk & McGowan, *supra* note 1, at 8 ("[Clients'] relationships with their outside counsel tended to be durable and exclusive, to extend broadly over a wide array of subjects, and to range from matters of great complexity and importance to routine services such as lending documentation and ordinary commercial disputes."); Guttenberg, *supra* note 1, at 421 ("Just as there was a perception of lawyer stability within the law firm, there was the perception that 'clients tended to be enduring.'").

5. *See* Burk & McGowan, *supra* note 1, at 16.

6. Vischer, *supra* note 4, at 186–87; Joan Williams & Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention*, 8 WM. & MARY J. WOMEN & L. 357, 360 (2002) ("[C]lients . . . are increasingly dissatisfied with high turnover.").

7. *See* Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 271 (2000) ("Lawyers are working more, reducing vacation time, spending less time with family members, are prone to alcohol abuse, and face high levels of psychological distress."); Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1920–21 (2008) (recounting a partner explaining that practicing in a big firm "has a very significant impact on the quality of life. But the legal profession—it is that slavish mistress. You can either practice a hundred percent or you can stop practicing").

8. *See* Burk & McGowan, *supra* note 1, at 37–38 ("[O]ne feature of the current unrest among pricing models is strong pressure on the client side to push and hold overall cost down."); Milton C.

expounded on lawyer and client dissatisfaction with the law firm as it exists today.

But for all they have written about the plight of the modern law firm, these commentators overlook what I suggest is a root cause of much of the problem: the law firm's organizational structure. Whether one embraces or laments the trend among law firms toward profit maximization, there can be no doubt that the law firm's retention of an outdated partnership model intensifies the problems triggered by this transition. The law firm partnership is a poor institutional choice for the delivery of legal services in today's legal market. Its structure fails to serve virtually all of its stakeholders. This Article addresses both the economic costs of the prevailing law firm model and the manner in which this model contributes to the profession's low morale and to client dissatisfaction.

A fundamental problem with the law firm is its confusion of ownership and employment—a confusion which, I will argue, leads law firms to place undue emphasis on maximizing billable hours in the short-term and to undervalue client service, employee well-being, and firm profitability in the long-term.

Unlike most other ventures, law firms do not permit partners to accumulate permanent equity in the businesses that they have helped to build. Partners hold equity only for as long as they remain employees.[9] Upon reaching retirement age, a partner's equity stake vanishes and what is left is a declining draw that more closely resembles an employee pension than a dividend stream on equity.[10] Accordingly, a law firm partner's only economic reward for membership in the firm is the annual compensation earned during productive working years. Moreover, because each partner's equity lasts only as long as his or her employment, partners tend to have widely disparate time horizons and risk-preferences. A sixty-three year old partner can expect to share in two more years of law firm profits, whereas a forty-five year old partner can expect to share in twenty.

Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 FORDHAM L. REV. 2137, 2138–39 (2010) ("[In-house] counsel are putting pressure on firms to deliver better services at lower cost.").

9. *Cf.* Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 343 (1985) (exploring ways to allocate firm profits among partners on the assumption that partners are contributing their human capital to the enterprise).

10. *See* Robert W. Hillman, *Ties That Bind and Restraints on Lawyer Competition: Restrictive Covenants as Conditions to the Payments of Retirement Benefits*, 39 IND. L. REV. 1, 2–3 (2005) (explaining the payout plan once a partner is no longer part of the firm).

In the past, law firm partners may well have cherished this now-outdated mode of business organization—viewing it as a cooperative endeavor in which important decisions were made collectively and senior partners retired to make room for juniors. They may also have venerated it as an institution that valued client service and employee loyalty, fostering long-term relationships among all of its constituents. But if that rosy picture of the law firm was ever accurate, it is accurate no longer. The changes that have transpired in law practice have rendered the old model of law firm ownership not only obsolete, but harmful. Whereas the partnership model may have been well-suited for an age of long-term loyalty, it is ill-suited for an age that emphasizes profit-maximization.

Due to law firms' lack of permanent equity, they are ill-equipped to make long-term investment decisions and have a decidedly short-term bias—a bias that harms both clients and lawyers. The corporate finance literature is replete with analyses of the perils of short-termism—that is, an undue focus on current profits at the expense of longer-term goals.[11] Short-termism fails to maximize returns to equity holders and can have negative externalities affecting a wide range of third-parties, including employees and customers.[12]

Short-termism is particularly acute among law firms, which obsess over current performance metrics, such as those captured in the *American Lawyer*'s annual statistics on profits-per-partner.[13] Although law firms vary in how they *divide* current profits—with a few still clinging to lock-step compensation and more trending toward an "eat-what-you-kill" approach—they almost all share a focus on *maximizing* those current profits.[14] Law firm management lacks a strong constituency in favor of reducing current income—say by hiring as many new associates and by making as many

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11. *See, e.g.*, Alfred Rappaport, *The Economics of Short-Term Performance Obsession*, 61 FIN. ANALYSTS J. 65, 65–66 (2005); Malcolm S. Salter, *How Short-Termism Invites Corruption . . . And What to Do About It* 3 (Harvard Bus. Sch., Working Paper No. 12-094, 2012).

12. *See* Bruce MacEwen, Milton C. Regan, Jr. & Larry Ribstein, *Law Firms, Ethics, and Equity Capital*, 21 GEO. J. LEGAL ETHICS 61, 84 (2008) ("Under the current model partners have every incentive to 'strip-mine the firm,' as one of my friends puts it, at the end of every fiscal year.").

13. *See* Shahin Gozarkhah, *Turnover: The Missing Metric*, 25 GEO. J. LEGAL ETHICS 555, 555 (2012) ("With every new issue of *The American Lawyer* and similar publications, this method of looking at easily malleable metrics like profits-per-partner to determine the success of a law firm is further entrenched."); MacEwen, Regan & Ribstein, *supra* note 12, at 72 ("Revenue and profit information is readily available, and various ratios based on financial performance are used to rank firms.").

14. *See* Milton C. Regan, Jr., *Corporate Norms and Contemporary Law Firm Practice*, 70 GEO. WASH. L. REV. 931, 934 (2002) ("[I]ncreasing profits per partner has become an explicit and commonplace goal of the large law firm.").

new partners during lean years as during good years—even if such a strategy offers long-term benefits over the life of the firm. Such a constituency is absent because law firms lack permanent equity holders.

Whereas in other corporate structures we can combat the problem of short-termism by aligning the interests of current management with those of permanent equity holders,[15] law firms do not have permanent equity holders for management to protect. It is no wonder, then, that the *American Lawyer*'s annual rankings of law firms based on profits-per-partner and similar of-the-moment financial metrics have come to dominate attorney thinking about law firms. Given the lack of permanent equity, law firms have no choice but to focus on current profitability.

This is not to say that law firms never make a decision to postpone gratification. For example, law firms routinely pay high signing bonuses to sought-after associates (for example, Supreme Court clerks)[16] or promise rich two-year guaranteed draws to coveted lateral partners (for example, senior government officials or rainmakers from other firms).[17] Yet, law firms only make these outlays if they are confident they will recoup their investments relatively quickly or if the bonuses at stake are quite small relative to the intangible benefits.[18] It remains difficult for law firm partners to reach a consensus on a larger, more sustained investment program because partners have disparate time horizons and those with greater seniority tend to dominate firm management. If law firm managers are generally in their late-fifties or early-sixties, one can expect investments designed to generate returns over a period of several years, but not much longer.

How does this disinclination to postpone gratification and invest in the future cause harm? First, and foremost, it prevents law firms from meeting client demands—a problem that harms not only clients, but ultimately the

15. Kevin J. Laverty, *Economic "Short-Termism": The Debate, the Unresolved Issues, and the Implications for Management Practice and Research*, 21 ACAD. MGMT. REV. 825, 838 (1996).

16. Brent Kendall, *High-Court Clerks Attract a Frenzy: Law Firms Offering Signing Bonuses that Exceed Justices' Pay*, WALL ST. J. (Sept. 18, 2012), http://online.wsj.com/news/articles/SB10000872396390443720204578000202789898248.

17. John P. Heinz, *When Law Firms Fail*, 43 SUFFOLK U. L. REV. 67, 69 (2009) ("[F]irms sometimes resort to extreme measures, including pay that is more than those partners are worth in the short run, ventured in the hope that the firm will end up in the winner's circle and collect the big prize."); Matthew S. Winings, *The Power of Law Firm Partnership: Why Dominant Rainmakers Will Impede the Immediate, Widespread Implementation of an Autocratic Management Structure*, 55 DRAKE L. REV. 165, 174 (2006) ("The trend toward lateral hiring is no longer confined to associates—it now applies to all levels of partnership.").

18. *See* Kendall, *supra* note 16 (recounting partners' characterizing Supreme Court clerks as a "terrific investment" and "benefit[ing] the bottom line of the firm").

firm itself, because it fails to garner the client loyalty that is critical to long-term success. To maximize profits, law firm partners tend to bill by the hour—charging high hourly rates and maximizing the hours they bill (both by working long hours and by leveraging associate hours).[19] If a law firm can keep as many lawyers occupied for as much of the year as possible, billing at the highest rates that clients will pay, the profits-per-partner metric rises. Although lawyers talk a great deal about "alternative billing arrangements," the billable hour persists as the underlying currency of the firm, which means that every nonhours structure will be evaluated against its hours comparable.[20] Clients often will request fixed fee-for-services arrangements or reduced billing in exchange for a success premium—arrangements that give the law firm a chance to earn more in the long run, both on successful individual matters and as a result of winning client loyalty.[21] Yet, firms generally approach any arrangement that risks reducing current profits with trepidation.

Law firms continue to compare any alternative billing arrangement to the hourly fee despite deep client dissatisfaction with the billable hour.[22] Clients disfavor hourly billing in part because it gives lawyers the wrong financial incentives. Whereas clients view a "successful" outcome as one that is achieved quickly and with minimal expense, law firm partners are more "successful" in the eyes of their partners (and in their annual share of firm profits) if they bill more hours.[23] This is not to say that responsible lawyers would ever consciously place their own financial interests over those of their clients, but the tendency among lawyers to be meticulous in their work and leave no stone unturned is reinforced by their financial incentive to bill more hours. Hourly billing also poses greater challenges for clients' budgeting and planning than does fee-for-service billing. Moreover, as a simple matter of risk allocation, lawyers often are better-

19. Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 760.

20. Ken Swenson, *The Exaggerated Demise of the Billable Hour*, L.A. LAW., November 2011, at 76 ("The billable hour is also an integral component of many so-called alternative billing arrangements. One need only scratch the surface of most of these arrangements to reveal the hour as the underlying framework.").

21. *See, e.g.*, Erin J. Cox, *An Economic Crisis is a Terrible Thing to Waste: Reforming the Business of Law for a Sustainable and Competitive Future*, 57 UCLA L. REV. 511, 545 (2009) ("[A partner] recently noted that 'more clients are paying Cravath flat fees for handling transactions and success fees for positive outcomes, as well as payments for meeting other benchmarks.'").

22. *See* William Kummel, Note, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation, and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379, 406 ("Traditional billing systems inequitably distribute risk and reward between law firms and corporate clients and provide few incentives for efficient legal solutions.").

23. *See* Cox, *supra* note 21, at 544–45 ("When fees are detached from aggregate hours worked, incentives to prolong litigation simply to rack up fees are nullified.").

suited to evaluate and bear the risk that a particular legal task—whether closing a transaction, clearing a regulatory hurdle, or litigating a dispute—will cost more or less than originally budgeted. Just as real estate developers prefer to employ building contractors who submit fixed bids for a project—and who abide by those bids even when faced with unforeseen obstacles—clients prefer to employ firms that will offer fee-for-service billing arrangements.[24] Contractors who refuse to bill on anything but a "time and materials" basis are unlikely to satisfy their clients, a reality reflected in the rarity of hourly billing in commercial real estate construction. Yet, law firms persist in this model.

The second constituency to suffer from law firms' short-term outlook is law firm associates. Law firms exhibit a willingness to expand or contract their summer programs, their entering associate classes, and in particular, their new partner ranks based on current profitability.[25] As a result, the entire career path of a young lawyer—one that could have spanned many productive decades at one law firm—may depend upon the happenstance of whether that lawyer graduates from law school or comes up for partner during a period of recession or economic growth.[26] Moreover, law firms' attitudes toward their new associate hires—and their expectation that most will leave after a few years of supporting firm profits—fosters a short-term outlook among the associates themselves. Young associates start their careers in a culture of short-termism and tend to embrace that culture, demonstrating little loyalty to their first employer out of law school.[27]

Finally, law firm short-termism works to the detriment of the partners themselves. If law firms permitted partners to build up permanent equity—

24. *Id.* at 544 ("The economic crisis has made clients more cost conscious and demanding of efficiency.").

25. *See* Burk & McGowan, *supra* note 1, at 28–29 ("From January 1, 2008 through January 31, 2010, the *Law Shucks* website documented 14,347 people laid off by 'major' law firms."); Sara Randazzo, *Summer Hiring Survey: Big Firms Slimmed Down in 2013*, AM. LAW. (Aug. 6, 2013), http://www.americanlawyer.com/PubArticleALD.jsp?id=1202614121454&slreturn=20131005111137 (quoting a director of recruiting at a major firm explaining "[t]his year, we thought it was a prudent idea given the market to just sort of bring in fewer summer associates").

26. *See* Ribstein, *supra* note 19, at 762 ("In order to maintain their per-partner profits, firms cannot start promoting or firing large numbers of associates."); Nate Raymond, *Law Firms Promote Fewer Senior Associates to Partnership*, N.Y. L.J. (Nov. 30, 2009), http://www.law.com/jsp/article.jsp?id=1202435897457&slreturn=20130927180102 ("Fewer associates are winning promotion to partnership this year, a trend industry experts say is a result of the economic downturn.").

27. *See* MacEwen, Regan & Ribstein, *supra* note 12, at 84 ("[T]he thought process of many senior partners is that associate mentoring is fine, 'but I really like my summer in the south of France and a new Mercedes every other year.'"); Vischer, *supra* note 4, at 186 ("[T]here is less attention paid to mentoring new attorneys, resulting in the next generation's reduced sense of loyalty to the firm.").

and to draw annual compensation based in part on their work as an employee, and in part on their equity ownership—this would enable law firms to make decisions that maximize long-term returns. The law firm fails to maximize long-term profitability when it fails to satisfy client demands for fixed-fee billing; when it fires associates or turns down partnership candidates during lean times even though those lawyers would contribute value over their careers; and when it forces productive partners into retirement so as to free up profits to distribute to the rest of the partnership.[28] Moreover, beyond just the consequences for the law firm's finances, the emphasis on current profitability can exact a psychological toll on partners, inducing low job satisfaction among successful partners that one would otherwise expect to experience the highest job satisfaction in the profession.[29] The lucky few lawyers who are skilled enough to make partner at prestigious, profitable law firms—and who get to rely on smart, hardworking associates and work on interesting, cutting-edge matters—should not be as dissatisfied with their careers as many law firm partners are. The pressures of working for one's entire career in a "what-have-you-done-for-me-lately" culture can outweigh many of the other benefits that accompany law firm partner status.

Law firms grapple with dissatisfaction among their partners differently. They may be more or less aggressive in their efforts to cut costs and increase revenues, with varying effects on lawyer morale (and client satisfaction). They also vary in how they allocate profits, as noted above. Lockstep firms inspire more comradery among their partners, but probably lead high-producers to resent peers who live off of their hard work, and to consider lateralling to an "eat-what-you-kill" firm.[30] "Eat-what-you-kill" firms reward the high-earners, but lead others to feel like second-class

28. *See* John Flood, *The Re-Organization and Re-Professionalization of Large Law Firms in the 21st Century: From Patriarchy to Democracy*, 36 J. LEGAL PROF. 415, 433 (2012) ("Equity partnerships have shrunk, largely in order to bolster declining revenues; salaried partners found they were no longer on a track to the equity; and associates found that they were welcome for a shorter number of years than before and only if they were prepared to abandon the partner track.").

29. *See, e.g.*, Patrick J. Schiltz, *On Being A Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 888 (1999) (reporting that a "survey of partners in the 125 largest American law firms found that one third of those partners—lawyers who, in the eyes of many, have reached the pinnacle of their profession—would choose a different career if they could do it over again").

30. *See* Paul C. Saunders, *When Compensation Creates Culture*, 19 GEO. J. LEGAL ETHICS 295, 297 (2006) (reviewing MILTON C. REGAN, JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (2004)) ("A lockstep system has benefits far beyond equality of compensation. It promotes collegiality and partnership. It enables a group of lawyers to practice law together as a firm or partnership, not just as individual lawyers sharing office space.").

citizens.[31] In both settings, an organization that is supposed to enjoy the virtue of self-management—and, in the past, was hailed as a true partnership among equals—nonetheless tends to be hierarchical, with sharp divides between associates and partners, and additional divisions between partners at the bottom or top of the structure (whether based on seniority or earnings).[32] Firms have recently built in layers of hierarchy between associate and partner—with new tiers labeled "counsel" or "non-equity partner." But if these alternative arrangements help to assuage the "up-or-out" culture, they are simply a palliative that fails to address the much larger problem. Indeed, in reality these new labels are designed to limit the number of equity partners who have a draw on law firm profits.[33]

It may well be that as fee-earners, client-getters, and effective lawyers, law firm partners will never truly be "equal," and that the "eat-what-you-kill" firms are correct in discarding that illusion. As in any large organization, some employees and managers will contribute more than others. But even if lawyers contribute differently to the law firm's enterprise, they can all work collectively for the common good and some sort of equality may be achievable, to the extent that all lawyers could own equity in the firm.

In this Article, I will propose a different organizational model that has the potential, in my view, to assuage the economic and cultural problems that plague contemporary law firms. The alternative model of law practice I embrace is not a new invention. Rather, it is the organizational form in which most other service providers operate: a corporation with a traditional corporate capital structure. From an economic perspective—postponing a discussion of professional norms[34]—law firms are not inherently different from other service providers. When Goldman Sachs, the last of the true "partnership" investment banks, converted from a partnership to a public

31. *See* Vischer, *supra* note 4, at 187 ("Perhaps the 'eat what you kill' law firm model has bred a lawyer culture that values self-reliance over cooperation, competition over collegiality, short-term profit over the client's long-term good, and the avoidance of vulnerability over the espousal of trust."). *Cf.* REGAN, *supra* note 30, at 46 ("[Milbank's] commitment to lockstep compensation . . . made it difficult to attract high-revenue partners from other firms.").

32. *See* Tanina Rostain, *Partners and Power: The Role of Law Firm Organizational Factors in Attorney Misconduct*, 19 GEO. J. LEGAL ETHICS 281, 284–85 (2006) ("[T]oday's firms, although giving the appearance of being organized on a collegial model, are hierarchical. Despite the absence of stated lines of authority, rainmaking partners sit at the top and control the professional fate of the partners below them.").

33. *See* William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691, 1709–10 (2006) ("[A] two-tier partnership structure allows a firm to 'keep the good people while controlling the pot.'").

34. *See infra* text accompanying notes 118–122.

corporation, there were those who lamented the change and worried about whether Goldman could continue to serve its clients, attract talented employees, and function profitably in a corporate form[35]—just as law firm partners might worry—but Goldman has been able to do just that. Why, then, couldn't a law firm be structured the way virtually every other service provider is, including financial advisors, management consultants, and public relations firms?

How would a lawyer's career path differ in a corporation as opposed to a partnership? A law school graduate would apply for a job at a law firm with an indeterminate time horizon. The new hire would be paid a salary (just as he or she is now) and would likely be paid a bonus as well, in the form of stock or stock options (as other corporate employees are, but law firm associates currently are not).[36] Over time, as the lawyer's productivity increased, so too would the lawyer's salary and stock grants. At some point, as the lawyer became more senior, her equity in the firm might approach a percentage that is enjoyed by law firm partners today, but there would no longer be any sharp dividing line between a law firm "associate" and "partner," or an "up-or-out" moment that today defines lawyers' careers.[37] Rather, the firm would value the efforts of many different contributors, ranging from the lawyer who services clients under the supervision of more senior managers, to the lawyer who is able to supervise a team, attract new clients, and perhaps even run a department. Of course, salaries and stock grants would reflect each lawyer's contribution to the firm; but if a lawyer has a bad year and earns a lower salary or bonus, that lawyer would not lose the equity accrued in prior years. The stock might have vesting provisions to encourage longer service, just as most corporate stock grants do.[38] However, most significantly, a lawyer's built-up equity

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35. Lisa Endlich, *Goldman Sachs: The Culture of Success: Chapter One,* N.Y. TIMES (1999) http://www.nytimes.com/books/first/e/endlich-sachs.html (book excerpt).

36. *See* Gerry Ledford et al., *The Effects of Stock Ownership on Employee Attitudes and Behavior: Evidence from the Rewards of Work Studies*, 20 J. COMPENSATION & BENEFITS, 24, 24–26 (2004) ("Slightly more than half [of employees of large companies surveyed] agreed that stock and options increased their loyalty to the company and that they had become more attentive to information about company performance because of stock plans.").

37. *See* Burk & McGowan, *supra* note 1, at 54 ("[F]iring all associates who fail to make partner is facially counterintuitive for both employer and employee: the firm loses its investment in years of training and socializing associates, as well as the value of any firm-specific capital. Similarly, some associates would be perfectly happy to stay on at the firm despite not making partner, and in departing will lose the value of any firm-specific capital they acquired during their years of apprenticeship.").

38. *See generally* Lucian A. Bebchuk & Jesse M. Fried, *Paying for Long-Term Performance*, 158 U. PA. L. REV. 1915 (2010) ("Firms, investors, and regulators around the world are now seeking to ensure that the compensation of public company executives is tied to long-term results.").

would not vanish upon retirement from law practice.[39] Instead, the lawyer would own a piece of the firm forever, like retired corporate employees, who are able to take their stock with them upon retirement.[40]

A law firm structured as a traditional corporation would approach investment decisions in the same way corporations do. It would carefully weigh prospective long-term returns from a potential investment, such as a client's request for long-term fixed-fee arrangement with a significant success kicker, or an opportunity to acquire a practice group from another law firm in a growing area of law. The firm would weigh the foregone, current income against the future, anticipated income and decide whether the risk-adjusted rate of return justifies the investment. If the risk-reward profile is attractive, management would make the investment, and the equity owners of the firm would have no reason to object, as they would expect to share the rewards in perpetuity. To be sure, the law firm would have to avoid *over*investment, and would have to set aside enough money to cover salary costs; it would also have to decide how much of its earnings should be retained for investment and how much should be distributed to equity holders. But all corporate enterprises grapple with such decisions.[41] Moreover, upon converting to a corporate form, law firms would benefit from the additional flexibility of choosing a range of financing options for attractive investment opportunities. Just as corporate entities today can make investments from retained earnings or from capital raised in the debt or equity markets, so too might a law firm issue debt or equity to finance its growth (as law firms in Australia and England currently may).[42]

39. *Id*. at 1919 ("Tying the freedom to cash out to retirement . . . can distort executives' decisions to retire as well as undermine their incentives to focus on long-term value when approaching retirement."). This Article does not address the tax consequences that might accompany a shift in the capital structure of law firms—an issue that would have to be addressed by any firm contemplating the transition.

40. *See* Chandler N. Hodge, Note, *Law Firms in the U.S.: To Go Public or Not to Go Public?*, 34 U. DAYTON L. REV. 79, 83 (2008) (explaining that the young attorneys at the first Australian firm to go public, Slater & Gordon Limited, "could be reassured the firm was committed to growing and would have access to a long-term equity asset").

41. *See, e.g.*, Richard Squire, *Strategic Liability in the Corporate Group*, 78 U. CHI. L. REV. 605, 644 (2011) ("[A] potential result [of the artificial reduction of a firm's borrowing cost] is that firms will engage in overinvestment because their overall cost of capital is lower than it would be if the borrowing were not subsidized by wealth transfers. Overinvestment reduces social wealth by causing firms to consume capital that would earn higher overall returns if invested elsewhere.").

42. Under the current partnership model, the perception that when a law firm borrows money, the current partners are essentially borrowing money from their successors could complicate financing decisions, a feature which can make long-term financing impractical for a lender to underwrite. *See* Tyler Cobb, Note, *Have Your Cake and Eat It Too! Appropriately Harnessing the Advantages of Nonlawyer Ownership*, 54 ARIZ. L. REV. 765, 777 (2012) ("Equity financing fosters financial stability by allowing '[i]nvestments [to] be made in long-lived and specialized physical assets, in information

So why has this not come to pass? Professional regulation is the most immediate obstacle.[43] The prohibition against "fee-splitting" and the professional concern with having lawyers supervised by nonlawyers has, to date, led the legal profession to cling to the traditional partnership model under which only existing lawyer-employees can share in a law firm's profits and serve as firm managers.[44] But in England and Australia, nonlawyer financiers are permitted to own law firms,[45] and in the United States, lawyers have explored alternative "professional corporation" organizational forms—particularly in the District of Columbia, where nonlawyers can hold equity in law firms.[46] I will argue that England, Australia, and the District of Columbia are moving in the right direction, and that professional norms can be respected by lawyers practicing in the context of a traditional corporate form. Professional concerns cannot justify the retention of an inefficient, costly organizational structure.

Are there sound reasons, beyond professional restrictions, why lawyers have organized themselves in a way different from virtually every other service provider—and in a way that is less attractive in both economic and noneconomic terms? Is there something about the economics of law practice that renders it ill-suited for a permanent equity model? One

and control systems, in specialized knowledge and routines, and in reputation and relationships, all of which [can] be sustained even as individual participants in the enterprise' come and go." (alterations in original) (quoting Margaret M. Blair, *Locking in Capital: What Corporate Law Achieved for Business Organizers in the Nineteenth Century*, 51 UCLA L. REV. 387, 387 (2003)).

43. *See* Matthew W. Bish, Note, *Revising Model Rule 5.4: Adopting a Regulatory Scheme That Permits Nonlawyer Ownership and Management of Law Firms*, 48 WASHBURN L.J. 669, 670 (2009) ("Instead of addressing the particular ethical considerations that could arise from nonlawyer ownership and management of law firms and drafting precise rules to address these issues, the ABA adopted Rule 5.4, which deems all lay investment and management to be interference with the lawyers' professional judgment."); Heather A. Miller, Note, *Don't Just Check "Yes" or "No": The Need for Broader Consideration of Outside Investment in the Law*, 2010 U. ILL. L. REV. 311, 335 ("If the restrictions on investment in Model Rule 5.4 were modified, many possible investment models could evolve in the United States based on models already being used overseas and creative models adapted to the unique needs of the legal industry.").

44. Cox, *supra* note 21, at 526 ("The ABA Model Rule of Professional Conduct 5.4(d), implemented through state-promulgated rules, provides that a 'lawyer shall not practice with or in [an entity] authorized to practice law for a profit, if: (1) a nonlawyer owns any interest therein . . .; (2) a nonlawyer is a corporate director or officer thereof . . .; or (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.'" (quoting MODEL RULES OF PROF'L CONDUCT r. 5.4(d) (2003))). *See also* RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 10 (2000).

45. Cox, *supra* note 21, at 533 ("After considered debate, both Australia and the United Kingdom passed laws allowing outside investment, confident that adherence to professional values would not be sacrificed in turn.").

46. *See* Bish, *supra* note 43, at 679–80 ("In the District of Columbia, a lawyer may form a partnership with a nonlawyer if the purpose of the partnership is to practice law, and the nonlawyer may hold a financial or managerial interest in the partnership. . . . [However,] the rule does not allow for passive investment in the organization by nonlawyers.").

might believe, mistakenly, that the absence of permanent capital and lack of long-term investment among law firms is unproblematic because law firms do not have any intrinsic long-term value in which to invest. The primary assumption underlying this argument is that clients rely on individual lawyers, not law firms. If that were true, then when a lawyer leaves a firm or retires, the business that he or she built would disappear.[47] Therefore, law firms are inherently loose associations of individual service providers whose contributions to the firm do not last beyond their working years and who should not own a piece of the firm after they leave.

I will argue that this picture of law practice is inaccurate. Whereas some portion of a lawyer's business inevitably will disappear with the lawyer, a law firm can structure client relationships and develop client loyalty so as to retain much of a lawyer's business even after that individual partner has retired. Although brand loyalty may be diminishing in the profession,[48] this phenomenon is not inexorable, but rather is largely a product of modern law firm behavior. I will argue that as an economic matter, the corporate form has distinct advantages over the prevailing partnership model and can offer the law firm, and all of its constituencies, significant long-term benefits.

This Article is organized as follows. In Part II, I will note some of the predominant complaints about law practice today and explore their connection to law firm structure. In Part III, I will expand on the economic and noneconomic costs of the law firm partnership model. In Part IV, I will map out an alternative model that has the potential to assuage these problems. To be clear, my goal here is not the complete substitution of the corporate form for the partnership model in every law firm. Although I criticize the existing model and champion an alternative, I concede that the corporate form may not be appropriate for all groups of lawyers and that it would be foolhardy to discard the old form in favor of the new before the new form has been tested.[49] My ambition here is more modest: I suggest that for at least some segment of the bar, the corporate firm is worth pursuing. If a few firms convert from the traditional partnership form and test out the corporate firm, we can then compare their performance to the

47. *See* Gary L. Sasso, *Toward a New Understanding of Loyalty*, 38 LITIG. 40, 43 (2011) ("[L]aw firms run the risk of defections by key partners and clients whenever they indulge or actively support the idea that any client belongs to an individual partner instead of the firm.").

48. *See* Guttenberg, *supra* note 1, at 442 ("Clients understand that there is no shortage of highly qualified and very talented lawyers, and they are willing to shop in the legal market like never before.").

49. It is hard to predict where, if anywhere, the conventional structure would work better than a permanent equity model, but it would be much wiser to evaluate the two models empirically after some firms have converted to the permanent equity structure.

traditional firms and see whether a more widespread conversation would be appropriate.

II. WHAT IS WRONG WITH LAW PRACTICE?

Lawyer discontent has been rampant for several decades.[50] In both popular press and academic literature, one finds varied descriptions of job dissatisfaction among lawyers, with some common themes emerging. Historically, associates have complained most loudly. In the 1980s, 1990s, and 2000s, they complained about long hours spent on mundane matters: litigation associates might spend months in windowless conference rooms reviewing documents, and corporate associates might spend similar amounts of time tweaking version after version of the same deal documents.[51] Partners made hard work and attention to detail the hallmarks of an associate's life, without the rewards of client contact or a contributing role in legal strategy.[52] The law firm associate was a "leverage tool" that enabled a partner to bill a client many times the value of the work actually performed by the partner.[53]

Not surprisingly, clients' frustration with this state of affairs mirrored that of associates, because they footed the bill for hours spent on tasks

50. Rhode, *supra* note 2, at 220 ("Lawyers' discontent is reflected in other measures, such as high rates of attrition and psychological difficulties. Almost half of all associates leave law firms within three years; three quarters leave within five years. An estimated one-third of lawyers suffer from depression or alcohol or drug addiction; attorneys have about three times the rate of depression and almost twice the rate of substance abuse of other Americans.").

51. *See* Burk & McGowan, *supra* note 1, at 25 ("[Elite law school] graduates received increasingly higher salaries to spend increasingly long hours performing monotonous and menial tasks organizing large quantities of information and documents."); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 725 (1998) ("[T]he life of a new attorney may very well be miserable. She will face unrelenting pressure to bill hours from the moment she sits down in her new office.").

52. *See* Burk & McGowan, *supra* note 1, at 25 ("[J]unior associates at elite firms were more often forced to find their training (if they found it at all) as deeply subordinated members of crowded 'teams' in large, complex matters.").

53. *See, e.g.*, Schiltz, *supra* note 29, at 901 ("So how can big firm partners take home double or triple or quadruple the revenue they generate? They can do so because partner compensation reflects not only the revenue that partners themselves generate, but also 'the surplus value law firms extract from associates.' Alex Johnson puts the point more dramatically: '[T]he blood and sweat of new associates line[] the pockets of the senior members of the firm.'" (alterations in original) (quoting Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1231 (1991)); Joshua Johnson, Note, *Associate Attrition and the Tragedy of the Commons*, 1 CRIT: CRITICAL LEGAL STUD. J. 48, 67 (2008) ("Law firms generate profit by buying associates' labor at 'wholesale' and selling it to clients at 'retail.' Under the traditional 'Rule of Thirds,' one-third of the revenue generated by an associate is used to pay his salary and benefits, one-third is used to pay overhead, and the remaining third goes to the partners as profit.").

unlikely to have more than a marginal impact on the legal matter at hand.[54] Although clients generally were willing to pay high hourly rates for a partner's time—because they placed a premium on the partner's legal advice and strategy—it only represented a fraction of their expense.[55]

After the most recent economic downturn, the law firm business model has evolved and so have the complaints. Faced with mounting competition for a diminishing pool of work, law firms sought lower-cost ways to perform mundane tasks, albeit without reducing partner profits. Rather than rely on associates with starting annual salaries of $160,000 to review documents, they shifted this function to staff attorneys, contract hires, or sometimes foreign lawyers.[56] With a lower-cost workforce, law firm partners could charge clients less and still earn a large mark-up for that work.

Now, the complaints among young lawyers are perhaps even more intense. Whereas in prior decades young lawyers would at least receive high salaries and substantial prestige for performing mundane tasks as associates at top law firms, these top firms now hire fewer associates and rely instead upon "staff attorney" or "temporary" positions, which do not provide the same prestige, security, or salary as the traditional law firm associate job.[57] As the opportunities for prestigious law firm jobs have

54. *See* David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2080 (2010) ("Whether these clients looked at staffing decisions (increasingly large teams of lawyers being thrown against every new problem), wasteful or duplicative effort (associates writing extensive memos to the file on problems that might never arise or having to review basic facts every time a new lawyer joined the team), or downright price gouging ($1 a page for Xeroxing or first class travel at the client's expense), companies began to feel that firms were using their market power to pad the partners' pockets at their expense."); Andrew Bruck & Andrew Canter, Note, *Supply, Demand, and the Changing Economics of Large Law Firms*, 60 STAN. L. REV. 2087, 2107 (2008) (highlighting three major client concerns, "escalating billable hour requirements, a lack of diversity, and high associate attrition rates—[that] affect a firm's ability to efficiently serve client demand, and thus influence how a client selects outside counsel").

55. *See* Jesse Nelman, Note, *A Little Trust Can Go a Long Way Toward Saving the Billable Hour*, 23 GEO. J. LEGAL ETHICS 717, 718–19 (2010) ("Corporate clients explain that the billable hour requires them to pay expensive junior associates for work that the client believes could have been completed in a less costly and more efficient manner.").

56. Daniel Thies, Note, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 603 (2010) ("[F]irms are shifting as much work as possible to lower paid staff attorneys or contract attorneys, while employing fewer high-paid associates. Many firms have engaged in significant layoffs, while others are using pay cuts and delayed start dates to lower their labor costs."); Joshua A. Bachrach, Note, *Offshore Legal Outsourcing and Risk Management: Proposing Prospective Limitation of Liability Agreements Under Model Rule 1.8(h)*, 21 GEO. J. LEGAL ETHICS 631, 631 (2008) ("Small law offices with few employees, corporate legal departments, and major U.S. law firms are now outsourcing legal work overseas to reduce costs and gain efficiencies.").

57. *See* Melissa Mortazavi, *Lawyers, Not Widgets: Why Private-Sector Attorneys Must Unionize*

contracted, young lawyers are significantly worse off than the law graduates of past decades.

Although all associates suffer the negative effects of law firm short-termism, women probably suffer most of all. In a society that continues to allocate family and child-rearing responsibilities unequally based on gender,[58] the career path of many female lawyers includes a period defined by their juggling of the demands of work versus family life. Over the span of a career, the period of most intense work-life tension may be comparatively short. But the crucial years of childbearing and child-rearing tend to coincide with the most important period in the career trajectory of a law firm lawyer: the years just before partnership. If law firms did not have such a short-term outlook, and did not have an up-or-out moment when female associates had to choose between professional advancement and more time at home, the benefits would inure to all concerned. Female lawyers who chose to slow down at work for a period of several years could gradually ramp up the intensity of their work at a pace that best suits them. Law firms would benefit as well, for they would no longer give up on lawyers who could be among the most productive, long-term members of the firm simply because those lawyers choose to work fewer hours during the years they have young children at home. Even male associates would benefit, for once a firm became more adaptable to alternative career paths, those paths would be available to men as well as women. The dissatisfaction that prevails among young lawyers at law firms today—and that is most acute among women of childbearing age—could potentially be assuaged by an alternative structure. But under the current structure in which all associates suffer, women suffer most acutely.[59]

Clients likewise are dissatisfied with the contemporary law firm. One might expect that recent efforts to cut costs by substituting less expensive alternatives for high-paid associates would be welcomed by clients, but clients believe they are paying far too much for the quality of work they

to Save the Legal Profession, 96 MINN. L. REV. 1482, 1489–90 (2012) ("In addition to the issues plaguing associates, staff and contract attorneys face compensation issues, lack of paid leave, poor or unsafe working conditions, and even less job security."); Vanessa O'Connell, *Lawyers Settle . . . For Temp Jobs*, WALL ST. J. (June 15, 2011), http://online.wsj.com/news/articles/SB10001424052702303714704576383641752966666 (discussing temporary attorney positions).

58. *See* CATHARINE A. MACKINNON, WOMEN'S LIVES, MEN'S LAWS 136 (2005) (discussing the social expectation that women bear responsibility for child-rearing).

59. For a critique of prevailing inequality in childrearing—and the emphasis on mothers, rather than fathers, as the group exclusively responsible for childrearing—see Naomi Mezey & Cornelia T. L. Pillard, *Against the New Maternalism*, 18 MICH. J. GENDER & L. 229 (2012).

receive.[60] It is one thing to pay a thousand dollars an hour for the limited number of hours worked by the lead partner on a matter; it is much more troubling to pay hundreds of dollars an hour for staff attorneys and even paralegals. As top firms increasingly rely on alternatives to the law firm associate, institutional clients have begun to wonder whether they should use less prestigious, lower-cost firms instead.[61] Indeed, clients increasingly spread their work out among various law firms and have ceased to rely on a single law firm partner as their trusted advisor for outside legal work.[62]

Ironically, law firm partners who would appear to have benefitted at the expense of associates and clients are themselves increasingly dissatisfied.[63] Partners' incomes increased rapidly over the past three decades as law firms found new ways to cut costs and/or recoup lost revenue even during economic downturns over that period.[64] In the most recent downturn, law firms worked hard yet again to avoid a dramatic reduction in partner profits. They hired fewer associates, made fewer partners, and even shed unproductive partners who in prior decades would have been permitted to remain until retirement.[65]

60. *See* Guttenberg, *supra* note 1, at 432 ("Corporate clients, like never before, feel the pressures to shop for legal services and to readily shift from one provider to another when they can obtain competitive and pricing advantages.").

61. *See* Dina Wang & Firoz Dattu, *Why Law Firm Pedigree May Be a Thing of the Past*, HARV. BUS. REV. BLOG (Oct. 11, 2013, 2:10 PM), http://blogs.hbr.org/2013/10/why-law-firm-pedigree-may-be-a-thing-of-the-past/ (arguing that traditional customers of high-end law firms are becoming more willing to shift their work to less pedigreed firms).

62. Gillian K. Hadfield, *Legal Infrastructure and the New Economy*, 8 I/S: J.L. & POL'Y FOR INFO. SOC'Y 1, 33 (2012) ("Low satisfaction with performance resulted in companies hiring more 'secondary' firms, increasing from an average of seven firms accounting for 30% of total expenditures in 2004 to fifteen firms accounting for 50% in 2006."); David B. Wilkins, *Is the In-House Counsel Movement Going Global? A Preliminary Assessment of the Role of Internal Counsel in Emerging Economies*, 2012 WIS. L. REV. 251, 258 ("[T]hese increasingly sophisticated internal lawyers sought to break up the long-standing relationships that tended to exist between companies and law firms by requiring firms to compete for every new piece of significant business and choosing the winner based on some combination of price and perceived expertise of the particular lawyers who would be working on the matter.").

63. STEPHEN J. HARPER, THE LAWYER BUBBLE: A PROFESSION IN CRISIS 97 (2013); RICHARD ZITRIN & CAROL M. LANGFORD, THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, JUSTICE, POWER, AND GREED 232–33 (1999) ("Despite all their money and power, lawyers themselves have never been more dissatisfied with their profession than they are today.").

64. *See* Nathan Koppel & Vanessa O'Connell, *Pay Gap Widens at Big Law Firms as Partners Chase Star Attorneys*, WALL ST. J. (Feb. 8, 2011), http://online.wsj.com/news/articles/SB10001424052748704570104576124232780067002 ("A majority of big law firms have begun reducing the compensation level of 10% to 30% of their partners each year, partly to free up more money to award top producers . . . . Star partners are routinely earning eight to 10 times the amount given to other partners—roughly double the usual compensation spread of a decade ago.").

65. Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 343–44 (2011) ("Law firms have hired fewer

But even if most partners have not suffered financially as much as recent law graduates, partner dissatisfaction nonetheless runs high. In a world in which clients no longer remain loyal, and law firms compete intensely for business, law firm partners find themselves spending more time on business development and management and less time practicing law.[66] Moreover, law firm management efforts to maintain profits by cutting costs, shedding lawyers, and increasing billing rates have made partners' lives more difficult. When your billing rates are high, your associates are unhappy, and your internal support services have been reduced, it is harder to win, please, and retain clients. Partners, who long ago chose the profession out of a love of law, find that law looms less large in their lives than it once did. Many partners lament that law has become a business, and a cut-throat one at that. Moreover, a large subset of partners have increasingly come to view themselves as free agents, who emulate law firms generally and seek to increase their own personal profits,[67] which further reinforces partner discontent.[68] Embracing the cultural shift in favor of profit maximization, law firm partners are increasingly willing to jump ship if another law firm offers them a better deal.[69]

The mobility of law firm partners tends to aggravate the already weakened links between a law firm and its clients, and among lawyers within a firm. If clients retain any semblance of loyalty to their outside lawyers, an individual lawyer tends to be the object of this loyalty, rather than the firm in which that lawyer operates.[70] Indeed, law firm partners

associates, drastically curtailed or eliminated summer associate programs, eliminated expenditures for outside training programs, reduced fringe benefits, deferred start dates or rescinded offers, frozen or scaled back salaries, and promoted fewer associates to partner."); Joyce S. Sterling & Nancy Reichman, *So, You Want to Be a Lawyer? The Quest for Professional Status in a Changing Legal World*, 78 FORDHAM L. REV. 2289, 2295–96 (2010) ("Equity partnership can no longer be assumed to be a permanent status at some firms. The legal press is full of reports of partners who have been 'de-equitized' because they have not produced sufficient business or because they have reached a certain age.").

66. *See* George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1638 (2006) ("With partners spending more time on rainmaking, higher leverage is necessary in order to have enough lawyers to actually do the legal work.").

67. *Cf.* Winings, *supra* note 17, at 177 ("[L]awyers with substantial books of business are highly sought after by other law firms.").

68. *See* Schiltz, *supra* note 29, at 889 ("[Lawyers] complain about a lack of collegiality and loyalty among their partners.").

69. *See* Wilkins, *supra* note 54, at 2082 ("Traditional taboos against lateral hiring of associates—and eventually partners—were discarded as firms moved to poach talented lawyers from their competitors, lawyers who were expected to bring their clients with them in tow.").

70. *See* Henderson, *supra* note 33, at 1697 ("In an environment in which corporate clients are increasingly loyal to individual lawyers rather than firms, rainmaking partners with 'portable' business

have strong financial incentives to cultivate clients' personal loyalty, rather than loyalty to their firms, which interferes with the natural career progression of associates who would otherwise earn the client's trust over time.[71] This state of affairs harms all concerned: associates progress slowly in their careers and feel pressure to find clients of their own; partners are unable to delegate as much to their associates and feel compelled to remain at the beck and call of their clients; law firms are unable to cultivate institutional loyalty among their clients; and clients resent law firms forcing them to overpay for the work of supporting lawyers when they only value a particular partner's advice.

III. THE COSTS OF THE PARTNERSHIP MODEL

If associates, partners, and clients all seem to lament the transformation of law from a profession to a cut-throat business, one might wonder how I could advocate a reform that would make the law firm yet more like an ordinary business. I suggest that the problem with law firms—and a root cause of lawyer and client dissatisfaction—is not that law firms are run as businesses, but rather that many of them are *poorly* run as businesses. Law firms' organizational structure, which confuses ownership and employment, is at the foundation of their poor business decisions.

Many profit-oriented enterprises seek to maximize value to equity holders while simultaneously enjoying high degrees of employee and client satisfaction.[72] These enterprises appreciate the value of employee and client loyalty, and they are willing to sacrifice current income and make long-term investments to that end.[73] Google decided early in its existence to forego current advertising revenue by refusing to sell advertising on its

must be compensated at or near their marginal product.").

71. *See* Wilkins, *supra* note 54, at 2078 ("[T]he stability of these lawyer-client relationships also helped to ensure that the valuable knowledge accumulated by senior lawyers would be passed on to the next generation. Clients were literally passed down from senior partners to their most promising protégé—who had already worked on the client's matters for several years before assuming their new role.").

72. *See generally* JAMES HESKETT, THE CULTURE CYCLE: HOW TO SHAPE THE UNSEEN FORCE THAT TRANSFORMS PERFORMANCE (2012) (examining the impact that organizational culture has on the success of a business and on customer satisfaction); JAMES L. HESKETT ET AL., THE VALUE PROFIT CHAIN: TREAT EMPLOYEES LIKE CUSTOMERS AND CUSTOMERS LIKE EMPLOYEES (2003) (discussing how adding value to clients and employees can be used to create positive change in organizations).

73. *But see* Ribstein, *supra* note 19, at 759–60 ("As firms' reputational capital declines, they can sustain their profits and size only by hiring more rainmakers to generate business. This, in turn, puts significant short-term pressure on firms to increase associate leverage and billable hours to pay the partners even if a more viable long-term strategy would be to focus on achieving greater efficiency and quality control.").

main search page.[74] Google also invested in a physical plant and work environment that are as conducive as possible to employee well-being and long-term productivity.[75] Far from seeking to squeeze out every possible dollar from transactions with customers or employees, Google recognized that cultivating customer and employee satisfaction and loyalty is advantageous to its long-term profitability.[76]

Law firms have followed a very different model. They have alienated clients and lawyers alike by clinging to a billable hour model that seeks to maximize current profits,[77] but leaves clients feeling overcharged[78] and lawyers feeling overworked and undervalued.[79] Law firms adhere to this model because any departure in favor of value billing or contingent billing might risk reducing current revenues and current profitability;[80] and a sacrifice of current profitability for long-term value would be perceived by law firm partners (accurately) as a pay cut.

It is very difficult for an organization to ask its *employees*—as opposed to its *investors*—to sacrifice current compensation in the hope of increased future compensation, particularly when the organization cannot offer the employees any mechanism to ensure that they capture the resulting long-term value. Imagine if Google had to take a vote of its employees every time it made an investment—inquiring whether those employees were willing to accept a 10 percent pay cut this year for the possibility of future profitability and pay raises, but without offering them equity shares or options to secure that future profitability. Such a scenario would no doubt lead to diminished levels of investment.

Yet that position reflects the one in which law firms find themselves.

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74. STEVEN LEVY, IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES 34 (2011).

75. *See id.* at 132–38 (discussing Google's efforts to make its offices as enjoyable and productive as possible).

76. *Id.* at 146 ("Google would be a shining beacon for the way corporations should operate: an employee-centric, data-driven leadership pampering a stunningly bright workforce that, for its own part, lavished all its wit and wizardry on empowering users and enriching advertising customers. From those practices, the profits would roll in.").

77. Amelia J. Uelmen, *The Evils of "Elasticity": Reflections on the Rhetoric of Professionalism and the Part-Time Paradox in Large Firm Practice*, 33 FORDHAM URB. L.J. 81, 94–95 (2005) ("The 'tyranny' flows from a sense that timekeepers must work excessive numbers of billable hours in order to generate the profits that sustain high salaries for both partners and associates.").

78. *See* Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 FORDHAM URB. L.J. 171, 180 (2005) (exploring both client and firm concerns about "inefficiency and unnecessary work performed when compensation structures create incentives to bill").

79. *Id.* at 179 ("From the standpoint of individual attorneys, the 'obsession with the numbers' may make it difficult for people to be successful and have a balanced life.").

80. *See* Ribstein, *supra* note 19, at 759–60.

Since law firm partners view their annual draws for their productive working years as the entirety of their interest in a law firm, it is difficult to build a consensus in favor of reducing current draws in the hope of larger future draws. This is particularly true given that partners do not know whether their colleagues managing the firm are savvy investors—good lawyers, yes, but good investors, who knows? It is no surprise, then, that self-managed law firms tend to adhere rigidly to whatever strategy will maximize current partner profits, even if that strategy fails to seize valuable opportunities to build lasting client loyalty and employee goodwill.

The complaints of associates, partners, and clients—repeated so often that it becomes difficult to find value in them—take on new meaning when considered against this backdrop. No doubt some of the complaints—from the lazy lawyers who are not willing to shoulder their share of work but want to earn as much as their colleagues, or the stingy client who wants to nickel and dime a law firm that is providing valuable services—should not be credited. But when associates complain that they are overworked and undervalued, partners complain that they are exhausted by a "what-have-you-done-for-me-lately" culture and disappointed that their favorite associates often do not make partner, and clients complain that they are being overcharged and underserved, law firms should listen. Rather than tolerate disgruntled associates, partners, and clients as a cost of doing business, law firms should reconsider their practices and seek out a better path to long-term value. Rather than simply accepting (and perhaps lamenting) that law has moved from being a profession to being a business, law firms should strive to be *better* businesses. They should recognize the long-term value to be gained from satisfying their clients' billing preferences and respecting their employees.[81] The measures required to maximize long-term value may require near-term sacrifices, as is the case with virtually all investment decisions. But if law firms could be persuaded to question their current fixation on near-term profits and consider long-term value, the benefits might inure to all of a law firm's constituents.

The problem is that even if law firms could see a path to long-term value, their current ownership structure deprives them of a means to navigate that path. Corporate finance literature frames short-termism as a problem wherein managers' overpowering incentives to hit short-term benchmarks—for example, earnings-per-share or current stock price—

81. *See* Peggy Kubicz Hall, *I've Looked at Fees from Both Sides Now: A Perspective on Market-Valued Pricing for Legal Services*, 39 WM. MITCHELL L. REV. 154, 223 (2012) ("Rather than viewing non-hourly structures as concessions to clients, small firms should embrace them and treat them as a key business strategy—a market-driven element of their product portfolio.").

result in them making poor long-term investment decisions.[82] Managers may choose to cut valuable research and development spending, or sell valuable assets, in an effort to generate near-term profits. The obvious solution to this problem is to align the interests of managers with those of the company's long-term stockholders through stock grants or options that vest over time and cannot be sold for an extended period.[83] Once a manager's personal wealth is tied to the long-term profitability of the company, the manager has the proper incentives to maximize long-term value, rather than short-term profits.

Law firm short-termism cannot be solved in this manner for two reasons. First, there is nothing that a law firm can give to a manager that would incentivize that manager to maximize long-term value. At present, law firms do not have permanent equity that they could award to managers. Second, and relatedly, if a law firm could find a way to provide long-term incentives to its management committee (say, a legacy share of law firm profits for some number of subsequent years), this would misalign the interests of managers and owners because none of the nonmanaging partners would have the same long-term interest. As noted at the outset, within the traditional law firm structure, it is not just managers who lack the permanent equity needed to motivate them to maximize long-term value. Law firms simply do not have permanent equity.[84] Law firms may continue in perpetuity, but they are merely transitory affiliations of lawyers who happen to work under the same roof at a particular moment in time, none of whom has an economic stake in what will become of the firm after his or her working years are over and his or her retirement draw has run its course.[85]

One might object that if we appropriately discount future income streams based on the time value of money, then the incentives of a law firm partner who has ten or fifteen years left to practice are not all that different from those of a shareholder in a company. Indeed, partners at the few remaining law firms with rich retirement plans—plans which can pay out

82. *See* James R. DeBuse, Note, *Opening at $25 1/2 is Big Firm U.S.A.: Why America May Eventually Have a Publicly Traded Law Firm, and Why Law Firms Can Succeed Without Going Public*, 34 J. CORP. L. 317, 346 (2008) ("[U]nder current financial metrics it is possible for a law firm to mortgage their future in order to increase short-term profits; but, current metrics will not show this mortgage.").

83. *See* David I. Walker, *The Challenge of Improving the Long-Term Focus of Executive Pay*, 51 B.C. L. REV. 435, 441–42 (2010) (noting that managerial wealth should be tied to long-term performance to prevent myopic tendencies).

84. *See supra* note 9 and accompanying text.

85. *See supra* note 10 and accompanying text.

diminishing shares of profits over as long as a decade—may view themselves as roughly equivalent to long-term equity holders. To be sure, these stakeholders do not have the *permanent* interests that corporate shareholders possess in corporate profits. But the present value of a dollar that the firm will earn fifteen years from now will be a fraction of the value of a dollar that the firm will earn this year or next. When one discounts the value of future profits, the value to be reaped from long-term investments may be less appealing than it would look without discounting.

However, we should not overemphasize the manner in which present value discounting can assuage the differences between temporary partnership interests and permanent equity ownership. After all, an equity holder who does not want to wait fifteen or twenty years to reap the benefits of a long-term investment program can cash in on those expected benefits immediately by selling his or her shares to a buyer who values those future income streams. In that scenario, the selling equity holder reaps the benefits of wise, long-term investment decisions—through an increased sales price—even if he does not stick around to realize those benefits. Thus, an equity holder is able to enjoy an earnings stream while holding stock *and* to profit from the sale of that stock when he or she no longer wants to wait for future earnings. In contrast, a retiring law firm partner is not able to cash in on his or her ownership interests. When the partner retires, the ownership interest is extinguished. The lack of permanent equity thus reduces the value to partners of the businesses that they help to build, and reinforces their incentives to earn as much as they can during their productive years and ignore the long-term effects of managerial decisions on their firm's future.[86]

IV. AN ALTERNATIVE MODEL OF LAW PRACTICE

A change in the law firm's organizational structure would help to alleviate the problem of short-termism that plagues law practice today. A corporate form would offer distinct benefits over the traditional partnership model for all of the law firm's principal constituencies. The discussion below first lays out how a permanent equity model would work in practice, and how it would benefit senior lawyers, junior lawyers, and clients. Next, I explore how a change in capital structure would address the specific problems that have preoccupied scholars and the legal press of late. Finally, I consider the broader implications of a corporate form for law firms, considering how the availability of equity might not only improve lawyer

86. *See supra* notes 9–10 and accompanying text.

incentives, but also enable lawyers to spread risk and raise investment capital from nonlawyer investors.

A. How Permanent Equity Would Operate in Practice to Change Law Firm Incentives

A successful partner at a law firm today can work for decades to build a practice area—bringing in clients, hiring and training associates to service those clients, and developing a somewhat distinct business within the confines of a larger law firm. It is not uncommon for a single law firm partner over the course of a career to develop a fiefdom that employs between ten and twenty professionals and generates millions of dollars in profits per year.[87] Consider, for example, a practice group that has a host of regular clients who together account for a consistent $5 million or more per year in billings, and a broader group of less regular clients whose individual needs are more sporadic but who together generally account for another $5 million per year. To service that $10 million per year in business, the lead partner may have assembled a team that includes a junior partner or two, between five and ten associates, and a number of paralegals and support staff who work full-time on the group's matters.

Outside of the law, there would be significant market value to a business that generates $10 million in revenues per year from an established client base using a dedicated team of experienced employees. The equity value of such a business would be some multiple of its annual earnings. The precise multiple that a buyer would pay for the business would depend upon how sustainable the annual earnings are, the potential for growth, market comparables, and the ease of combining that business unit with others such that it could fit nicely within a larger business and offer some synergies.[88] To continue with the hypothetical, if the $10 million in revenues generates $5 million in profit after covering salaries and overhead, the owner of such a business might be able to sell it for around $50 million (a 10x multiple). Whereas today, a lawyer can share in profits only for the years in which he or she works, under a more conventional capital structure, the lawyer would be able to cash out and sell that business upon retirement. It may well be that some of the equity would be distributed among the junior partners, or even associates (as I discuss

87. *See* Eli Wald, *Smart Growth: The Large Law Firm in the Twenty-First Century*, 80 FORDHAM L. REV. 2867, 2870 (2012) (discussing the common pyramid structure of the modern large law firm).

88. *See* RICHARD A. BREALEY ET AL., PRINCIPLES OF CORPORATE FINANCE 816 (10th ed. 2011) (explaining characteristics of favorable conditions for corporate mergers).

more fully below), and that the founding partner would not retain all $50 million in equity. But for a lawyer who earns several million dollars per year, the prospect of a nest egg upon retirement worth tens of millions of dollars could well be life-altering.

Interestingly, the market value of such a law practice would tend to be inversely related to just how important its senior lawyer is to its continued success and, thus, directly dependent upon how well it could function upon the departure or retirement of that lawyer. An entrepreneur who builds a business that is able to function without him—such that the business has intrinsic value independent of his or her labor—is likely to be able to sell that business for more than an entrepreneur whose business depends upon his or her continued labor. Purchasers certainly can negotiate to require an entrepreneur's continued employment (by including an employment contract and a noncompete clause in the deal and reserving much of the purchase price for back-end, contingent performance payments), but if a business's value depends on its expected future earnings, the effect of the founder's eventual departure on the business's ability to generate those earnings will influence its value. Outside of the law, then, an entrepreneur who holds permanent equity in his or her business has every incentive to build a business that is *less*, rather than *more*, dependent upon him. Accordingly, the entrepreneur would have strong reasons to promote client loyalty to the firm, rather than to the entrepreneur personally, and would want to help junior employees advance to the point where they could run the business and service clients effectively in his or her absence. Indeed, to ensure an effective employee's continued employment and commitment to the firm's growth, the entrepreneur may well decide to grant him or her equity interests. Although equity grants to employees might dilute the entrepreneur's personal ownership interest, the entrepreneur would end up with a slightly reduced percentage of a much larger pie if those equity grants incentivize employees to stay on and grow the business.

The lawyer in my hypothetical above who builds a practice group worth $50 million would have strong incentives to give some equity to his junior partners and subordinates and to train them to take over the business when he or she retires. Only if the practice is able to survive the founder's departure—and perhaps even grow after his or her departure—would a purchaser be willing to pay ten times current earnings to purchase it. If current earnings are not sustainable and there is no potential for future earnings growth, prospective buyers would pay a much lower multiple for the business and/or would discount current earnings in calculating the business's value. For example, if the $10 million per year in revenues is expected to decline by 25 percent (perhaps due to a loss in business from sporadic clients), but the $5 million per year in expenses is not expected to change significantly, then the future earnings would be only $2.5 million. In this scenario, even if a buyer were still willing to pay the same 10x multiple for the business—a big "if"—the 25 percent drop in expected billings would translate into a 50 percent reduction in the business' value. Moreover, faced with the prospect of a contraction in earnings, most buyers would likely pay a *lower* multiple times earnings. Accordingly, even a small expected drop in future earnings could reduce the value of the business dramatically—and founding partners who fail to train subordinates or win their ongoing loyalty could well see the equity value of their practice groups vanish. The hypothetical $10 million-a-year business thus illustrates quite starkly how a permanent equity model would incentivize law firm partners to weigh the long-term over the short-term and to do everything within their power to win the continuing loyalty of the junior lawyers who are vital to maintaining long-term value. Whereas today, a partner might be incentivized to hire fewer associates, work them a bit harder, and/or pay them a bit less in an effort to eke out an extra $1 million in current partner compensation, this would no longer be the case in a permanent equity model. If the $1 million increase in current compensation risks diminishing the firm's long-term sustainability, such a decision to boost his current compensation could well cost the partner many times that amount in equity value down the road.

The economic model I have outlined describes not only businesses launched by individual entrepreneurs, but also by management teams who build businesses together and share in the equity. The allocation of equity may be more complicated when a business has multiple founders; they might fix equity shares at the outset and then grant additional equity based on personal performance over time, issuing new shares to successful managers and junior employees.[89] If three partners similar to the entrepreneurial partner I describe above had chosen initially to launch a firm together, rather than alone, and each of them built a practice group

89. The decision of a law firm partner to operate as a stand-alone business or to join one of several law firms is analogous to the decision that small business owner faces in the conventional M&A context. Whether operating on a stand-alone basis or as part of a larger firm, the principal of a business in theory would have two main objectives: (1) to service his clients' needs and (2) to train and retain his best employees so that they can help him service his clients' needs. In deciding whether to operate as a stand-alone business or to join a larger firm—and also in deciding which larger firm to join—he would ask whether being part of the larger firm helps him achieve his two objectives and, if so, whether the larger firm is willing to share with him and his team enough of those additional benefits to justify the transaction. He would prefer to be part of a larger firm if, and only if, the larger firm would help him service clients and train and retain employees and would not charge him too much for those benefits.

with $10 million in annual revenues and $5 million in annual earnings, then the firm as a whole might be worth $150 million (assuming the same 10x earnings multiple). Over time, if one partner is more successful than another at building her practice group, the partners might collectively agree to grant her (and her juniors) more equity so that her group ended up with more than one-third of the total equity. The firm might also base annual salaries at least in part on current performance.

To the extent that personal performance in a given year has the potential to affect current compensation and additional stock grants, some members of the management team (and their juniors) might have incentives to enhance their *personal* importance to the business. But any incentive to emphasize personal value in the short-term would be countered by the management team's collective desire to enhance the *enterprise's* overall value in the long-term, and thus to increase the worth of their permanent equity. Indeed, regardless of how they choose to allocate equity, every equity holder should have long-term incentives similar to those of the individual entrepreneur above. More specifically, the incentives of each equity holder should drive her to build loyalty to the business rather than to herself personally, so as to enhance enterprise value and increase the value of her equity. Therefore, the existence of permanent equity tends to promote a long-term outlook in firms of all sizes.

If law firms had permanent equity—and lawyers were in the position of the entrepreneurs and managers described above—this would likely improve matters for clients as well. A true equity partner in a law firm—one who has permanent equity and wants to maximize the value of that equity—would have strong incentives not to squeeze every penny out of the business in the current year, and instead to favor decisions that place the business on a growth trajectory for the future. Whereas today, a law firm may be incentivized to overstaff client matters, rather than to staff matters leanly, in the hope of generating additional current revenue, in a permanent equity model they might take a very different view. Partners who hold permanent equity should value the long-term sustainability of earnings as much as their size. A practice group that bills $9 million per year reliably—and that will continue to bill at least $9 million into the future—is much more valuable than a practice group that bills $10 million this year but is unlikely to sustain that level of business over time. Lawyers with permanent equity in their firms would want to ensure that clients are satisfied with the firm's services and billing practices, and that they remain loyal to the firm in the long-run.

B. Comparing Permanent Equity with Existing Dynamics

My general thesis—that permanent equity can encourage law firm partners to adopt a longer-term perspective and become more attuned to the best interests of junior lawyers and clients—has specific implications for some of the challenges that plague law practice today. I consider below several of those implications, asking the following questions regarding the potential effects of a permanent equity model on existing law firm partners, associates, and clients: (1) How would permanent equity affect the mobility of law firm partners during an era in which changing law firms has become common, and would permanent equity tend to favor "lock-step" compensation or an "eat-what-you-kill" approach? (2) How could law firms make room for junior lawyers to advance if retiring partners were able to retain all of their equity, and would such a regime increase or decrease the number of new equity holders admitted? And, (3) how might the permanent equity model alter the law firm's emphasis on the billable hour and reluctance to agree to alternative billing arrangements?

1. Law Partner Compensation and Mobility

As described above, a central problem in law practice today is senior partners' focus on current compensation and willingness to switch firms to increase their current compensation.[90] This dynamic incentivizes lawyers to promote personal loyalty rather than loyalty to the law firm—something that works to the detriment of a lawyer's partners, subordinates, and clients.[91] The key to higher compensation for a lawyer is being able to show her partners that she is personally responsible for a large book of business and that if she is not paid handsomely, she will take that business elsewhere.

Shifting a law partner's primary source of wealth from current compensation to permanent equity could reduce the partner's emphasis on current compensation and counteract the tendency among lawyers to chase compensation by switching firms. To some extent, permanent equity would encourage the sort of long-term loyalty among partners that used to characterize traditional lock-step firms. Until the late twentieth century, law firms promoted loyalty and a long-term outlook by ensuring that a law firm partner's personal wealth was the product of the *firm's* success, rather than an individual lawyer's *personal* success.[92] At a lockstep firm, lawyers do

90. *See supra* text accompanying notes 2–3, 67–69.

91. *See supra* text accompanying note 71.

92. *See* Saunders, *supra* note 30, at 297 ("In a lockstep system, the only way one partner can do better is if everyone does better, so the incentives are in the right place. It doesn't matter who gets the

not have financial incentives to cultivate personal loyalty among clients; instead, the compensation structure cultivates firm loyalty and encourages senior lawyers to help their juniors advance to a level where they can satisfy client demands without undue involvement of their superiors.[93] Permanent equity tends to have a similar effect by rendering *firm* success more important to a lawyer's personal wealth than *personal* success.

Indeed, an attractive feature of the permanent equity model is that it can be further adjusted to counter the negative effects of the lockstep compensation model. While lockstep compensation has the virtue of promoting firm loyalty, it has the negative side effect of failing to motivate each lawyer to contribute as much as possible to firm success.[94] In a large firm, lockstep compensation can trigger a free-rider problem: given that the contribution of any single partner may be too small to have a meaningful effect on the firm's overall profitability, each individual partner may have insufficient incentive to do everything in his or her power to increase the firm's long-term profitability.[95] If the proportional impact of any single lawyer's success is too small to move the needle for the firm, it will also be too small to affect that individual lawyer's share of firm revenues. With a permanent equity model, in contrast, a firm can balance competing considerations by tying current compensation and new equity grants to a lawyer's personal contribution while relying on permanent equity as a lawyer's principal source of wealth to motivate her to pursue the firm's overall success. Firms can place more or less weight on personal performance when setting current compensation and new equity grants in order to strike the right balance between promoting personal performance and firm loyalty.

In short, the permanent equity model can offer all of the benefits of the traditional lockstep compensation approach—by promoting long-term firm loyalty—and yet can counteract associated free-rider problems by placing more or less importance on current, personal performance.

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credit; all share in it. Fully equal partners look out for each other and consult with each other easily.").

93. *See* REGAN, *supra* note 30, at 20–21 (explaining the "Cravath system," the prototype for the lock-step compensation firm, in which "associates would be trained by the firm gradually to take on more responsibility as they gained experience").

94. *See* Edward A. Bernstein, *Structural Conflicts of Interest: How a Law Firm's Compensation System Affects Its Ability to Serve Clients*, 2003 U. ILL. L. REV. 1261, 1262 (2003) ("[U]nder a 'lockstep system' in which partners are rewarded based primarily upon length of service, partners obtain the benefits of a diversified client base, but shirking is not fully deterred.").

95. *See* Gilson & Mnookin, *supra* note 9, at 345–46 (explaining that a sharing model can create problems of shirking, grabbing, and leaving).

2. Advancement of Junior Lawyers and Allocation of Equity Across Generations of Lawyers

I have suggested that, as a general matter, the longer-term perspective associated with a permanent equity model could inure to the benefit of junior lawyers by incentivizing seniors to encourage their advancement within the firm and their direct interaction with clients. But how specifically would a permanent equity model change law firm associates' lives? I noted above that, in a traditional business setting, equity owners might have incentives to share equity with up-and-coming employees so as to promote firm loyalty and a commitment to the firm's continued growth and success.[96] But a senior equity holder cannot *both* give away equity to a junior (thereby diluting his or her stake) *and* see the value of his or her equity increase unless the firm continues to grow. Only by expanding the pie can a firm make up for the dilution that equity holders suffer when they distribute additional shares.

Hence, the question arises as to whether law firms have sufficient growth potential to incentivize senior partners to share equity interests with their juniors. Under the current model, room is made for junior partners by requiring senior partners to give up their partnership interests *completely*. If retiring partners were to give up only *part* of their equity interest in a firm—by diluting themselves with stock grants to new partners—would that suffice to attract and retain junior lawyers? Or would the limited amount of additional available equity in existing firms lead junior lawyers to leave and create their own new firms more often?

If we look backward and examine the dramatic growth of law firms, and the dramatic increases in law firm profitability during the 1980s, 1990s, and early 2000s,[97] one would expect there to be ample room for early partners to retain some permanent equity while simultaneously granting equity to new partners who are responsible for the law firms' continued growth and success. Indeed, there is a logic and fairness to leaving some permanent equity in the hands of retired partners from the 1960s and 1970s, who built their firms' brand names and client rosters and paved the way for the huge profits that followed in subsequent decades. In hindsight, it seems unfair that the partner who retired in the early 1980s wouldn't get to share in the profits that followed. And when one simply

96. *See supra* Part IV.A.

97. *See* Burk & McGowan, *supra* note 1, at 11–12 ("In the late 1950s there were only thirty-eight law firms in the United States with more than fifty lawyers (over half of which were located in New York City). By the mid-1980s, there were 508 firms with more than 50 lawyers, and the number of firms larger than 100 had increased from a dozen to more than 250.").

examines the numbers, it would require only a small reduction in the profit-share of the hundreds of later partners in greatly expanded global law firms to leave a share for the relatively fewer partners who preceded them.

However, when we examine the legal market today and project forward, it is far from clear that law firms will experience the same meteoric growth in the future that they enjoyed in the past.[98] Whereas the market for legal services expanded rapidly in the 1980s, 1990s, and early 2000s, today it seems that large law firms battle for market share in a market that is no longer growing. Going forward, one wonders whether retiring partners can retain equity and leave room for new partners to earn their share.

I suggest that the appropriate allocation of equity among retiring partners who built a firm, existing partners who fuel its current growth and are responsible for its existing billings, and future partners still to come should be the product of market forces. Management committees who are responsible to all shareholders—including both retired and existing partners—would have to decide how much dilution is necessary to motivate junior lawyers to remain loyal to the firm and committed to its continued growth. In some cases, existing equity holders would have to accept dilution, even if they don't anticipate growth, simply in order to maintain the status quo. If they do not give up sufficient equity to enable the retention of the existing team, they might threaten the long-term viability of the firm. On the other hand, if existing lawyers do nothing more than service existing clients—and do not contribute to a firm's continued growth—then perhaps those lawyers do not merit significant grants of permanent equity. Lawyers who service existing clients certainly should be paid handsomely for their work. Indeed, that is the prevailing model of law practice. Just like partners in law practice today, a "service partner" in a law firm with permanent equity—one who services clients but does not build a practice—would be entitled to a share of current, but not future, profits.[99] Where a law firm ceases to grow in size or profitability, and simply maintains the status quo, then permanent equity might more appropriately be left with prior generations of partners who built the firm and paved the way for its current profitability.

98. *See* Ribstein, *supra* note 19, at 774 ("Law firms . . . seem to be devolving back to the pre-Big-Law model of law practice in which lawyers are bound by personal ties rather than working for large institutions.").

99. *Cf.* Milton C. Regan, Jr. & Lisa H. Rohrer, *Money and Meaning: The Moral Economy of Law Firm Compensation*, 10 U. ST. THOMAS L.J. 74, 94 (2012) ("Rainmakers (the 'Finders') with a large number of origination credits generally earn substantially more than service partners ('the Minders' and 'the Grinders'), whose compensation is based mainly on the number of hours that they bill.").

In suggesting that market negotiation should determine the appropriate allocation of equity among past, current, and future lawyers, I do not mean to gloss over the conceptual importance of this question. In fact, it is a concrete manifestation of the core question that motivated me to write this Article. The question I have suggested that we should leave to law firms to decide—regarding the allocation of equity based on judgments about whose contributions are lasting and whose are not—implicates a broader question about the wisdom of my entire project. Do lawyers indeed contribute value in the long-term such that they deserve permanent equity? Or is my proposal simply a device that would enable retired lawyers to reach into the pocket of current and future lawyers?

I firmly believe that lawyers, just like other business people, do indeed have the capacity to build long-term value. When a lawyer builds a practice area, a client base, and a reputation for high quality legal services, that legacy can continue after the lawyer's retirement. Certainly, the top national law firms today owe much of their current success to the efforts of retired partners who built reputations and client rosters in the major metropolitan areas (for example, New York, Los Angeles, Washington D.C., and Chicago), and then facilitated an evolution from regional to national, and then to international status.[100] And even in an era with less growth potential, at least some lawyers at top firms today deserve credit for building a business that will outlast their time in practice. The extent to which any single partner at a firm today can claim such credit may depend upon individual circumstances and the firm in question.

I must acknowledge that the distinction I am drawing—between partners who generate revenues in the near-term and partners who build opportunities in the long-term—is vulnerable to criticism. If equity is going to be allocated based on personal contribution to long-term growth, this threatens to return us to the current state of affairs in which partners are obsessed with proving their personal worth to their colleagues. But there is a distinction between the sort of personal worth that prevails today and the personal worth I am emphasizing. Today a lawyer's personal value is the product of the current billings he or she generates, so that a partner who can keep dozens of junior associates and staff attorneys busy on document-intensive litigation matters becomes a top earner.[101] His or her

100. *See* Burk & McGowan, *supra* note 1, at 11–12 (noting that by 1980 firms drastically grew in size and expanded geographically).

101. *See* Kevin A. Kordana, *Law Firms and Associate Careers: Tournament Theory Versus the Production-Imperative Model*, 104 YALE L.J. 1907, 1925 (1995) ("Therefore, in order to maximize profits, the partner will personally handle the strategic work and will employ one or more associates to

compensation does not depend on whether the client or the junior lawyers will be there ten years from now. (Indeed, if fewer members of his or her team make partner, that means the senior partner gets to keep a larger cut of the revenues.) Under a permanent equity model, in contrast, we would ask whether the partner is cultivating long-term client loyalty likely to generate future billings, and whether he or she is training junior lawyers to service those clients' needs in the future.

The question that law firms should face is not whether any lawyers deserve permanent equity (clearly some do), but rather which lawyers deserve permanent equity, how much permanent equity they deserve, and how firm revenues should be divided between compensating employees and paying dividends to equity holders. Once a firm's founders and early partners grow their firm to the point of maturity, it may be only a small minority of lawyers thereafter who truly contribute to its long-term growth and development and would merit significant equity grants. To be sure, all employees would likely be eligible for small equity grants as part of their annual bonuses—just as long-term employee compensation plans at major corporations include options and stock grants to incentivize long-term loyalty. But in a firm that is no longer growing, only a subset of employees would be entitled to significant shares of permanent equity.

The bigger question would then become how to allocate firm revenues among employees and shareholders. Even lawyers who do not have the potential to build long-lasting practice groups would have to be compensated fairly for the revenues they generate in the short-term; otherwise they will be inclined to leave. For a firm with permanent equity to compete for employees with firms that adhere to the old nonpermanent equity model, it might have to distribute the vast majority of its current revenues to current earners based upon their current contribution, and reserve only a small portion of revenues to be paid as dividends to the equity holders who helped build the firm. But it would be important to reserve at least some portion of earnings for equity holders, and to grant at least some of that equity to current employees, if the firm wants to promote long-term loyalty and a commitment to the firm's long-term sustainability and growth.

Consider a large, global firm with $1 billion in annual revenues (though the same principles might apply to the small or mid-sized hypothetical firms described above). Today, one might expect 25–35

do the paperwork. With this structure, the partner can keep busy all of the time while billing at a high rate.").

percent of revenues to be spent on hard costs (rent, health insurance, support services, and expenses other than lawyer compensation), another 25–35 percent devoted to associate salaries, and as much as 35–40 percent distributed as partner profits.[102] If the firm had 1000 associates and 200 partners, the associates might earn $200,000 to $250,000 per year on average (with salaries ranging from $160,000 to $350,000) and the partners might take home around $2 million on average. Under the current model, the partnership might distribute partner profits based on a combination of seniority and productivity, so that the most senior rainmakers receive more than twice the average (perhaps as much as $5 million) and the most junior partners, who do not yet have substantial client billings of their own, earn well below half the average (under $1 million and probably closer to half a million dollars).

Under a revised model, the junior lawyers who today are "associates" would probably earn a similar amount, but 5–10 percent of their salary or bonus might be paid in stock. Instead of $160,000 in cash, a first year associate might receive $150,000 in cash and $15,000 worth of stock, perhaps with the stock subject to a vesting restriction that requires two years of employment. The $400 million that would ordinarily be distributed among the 200 partners based on a complex formula involving seniority, hours worked, and client billings generated, would now be divided, so that *some* of it is distributed as compensation for work in the current year and the remainder is paid as a dividend for equity ownership. If currently-employed lawyers own the vast bulk of the equity, then the ultimate distribution might be very close to the current distribution, as the senior partners who generate the most business would likely have accumulated the most equity and would receive higher draws *both* for current year work *and* for their equity holdings. But if a senior lawyer were to slow down toward the end of his career—working less himself and bringing in less business—then he might see a smaller annual compensation check and earn more of his income based on his equity holdings, whereas a mid-career partner that has a particularly good year would earn much more for current year work and a smaller equity dividend.

The most significant differences between the new model and the old would be the elimination of sharp dividing lines between associate and partner, and between partner and retired partner. Today, associates own no equity unless and until they come up for partner, at which point they face

102. *See generally The 2013 Am Law 200: Firms Ranked by Profits Per Partner*, AM. LAW. (June 1, 2013), http://www.americanlawyer.com/id=1202601383296/The-2013-Am-Law-200%3A-Firms-Ranked-by-Profits-Per-Partner.

an up-or-out moment when they either make partner, are asked to leave, or perhaps are offered an intermediate second-class job as a "counsel" or "non-equity" partner.[103] Under the model I envision, associates would begin to receive stock, or stock options, as soon as they join the firm, and that equity ownership would increase as they stay on and become more productive and valuable members of the firm. Today, when a partner retires (as he or she is forced to do at around sixty-five years old), that partner's equity interest vanishes. At some firms, there are no pension plans and a retiring partner's future income will depend solely on what he or she has contributed to a retirement plan over the years. At other firms, the retiring partner will receive a declining draw over the next several years.[104] Under a revised model, however, the retiring partner's equity stake would not vanish. The retired partner's built-up equity would remain, and he or she would receive dividends in perpetuity. It may be that only 10–20 percent of firm revenues would be paid out as dividends to equity holders in any given year, and those dividends would be distributed among *both* the equity holders who are current employees *and* the retired partners. But if firm revenues are large enough, the value of the equity could be substantial. The firm with $1 billion in revenues might distribute as much as $200 million per year in dividends. If the firm has fifty to one hundred retired partners who own roughly 25 percent of that equity, the dividends would translate into an average of somewhere between $500,000 and $1 million in distributions per retired partner per year. A partner who retires with enough equity to receive $1 million per year in dividends is retiring with a nest egg that could be worth as much as ten times that amount.

Although retiring partners might retain significant equity under this revised model, the reservation of equity for those no longer working would not inevitably leave too little to reward and retain current lawyers. As long as a firm: (1) does not reserve too much of its equity for retiring partners (and instead dilutes them over time with new equity grants to junior lawyers), and (2) does not reserve too much of its current revenues for dividend payments (and instead pays most of its revenue to current lawyers in cash compensation), the firm would be able to award junior lawyers sufficient equity grants and current compensation payments to motivate and reward them.

It is possible that some high-earning current partners would earn less in current compensation under my proposal than under the existing state of

103. *See supra* text accompanying notes 32–33.

104. *See supra* text accompanying notes 9–10.

affairs. After all, I am proposing that some portion of revenues would be reserved for equity holders, and that some equity would be held by associates and retired partners who today do not share in firm profits. It stands to reason that this would reduce the annual income of the highest-earning current partners. However, I suggest that the decline in current compensation among the highest earning partners would be offset by the prospect of future equity value when they become more senior and ultimately retire. Moreover, from the perspective of junior lawyers who today are hoping to make partner, this spreading of revenues over a broader group of lawyers would be a welcome change. If you ask mid-level associates today whether they prefer the current regime, in which a tiny fraction of them will make partner and get rich, or an alternative regime in which many more of them will stay on with the firm and enjoy varying degrees of financial success, I expect that most lawyers would prefer the broader distribution of profits. Moreover—and most importantly—the allocation of profits based on long-term contribution, rather than short-term revenue generation, would ultimately inure to the benefit of all. If we want to promote long-term loyalty to the firm, it makes sense to substitute long-term equity for some of the current compensation that today motivates the highest producing law firm partners to favor short- over long-term interests.

3. Meeting Client Needs and Promoting Long-Term Client Loyalty

As noted, a central problem in law practice today is client dissatisfaction with hourly billing.[105] Lawyers' obsession with current revenues has led them to place undue emphasis on the billable hour and to ignore client desires for alternative arrangements. Clients prefer value billing, so that they get what they pay for, without regard to how many hours it takes lawyers to achieve that outcome.[106] They prefer it because it better reflects the value that law firms deliver, and incentivizes lawyers to pursue client goals in as efficient a manner as possible.[107]

In a world where lawyer compensation depends upon current revenue generation, it becomes much more difficult for law firms to postpone

105. *See* Stuart L. Pardau, *Bill, Baby, Bill: How the Billable Hour Emerged as the Primary Method of Attorney Fee Generation and Why Early Reports of Its Demise May Be Greatly Exaggerated*, 50 IDAHO L. REV. 1, 6 (2013) ("The billable hour has routinely been criticized, including by the ABA itself, as creating incentives for lawyers to be inefficient, pitting the lawyer's financial interest against that of the client."); *supra* text accompanying notes 22–24.

106. *See* Hall, *supra* note 81, at 220 ("Clients will be better served by measuring success against articulated goals: outcomes achieved, quality observed, services provided, timelines met, and predictability of costs and budgets met."); *supra* notes 19–21 and accompanying text.

107. *See* Hall, *supra* note 81, at 220.

gratification and accept the possibility of a success fee down the road in exchange for reduced current revenues. Indeed, even if such an arrangement would enhance client satisfaction and cultivate client loyalty—thereby increasing the chances of future work from the same client—lawyers have financial incentives to shy away from such arrangements.

If, however, lawyers' personal wealth depended more upon the value of their permanent equity in their firms, and less on their firms' current annual revenues, this should induce lawyers to be more flexible in their billing arrangements. If a firm can be induced to place greater emphasis on the value of success fees down the road, and of future additional business flowing from enhanced client loyalty, it will be far more likely to accede to client requests for alternative billing arrangements.[108] This is not to say that a switch to the permanent equity model will lead firms to abandon hourly billing automatically. Where success fees and the prospect of future business are too uncertain or too small in value to compensate for the loss of current revenue, law firms will continue to bill by the hour. But if the permanent equity model can tilt law firms' orientation from shorter- to longer-term goals, it should at least make firms more receptive to the alternatives that clients desire.

C. PERMANENT EQUITY AND OUTSIDE INVESTMENT

If law firms were to replace their traditional partnership structure with a conventional capital structure that includes permanent equity, the further question would arise as to whether some portion of the equity could appropriately be held by nonlawyers. There are two principal reasons why it would make sense for law firms to permit nonlawyers to hold equity in a law firm. First, by broadening the universe of potential shareholders, law firms would increase the liquidity and the ultimate value of their equity shares. If a central goal of the permanent equity model is to permit lawyers to benefit from the long-term value they create and thus incentivize them to create long-term value, then it is important that lawyers know they will be able to monetize that value at some point down the road. Corporations may lock up their employees' stock for many years to ensure their continued employment and commitment, and so too would law firms. But after partners retire, they should be able to monetize their shares through market

108. Hourly billing may in fact dissuade clients from seeking a lawyer's advice—perhaps making many hesitate to pick up the phone and call a lawyer because of the expense associated with every minute of a lawyer's time. Clients might actually utilize their lawyers *more* if they didn't have to worry about paying by the hour.

transactions (or perhaps bequests to heirs who would then be free to monetize the shares). It is a basic fact in finance literature that there is a liquidity premium for easily saleable, publicly traded securities, and an illiquidity discount for closely held companies whose stock is not saleable.[109] If our goal is to incentivize lawyers to build long-term value as a path to increasing their personal wealth, then we would like to maximize the value of their equity interests.

Second, if our goal is to promote long-term value creation, we should recognize that the risk profiles and time horizons of law firm lawyers may not be conducive to a long-term investment outlook and that outside capital investment may be needed to address this problem. I have suggested that we can alleviate law firm short-termism by giving lawyers permanent equity designed to promote a longer-term outlook. But lawyers, by nature, may be risk averse.[110] Even if they fully understand and know they will share in the long-term economic benefits that might flow from hiring, retaining, and training additional associates, making additional equity partners, and offering clients alternative billing arrangements, lawyers may not be willing to give up current income for the possibility of future profitability if that future profitability is not assured. If we restrict law firm equity to the firm's current and former employees, we retain a core part of the problem we started with: we make the mistake of putting investment decisions in the hands of individuals who must affirmatively decide to sacrifice current compensation in favor of long-term goals. This problem is easily remedied by permitting law firms to raise investment capital from outside investors. Firm management deciding whether to undertake a new investment program—whether to acquire a new practice group, make a new crop of deserving partners in a bad economic year, or offer a new, long-term alternative billing arrangement to a key client—need not make a binary choice to cut current compensation or else forego the investment. Rather, just like other commercial enterprises, firm management could separate the question of whether the investment proposal is worth pursuing from the question of how best to finance it.

Companies today have a range of financing options when they decide to undertake investment projects: they can draw from retained earnings,

109. *See generally* YAKOV AMIHUD ET AL., LIQUIDITY AND ASSET PRICES (2006).

110. *See* Jonathan T. Molot, *Litigation Finance: A Market Solution to a Procedural Problem*, 99 GEO. L.J. 65, 100 (2010). (noting that transactional lawyers are often confronted with the reality that their investment banker or hedge fund clients earn much more money than they do, but that they often prefer the steady profits of an hourly billing law firm model to the feast-or-famine, bonus-driven compensation packages of their clients).

access debt financing through bank loans or public bond offerings, or resort to equity financing.[111] In choosing among these options, management will have to consider the risk profile of the investment and how the investment fits within the enterprise's broader financial position. A mature company with steady cash flows that wishes to undertake a capital intensive, long-term project that is relatively low-risk, will most likely use debt financing to pay for it.[112] A less mature company with great growth potential, but higher risk, may not be able to access debt at interest rates it can afford, and may therefore choose to raise equity capital.[113] The precise balance that companies strike between debt and equity can vary widely depending on their stage of development, their risk profile, and their business needs.[114]

Law firms would benefit from having the same options available. Today, most law firm investments are funded out of earnings. When a new partner is made or a client is given discounted billing rates, the resulting loss of revenue is taken out of the current partners' current cash compensation. Major law firms use debt financing to cover time gaps between revenue collection and partner compensation—so that partners can take regularly scheduled draws without having to await collection of all outstanding receivables.[115] But the major hourly-fee firms generally do not rely on permanent debt to grow their firms, in part because the interest expense would be a drain on partner draws, and in part because a long-term debt raise would trigger allocation issues between older partners, who would benefit from increased current draws before their retirement, and younger partners, who would be stuck repaying the debt down the road.

Contingent fee firms may place heavier reliance on debt financing because the timing and size of revenue streams is harder to predict. But contingent fee firms have a harder time borrowing from banks precisely because their revenues are harder to predict. If they borrow from banks, the loans generally must be secured with personal guarantees from the partners and, sometimes, with their personal collateral (such as second mortgages on their homes). Traditional banks are comfortable making loans that are based on steady revenue streams and traditional collateral bases (like real estate), but are generally uncomfortable making bets on the outcome of

111. BREALEY ET AL., *supra* note 88, at 4.

112. RUTH BENDER & KEITH WARD, CORPORATE FINANCIAL STRATEGY 43 (2nd ed. 2002).

113. *Id.*

114. *See id* ("The concept of financial risk can be combined with the business risk profile, in order to develop logical alternative financial strategies for different types of business.").

115. *See* Cox, *supra* note 21, at 518 ("During the peak of the credit markets, debt was cheap, readily available, and more palatable than siphoning funds from equity partners. Law firms became increasingly dependent on bank financing for working capital.").

litigation. There are lending organizations that will make loans collateralized only by contingent fee entitlements, but they charge much higher interest rates—typically in the high-teens to 20 percent.[116] Because contingent fee law firms are not permitted to issue equity to outside capital providers, they must either take out high interest loans or else spread the risk and cost of contingent fee matters over a broader group of law firms. If a law firm cannot bear the risk and expense itself of a multi-year litigation that will cost millions of dollars to litigate, it may engage in a co-counsel relationship with another firm that has greater financial resources. Even if the first law firm continues to do the bulk of the important work on the case, it may end up giving away more than half of its fees to wealthier firms that are willing to front the costs.[117]

If law firms were permitted to issue equity to outside capital providers, this would enable both the traditional hourly fee firms and the contingent fee plaintiffs firms to make more rational investment decisions. Hourly firms would no longer be required to sacrifice current compensation for future investment. They could raise outside capital to maintain current annual draws, while at the same time investing in the firm's future. Contingent fee firms would no longer have to choose between high-interest loans and ceding fees and/or control over cases to other law firms, but rather could raise outside capital as needed to fund their commitments and zealously represent their clients. To be sure, law firms would have to be careful about selling too much equity to outside investors and leaving too little to incentivize their lawyers (and equity investors would share this concern). Law firms would also have to put management structures in place to ensure that lawyers meet their professional obligations to clients and courts and do not let financial obligations to investors interfere with those obligations. But this should not be difficult, given that lawyers already juggle the competing demands of being zealous advocates, officers of the court, and fiduciaries to their law partners. The introduction of a passive, third-party capital provider should have no negative effect on law practice.[118] In the United Kingdom, law firms are permitted to use so-called

116. *See* Molot, *supra* note 110, at 98–99 ("The interest rates for these law-firm loans . . . would still be quite high—25% per year or greater, depending upon the risk involved."); STEVEN GARBER, RAND INST. FOR CIVIL JUSTICE: LAW, FIN., & CAPITAL MKTS. PROGRAM, ALTERNATIVE LITIGATION FINANCING IN THE UNITED STATES: ISSUES, KNOWNS, AND UNKNOWNS 13 (2010) (suggesting that the interest rate of loans for plaintiffs' law firms is in the vicinity of 20 percent per year).

117. *See* Molot, *supra* note 110, at 99–101 ("[I]t is widely understood that contingent fee law firms in need of cash often accept funds from other, better financed law firms, in exchange for a share of the contingent fee.").

118. *See* 107 ABA ANN. REP. 886–87 (1982).

Alternative Business Structures to issue equity to nonlawyer capital providers.[119] In Australia, law firms can be publicly traded.[120] And in the District of Columbia, lawyers can partner with nonlawyers to provide interdisciplinary professional services to their clients.[121] The key in all three jurisdictions is ensuring that those in charge of the firm, as well as those who represent clients and appear in court, are subject to the applicable ethics rules and are unable to put financial interests ahead of professional obligations.[122] There is no evidence that outside ownership of law firms in any of these jurisdictions has had any deleterious consequences.

V. CONCLUSION

I have argued that we could address many of the problems facing law practice today by changing the law firm's structure and permitting law firms to issue permanent equity. My proposed change would tend to favor long-term value over short-term profits and would improve both the economics and culture of law practice. It would help to address partners' complaints about a "what-have-you-done-for-me-lately" culture, associates' complaints about a cold, "up-or-out" advancement system, and clients' complaints about being overcharged and underserved. A revised structure would give all of a firm's constituencies what they so badly crave: a law firm focused on long-term, value-added relationships rather than hourly fees and current billings.

119. *See* Hodge, *supra* note 40, at 86 ("These alternative business structures 'enable nonlawyers and lawyers to work together to deliver legal and non-legal services.'").

120. *See id.* at 79 (discussing Slater & Gordon Limited, an Australian law firm that became the first publicly traded law firm).

121. *See* Edward S. Adams & John H. Matheson, *Law Firms on the Big Board?: A Proposal for Nonlawyer Investment in Law Firms*, 86 CALIF. L. REV. 1, 11 (1998) (discussing rules allowing lawyers to partner with nonlawyers).

122. In the District of Columbia, nonlawyer partners in law firms are subject to the same disciplinary rules as their lawyer partners. *See supra* note 46 and accompanying text.