THE EMERGENCE OF THE CORPORATE LAW FIRM IN AUSTRALIA†

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Almost all the factual material in this article is drawn from interviews with partners in corporate law firms; at their request, these firms must remain anonymous. The time necessary to master the nature and history of any one firm obliged the authors to concentrate on only two firms in Sydney and two in Melbourne. These leading firms are representative of the general class of firm discussed; this has been verified by the similarities between the four firms themselves and by gathering general impressions of other leading firms. Study of the firms was intensive; some 30 partners were interviewed including the senior partner of each firm and a range of other partners (and administrative officers). The method was simply to persist with interviews until it was certain that no important aspect of the firm's work and character had been missed. While the method may seem unorthodox, we would defend it as the only method that could illuminate legal firms that are usually closed to scrutiny from outside. There has been no previous study of the large legal firms in Australia, a fact which no doubt reflects their impenetrability.

I INTRODUCTION

Over the last two decades a substantially new branch of the legal profession has emerged in response to the changing economic structure of Australia. The new organisation can be called the corporate law firm, since its rationale is to provide legal services to the business corporations that are increasingly dominant in the Australian economy. The appearance of the corporate firm replicates in Australia a long-standing American phenomenon and has profound implications both for the legal profession and Australian society in general. The object here is to identify the corporate firm and account for its emergence.

The Australian legal profession is split into two basic categories, barristers and solicitors. The primary task of barristers is the conduct of litigation. Their practice is on an individual basis, though they may join with other barristers in complex litigation. Solicitors assist barristers and supply legal services that do not entail litigation. Their practice may also be individual but for at least a century solicitors have sometimes pooled their efforts in a partnership ranging from two to a handful of

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qualified practitioners. The corporate law firm is a radical variation on the traditional partnership of solicitors; it is larger and more complex than the older form and distinguished by a new kind of relationship with the interests that it serves.

The lack of attention that has been paid to the corporate law firms stems in part from the fact that they have grown out of the leading partnerships of an earlier era. With only one exception—an Australian branch of an American firm—there appears to be no large corporate firm that cannot trace its history at least as far back as the early years of this century. By no means all the old leading firms have succeeded to the modern corporate form. Some have retained a form closer to their origins, and in so doing they have forfeited their leading status. (Tradition, however, sometimes dies hard. Two particular firms (others do likewise) have played an annual cricket match throughout the century. One of the firms is now a leading corporate firm; the other has remained an old-style, now obscure, partnership.) The object of the following sketch is to plot the process of corporate transformation of individual law firms and to account for the absence of this change in others.

II FROM FAMILY CONCERN TO CORPORATE FIRM: A SKETCH

By the late years of the nineteenth century the profession of solicitor in Sydney and Melbourne was set in a mould that lasted for the next half century. The primary distinction among solicitors was between a small number of leading firms—no more than a handful in each city—and the remaining practitioners organised either individually or in small partnerships. All the leading firms were long established by Federation and one Sydney firm could trace an uninterrupted history to 1823, when the first locally trained solicitor was admitted to the profession. They were essentially family concerns and for at least the next forty years they remained the proprietary holding of one or sometimes several families. The general rule was that only solicitors within the family could qualify as partners, thereby sharing the profits of the firm. Everyone else was an employee, whether he was a solicitor, law clerk or office assistant. In practice, the absence of qualified family representatives led on occasion to the admission of an outsider to the partnership or to a merger with a small firm. The outsider, however, was almost invariably drawn from a close circle of friends of the family. Nepotism —albeit sometimes an extended kind of nepotism—was the basis of recruitment to the partnership.

The families who ran the leading firms were prominent in the social world of the two cities and their established status had been a powerful, perhaps indispensable, aid in building their practices. But by nineteen-hundred the large firms had been institutionalised; particular firms led

their profession in virtue of the size and nature of their practice, rather than any special distinction of their proprietors. Their strength lay in secure relationships with large companies and above all with a large bank (or, in at least one case, an insurance company). These institutions gave rise to a great number of small legal transactions—particularly conveyances of land for which they were mortgagees—and these tended to be channelled to a single firm of solicitors. The status of solicitor to the finance house also served as a basis for the general commercial practice of the firm, since a company commonly used the solicitor of its banker.

The firms acted for a range of companies including pastoral concerns, tobacco houses, entertainment and publishing organisations. By current standards the range of their commercial legal services was rudimentary. Generally speaking, they drafted documents, lent assistance in commercial litigation and provided a certain amount of advice on matters such as whether a particular claim against a company was legally justifiable. The drafting tasks mainly concerned contracts, securities for loans and trade mark claims. Thus the commercial lawyer was essentially a master of certain formal skills, rather than a creative figure who could maximise commercial opportunities. He was closer to the world of law books and courts than to the calculations of the entrepreneur.

The remainder of the work of the large firm was the provision of services to private clients, the staple business of all solicitors of the period. Many of these clients were "ordinary" people in need of legal assistance to buy or sell property, make a will or resolve a comparatively small dispute. What distinguished the leading firms was their close relations with some of the great families of town and country. In an era of intense concern to maintain property in the family, these connections yielded the firms a great deal of trusts and estate work. They were well suited to this work by their experience in managing the property of the proprietors of the firm itself.

The greater size of the leading firms was to be measured not so much by the number of qualified solicitors—typically, there were no more than a handful of these (and most of them partners) in the early years of the century—but more by the number of non-professional employees. The mainstay of the firms was their body of law clerks, headed by the almost Dickensian figure of the managing clerk. This reflected the routine quality of much of the firm's work and the high level of competence in the clerks. All the firms depended heavily on a multitude of small legal services which could safely be left to experienced clerks. And the social pattern of Sydney and Melbourne in these years ensured a steady availability of young clerks who could be trained to do routine and sometimes quite complex legal work. Later, in the post-World War II era, the ambitions of the class that supplied the legal clerks grew to the point where the whole system broke down.

As early as the twenties, the leading firms were being forced to expand their numbers of employed solicitors in order to cope with an increasing volume of work. The Great Depression brought a halt to this trend and to the organisational problems it set in train. But with economic recovery in the mid-thirties the problems were redoubled; while it proved possible to run the firm as a family proprietorship for some years more, the employed solicitors were exerting mounting pressure to open up the partnership. The growth potential of the firms was obviously at stake, since able solicitors denied a partnership might see a better future in striking out on their own.

The first concession to the claims of non-family solicitors had been made as early as the second decade of the century. Outsiders were accorded the dignity of partnership in some prestigious firms while continuing to be employed rather than given a share of the profits. It is doubtful that this was seen as anything more than a temporary sop to the ambitions of capable solicitors and it served, in fact, to sharpen their claims for true partnership. By the late thirties the claims were irresistible. The War slowed down the full opening of the partnership—many of the employees were in active service—but by the late forties almost all the corporate firms of today had ceased to be owned exclusively by individual families. A member or close associate of the family might still find it easier to be taken into the partnership but the bar against rank outsiders had been lifted.

The ending of family control of the firms and the closely allied decision to recruit solicitors on the basis of talent proved to be the foundation for the emergence of the corporate firm in the sixties. This break with tradition was the whole basis for the present distinction between once relatively equal family firms. The firms that continued to practise nepotism well into the post-World War II period have lost their leading status. They had clung too long to the comfortable structure of a family practice and the consequence of their conservatism was inflexibility and loss of earning power and prestige.

The decade of the fifties was a period of steady growth and cautious modernisation for the leading firms, as it was for most Australian institutions. Certainly it was a period of no radical change. The firms that had cut the family tie became larger, younger and more talented than they had been before the War. And they were gradually being drawn deeper into commercial law. General economic expansion brought about an automatic increase in the volume of commercial law work, some of it now much more complex. Major growth areas included securities, taxation, the formation of new companies (notably in the field of hire-purchase) and the establishment of subsidiary companies of overseas corporations. Taxation, for example, had in the past generally been left to accountants but events such as the Double Tax Agreement —effected in the Income Tax (International Agreements) Act 1953

(Cth), a response to increased overseas investment in Australia—led some far-sighted partners to see the coming importance of this field for lawyers. In one firm a partner made it his business to master the subject of taxation and to stimulate others to do likewise through a fortnightly study circle. In another firm the senior partner developed strong links with the accounting profession and with one particular financial entrepreneur who by the sixties was generating a large volume of securities and other financial business for the firm. Thus the trend—still in its infancy—was towards development of business law at the expense of services for individual clients.

In organisational terms the firms were in what proved to be a brief transitional phase. The break with family domination had not entailed an end to hierarchy within the firm. Through the fifties major organisational decisions tended to be made by the several most senior partners (determined by the time of admission to the partnership), with one man typically dominant. But alongside this conservative structure there was a new awareness of the need for efficiency. The position of "office manager" was established in most firms, though the duties of the job were initially quite minor. At least one of the firms instituted a comparatively rigorous scheme for staff costing, thereby fixing billing targets for the firm. These were the first serious efforts to come to grips with the fact that these firms were now quite large, and to some extent bureaucratic, organisations.

The fifties also saw the substantial demise of the old clerk system. Several factors conspired to this end, perhaps the chief one being the difficulty of replacing retiring clerks. Opportunities in expanding white-collar situations—sales representative, insurance agent, finance company job—had tended to remove the recruiting base for the unglamorous and poorly paid position of a law clerk. The firms were easily able to adapt to their loss. They simply increased their intake of articled clerks working towards professional qualification through the university law schools or admission board courses. Depending on the firm, a considerable proportion of these articled clerks were retained after they had qualified for practice.

The breakdown of the clerk system had in fact coincided with an increased availability of young men (infrequently women) anxious to become lawyers. While the bar continued to attract the lion's share of talented university graduates in law, the very top firms found that they could recruit a small flow of the most promising graduates. Good earning prospects, interesting and responsible work and security were the drawing power of these firms. Quite often a good graduate came with the intention of later moving on to the bar but found himself sufficiently advantaged to make a career with the firm. Importantly, the effect of the replacement of clerks with solicitors was to increase the cost of legal services—solicitors had to be paid more than clerks. It also

reinforced the otherwise reflexive movement of the firms towards providing more complex, hence more expensive, legal services, which legitimately demanded the attention of skilled lawyers. And it fed the growing awareness of the need for organisational efficiency.

These various changes had dispelled in some firms the antique quality that had come to pervade the whole legal profession in Australia. But, they had not effected a dramatic change in the comparative standing of the old firms. Only in the sixties did the gap between the progressive and the traditionalist firms grow to the point where the two became easily distinguishable. By the time the gap was apparent, it was too late for the traditionalist firms to repair what they could now see to have been a costly conservatism in the immediate post-war years. They could—and many of them did—cut the family tie, but they had missed the momentum which in the sixties propelled their competitors to the status of corporate law firms.

There was no great "watershed" in the sixties, merely a number of cumulative developments that pushed the leading legal firms in one particular direction. They did not consciously set out to become corporate firms; at least initially, they were simply swept along by the increasing volume of corporate work. This demand was in turn the product of greatly increased, more complex, corporate activity in Australia. The sixties were another of the "boom-bust-boom" epochs so characteristic of Australian economic history; but this time the booms were more spectacular and more complex than they had been previously. The whole style of Australian business activity changed with the huge inflow of capital from multi-national corporations, the aggressive expansion of many Australian companies and a new government interest in the way business was done. The character of the leading law firms was transformed in almost mirror reflection of these business changes.

While earlier boom periods had benefited the various large partnerships reasonably equally, the boom of the sixties advantaged a very few firms disproportionately. The greatly expanding demand for corporate legal services was directed to the contracting number of firms that had both an expertise in commercial law and an internal structure capable of adaptation to the new economic structure. It was their adaptability that enabled them to out-distance their old rivals, not a measurably superior base in commercial legal practice. This adaptability consisted in an ability to expand their personnel, develop new legal specialities and take advantage of technological changes that enhanced the work capacity of the firm. At some point in the sixties—it is not possible to say exactly when—it became possible to label these old partnerships "corporate firms". This term simply denotes that these are firms overwhelmingly pre-occupied with the legal affairs of business corporations.

III THE CORPORATE LAW FIRM: A PROFILE

1. *The Character of the Practice*

By the late sixties the corporate practice of the large firms could be seen to fall into three categories: first, a comprehensive legal service to now generally expanding corporations that had traditionally retained the firm; secondly, a similar service to a large number of new corporate clients, many of which were multi-nationals; and thirdly, the provision of specialised legal services that were not necessarily part of a comprehensive legal relationship with individual corporations. Thus the firms now acted out a dual role as general lawyer to individual corporations and specialised problem solver in particular spheres of corporate law. The size and profitability of this corporate practice produced a radically declining interest in providing services to private individuals, whether they were the "ordinary" clients of old or even the representatives of the large propertied families.

We have located the general cause of the transformation of the firms in the sheer growth of corporate activity, but there are various levels of causation within this broad phenomenon. Perhaps the single most significant factor was the influence of the multi-national corporations, which during the sixties and early seventies saw Australia as one of the more stable and lucrative fields for investment. These (usually American-based) corporations brought to Australia a more sophisticated way of doing business and a developed conception of the role of the corporate lawyer. Under their influence the whole corporate sector came to see a role for lawyers that transcended traditional Australian thinking. The multi-nationals were thus a double benefactor of the large law firms; they contributed greatly to the general economic expansion of business and hence the firms themselves and they propelled the firms into a more sophisticated (and profitable) style of legal service.

Without systematic intention—there has been no great percipience in any of the firms—the corporate firms of today fell heir to the great bulk of legal services for the multi-nationals themselves. Much of the flow of this work in the early sixties came through introductions effected by the banks, which again proved their value to the law firms. Some of the firms did make conscious efforts to attract the incoming multi-national business; for example, a partner in one firm used his frequent overseas trips in the capacity of company director to make contacts with American corporations intending to invest in Australia. Another firm had enjoyed a minor relationship with one of the large Wall Street law firms dating back to the thirties; this connection was now responsible for a certain amount of business. And several firms encouraged partners with developed specialities to speak and write as a way of advertising the firm. Whatever the effectiveness of these efforts, the increasing gap

in sophistication between the leading firms and all the others ensured that they would acquire a near monopoly of the more complex legal work.

The best way of locating the new kind of corporate law is to give several concrete examples. Perhaps the best single example comes from the economic centre-piece of the sixties, the minerals boom. Exploitation of the vast newly discovered mineral deposits was effected with the aid of a great inflow of capital and expertise from the multi-nationals. In a number of instances a particular field of minerals (Mount Newman, Robe River and the Queensland bauxite field are examples) was managed as a "joint venture", which was a stitching together of several corporations (Australian and multi-national) for a single enterprise. The law firms which were retained to formalise these arrangements were required to meet multiple problems associated with finance, securities, government rules of foreign investment, taxation, labour negotiations and complex international supply agreements. The sophistication of this task was thoroughly novel to the Australian lawyer.

Another example is the finance industry. The enormous appetite for capital during the sixties could not be supplied by domestic and multi-national investment alone and the result was a vastly stimulated demand for loans on the international money market. The Euro-dollar short-term money market (and later, the Australian short-term market) became an indispensable source of finance for many industrial and commercial ventures in Australia, particularly those with multi-national involvement. Since these loans had to be secured against assets of the borrower, the finance houses (banks, merchant banks, new specialist loan brokers) delivered to the large firms what rapidly became a great volume of securities work. The traditional approach to production of securities documents had to be adapted to this new mode of finance. International practice varied from the Australian and there was a new premium on the speed of operation. The latter imperative fed the technological transformation of the corporate firms.

The sixties also saw more systematic organisation of cartels of corporations engaged in the one industry—the mining and shipping industries are leading examples. The object of creating these industry organisations was to maximise the effectiveness of the industry as a whole and to work out common approaches to problems shared by the various corporations. And since many of these problems had legal ramifications, the cartel had frequent occasion to retain a large firm. Thus, one firm has discharged a great number of assignments for the collective body of maritime employers, which saw an interest in systematising its labour negotiations in what was a perennially troubled area of labour relations. This same firm has recently established a credit card scheme for an association of financiers.

The headiest years were those from the late sixties through 1973

when company flotations, takeovers and mergers were practically an everyday occurrence. While the law firms had always been called in to formalise such events, the new complexity of corporate structure introduced new legal complications. The level of flotations and takeovers has not been sustained in the years since 1973 but this category of work remains a specialty which will no doubt mushroom in future boom conditions. Importantly, this was another of the developments that set the seal on the corporate orientation of the firms.

Another large growth area has been industrial property, a legal classification which includes patent, copyright and trade mark issues. This field has been in effect expropriated from the old-style patent attorneys who proved unequal to the new multi-national era. The world-wide development of the record industry, for example, raised immensely difficult legal problems to do with claims for international proprietorship of recordings. During the sixties and seventies the multinational recording corporations have waged a ceaseless battle against "pirate" pressings of recordings originated by them and one law firm has developed a major specialty in devising solutions to the problem. This expertise has led to kindred work throughout the Pacific region, an example of the growing international orientation of the leading firms. The same firm was occupied over a period of years with the efforts of a giant multi-national pharmaceutical company to prevent competitors marketing a product claimed to be protected by international patents. As the transfer of technology rather than hard investment becomes the predominant style of multi-national business—franchise arrangements are a good example—the field of industrial property will become increasingly important.

Side-by-side with the growth of this specialised corporate problem solving, the law firms have tended to draw closer to individual corporate clients. In some cases the development has been so marked that particular firms have taken on what is essentially the role of everyday corporate counsellor. The media industry provides some good illustrations of this phenomenon. Newspaper proprietors have long been a fruitful source of legal business—defamation suits and contempt actions are an occupational hazard of newspapers—and they have tended to retain one firm for all their legal needs. Since the introduction of television in the late fifties, the newspaper proprietors have grown into diversified multinational media corporations and they have lost none of their legal riskiness in the process of expansion. Their favoured firm now finds itself on constant call for advice; a partner in one firm typically spends a portion of every day in conversation with the head of one of the largest media corporations. As yet, such continuous availability has not led to a system of retainer fees but clearly such a system is not far off.

The tendency of the firms to become closer to their large clients is further evident in the practice of partners acting as directors of

companies. What was an occasional occurrence in the era before the corporate boom, has now become commonplace; a partner in one firm had acquired some 50 directorships by the late sixties, when he finally opted for a full-time business career. The more aggressive firms have adopted a concerted policy of trying to place their partners in directorships, the fees from which are pooled in ordinary partnership earnings. There is no doubt that a healthy representation on city boards is a powerful advertisement for the firm.

One of the more curious developments has arisen from the trend towards corporations building up their own "in-house" lawyers. It might be thought that this fairly recent development stands to infringe the interests of the law firms, since the in-house lawyer could be expected to discharge business that would otherwise have gone to the firms. In fact, the appearance of the in-house lawyer seems to have further advantaged the firms. Rather than usurping a share of a finite market for legal services, the in-house counsel has tended to expand the market itself. The division of functions has been partly on a routine/complex basis—few in-house lawyers have the sophistication or resources of the firms, so the more difficult problems tend to end up with the latter. But there has also been a kind of insurance policy or sharing of responsibility, whereby the lawyers within the corporations check their own judgment against that of the law firms. This co-operation has in some instances been rooted in an in-house lawyer's prior service with the firm he now retains on behalf of his corporation. Indeed, some partners are now so sensible of the benefits of such a tie that they are actively concerned to place former employees in client corporations.

We have thus far described the changing character of the corporate law practice without reference to heightened government regulation of the corporations. Second to the impact of the multi-nationals, this has been the most significant influence on the changing shape of the firms. In fact, these two influences are considerably bound up with each other. Both the theory and the practical effect of economic regulation have closely followed the American pattern. Government policy makers have used American legislative models—in the trade practices, consumer and environment protection areas, for example—and the corporations (led by the multi-nationals) have responded by turning to American models of corporate cohabitation with the new regulation. This has worked to the advantage of the law firms, since negotiation of the pitfalls of government regulation has been the stock-in-trade of the great Wall Street and Washington law firms. The large Australian firms have found themselves asked to perform services pioneered by the American law firms.

Regulation of business is, of course, not entirely new to Australia and there were occasional instances of a law firm playing a role in the older style of regulation. One firm was retained as early as the fifties

by egg and dried fruits producers that faced common problems in relation to government schemes for the orderly marketing of their agricultural products. But prior to the sixties, legal problems directly created by government were at best a small source of work for any law firm.

Since the mid-sixties both Labor and Liberal-Country Party governments have accepted the desirability of closer control of business practices. For the Labor Party, regulation has come to occupy a position left vacant by the disenchantment with nationalisation. The major milestone of the new regulation was the Trade Practices Act 1965 (Cth), the first serious Australian effort to come to grips with monopolistic and unfair trade practices. This was the basis for later national and state legislation for consumer and environment protection, and it was also influential as a bureaucratic model of how regulation could be effected. One of the more important recent regulatory bodies is the Prices Justification Tribunal, which was established by the Whitlam Labor Government to deliberate the justification of corporate price increases. And earlier forms of regulation have been re-modelled in recent years. Thus, the Industries Assistance Commission was created out of the old Tariff Board to investigate and advise government on the desirable levels of protection for Australian industry; the Transport Department has been given an increasingly important role in regulating air, land and maritime transport systems; the Treasury has devoted increasing energy to devising and administering foreign investment rules; and the Broadcasting Control Board's regulation of the broadcasting system has become more significant in the context of the growing media complex. The pending securities legislation is another example of the trend: the Australian securities industry now faces the first systematic regulation in its history.

The practical process of regulation has not yet been systematised but there are signs that point to an increasing approximation to the American process. The distinctive character of the regulatory process in the United States has come from its blend of formal and informal modes of administration. "Due process" guarantees in the Constitution have spawned a large judicial-type sector within the administration; the granting of broadcasting licences, for example, is administered through a strict scheme of quasi-judicial hearings held by the Federal Communications Commission. But typically, such hearings are supplemented (and often in effect supplanted) by an informal process of negotiation between the licensing authority and the applicant. Both the formal and the informal processes are dominated by lobbyist-lawyers skilled in the peculiar amalgam of legal and political considerations that is the stuff of administrative law in the United States. These figures are drawn almost exclusively from the corporate law firms.

In this country, by far the greatest source of the law firms' involve-

ment in the regulatory process has been the Commonwealth Trade Practices legislation. At one stroke, the Trade Practices Act 1965 (Cth) required every corporation operating in Australia to conform to complex (if vague and often unenforceable) standards. The scope of the legislation was broadened by the Labor Government's Trade Practices Act 1974 (Cth), which amounted to the first serious consumer protection legislation in Australia. The legislation created a veritable bonanza for the leading firms, though this has been scaled down by the 1977 amendments of the Liberal-Country Party Government which have considerably weakened the Act. Even if the corporations had been prepared to go to smaller law firms, they could scarcely have found a suitable one: no small firm could have afforded to relieve lawyers of sufficient work-load to enable them to master the new field.

The greater part of legal work in the trade practices area has been to give advice direct to the corporations and to represent them in formal tribunal hearings. Thus the 1974 consumer protection amendments drove the large advertising agencies (almost all of them branches of multi-national agencies) into a continuous relationship with a law firm. One firm has a collection of advertising agency clients which constantly approach the relevant partners for a "clearance" that particular advertising copy does not infringe the standards laid down by the Act. But the firms have also engaged in considerable informal dealing with the trade practices bureaucracy. This has ranged from representations on behalf of a corporation under scrutiny by the trade practices bodies, to lobbying for changes to the legislation itself. Thus proposals to amend the legislation in 1977 led to a great flurry of lobbying by firms acting for some of their larger clients.

There is no doubt that the whole field of government regulation—including both the formal and informal processes—will occupy an increasing place in the corporate firm's activity. The firms themselves are confident of this. One firm has gone so far as to merge with an established firm of solicitors in Canberra, in order to be close to the locus of most of the bureaucratic and political decision-making in the area. And there are several instances of firms having recruited lawyers from positions in the regulatory arms of government. Conversely, the Australian Government has actively begun to encourage private lawyers to serve periods in government service. While it is true that the Australian firms are still far less involved in coping with regulation than are the firms of Wall Street, they have been given a powerful push in the Wall Street direction. As the corporations become increasingly attuned to the advantages of involving lawyers in their dealings with government and as government attempts further regulation, the trend will continue.

It is almost a paradox that law firms dependent on corporations for their livelihood find themselves advantaged by government efforts to regulate these corporations. One of the top firms has found itself even

more directly benefited by the general expansion of government activity. This firm has developed a specialty in servicing large State Government corporations. In the area of public utilities, the interests of government corporations are quite similar to those of corporations in the private sector; expertise gained from legal work for the one is freely transferable to the other. Moreover, the sheer size of the corporate firms stands as a guarantee that they will be able to handle large-scale work from whatever source.

These, then, are some of the changes in the work profile of the firms over the last two decades. They have resulted in a rapidly dwindling interest in providing services of a small-scale nature. The trend had proceeded so far by the mid-seventies that one of the top two firms in Australia mounted a wholesale review to determine the desirability of dispensing with private work altogether, having already dropped its practice in divorce and trusts for landed interests. The partners decided that the time was not yet ripe for this move—private services still accounted for some 20 per cent of the revenue of the firm—but they concluded that it would shortly be inevitable. The firm positively looked forward to the decision: work for private individuals was a "nuisance", to quote the senior partner. Not all the corporate firms have moved quite so far down the corporate path; one firm continues to derive a healthy share of revenue from conveyances delivered in bulk by the insurance company that has been its largest client over the years. But all the large firms will be encouraged by cost pressures, if nothing else, to sever the small-scale services that any small firm can perform satisfactorily. The costs of maintaining prestigious city suites (these firms have moved to ever more expensive accommodation with their rise) and investing in the new office technology demanded by the scale of their corporate work will make private services a luxury they cannot afford. Like it or not—and a few partners do not—the large firms now have no option but to become corporate firms and nothing else.

2. *The Internal Structure of the Corporate Law Firms*

The developments we have described were contingent on substantial changes to the organisation and recruitment policies of the firms. Despite the innovative break with nepotism as the basis of control and advancement in the firms, they had moved into the sixties with a dated organisational structure. The sheer flow of work and the expectations of the corporations served to wash away much of the dead wood, though particular firms proved more adept at modernising their structure in a way that increased the flow. While we have stressed the fact that innovation has never been the hallmark of the firms, the successful ones have learnt to resist change far less than they once did.

(a) *Recruitment*

By far the greatest internal change has been the growth in the number

of personnel. Where one firm had five partners and a total of some 50 persons in 1951, they now have 20 partners and a total staff of about 160. The bulk of this expansion has been in the sixties and seventies. Typically, the firms made a number of new partners in the immediate post-war years—these were the first generation of non-family partners —but almost no more until the great economic expansion beginning at the end of the fifties. It was at about this stage that the firms realised they could not afford to impose an arbitrary size limit on the partnership. Until then, even the non-family partners had tended to be fixed in the view that the firm would continue to be a small organisation measured against even a medium-sized business concern. Their point of comparison tended to be the individual legal practitioner or small partnership and by that standard they were a very large organisation.

The growth in work forced the firms to use ordinary business calculations in relation to recruitment and elevation to partnership. If business is buoyant, then the firm takes on more articled clerks (who soon become fully-fledged solicitors), employed solicitors and partners. And with the demise of the old clerk system, virtually every employee engaged in legal work has an ambition of eventual elevation to partnership. It is unlikely, however, that this general expectation will last much longer. It is probable that growing overheads and the interest of the partners (particularly the young ones) will turn the firms back to a situation where the partners were backed by a large body of legal employees who had no prospect of partnership. The difference is that the employees-for-life will all be qualified solicitors rather than non-professional clerks. The firm's ability to pay high salaries and superannuation benefits may make such an arrangement acceptable to solicitors who now see non-elevation to partnership as intolerable personal failure and cause to leave the firm.

The source of recruitment of solicitors has varied between the firms. The very top couple of firms have tended to recruit promising young law students as articled clerks—now the point of entry is on completion of a university law degree—then retain the best of them as employed solicitors, and eventually draw the most suitable of this reduced number into the partnership. Thus the typical partner has spent the whole of his working life within the firm. Less prestigious firms have not been able to rely so heavily on their own articled clerk system to produce senior solicitors capable of contributing to a sophisticated corporate firm. Once they realised the deficiency of their internal scheme of recruitment, they have tended to look actively to outside solicitors who can meet their requirements.

The scheme of internal development of solicitors has been heavily biased towards a particular social group. The majority of partners (in some cases almost the whole group) in the most prestigious firms are products of the elite Protestant schools. While from the outside the bias

appears as a conscious policy, it is sometimes defended on the basis that "the kind of people able to do the job tend to be produced by the 'public' schools". "Ease of manner" is another way of expressing the same criterion. Given the fact that the existing partners tend to place a high value on their own background, this bias will undoubtedly continue. To be accurate, it is now true that every firm has partners who do not fit the stereotype: there is an occasional Jew, a number of Catholics and some State high school products who have achieved partnership. But in none of the firms studied was there a single female partner. Understandably, bias towards traditional social elites is far less noticeable in corporate firms that command less prestige.

It would be false to conclude from this pattern of recruitment that the leading corporate firms have merely broadened the base of the old nepotism to encompass a larger social elite. Despite their social bias, the firms are solidly committed to recruiting on the basis of ability. More than ever before, it is sheer acumen that the firms seek to attract. Indeed, one of the most prestigious firms has for a number of years declined to look seriously at any applicant for articled clerkship who does not possess a good honours degree in law from a university. The short-listed candidates are then subjected to intense scrutiny, including psychological testing by a firm of professional psychology consultants. Only people who are genuinely promising can survive such rigorous appraisal.

Moreover, all the leading firms—not merely those that cannot supply their personnel needs from internal staff development—have displayed an increasing interest in recruiting proven lawyers from outside. The internationalisation of their practice has led them to encourage applicants who have either had some experience in working for an overseas (particularly American) firm or undergone higher education in a leading (again usually American) law school. And in a number of instances they have held a position open to enable an employee to undertake further study or overseas work experience of potential value to the firm. The firms have thus become much less of a closed shop than they once were, and there is no doubt that this more outward looking stance will be furthered in the coming years.

Some of the firms are beginning to follow the American pattern of recruiting from the regulatory agencies of government. The benefits of this are obvious. A lawyer skilled in the process of government regulation will be an immense asset to a practice increasingly concerned to minimise its effect on the corporations. Thus, one firm has anticipated the boom that will ensue from the foreshadowed securities industry regulation by recruiting two lawyers from the Commonwealth Department that has prepared the legislation.

The more diverse backgrounds of some of the lawyers is by now evident in the work of the firms. While the great bulk of work has come

to the firm *qua* firm, particular partners have developed reputations that have served to generate business for themselves as distinct identities. Thus one firm has a partner who has almost single-handedly carved out a quite distinctive practice for himself. This man completed his articled clerkship with a smaller Australian firm and became a partner of that firm at the end of the fifties. He then left to undertake graduate studies at a leading American law school and from there moved for a year to a New York law firm. From there he considered going to the bar in Australia but concluded that the perhaps greater prestige of this branch of the profession was outweighed by the greater opportunities offered to him by a large corporate law firm. He has capitalised on his American experience to develop a practice with a strong international flavour. His assignments for multi-national corporations and for the World Bank have drawn him into prolonged work in South-East Asia, a category of service that has hitherto been the preserve of American lawyers. And he was one of the leaders of the profession in employing American legal experience in the trade practices area. He has kept abreast of developments in corporate law by maintaining regular contact with universities in Australia and the United States and has undertaken frequent speaking and writing engagements on his specialties. While this man is scarcely typical of partners in the firms, his career pattern is by now acceptable to the firms. Clearly he represents a figure quite distant from the partners of an earlier era.

It is a major change that a career in a firm of solicitors no longer appears obviously inferior to one at the bar. A rising young lawyer in one of the corporate firms is often faced by more challenging work than would come to him as a junior barrister and this is coupled with a level of income comparable with that of all but the most successful barristers. The income of both employed solicitors and partners in the corporate firms has probably grown at a faster rate than that of other lawyers.

(b) *Organisation*

The corporate firms of the seventies are being increasingly remodelled to conform to the concept of "efficiency". The language of efficiency has affected all the firms, though some have resisted the trend longer than others. The tendency may be irksome to some partners—notably those who are older and grew up in a more leisurely regime—but the growing size of the firms, the changing character of work and the new technology make it inevitable. Just as the firms have moved closer to the problems of the corporations, they have also shed the character of a partnership of individuated legal practitioners. The partners of the seventies are increasingly organisation men, despite the occasional figure who carves out a distinctive practice of his own.

In terms of overall control, the firms have moved full-circle from a

high centralised structure, through a short "democratic" period, back to another centralised position. Through the fifties and early sixties management was largely left to the senior partner, who was at best expected to consult his partners informally. Meetings of the partnership as a whole were infrequent, being reserved for particularly important decisions such as the admission of a new partner. The rules of partnership meetings reflected their rarity: the "blackball" system operated to prohibit a positive decision being taken without unanimity. A process of gentle persuasion was the accepted style for pressing a point of view. Clearly, this was not the kind of body for routine decision-making.

The old pattern of organisation disintegrated with the rapid growth of the partnership in the sixties and the retirement of the first generation of non-family partners. The senior partners who had directed the two most prestigious firms almost throughout the post-war period retired within five years of each other—one in 1965, the other in 1970—and they were not replaced by functional equivalents. Even before their retirement, control of the firm had been broadened. The task of management had simply grown beyond the capacity of a single (now ageing) partner who lacked any high-level managerial backing. So the firms experimented with a "democratic" phase of frequent (and now much larger) partnership meetings with the senior partner being responsible for general administration.

The democratic era turned out to be inefficient and very brief, and by the end of the sixties the firms had retreated (or advanced) to centralism, this time a bureaucratic centralism. Committees of the partnership were formed to handle different managerial problems—finance, staff and general administration, for example—and these in turn spawned sub-committees. In some firms a partner was designated managing partner (as distinct from senior partner) and charged with co-ordinating the various committees and making the routine decisions common to any large organisation. In another firm, a high-level office manager was appointed to do substantially the same job. In both cases the position of senior partner was freed from an intolerable burden of administration and substantially changed. In a firm run by committees and managerial experts, the senior partner tends to be the public personality but little more than titular head of the firm. The era of the dominant senior partner is over.

Rising levels of staff and overheads have led to more serious costing and accounting procedures. One firm has gone so far as to project costs and minimum receipts necessary to sustain the firm, and to proceed from there to specify minimum weekly billing targets for its partners and employed solicitors. An employed solicitor who fails to meet his targets will eventually have his services dispensed with. While other firms have clung longer to a sense of individual autonomy in the partners, cost pressures have induced all of them to quantify the value

of their members.

The corporate law firms have been de-personalised in a still more important sense than the imposition of financial targets on the personnel. Whereas the old-style partner was a generalist, the partner of the seventies is increasingly a specialist. A complex legal problem is decreasingly handled by a single lawyer; rather, it is broken into its constituent parts and parcelled out to the relevant "expert". For example, the flotation of a new company may involve problems of finance, taxation, conveyancing and stamp duties in addition to the basic task of devising a company structure. Some of these fields will be the specialty of particular lawyers in the firm and so the task will be divided between several hands. A partner whose specialty is taxation will not pursue a taxation problem if it matures to the stage of litigation; it will be turned over to the litigation experts, who have specialist knowledge of court rules and regular relations with the barristers whom they will brief. Again it is the concept of efficiency that underpins such specialisation.

Curiously, the trend towards specialisation has been resisted longest by the most prestigious firm of all. This firm continued into the seventies to pride itself on being a partnership of individual practices. In fact, there was a good deal of wishful thinking in this belief and the firm has by now reluctantly seen the need for a great deal more specialisation. This is equated with "efficiency", hence profitability. There is a new premium on the speed of work, which is seen to be increased by more rational division of labour.

All the corporate firms have invested heavily in the new office technology. Electronic word processors have replaced many typists; computers have been installed to manage files, accounts and staffing. (In one firm this has worked to halve the office support staff.) The age of the lawyer scribbling with his quill—a not so distant image—finds no echo in the contemporary corporate law firm. Many of the new legal problems involve multiple corporate parties—consortium arrangements, for example—and these can only be handled quickly by taking advantage of advanced technology. The growth of the firms in the eighties will be increasingly geared to technological capacity. The firms are aware that their lead is not merely in number of personnel and legal talent, but also in the ability to produce multiple copies of 200 page documents overnight. They are actively concerned to develop clientele that can use this capacity. They see the future in performing assignments that will diminish in quantity but grow in complexity and scale.

IV SOME FINAL OBSERVATIONS

We stated at the beginning of this article that the emergence of the corporate law firm has important implications both for the legal profession and Australian society at large. These implications can now

be spelled out. For the legal profession, the most profound result lies in the creation of a category of lawyers who are more closely identified with their clients than lawyers have traditionally been. It is no great distortion to say that the corporate law firms are a branch of the corporations.

The traditional model of the lawyer is that of a professional who can argue the case of one party in the morning and, if he is asked, the case of his morning opponent in the afternoon. He is both detached and totally involved: detached in the sense of being available on hire to anyone, involved in the sense of totally committing himself within the rules of the game for the duration of his service. While there was always some variance between model and reality, the model is now hopelessly out of alignment with the phenomenon of the corporate law firm. The corporate firm is available to only one class of clients.

It is not simply a case of the class of clients having been narrowed. The lawyer-client relationship has also changed. The phenomenon of the lawyer as corporate counsellor and the frequent fact of lawyer/directors are illustrations of the extent to which the corporate law firm has become bound up with the interests it serves. Perhaps the lobbying activities are a still better example. The firm charges for such a service on the same basis as for any other legal service but clearly it is a legal service with a difference. The firm has entered the political process on one particular side.

The implications of the new role have not yet become fully apparent to the firms themselves (let alone to the legal profession as a whole), though the more self-conscious among corporate lawyers see the coming need for a fundamental reappraisal. Sheer self-interest will dictate this. Thus one lawyer sees stricter corporate regulation as a threat to the present position of the corporate lawyer. As government takes an increasingly tough stand against malpractices at the corporate level, the lawyer stands in danger of being drawn into the fire. His involvement in the issue of a prospectus, for example, could render the lawyer liable to prosecution for misrepresentation. This kind of threat may well lead the corporate lawyer to adopt the kind of moral evaluation of clients that lawyers have traditionally eschewed. He may have to satisfy his own mind that the client is not engaged in legally questionable activities before agreeing to take on a legal brief. Clearly, the degree of their identification with corporations is not without problems for the law firms.

The emergence of the corporate law firm has also had more limited institutional consequences for the legal profession as a whole. The solicitors branch of the profession is now both more compartmentalised and more stratified than it was before the emergence of the corporate solicitor. Again, the movement has been towards the American model of professional hierarchy. Whereas the interests of the old family firms

tended to coincide with those of the small partnerships and individual solicitors, the concerns of the corporate firms are theirs alone. The new division of interests has had the effect of robbing the small solicitors of their old standard-bearer and rendering them poorly equipped to confront movements for the de-professionalisation of routine legal tasks. Thus the current threat to the traditional professional monopoly of conveyancing holds little direct interest for the corporate firms, since they are fast abandoning the field of their own accord. The large firms have secured their future through specialisation in undeniably professional areas at a time when small solicitors are apprehensive as never before.

The new level of expertise in the corporate firms also has implications for barristers. In addition to being the specialist in litigation, the barristers were traditionally the elite branch of the profession and the branch with specialised knowledge. A good barrister was in heavy demand by solicitors for legal opinions on complex points of law. The changed character of the leading firms has worked to erode this demand; a good lawyer in the corporate firms may now know more about a legal specialty than any member of the bar. (Interestingly, one firm has successively employed two highly competent barristers on a full-time basis; their availability stemmed from their expatriate status.) Barristers are thus decreasingly engaged by the corporate firms for tasks other than the conduct of litigation. This development may spur the movement for a fusion of the two branches of the profession; certainly the corporate firms would be happy enough to take on the role of court advocate and their corporate clients may well see an advantage in this development. The growth of administrative tribunals has already led to more appearance work by solicitors.

By far the most important implications of the corporate law firm are those that directly affect society at large. In essence these amount to a strengthening of corporate power in Australia. The corporations have captured a whole sector of the Australian legal profession and it happens to be a highly competent sector. The talented personnel and specialised expertise of the corporate law firms have given the business corporations a powerful new shield against interests that might work against them.

In particular, the corporations' monopoly of the leading law firms has strengthened their comparative advantage over government. To repeat, the emergence of the corporate firm has been in considerable part a response to increasing government regulation of the economy. The firms have been created to defeat or at least tame this regulation. The struggle between governments (of whatever ideological persuasion) and corporations is an unequal one. The corporations have at their disposal some of the best legal resources in Australia—certainly *the* best outside the bar—which can be used in tandem with standard political resources. Government cannot easily match these resources. The almost

total absence of consumer interests organised as a countervailing force to the corporations means that the whole push for regulation must come from within government itself. Even if the requisite political will were present, the advantage would lie with the corporations.

In fact, government is very far from being unequivocally committed to wholesale regulation. We have already mentioned the occasional cross-overs from regulatory body to corporate law firm that have begun to make their appearance in Australia. This and the reverse form of cross-over are likely to become commonplace. The effect of this kind of career movement is to tie the law firms more closely into the structure of government. The firms and the corporate interests they represent are legitimised as ordinary participants in the process of government, which tends to become less zealous in its concern to impinge on the interests of the corporations. This, at least, is the American experience and there are pointers enough to suggest the relevance of that experience to Australia.

In a larger sense, this article raises questions about the relation of structural change in the economy to the character of the legal profession. It is now abundantly plain that the traditional conception of the lawyer's role in Australian society lags far behind the reality of the corporate law firm. The corporate lawyer is fast becoming a central figure in the industrial-government complex and it is high time that the implications of this are explored by both the profession and the political community as a whole.