The Globalisation of Regulation of the Legal Profession

(Volume I)

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Summary

The thesis investigates the nature and regulation of the international practices of large commercial law firms. The overseas work of City solicitors, German commercial lawyers and US corporate lawyers is examined; almost seventy interviews were undertaken with lawyers and regulators based within the jurisdictions of England and Wales and Germany. A wide variety of literature, ranging from the fields of globalisation and regulation to the sociology of the professions, contextualises the empirical research.

It is argued that the processes of globalisation have intensified within the last quarter of this century. The heightened internationalisation of business has impacted upon the worlds of many professionals, including those of lawyers in large law firms. Many of the largest law firms are moving to more commercialised forms of practice, where entrepreneurship is highly valued. Indeed, one of the reasons why foreign offices are opened is to take advantage of "green-field" sites abroad. However, law firms' strategies do vary; the thesis aims to tease out some of the differences in the international practices of the law firms investigated. In so doing, it cautions against over-generalising when discussing the overseas strategies and experience of "mega-law firms".

Nevertheless, international developments do test the limits of current regulation. Large law firms often operate beyond the regulatory concerns of professional associations yet several features of their practice are worrying. For instance, the tendency of commercial lawyers not to consider anything other than their clients' immediate interests (to act as "hired guns") calls into question the legitimacy of regulatory systems. The thesis proposes a programme of reform to address such concerns.

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Finally, I would like to dedicate this work to my dad, for knowing what justice is really about, and to Yvonne, whose unfailing support and love made this possible.

Glossary and abbreviations

ABA - the American Bar Association.

Associate - this term is used to describe an assistant lawyer.

Beauty parade - terminology used by corporate lawyers (and clients) to describe when a potential client asks several law firms to tender for work, by giving presentations.

Bundesrechtsanwaltskammer - German National Bar Association, based in Bonn, to which all local law societies (Rechtsanwaltskammern) belong.

CCBE - the Council of the Bars and Law Societies of Europe, an umbrella organisation for each nation's respective legal professional association/s.

"the City" - the City of London; the square mile of land in central London which comprises the heart of the financial district.

DAV (Deutsche Anwaltsverein) - the German lawyers' association (membership voluntary). It has the reputation of being less conservative than the Bundesrechtsanwaltskammer (Schack 1991).

EEIG - a European economic interest group.

GATS - the General Agreement on Trade in Services.

GATT - the General Agreement on Tariffs and Trade, now superseded by the WTO (see below).

IBA (International Bar Association) - a private international organisation of lawyers.

IT - information technology.

IP - intellectual property.

LDC - less developed country.

Leverage ratio - the ratio of partners to assistant lawyers.

Lockstep compensation - this refers to the system in which partners' seniority is rewarded by a higher profit share.

M&A - merger and acquisitions work.

Magic circle law firms - several commentators use this phrase to refer to the City firms of Allen & Overy, Clifford Chance, Freshfields, Linklaters, and Slaughter & May.

Mega-law firms - the terminology of Galanter (1983), used to refer to large Anglo-American law firms. Galanter noted several features of what he termed "mega-lawyering" in the US:

- practice occurs in large units;
- firms extend their geographic reach by access to funds of information and networks of contacts which enable them to identify suitable local counsel and monitor their performance;
- a high level of specialisation is cultivated;
- clients are overwhelmingly corporate;
- work often involves research and the use of experts;
- work is often prestigious and derogates altruism; and
- clients have greater control; autonomy is absent from practice.

Mittelstand companies - German small and medium sized companies.

MNC - multi-national corporation.

MNP - multi-national partnership; a structure available in England and Wales to enable solicitors and foreign lawyers (registered with the Law Society) to practise in partnership together.

OECD - the Organisation for Economic Cooperation and Development. This organisation provides a forum in which the governments of its 29 member countries can discuss and develop economic and social policy.

OPRs - Overseas Practice Rules, governing the overseas work of solicitors, found in the solicitors' code of conduct (Taylor 1996).

QLTT (Qualified Lawyers' Transfer Test) - a test designed by the Law Society of England and Wales, to allow lawyers from certain overseas jurisdictions to become dually qualified as solicitors.

Rechtsanwalt/Rechtsanwältin - a German lawyer (advocate). 'Rechtsanwältin' refers to a woman lawyer and Rechtsanwalt to a male lawyer.

Rechtsanwaltskammer - see Bundesrechtsanwaltskammer.

RFL - refers to a registered foreign lawyer, able to practise in a MNP (see above).

SPRs - Solicitors' Practice Rules, found in the solicitors' code of conduct (Taylor 1996).

SRA - self-regulatory agency.

TNC - trans-national company.

WTO - World Trade Organization, the successor to the GATT.

A comment on the structural forms of international legal practice

The first literature review notes the difficulty of defining what is meant by 'international legal work', although it does mention that lawyers could carry out international work not only when based overseas but also when based in their home jurisdiction (for instance, by doing Italian work in London).

There are several structural vehicles through which international legal work can be channelled, as will be described most fully in chapter two. As, however, there will be some mention of these structures before that chapter, the following summary might prove useful:

Correspondence arrangements - lawyers are often acquainted with certain lawyers/firms overseas and will work with these contacts when they so desire.

Networks - networks take correspondence arrangements one step further. Relationships between different firms are formalised to the extent that firms in the network are encouraged to deal with each of the other firms.

Associations and alliances - an association/alliance usually refers to a relationship between a more limited number of parties than those involved in a network.

European economic interest group (EEIG) - a structure permitted by the European Commission to facilitate the cross-border co-operation of European businesses. An EEIG is created by a contract entered into by the parties.

Foreign/overseas offices - this refers to the offices set up in overseas jurisdictions by law firms. Offices vary greatly in size and in the work they undertake.

Chapter one - The background

Part one - Introduction

"Por una mirada, un mundo ..."
From *Rimas y Leyendas* by Gustavo Adolfo Becquer (1977)

A new acquaintance recently asked, somewhat increduously, why I[1] was spending my time researching business lawyers. A devastatingly simple question, perhaps. On such occasions, unspoken charges of ivory tower élitism, unadulterated self-indulgence or - worse - reluctance to 'get a proper job' seemingly spike the surface.

Being forced to justify one's existence may, however, prove a salutary experience. In retrospect, the episode acted as a dress rehearsal for this chapter and thus may have helped clarify why the reader might care to read this thesis. So, let the question be posed: why *should* corporate lawyers be studied?

The "why bother?" question has taxed other researchers who have investigated large commercial law firms. There is a need to justify the decision to spend time on what is, after all, a highly privileged section of society. Most commonly, as Cain (1994:15) states, sociologists have justified their research on lawyers by invoking their power; lawyers are said to play a significant part in the ordering of society and so research can contribute to a broader understanding of why society is as it is.

Lest this appears to border on the woolly, more detailed arguments have been put forward to support this type of research. Nelson (1994:x, 1 and 7), for one, discusses the importance of the large law firm in the United States, asserting that it "sits atop the pyramid of prestige and power within the American legal

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[1] The use of the first person singular in academic writing will be discussed in the later section on methods and methodology.

profession" (1988:1). Although only a minority of lawyers work in these firms in the States, their impact is great as (not in order of importance):

- they recruit the "top graduates of the top law schools" and earn the most;
- they work in the most intellectually challenging and rapidly changing fields of substantive law;
- their members often occupy positions of leadership in bar associations, law reform commissions, and civic and political[2] organisations;
- they represent the most resourceful of clients. As legal counsel to major corporations, they participate in transactions and disputes which have enormous economic consequences for society; and
- "... the functioning of formal legal institutions is heavily dependent on the social organization of the legal profession. The incentives, resources, and political, social and cultural orientations of lawyers often determine the relationship between law and society" (Nelson 1988:7). As the dominant organisation in the private sphere of the legal profession, patterns of change in large law firms both reflect and shape the changing functions of law in US society[3].

This perspective is founded upon an analysis of the US firm as it interacts with US society. My research, however, was undertaken in two European countries, moving between the legal worlds of London and Frankfurt. The primary focus is the overseas work of US corporate lawyers, City solicitors and German commercial lawyers ("Rechtsanwälte/innen"), all working for private law firms.

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[2] Rauch (1998) documented the omnipresence of lawyers in US political life thus: "Having promised to make his government "look more like America," President Clinton promptly produced a cabinet whose 18 members included 14 lawyers. Our president, vice-president and first lady are lawyers; lawyers make up 40 per cent of Congress; and Washington's elite is dominated by lawyers."

[3] Nelson also argues that large law firms have considerable impact not because they bring about an allocation of society's scarce resources which differs from that willed by clients, but precisely because they maintain and make legitimate the current system for the allocation of rights and benefits. Galanter and Palay (1995a:193) add that by efficiently assembling great concentrations of talent and resources, and placing them at the service of the powerful economic actors (and occasional rich individuals) who can afford their fees, large law firms accentuate the disparity in ability to use the legal system.

The membership and influence of these groups of lawyers may be quite different from those of their counterparts working in the States.

Nevertheless, several writers have affirmed the importance of large law firms in the UK. These firms do represent extremely resourceful clients and they have significant influence in determining recruitment patterns and training within the profession. Hanlon (1997:804), for instance, has argued that these firms appear to be the training ground for commercial lawyers in the profession - firms with over 20 partners account for 63% of all trainees in the profession and 75% of all assistants. King et al (1990) also showed that large law firms recruit disproportionate numbers of Oxbridge graduates.

Further, large law firms strongly affect public perceptions of the legal profession, and the profession's image of itself and its social rôle (Boon and Abbey 1997:631). This might be illustrated by the press' criticism of "fat cat" lawyers. Indeed, the Guardian reported in January 1999 that it had found the first "£1 million-plus" job advertised in the British press and it was for a lawyer - for a partner to head the London office of a US firm (The Guardian Editor 1999:22)[4].

How important large firms are in Germany is less clear cut, as will be seen, but these firms do recruit extremely well qualified entrants (Rogowski 1995) and deal with cases which may have far-reaching economic and social consequences (as can be seen in the privatisation work undertaken in the former East Germany - Scheifele 1994).

This thesis attempts an understanding of what happens when the work of these German, US and UK lawyers moves beyond the national arena. Such work might span involvement in, and facilitation of, cross-border M&A deals (such as the recent Daimler-Chrysler merger) to the restructuring of the debt of developing

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[4] The firm was later named as McDermott Will & Emery (Unattributed 1999g).

countries. As such, these 'deals' have a significant impact upon millions of people across the globe.

Research in this field may also carry an additional justification. Apart from helping to understand, in macro terms, the importance of global business and lawyers' involvement in it, research on the international practices of professionals might also help illuminate the nature of interaction between 'professionals'. According to Dezalay (1995:5):

> "Competition between national elites and public confrontation between modernizers and guardians of tradition contribute to the revelation of hidden structures or the tacit rules on which rests the authority of these symbolic fields."

Yet the international work of professionals is severely under-researched. To date, most work on the professions has been written assuming the backdrop of a nation state. What happens when professionals raise their gaze over the national parapet remains shrouded in greater mystery. There was much for the thesis to investigate.

The research tackles some fundamental questions. What is international legal work? Which lawyers undertake this work? What are the implications of a globalising world economy for them? What differences exist between and within the groups of lawyers studied (and their firms) and why? More importantly, perhaps, what rôle(s) do they play within global capitalism? How does their work impact upon the nations within which they and their clients operate? Are lawyers let loose upon the world stage, unfettered by national constraints, to follow their own stars? If they are, should we care?

Investigation of these issues necessitated a somewhat eclectic approach to the literature, due to the limited international body of scholarship in this area. At the outset, there was the need to read widely, drawing upon work published in several disciplines. The highest proportion of the literature read was, however, sociological in nature, although the work of various social geographers, management theorists, economists and political scientists was referred to.

To begin with, and to avoid putting the cart before the horse, the first section of the thesis analyses why businesses (industry, trade and services) have increasingly crossed national frontiers and questions who stands to gain (and lose) most in this race to globalise (or, less ambitiously, internationalise[5]). Literature examining globalisation and global business will be reviewed, from modernisation and dependency theory to accounts of globalisation and the 'service revolution'.

The concern to locate the rôle of lawyers within the global economy runs as a leitmotiv through this and following chapters of the thesis. Some sociological theory of the professions is reviewed, to examine more acutely the nature of corporate lawyering. The review raises a clutch of issues, including the following:

- Who are corporate, international lawyers?
- Whose interests do they promote?
- How important is international work[6] to them?
- How do they organise and develop their work and why?
- Do Anglo-American lawyers working overseas dominate local legal cultures?
- Does globalisation impose a homogenising American template upon the rest of the world?
- What might international legal work look like in the future? How significant might cross-national law firm mergers and the 'threat of the Big Five' be?

The research was, however, largely inductive in nature, as will be discussed in the section on methods and methodology. The empirical research formed a substantial part of the project - in total, almost seventy people (lawyers and regulators) were interviewed.

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[5] Lash and Urry (1994:306) believe that globalisation is autonomous from inter-state relationships whereas internationalisation implies exchanges between nation states.

[6] This rather amorphous phrase is analysed in the first literature review.

Chapter four discusses the regulation of international legal work and, in so doing, sets out a second literature review. Here, regulation (broadly construed) as it applies to the groups of lawyers studied is analysed, painting a picture of the status quo and hence the parameters within which these lawyers work. Topics mulled over include:

- the ethical tensions of large law firm practice;
- whether the formal regulation of professional associations impacts at all upon large firm lawyers' work;
- the limits of national regulation when stretched to govern global practices; and
- whether international lawyering should be regulated and, if so, how.

A critique of this status quo is suggested, challenging regulatory assumptions underpinning the current modus operandi[7].

The conclusion draws these threads together, by summarising themes and returning to that from whence we came. *Can* we conclude that commercial global lawyering is a good thing? Is there anything that could or should be changed? What might the future of these professionals hold? To paraphrase the words of Lash and Urry (1994:325), are these developments - engendered by globalisation - liberating or repressive?

We begin our round trip by exploring the globe's shrinking and shifting landscape.

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[7] As the thesis has examined the international work and regulation of lawyers from three jurisdictions, it has been necessary to provide the reader with a considerable amount of information. The thesis has turned into quite a lengthy document as a result and I apologise to the daunted reader for this.

Part two - Literature review, section one

One problem in carrying out the review was that the different strands of the thesis (globalisation, regulation and the professions) pointed to the bodies of work of various academic disciplines although there was little work available which integrated these themes. Globalisation has a literature of its own, drawing on many perspectives, from those of geography to sociology. Regulation is usually looked at by economists but not exclusively so; the literature here includes work by political analysts. The legal profession has been analysed by sociologists, amongst many others. Yet there is little collective work on the globalisation of regulation of the legal profession *per se.*

My response to this has been to concentrate upon the sociological literature of globalisation and the professions in this part of the thesis, whilst chapter four includes a review of work on regulation.

Globalisation, focusing most specifically upon its inter-relationship with the world of business, will first be considered. It is hoped that this will aid an understanding of why the work of the lawyers studied has developed internationally, whilst locating their possible rôle(s) and loyalties within this brave new (or not so new) world. Literature which concentrates more exclusively on professional practice will then be analysed.

Globalisation

The concept of globalisation, our *sine qua non,* is much used and abused. Its most popular lay use loosely refers to the wide economic, social, cultural and political developments which have rendered the world as a whole a much smaller place, perhaps most significantly within the last thirty years. The contours of the most recent changes will first be sketched.

Features of "global compression" and the "global economy"

That the last 30 years have seen huge changes in the world generally and in the conduct of business in particular seems to be a truism almost too trite to repeat. There are various publications charting these developments, from literature generated by organisations such as the United Nations to academic texts in a variety of disciplines - from management theory to geography.

One summary of recent global changes is that provided by Robertson, a sociologist. He summarises in outline (1992:59) the most recent stage of the "temporal-historical path to the present circumstance of a very high degree of global density":

> "*Phase V: The Uncertainty Phase* Beginning in the late 1960s and displaying crisis tendencies in the early 1990s. Heightening of global consciousness in the late 1960s. Moon landing. Accentuation of 'post materialist' values. End of the Cold War and manifest rise of the problem of 'rights' and widespread access to nuclear and thermonuclear weaponry. Number of global institutions and movements greatly increases. Sharp acceleration in means of global communication. Societies increasingly facing problems of multi-culturality and polyethnicity. Conceptions of individuals rendered more complex by gender, sexual, ethnic and racial considerations. Civil rights become a global issue. International system more fluid - end of bipolarity. Concern with humankind as a species-community greatly enhanced, particularly via environmental movements. Arising of interest in world civil society and world citizenship, in spite of 'the ethnic revolution.' Consolidation of global media system, including rivalries about such. Islam as a deglobalizing/reglobalizing movement. Earth Summit in Rio de Janeiro."

Considering more specifically the realm of business within this period, certain trends are striking. There has been a universal shift out of agriculture, growth in both the service sectors of 'mature economies' and in the amount of manufacturing activity undertaken in developing/majority world economies[8] (United Nations 1990:17).

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[8] To put this in numeric terms, the United Nations (1990) notes that in 1960 the manufacturing sector accounted for over 30% of the total value of all goods and services entering the final product of the developed economies (of North America, southern and western Europe, Australia, Israel, Japan, New Zealand and South Africa); by 1987 less than 25% of their GDP was generated in this sector. On the other hand, services grew from just over one half of GDP in 1960 to two thirds in 1987.

This 'shift to services' is particularly significant for our purposes, of course, as is another salient feature of business, the freer movement of financial capital across borders, as will be seen later.

In fact, the world map of production and trade in the 1990s is much more complicated than that of half a century ago (Dicken 1992:44). Whilst the most noteworthy constant is the persistent dominance of the developed market economies[9], change in this period has been dramatic. Manufacturing growth was particularly high after the Second World War and manufacturing became increasingly global in nature (ibid). After the economic shocks of the late 1970s and early 1980s, though, the growth of international trade was driven more by the development of trade in commercial services than in manufacturing, reflecting the increasingly close interconnections at a global level between production and circulation activities (ibid). Indeed, in the eighties, the growth of international trade in commercial services accelerated to increase more rapidly than manufacturing trade (ibid:18)[10].

Yet although service sectors are to be found in all economies, the importance of services as a proportion of GDP tends to vary directly with a country's income level (ibid:41). Moreover, the kind of services found in developing countries is (ibid) "... low-skill, low-technology private service activity (including wholesale and retail trade) whereas in the developed economies the relative importance of business-related services (including finance) is greater." Thus, financial services

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[9] For instance, as Buckley (1996a) notes, until the 1970s almost all international trade and cross-border investment was carried out by a handful of industrialised countries - most of the world's nations effectively operated outside the 'global economy' (protected by barriers of culture, politics, geography and/or import tariffs). Even a decade ago, two thirds of the world's population lived in the protected economies of the developing/majority world or the communist bloc, whereas today almost every country has embraced free market capitalism. In 1996 foreign direct investment around the world was (at $553 billion) more than twice the figure for 1990 (Buckley 1998:2).

[10] In 1996, cross-border trade in services was estimated to be worth about $1,200 billion, with international merchandise trade's value being $5,000 billion (Buckley 1996a:3).

are heavily concentrated in a few OECD countries. One statistic is that the USA accounts for 42% of the sum of market capitalisation values of the world's stock markets (which totalled $20,178 billion in 1997 - Buckley 1998:3).

Indeed, Dicken (1992:41) argues that it is the growth of international trade in the business related services of finance, management, advertising and professional/technical services (thus including the international work of lawyers) which has been especially important during the "past decade" and that these services are concentrated in the West:

> "Western Europe was the dominant region in total commercial services trade (exports and imports) in 1987, accounting for 58 per cent of the world total, followed by Asia and North America. In terms of growth during the 1980s, however, the most dynamic regions were North America and Asia ...
> [B]oth the United Kingdom and France are more important as exporters of commercial services than they are as manufacturing exporters."

Advocates of growth laud these developments and persistently maintain that economic growth is the world's key to ending poverty, stabilising population, protecting the environment and achieving social harmony. Perkin (1996:xv) lists the benefits of what he terms "professional societies" - post-industrial (mostly western) societies which are dominated by professionals. Gains have included:

> "... longer and healthier life; more comfort and enjoyment than any previous age; solutions to many of the problems and diseases - even genetic ones - faced for centuries by humanity; incomparable mobility at unprecedented speeds; instant communication with friends and relations around the globe; push-button access to worldwide entertainment, sport, music, opera, and theatre; and electronic recovery of information from global data banks and libraries."

Nevertheless, all is not rosy and well in this new post-industrial landscape. Growth and development have not occurred without immense social and environmental costs. The fruits of growth have not been evenly spread - the gap between the richest and poorest quintiles of the world's population is twice as big today as it was thirty years ago (Hoogvelt 1997:xi)[11].

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[11] As Bottomore also notes (1993:119): "The advanced (or relatively advanced) industrial countries, with at most 25 per cent of the world's population, consume 80 per cent of its energy

The environment has also suffered tremendously. One statistic is that a third of the species to be found in the natural world have been destroyed by human activity in the last 25 years (Crace 1998). As Jorgen Randers, deputy director of WWF (World Wide Fund for Nature) International states (quoted in Crace 1998):

> "In spite of the uncertainties, it is safe to say that the period since 1970 has been the most destructive for the natural world since the great extinction 65 million years ago, when the meteor hit the Caribbean and wiped out the dinosaurs."

According to Perkin (1996:xv), the "costs of professional society" must be weighed against the achievements noted above. All professional societies have experienced the following:

> "... the widening of the distribution of income and prestige as the best jobs go to the able and highly educated, skilled manufacturing jobs are exported to low-cost areas and countries, and the uneducated are relegated to low-wage 'in person' services or to unemployment; the consequent decline in morale and the concomitant rise in crime, drugs, public disorder, and mental illness already mentioned; and the congestion, pollution and stresses of life in overcrowded cities. Balancing the benefits against the costs calls for a moral calculus of a high order."

The issue of why these trends are writ large upon the face of globalisation has been left to several generations of theorists to try to resolve. One fundamental question posed is why capitalism has developed globally. And who (or what) are the 'winners and losers' of global business? Another more recent need has been to rationalise the growth in (international) services. Where do lawyers fit into this picture?

It is to these questions that we now turn, starting with the broad issue of the development of global capitalism.

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resources and receive 85 per cent of total world income, while in the poorer countries 2,000 million people live in abject poverty or starve."

Theories of globalisation and development

"The task which development theory set itself was to theorise, and explain, what made the [First World] rich and what the [Third World] had to do to become rich (modernisation theory), or what made the former rich and kept the latter poor (as in dependency theory)."

Ankie Hoogvelt (1997)

Perhaps unsurprisingly, it is much easier to describe global trends than to explain them. Within the context of theory, various sociological, economic, philosophical and political concepts have been used to explain why such changes have come about, why and how regions in the world have developed within the capitalist framework and, indeed, whether the global developments we have seen are to be welcomed.

This overview has selected several significant theories, as a comprehensive study of the immense body of literature in this area would obviously have been a Herculean task. Consequently, such a selection cannot do justice to the breadth and complexity of the literature or even to the theory outlined itself, although it will provide awareness of the ground most commonly covered by commentators.

The sketch begins with some ideas of why development towards 'modernisation' occurs, as before one can understand why international services have taken off, it seems necessary to ask why global business occurs at all and, in so doing, takes the shape it does.

Development (or modernisation) theory

"Accumulate, accumulate! That is Moses and the prophets!"

Karl Marx (1990)

One strand of theory, developed after the Second World War, which considered the development of societies around the world (albeit comparatively) is that labelled modernisation or development theory. This analysis assumes a fundamental dynamic, a necessary logic, to explain change, drawing on notions of functionalist thought associated, for instance, with Durkheim (although both

Durkheim and Weber said little directly about the changes occurring in their own eras which were turning the world into a smaller place).

The task was to develop an all-encompassing theory of all the processes and structural changes required to transform non-industrial societies into industrial societies. The theory supported US aid programmes designed to encourage the efforts of people from economically under-developed areas to "progress" and, more covertly, to support successive US governments' cold war strategies to keep as much of the world as possible from communism (see Hoogvelt 1997:35 and 36).

Such 'modernisation' theorists argued that societies shift inexorably in nature from simple to complex, from traditional to modern. One important difference between the arguments of modernisation theorists, though, related to the causation of change. Some argued that the development of technology had been the prime factor in initiating development in traditional societies whereas others felt that ideas had predominantly generated change. However, this is not necessarily seen as an either/or choice (O'Donnell 1992).

Rostow (1971) argued that it is useful to break down the story of each national economy into a set of stages. He believed that (1971:1):

> "It is possible to identify in all societies, in their economic dimensions, as lying within one of five categories: the traditional society, the preconditions for take-off, the take-off, the drive to maturity, and the age of mass consumption ...
> They constitute, in the end, both a theory about economic growth and a more general, if still highly partial, theory about modern history as a whole."

Technology ("the insights of modern science") and "an effective centralised national state" provided the basis for take-off in a traditional society. This resulted in moves to produce durable consumer goods and services and increases in personal income during an age of mass consumption, which was preceded by the "maturity" stage of sustained "progress."

Parsons' (1964) list of pattern variables (seen as a set of mutually exclusive and universally applicable choices open to "actors" to "direct their action towards achieving goals") was also used to explain the shift to complex society. Parsons listed those variables which were characteristic of traditional society and those characteristic of a modern society. In respect of modern society (1964:184):

> "The combination of achievement interests and cognitive primacies will mean that it is a dynamically developing system, with an encouragement for initiative in defining new goals, within the acceptable range, and an interest in improving instrumental efficiency. This means that the instrumental complex will tend to be a progressively developing and differentiating system of the division of labour, hence of differentiated occupational roles."

Hoselitz (1960) based his analysis of the social factors which contribute to economic growth upon this. He felt that the values of achievement, universalism and specificity promoted growth. Therefore, modernisation became the problem of ensuring a transition from dominance by the traditional to the modern type of action-orientation. Once this transition had occurred, business would develop.

However, these theorists uncritically accepted the structure of the relationships between rich and poor countries which had evolved during the preceding epochs of capitalist expansion; in effect, they wrote a kind of 'how to develop' manual for less developed countries (Hoogvelt 1997:35). It is perhaps unsurprising, then, that these arguments have been strongly challenged. Notions of societal evolution had been scripted from an abstracted, historical account of the development of the West, which had then been turned into a prescriptive theory (ibid:36).

For instance, the notion of rational action is a concept which was universally generalised only as it reflected "common sense" assumptions held in the capitalist countries where the theorists lived (Taylor 1979:9). Hence, the theory could not explain why certain variables existed and so could only be descriptive, a determinist 'grand narrative' or a 'teleological' conception. This led to a failure to recognise other potential engines of change, such as class conflict.

Moreover, criticism has mounted to counter the notion of a unitary path to development. As Hall argues (1992:8):

> "Increasingly, different temporalities, different outcomes seem to be involved. Many events seem to follow no rational logic but to be more the contingent effects of unintended consequences - outcomes no one ever intended, which are contrary to and often the direct opposite of, what seemed to be the dominant thrust of events. Of course, the processes of formation were not autonomous and separate from one another. There were connections between them - they were articulated with one another. But they weren't inevitably harnessed together, all moving or changing in tandem."

In effect, development theory works as a narrative which chooses 'modernisation', its end goal, as a matter of empirical preference. The imperialist political assumption is made that developing/majority world countries should follow the pattern of capitalist industrialised countries in their 'development'.

Marxist/Imperialist theory and Dependency/World Systems theory

The roots of an alternative explanation of world business growth are found in Marxist theory. Rather than perceiving societies to be independent units, as the development theorists had, Marxist theorists took capitalism to be their fundamental unit of analysis, and critiqued a world system which placed nations structurally within a historically developed international division of labour (Hoogvelt 1997:37).

To start by sketching the raw bones of a crude Marxism, most societies are built from two main classes - that which owns the means of production and that which sells its labour. The former, the bourgeoisie in capitalist society, control the latter and this class distinction provides the basis for social change. This is because the interests of the two are diametrically opposed so that class conflict occurs, causing social change.

Classical Marxist theorists were, however, mainly concerned with the causes of imperialism - what it was about the capitalist system that drove it to extend itself beyond its own national borders (ibid:37). Dependency theorists were interested

in studying the *effects* of imperialism overseas, aiming to critique "bourgeois modernisation theory" (ibid:38).

The consensus was that capitalism was necessarily an international project. Over-production and falling rates of profit led capitalists to expand abroad in order to obtain a cheap labour force, cheap materials and new markets for goods. Thus, Baran and Sweezy (1966) saw one stage of capitalism to be monopolistic, quoting Lenin's phrase (ibid:17) that "If it were necessary to give the briefest definition of imperialism, we should have to say that it is the monopoly stage of capitalism." From the Middle Ages, capitalism was an international, hierarchical system, with leading metropolises presiding over dependent colonies (ibid:178) of differing strengths, that were not able to resist domination.

This monopoly stage meant that major production centred around a small number of organisations. This effected a system of exploitation which could be tangibly seen in the operation of trans-national companies ("TNCs") which aimed for monopolistic control over foreign sources of supply and foreign markets (ibid:9):

> "Today, the typical economic unit in the capitalist world is not the small firm producing a negligible fraction of a homogeneous output for an anonymous market, but a large scale enterprise producing a significant share of the output of an industry, or even several industries, and able to control its prices, the volume of its production and the types and amounts of its investments."

Such a system enabled such enterprises to do business on advantageous terms and to move business to where those terms were most favourable[12]. This 'shopping' for location ensured that these businesses needed "allies and clients" willing and able to respond to their demands[13]. The coincidence of interests between imperial

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[12] Korten also adds (1995:126) that the more readily a firm is able to move production, the greater is the competitive pressure on localities to subsidise investors by absorbing their social, environmental and other production costs.

[13] Or as Korten argues (1995:42): "[T]he policies that favor economic expansion commonly shift income and assets to those who own property at the expense of those who depend on their labor for their livelihood."

states and the ex-colonial élites blocked attempts at social transformation (Hoogvelt 1997:39).

Frank (1981) followed this direction, treating the capitalist system as a single world system, based on its historical development and particularly its spread to incorporate all parts of the globe. He argued that capitalism had created dependency and under-development on an international level as a result of its treatment of developing/majority world societies. This notion of the capitalist world system detailed the capitalist core and the peripheral, or 'semi-peripheral' states in the developing/majority world.

World systems theorists also attacked modernisation theorists, arguing that it was wrong to study societies only comparatively and not in an integrated sense. In effect, these theorists argued that the world should be seen as an entity encompassing a systematic ordering of "inter-societal", capitalist relations.

Wallerstein (1974) did much to found this new approach. He argued that a world system was a social system, with boundaries, structures, member groups, rules of legitimation and coherence (ibid:347).

He believed that there only existed two varieties of world systems - world empires, where there was singular political control over most of the area and the world economy, where there was no such single political entity. The latter system, which arose at the beginning of the sixteenth century, was founded upon capitalism which flourished internationally as economic factors then operated within a larger arena than that which any political entity could totally control (ibid:48). Hence (ibid):

> "This gives capitalists a freedom of maneuver which is structurally biased. It has made possible the constant expansion of the world-system, albeit a very skewed distribution of its rewards."

Therefore, capitalism became more dominant at the world rather than national level as the former level lacked substantially significant restraining checks on

capitalist development[14]. National societies should therefore be seen as one organisational level within the capitalist world economy.

Such theories have not gone unchallenged. World systems theorists will be considered first and then a basic critique will be levelled at Marxism in general.

One criticism of Frank's thesis relates to causation. It may not explain why some previously undeveloped countries have shown some capacity for growth (Taylor 1979). This suggests that growth is more complex than his model of total capitalist domination permits. Moreover, relations between countries remain obscure in his analysis; the argument largely rests on aggregate data which cannot illuminate the social/structural relations fundamental to the thesis.

Frank's view of capitalism as a system of exchange has also been criticised by Taylor (1979) as capitalism is not recognised as a mode of production. The numerous modes of production found in capitalism may impact differently upon class structure and so on the process of change - this should be part of any global analysis of change. Taylor (ibid) argued that "Third World" societies should be seen as particular combinations of different modes of production, establishing the bases for forms of class structure and political representation that are specific to those societies and different to those in the West. Hence he claims that the reasons for under-development in any given developing country stem from the country itself, rather than from its relation to the world capitalist system[15].

In sum, dependency theory is thought to focus too exclusively on the external relations between societies without considering their internal class relations (Peet 1991:11).

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[14] The difficulties of regulating the international work of lawyers will be discussed in the later chapter on regulation.

[15] Yet Sklair notes that (1991:35) dependency theorists and modes of production theorists "may have more in common than they seem to realize. Their arguments suggest that the lack of development in the Third World is due to obstacles, both internal and externally-imposed, to capitalist industrialization."

Perhaps the most fundamental criticism of Marxist thought, hinted at in some of the previous critiques, draws upon a Weberian perspective. The challenge is that of economic determinism, specifically that there can be other factors which generate change, such as new ideas, the work of powerful individuals or pressure groups. Hence, class conflict cannot be seen as the only source of change in society. A serious criticism of Marxist theory would consist in showing that one or more of its defined types of society came into existence, was maintained or declined by the operation of non-economic factors (perhaps geographic or cultural?) (Bottomore 1993:17).

Other theorists have also felt that these theories are unduly simplistic. They may not be an accurate reflection of the strategic options and decisions made by capitalists today. For instance, even in industries such as textiles and clothing, the availability of cheap labour is not usually the overwhelming locational consideration for TNCs; markets may be more important (Dicken 1992:125)[16]. The approach also underestimates the rôles played by national governments in influencing the internationalisation of production (ibid).

In fact, it may not be possible to view the world economy in simple core/periphery terms any more. The development of new forms of business structures may mean that we have moved beyond "the old multi-nationalism" (Gilpin 1987:256), so that 'big business' cannot dominate developing countries (ibid):

> "The day is passed when corporations of the United States and a few other developed countries could operate freely in and even dominate the host economies and when foreign direct investment meant the ownership and control of subsidiaries. Instead, a great variety of negotiated arrangements have been put in place: cross-licensing of technology among corporations of different nationalities, joint ventures, orderly marketing arrangements, secondary sourcing,

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[16] Buckley (1997:14) also argues that market penetration is a greater spur to inward investment than, say, low labour costs or lax pollution laws. Indeed, several German industrialists I have spoken to emphasised the key importance of proximity to markets in determining their global strategies.

> off-shore production of components, and crosscutting equity ownership. In the developed countries, the General Motors-Toyota alliance is undoubtedly the shape of things to come. In the developing world the corporations see the LDCs[17] less as pliable exporters of raw materials and more as expanding local markets and industrial partners or even potential rivals[18]. Thus the relatively simple models of both liberal [modernization] and dependency theorists are becoming outmoded in the final quarter of the century."

Yet I believe that Gilpin is overstating his case as only a small number of developing countries have experienced substantial growth and many are experiencing financial difficulties (Dicken 1992:45).

Statistics reveal that as much as 70% of world trade is controlled by just 500 corporations and a mere 1% of all multinationals own half the stock of foreign direct investment (Korten 1995:124). Furthermore, Korten argues that complex networking forms of organisation actually enable the world's transnational corporations to consolidate their power (ibid:216). Many companies trim their in-house operations to their "core competencies" (such as finance and marketing), which are consolidated within corporate headquarters, and farm out their peripheral functions, including much of their manufacturing activity, to relatively small contractors, often in low-wage countries (see also Sassen 1991 in the next chapter). Peripheral functions which are not contracted out may be located away from corporate headquarters, as in the "back offices" of big insurance companies, which are generally staffed by poorly paid female clerical workers.

These peripheral units function as independent contractors and are pitted in intense competition with one another and so are forced to cut their costs to the bone (ibid:217). Korten concludes that the power relationships between companies of the core and the periphery existing today are remarkably similar to those which prevailed between core and peripheral countries in the days of colonial empires (ibid:218).

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[17] Less developed countries.

[18] However, Buckley argues (1997:I) that the increasing prevalence of sub-contraction by TNCs has increased the exploitation of the local labour force, employed by local entrepreneurs who "have little regard for human rights or ecology."

Lash and Urry also argue (1994:22) that hierarchies continue to be important in the business world of the nineties. In an argument reminiscent of Wallerstein, they argue that the decline[19] of the national state in the process of globalisation means that hierarchies, especially in transnational firms, have a more enhanced rôle to play in the new economic arrangements. Hence, the more pronounced profiles of hybrid forms of government (such as subcontracting and joint ventures) do not imply a decline in the power of hierarchies, but signify their enhanced rôle as political actors in the void left by the decline of the national state (ibid:23). They carry on foreign relations with other firms, concluding 'treaties' in joint ventures and alliances. Further, large transnational firms are often at the hub of disintegrated networks of small firms. For instance, in the Stuttgart region in Germany, medium sized firms in the machine tool industry usually transact with firms outside of the region or country (ibid)[20].

But there is no single hegemon (ibid:285) in this new scheme; no one country exerts structural power and as a result, certain 'international public goods' may not be supplied:

> "There is no particular reason in a new world order for particular countries to take responsibility, or indeed to have the individual powers, to deal with the global problems that will be periodically generated."

Furthermore, the core-periphery dichotomy of bourgeoisie and proletariat or the stratification of nations (à la Wallerstein) is transformed. In their account (ibid:28) the core comprises the heavily networked "more or less" global cities (as a "wired village of non-contiguous communities") and the periphery consists

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[19] This assumption of a declining nation state leading to greater freedom is not empirically proven, in their account. One might posit a contrary outcome - globalisation could lead to increasing controls, regulation, at both a national and international level. Alternatively, it may be that there is national and international regulation, but that it is ineffective.

[20] However, Lash and Urry also believe that hierarchies are not all powerful today - although they may be stronger than ever in the macro-relations of political power, they are less significant in the micro-sociology of work relations. Working for a parent firm is vastly different to working for a small firm which is indirectly dominated by a hierarchy.

of isolated areas in the same countries, in the former eastern Europe or in the developing/majority world. Their thesis will be considered in more detail later in this chapter.

Their conclusion is that the relatively simple international division of labour, outlined by dependency theorists, has broken down, to be replaced by a "mosaic of uneveness", a multi-polar global economy in which three clear regional blocs are evident, those of North America, the European Community and East and South East Asia (Dicken 1992:45):

> "This 'triad' ... sits astride the global economy like a modern three-legged Colossus ... They are the 'megamarkets' of today's global economy."

Comment

In this section, we have seen that modernisation theory as a means of explaining business development across the globe has largely been discredited. The insights of dependency have proved more durable, although the criticism of economic determinism remains. What, then, can be salvaged from this section?

The discussion did raise several questions which will be briefly discussed now, emphasising their significance for lawyers - this will necessitate the discussion of some aspects of the work of 'international lawyers'. The points raised will be returned to when the empirical work is fully considered in the next chapter.

- Do enterprises expand abroad solely to maximise profit (as Baran and Sweezy argued)? Or are there other factors involved?

I would argue that TNCs have expanded overseas primarily to increase profits although, following Taylor (1979), the impact of their business will vary from country to country. Nevertheless, the motivation of law firms which have expanded abroad might be a little more complex, although I would also argue that their impact will depend upon the nature of the jurisdiction in question. Whilst

the concern to make a profit looms large in law firm calculations, firms might not expand abroad purely to maximise profit - foreign offices, for instance, are often a drain on a firm's overall profit levels and might not be set up simply to retain clients. There may be other factors involved which are not wholly profit-motivated - such as the desire to do interesting international work, even if it is not as well paid as national work. Indeed, might there not be cultural reasons why some firms are more predisposed than others to venture abroad in the first place?

- Does globalisation lead to the decline of the nation state, allowing business greater freedom of action (as Wallerstein (1974) and Lash and Urry (1994) suggest)?

In response, and without delving into the burgeoning political literature dealing with the changing rôle of the state at the end of the millennium, I shall later argue that globalisation does not *necessarily* lead to a decline in the power of the nation state, at least where lawyers and law firms are concerned. Much will depend upon what is being considered. For instance, whilst on the one hand pan-European directives might attempt to liberalise the rights of lawyers to practise in Europe, those very same provisions might allow each nation state to determine how that shall be done (as was the case with the 1989 'Diplomas' directive, which is considered later in chapter four[2i]).

Globalisation can lead to increasing regulation, as when an additional layer of international regulation is added to existing national regulation. There may, however, be problems with the efficacy of regulation and gaps between the two systems which may be exploited. International regulation might also increase freedom of action when it overrides national provisions, one example being how the GATT treaty has undermined certain national legislation protecting the environment (seen in the section on free trade in chapter four).

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[21] Alternatively, and more obviously, international regulation might lead to the rethinking and liberalisation of national regulation - as, for instance, EU decisions forced Germany to liberalise its regulation restricting cross-European practice (see Eidenmüller 1990).

Hence, overseas expansion can bring increased freedom to business, as when production is relocated to countries partly at least to take advantage of weaker legislation (such as laxer environmental controls). Lawyers may, in certain instances, be called upon to help effect the evasion of national restrictions (for example, certain financial instruments may be drawn up to take advantage of off-shore tax havens).

- Is there (as Lash and Urry argue) no particular reason for particular countries to take responsibility to deal with global problems?

To the contrary, certain nations may have more reason than others to push for more effective global regulation to deal with global problems, although concerted action may be needed to deal with these problems. This may be, for example, because they have a greater interest in changing the status quo as their citizens are particularly affected by what are defined as 'global problems'. Thus, Scandanavian countries might have a vested interest in controlling acid rain because it kills their forests. Alternatively, the British government might promote legislation which eases regulation limiting the rights of British lawyers to practise abroad (as a House of Lords select committee backed the Law Society's lobbying to liberalise legislation in Brussels in 1995).

- Can we usefully talk about nations constituting the core and periphery of world societies? Should we recognise an increasing polarisation of society within those countries which were previously deemed to belong to the core?

As modernisation and dependency theorists' work was written mostly before the 1970s, they were unable to explain recent diversity - why, for instance, the structures of business have become more complex in the last quarter of this century or so and what effect that has had upon 'core' nations. The international expansion of services (and so the work internationally of lawyers) was also not

explicitly dealt with. The views of more recent globalisation theorists may shed some light upon these matters and so these theories will now be discussed.

Globalisation theorists - Sklair, Waters and Robertson

> ***"The global market no longer has any frontiers. Trade occurs 24 hours a day, dictated by people who watch the same news and each other and, like a school of fish, will often charge in the same direction for fear of being left behind and cannibalised by their own kind."***
>
> **Hunt and Heinrich (1996)**

Here, the work of specific writers is discussed separately, with the themes and issues arising in their work which are of most relevance to the thesis being listed at the end. This style has been chosen instead of a thematic discussion to avoid losing too much of the context of their arguments.

We begin our exploration of the work of contemporary globalisation theorists with the work of Leslie Sklair.

Leslie Sklair

Sklair (1991) has developed his own theory of world change. In a Marxian vein, central to his thesis is the role of TNCs, entities which he considers to be so globally dominant that they often are more powerful than nation states. In fact, he believes that there is a 'global system' and that it is constituted as a series of three forms of 'practices'. Economic transnational practices are the building blocks of the system, political practices are the principles organising the system and cultural-ideological practices hold the system together (ibid:81). In order to work properly, the dominant forces in each of these three spheres have to monopolise key resources (ibid):

> "The transnational corporations strive to control global capital and material resources, the transnational capitalist classes strive to control global power and the transnational agents and institutions of the cultural-ideology of consumerism strive to control the realm of ideas ...

> Without consumerism, the rationale for continuous capitalist accumulation dissolves."

To consider the transnational capitalist class first (ibid:8), this class consists of those people who see their own interests and/or the interests of their nation as being best served by an identification with the interests of the "capitalist global system" (in particular, with the interests of the countries of the capitalist core and the TNCs domiciled there). Hence, membership of this group is much wider than the owners of the means of production, as in Marxism. Members include the (ibid:62):

> "... entrepreneurial elite, managers of firms, senior state functionaries, leading politicians, members of learned professions and persons of similar standing in all spheres of society."

Obviously, and importantly for our purposes, lawyers can be part of this class. Members promote capitalism world-wide and benefit from it, although to the detriment of less powerful groups in society. The transnational capitalist class aims to downgrade "certain domestic practices by comparision with new and more glamorous transnational practices", to create a "comprador" mentality (ibid:63):

> "This can be measured by the local and in some cases international brain drain from domestic to transnational enterprises, mainly but not exclusively TNCs. The people who make up this brain drain are the backbone of the transnational capitalist class, the class whose political role is to persuade co-nationals that their interests are identical with, or at least served by, those of the TNCS."

Focusing now on the "cultural-ideology" of consumerism in global capitalism, Sklair argues (ibid:41) that its aim is to persuade people to consume above their perceived needs. This ensures that accumulation for private profit occurs and guarantees the perpetuation of the system.

Sklair finally argues for more effective mechanisms to redistribute wealth and to increase institutional participation world-wide.

Sklair's thesis owes some debt to the various theories with Marxian roots described above, as he argues that the global system of transnational practices is largely structured by capitalism (Waters 1995:143). Yet, Sklair pays more attention to the transnational relationships which emerge under globalisation than his predecessors (ibid).

However, Sklair's explanation of the "way in which consumer culture pervades the globe and controls the individual" is not wholly satisfying. It lacks an acknowledgement of agency - people may not simply be pawns (or cultural dupes) in the hands of big business (although I would acknowledge the power of much media advertising) but may actually be inherently attracted to at least some of what global business has to offer. For example, Waters (1995:143) notes the attraction of consumer culture for many in the east of Europe, "despite the massive propoganda about the evils of consumerism[22]."

The notion of a single transnational class may also be too simplistic. I agree with Bottomore (1993:63[23]) that members of the 'service class' (including lawyers) do not form a homogenous grouping nor do they always make strategic decisions about the use of capital (although they may do in some cases)[24].

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[22] Anecdotally, I also recall a Czech friend taking me to a (spartan but packed) cinema in Prague in 1991, which was showing the film *Pretty Woman*, and the audience's overwhelming enjoyment of the film.

[23] "The top executives and the owners of property are so intimately connected as to form a single social group, while the position of those in the middle and lower levels of management ('the service class') differs fundamentally in that although they play an important part in the organization, technical operation, and administration of many vital economic enterprises and services (also in the public sector) they have, nevertheless, a subaltern role and do not make the crucial strategic decisions about the use of capital."

[24] Freidson similarly notes (1986:218) that powerful clients who are able to define their own problems and needs expect practitioners to serve them. Under these circumstances, professionals will, because of their expertise, be able to determine many of the tactics or methods of the service they provide but not the strategy or goals of the service itself.

An illustration would be the recent merger between Daimler Benz and Chrysler where lawyers were only brought in once the deal had actually been brokered (Simonian 1998).

Moreover, it is useful to bear in mind Bottomore's injunction (1993:48) that in order to demonstrate a connection between élites and other social phenomena, it is necessary to undertake comprehensive and systematic comparisons between societies. Hence, Sklair could be criticised for lack of empirical rigour.

Nevertheless, this is not to say that there are no pressures which most financially successful business people (and their advisors, such as some commercial lawyers) share. To be sure, there are peer group pressures which "urge them to live in style, join exclusive clubs and travel first class - activities which cut them off from the real world which most people inhabit" (Buckley 1997:15) [25].

Furthermore, many professionals have benefited immensely (in financial terms) from the existing distribution of money in the global economy, and they often identify strongly with the interests of corporations which hope to maintain the status quo[26]. This point will be returned to, after the work of Waters and Robertson has been discussed.

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[25] The average 1996 compensation of top chief executive officers in the US was $5.8 million (including stock options), over 200 times greater than the annual wages of a shop floor worker (Buckley 1997:15). Hence (ibid): "Their rewards look unfair, despite the long hours and heavy responsibilities they endure."

[26] For instance, Korten (1995:251) believes that the era of modern development has expanded opportunities for those workers whose functions are exclusive to the money economy, such as some lawyers. Yet (ibid): "These "money workers" produce nothing of intrinsic worth yet receive handsome financial compensation for performing functions that did not exist in premonetized societies ... 75 per cent of the value created by those who produce real goods and services is now being captured by those who do only money work."

These people are also highly likely to be "overconsumers" in ecological terms, maintaining unsustainable lifestyles. See appendix one for Korten's (1995) elaboration of the "Earth's Three Socio-ecological Classes".

Malcolm Waters

Waters is particularly concerned with the concept of globalisation itself, rather than with the exercise of mapping global trends. He defines globalisation as (1995:3):

> "*A social process in which the constraints of geography on social and cultural arrangements recede and in which people become increasingly aware that they are receding.*" (italics in original)

This implies that globalisation is a reflexive process, as people are aware of societal changes[27]. Still, he does agree with the critics of modernisation theory that globalisation in practice *today* is associated with a form of cultural imperialism. This justifies the spread of Western capitalism and culture by positing the existence of forces that are beyond human control, forces which are shaping the world. Waters argues that (ibid):

> "Globalization is a direct consequence of the expansion of European culture across the planet via settlement, colonization and cultural mimesis. It is also bound up intrinsically with the pattern of capitalist development as it has ramified through political and cultural arenas. However, it does not imply that every corner of the planet must become Westernized and capitalist but rather that every set of social arrangements must establish its position in relation to the capitalist West - to use Robertson's term, it must relativize itself."

The point about "relativisation" is important for our purposes, as an explanation of why diversity rather than homogeneity may result from globalisation; this assertion will be referred to again later. It is a useful counter to the monolithic accounts of global capitalism which cannot account for diversity within the world[28], although the theory is limited as it deals mostly in descriptive (as opposed to explanatory) terms.

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[27] Hoogvelt argues (1997:117) that global consciousness is manifested in the way people all over the world speak of issues in terms of the 'world order'. Although globalisation (or global interdependencies) has been increasing for a long time, it has accelerated only in the last decade or so as then it moved to the level of consciousness.

[28] Specifically Waters argues that Wallerstein's arguments could not be a precursor of globalisation theory as (1995:25): "... the existence of a world-system or systems does not itself imply global unification ... The world system argument can only truly be a theory of

Roland Robertson

Robertson is also critical of all theories in general which take their fundamental thread to be economic globalisation when accounting in general for world "compression." He feels that these theories often rise out of an idea of a homogeneous national society and this overlooks other factors in world development.

His definition of globlisation runs as follows (1992:8):

> "Globalization as a concept refers both to the compression of the world and the intensification of the consciousness of the world as a whole. The processes and actions to which the concept of globalization now refers have been proceeding, with some interruptions, for many centuries, but the main focus of globalization is on relatively recent times."

His perspective is largely cultural and he forms a model of globalisation which centres on relationships between four components: national societies; individual selves; the international system of societies; and 'mankind.' This form has its own dynamic - changes have occurred through phases of historical development in relation to each component as each becomes a more definite aspect of the global field In effect, as Waters argued, globalisation "involves the relativization of individual and national reference points to general and supranational ones" (Waters 1995:42). One example of this would be that although the theme of 'mega-nations' has arisen, he sees nothing to suggest that the national society will wither away[29].

Consequently, globalisation is primarily concerned with the form in which the world has moved towards unicity, and how both particularisation and

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globalization if it can give an account both of the incorporation of all states into a capitalist world-system and of the integration of polities and cultures by virtue of that expansion."

[29] Lash and Urry (1994), seen above, were more pessimistic about the strength of the nation state. The discussion later considering the effects of mega-lawyering in Europe will analyse this further.

universalisation occur - there is no one particular process or trajectory such as economic imperialism that can alone account for "global compression."

Comment

To sum up this section, sociological thought has moved from the early ideas of functionalist modernisation theorists, who worked largely in descriptive terms, to more causal explanations of global development. From the economic bases of Marxism, through to world-systems theorists, there now appear to be moves to draw upon various strands of theory, as in the work of Sklair, and to emphasise other causal, particularly cultural, factors, as in the work of Robinson. It was particularly interesting to note that there has been a shift from all-encompassing models of development/globalisation to those which point out the variations in density of global compression[30].

Again, the process of review seems to throw up several issues which will contextualise the empirical research:

- The work of Sklair is noteworthy in that it assigns a particular function to international professionals, such as commercial lawyers; they promote capitalism world-wide, identifying closely with the interests of global capital from which they benefit, but often at the expense of less powerful groups in society. Whilst the concept of an internationalisation of class might not be wholly convincing, this does not necessarily challenge the idea that professionals are closely aligned to the interests of capital.

- Globalisation, according to Waters and Robinson, involves the "relativisation of individual reference points to general and supranational ones". The idea is of a global consciousness, which does require a degree of reflexivity on the

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[30] Albrow also interestingly points out that there are many senses to globalisation (1998:9), with many representing more a rupture with modernity than its continuation. For example, the ecological sense of globalisation involves a concern for the fate of the planet "which arrests one of the core beliefs of modernity, the notion of everlasting expansion."

part of individuals. We shall see how Lash and Urry take this notion forward, in the next section, when the potential implications for lawyers of this increased sense of subjectivity are discussed.

- Robertson's assertion that globalisation implies the relativisation and not necessarily the homogenisation of culture will be of particular interest when considering several issues investigated in the interviews. For instance, what is the impact of Anglo-American lawyers on local cultures when they work abroad? Are they able to maintain their dominant working culture when overseas or must it adapt, "relativise", to the local climate?

- The most recent phase of globalisation has entailed a "compression" of world, as geographic constraints on social and cultural phenomena are redefined. This will be further elaborated upon in the next section.

This, then, provides some pointers as to why world "compression" in general has occurred and its nature, but it does not explain specifically why there has been the 'shift to services', a point central to our consideration of the location of lawyers within these global developments.

Thus the next section moves on to look at the shift to services, homing in on their international development. This review is intended to put the later discussion of the international work of lawyers into some perspective.

The shift to services and international expansion in the service sector

The following theories attempt an explanation of the shift to services, some of which consider their world spread.

Post-industrialism: Bell

One of the best known post-industrial theorists is Daniel Bell. Bell's (1973) thesis posits a three-stage historic model of economic development. The first stage is pre-industrial and agricultural, the second industrial, based upon manufacturing, and the third is "post-industrial", dominated by services. Rising productivity levels in both agriculture and industrialism are said to account for the progression of labour within the three sectors, a shift also indicative of increasing consumer wealth and demand for more services[31].

Focusing on his account of the latter stage of post-industrial society, Bell argues that the dynamics behind its economic growth, its "axial principles", are knowledge and information. Such knowledge is seen most physically in new technologies. These technologies reduce the number of manufacturing jobs available and the service sector of an economy grows. Moreover, those controlling these resources, "knowledge elites", participate in an increasing professionalisation of work.

Bell's work has been strongly criticised. One criticism is that the explanation of the demand for services is questionable. It does not, for example, explain why Europe has seen a decline in final (consumer) service consumption, accompanied by an increase in service employment, the converse of the position in manufacturing (Gershuny 1978). This may be part of the larger criticism that an increase in service employment may be generated by factors other than growth in the demand for services. It could be that manufacturing growth is one causal factor, as manufacturing enterprises themselves employ service employees (although see Lash and Urry 1994:194 and Hanlon 1994:4).

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[31] In effect, this sees the income elasticity of demand to be greater for services than for goods, so that as national income rises, more will be spent on services (Brown and Sheriff 1979).

Again, an ever popular criticism relates to the theory's mono-causality. Specifically, this theory does not account for the diversity found within nations' economies[32], the fact that both sweatshops and merchant banks can be found, for instance, in London. Hanlon (1994:7) states that this is because the post-industrial thesis does not take into account capital's quest to maximise profitability[33]. As Allen argues, explanations based on mono-causality are suspect (1992:202):

> "[I]f national economies are increasingly becoming 'sites' across which international forces flow, with some parts of a country passed over by the new growth dynamics, then the new uneven global order will very likely be characterized by *more* than one line of economic direction within and between countries. The idea that a single dominant economic dynamic, such as information or flexible manufacturing, is capable of transforming much of the world economy may therefore represent the thinking of a *modern discourse* whose economic moment has now passed." (italics in original.)

Post-Fordism: Harvey

The criticism of mono-causality could also be levelled at David Harvey's thesis, to be considered next, focusing as it does on the rôle of financial capital in promoting change.

If Bell thought the world was moving beyond industrialism, then Harvey thinks it is moving beyond one type of industrialism, Fordism. Harvey argues that we have entered a period of "flexible accumulation", a response to a crisis experienced by Fordism around 1970. This crisis was precipitated by several factors (including the saturation of markets, rigidities in labour practices and inflation) which restricted the development of new markets and working methods.

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[32] Lash and Urry (1987:162), for example, argue that this approach fails "to explain just why 'knowledge, education and science' come to occupy a particular importance in modern western societies and especially why they are more important in certain periods in some societies rather than others."

[33] Hence, (1994:79): "It does not describe the situation of certain privileged sections within the service sector, nor does it provide an adequate explanation as to why these groups enjoy the working conditions they do. Fundamentally it ignores the capitalist motive of profitability that lies behind change and the position of groups [like accountants] within this process."

The 1973 oil price shock then created the space for a new regime of accumulation to become established.

Harvey describes this regime as follows (1989:147)[34]:

> "Flexible accumulation, as I shall tentatively call it, is marked by a direct confrontation with the rigidities of Fordism. It rests on flexibility with respect to labour processes, labour markets, products, and patterns of consumption. It is characterized by the emergence of entirely new sectors of production, new ways of providing financial services, new markets, and, above all, greatly intensified rates of commercial, technological, and organizational innovation. It has entrained rapid shifts in the patterning of uneven development, both between sectors and between geographical regions, giving rise, for example, to a vast surge in so-called 'service-sector' employment as well as to entirely new industrial ensembles in hitherto undeveloped regions ... It has also entailed a new round of what I shall call 'time-space compression'[35] ... in the capitalist world - the time horizons of both private and public decision-making have shrunk, while satellite communication and declining transport costs have made it increasingly possible to spread those decisions immediately over an ever wider and variegated space."

When describing this growth in services, he argues that flexible accumulation has been accompanied by consumption which pays much greater attention to quick changing fashions, mobilised by "artifices of need inducement and cultural transformation" (ibid:156). When this is combined with changes in production, information gathering and financing, this "seems" to underlie the surge in service employment witnessed since the 1970s.

Yet Harvey's explanation is tentative (ibid):

> "The exact interpretation (or indeed even basic definitions of what is meant by a service) to be put on this is a matter of considerable controversy. Some of the expansion can be attributed, for example, to the growth of sub-contracting and consultancy which permits activities formally internalized within manufacturing firms (legal, marketing, advertising, typing etc) to be hived off to separate enterprises. It may also be ... that the need to accelerate turnover time in consumption has led to a shift of emphasis from production of goods (most of

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[34] See also Gilpin's description above.

[35] Harvey views this as a 'speeding up' of economic and social processes, which is associated with periodic crises in capitalism, of which the latest phase began in the 1970s. This has also been associated with an increase in globalisation, which itself can be seen economically in the increased mobility of capital (promoted by technological and organisational change).

> which, like knives and forks, have a substantial lifetime) to the production of events (such as spectacles that have an almost instantaneous turnover time)."

However, he does not feel that capitalism is becoming more disorganised as Lash and Urry (1987) argued in "The End of Organized Capitalism". They suggested that under what they term "organised capitalism" in the twentieth century, states and large businesses organised flows of finance, labour, commodities and the means of production most significantly on a national scale. What we are now witnessing, then, is capitalism's "disorganisation", as more fragmented and flexible types of production occur on an international scale. Commodities, money and productive capital circulate internationally at ever greater speeds, as global trade, global movements in finance and foreign direct investment increase. This transformation is post-Fordist in that the age of mass production and consumption has been succeeded.

Yet Harvey (1989:159) thinks that organisation is, to the contrary, becoming stronger as capitalism is ever more tightly organised *through* "dispersal, geographic mobility and flexible responses in labour markets, labour processes and consumer markets", all of which are accompanied by institutional, product and technological innovation.

This "tighter organization and imploding centralization" has been achieved by access to information and the reorganisation of the global financial system, together with much greater financial co-ordination. Flexible accumulation relies more on finance capital as its co-ordinating power than Fordism (ibid:164). Thus the dynamic agents of this new capitalist regime are new financial systems, which have become more autonomous in the last twenty years and able to challenge the rigidities of Fordism[36]. The speed and scale of resultant capital flows pose problems for nations seeking to establish structures of stable accumulation[37].

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[36] However, Harvey also agrees with other theorists that globalisation involves localisation (1989:293).

[37] As can be seen in the section in chapter four which discusses the free movement of capital.

Again, this theory is open to the criticism of Allen (critiquing Bell) noted above. In fact, we cannot be sure that we are entering a new global order; it may be that the changes in financial practices described are only one aspect of the current economic crisis and do not indicate the establishment of a new system of accumulation in the longer term (Gordon 1988). It may be too soon to predict such change; the thesis might not be predictive.

Indeed, all we have so far are certain directional tendencies (the emergence of a global market, flexible accumulation through global webs and financial deepening) but these tendencies are all on the production side (Hoogvelt 1997:133). To argue that we have entered a new mode of regulation, the means to regulate the supply side in the global economy (that is, the "institutional mechanisms, coordinating complexes and norms and values") should also be apparent (ibid).

Many recent theories (such as post-Fordism and disorganised capitalism) have in common, *inter alia*, a preference for order over chaos (ibid:91). However, when saying something about a new order, we seek to understand it with the language of the old - this may mean that we impose an assumption of historical continuity which is not justified. "What if the future is not like the past and what if it is marked by functioning anarchy instead?" (ibid:92).

Nevertheless, Harvey raises several points which are useful for our purposes:

- We have a fuller description of what changes have occurred in the business world within the last thirty years, even if it seems too early to call this a new productive regime. Lawyers, as advisors to industry, have provided the new forms of legal vehicles (franchise contracts, intellectual property protection and so on) to structure these new developments.

- Financial systems have become more autonomous and diversified within this period; we will see later that many of the lawyers studied carry out work for various financial institutions.

- Harvey's work would lead us to expect that the work of professionals such as 'out-house' lawyers is becoming increasingly innovative, as they service ever more flexible and internationally mobile institutions and companies. Their work is also likely to become more pressurised, as "time-space compression" ensures that their speed of response is driven ever faster. Perhaps, too, this has meant that lawyers have had to react to increasingly volatile relations with clients who may change their policies on, for example, hiring 'out-house' firms more frequently.

Economies of Signs and Space: Lash and Urry

Lash and Urry (1994:60) believe that theories of flexible accumulation are not really helpful in understanding the extent to which modern societies are based on services and that these theories do not devote enough attention to the extent to which knowledge and information are fundamental to contemporary economic growth. Their theory aims to address this.

In "Economies of Signs and Space" they note (ibid:10) that their previous work ("The End of Organized Capitalism", summarised above) was criticised for suggesting that contemporary societies are disorganised rather than reorganised. They hope that their second book argues the case more clearly, that contemporary capitalism is disorganised "as flows of subjects and objects are progessively less synchronized within national boundaries." Although there are massively powerful organisations working within each individual country (and hierarchies continue to be important - see the above discussion, in the section on dependency theory, criticising Gilpin), there is no reason why these patterns will be synchronised. And different organisations operate within different times (ibid):

> "These range from the instantaneous time of the computer ... to the glacial time of environmental change where individuals are encouraged to consider the impacts of their actions upon unborn generations of both people and of other plant species."

They also argue that their previous book insufficiently examined "economies of signs[38] and space", of how objects (money, productive capital and commodities) and subjects (labour) are mobile and how these mobilities are structured (ibid:3).

The new book attempts to rectify this, partly by focusing on subjectivity - on an increasingly "reflexive human subjectivity". We can now see an ongoing process of individualisation, as social agents are increasingly "set free" from monitoring social structures in order to be self-monitoring or self-reflective[39] (see also Beck 1986). Disorganised capitalism disorganises everything (Lash and Urry 1994:10):

> "Nothing is fixed, given and certain, while everything rests upon much greater knowledge and information, on institutionalized reflexivity. People are increasingly knowledgeable about just how little they do in fact know[40]."

The structural conditions of reflexivity are also examined, by reference to "information structures" which condition information flows and knowledge acquisition in production systems. They argue (ibid:7) that information structures in Britain and the US encourage reflexive *consumption* whilst "corporatist" governance of information structures in Germany is favourable to much more highly modern, reflexive *production.*

Moreover, access to information and communication networks, as a condition of reflexivity, is a crucial determinant of class position (ibid:319), the densely

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[38] Signs are taken to be cultural artifacts ("signifiers") produced, for instance, by computers and TV sets.

[39] This immediately makes me wonder how they can hope to account for phenomena such as the growth of fundamentalism in religion.

[40] This may be overstating the case somewhat - it is a huge generalisation to say that all people in all nations are so affected. Indeed, this might clash with their later statements about how societies are dividing inwardly into cores and peripheries.

networked global cities being where the "top fractions, in the corporation headquarters, business and finance and legal services, of today's new informational bourgeoisie are primarily located[41]."

Yet there are changes not only in the nature of subjects but also in the objects involved in mobility (ibid:4), which are progressively emptied of material content, leading to the increased production of signs. The signs are of two types: either they have a primary cognitive value and are post-industrial or informational goods, or they are postmodern goods, which have primarily an aesthetic content (as seen in the development of objects with an increased image component, such as videos and magazines).

Usefully for our purposes, Lash and Urry (ibid:206) discuss the growth of "producer services" (such as finance, insurance, banking and legal services). They argue that there are two factors involved in the growth of producer services: the first is that of vertical disintegration (the degree to which there is outsourcing of producer services away from in-house production) and the second is that of the absolute increase in demand for producer service inputs.

They believe that both can be explained by the fact that the production of a more diversified range of specialised goods and services (symptomatic of this new disorganised "space") involves a much greater complexity in the structure of the firm, entailing a much greater range and number of service inputs at quite high levels of information or design intensity and so:

> "This necessitates greater numbers employed in personnel, finance, accounting, engineering, research and development, legal, marketing and other functions, whether they are employed inside or outside the firm. And as an increasing number of the services demanded from these specialists assume the nature of one-offs ... it makes increasing sense to outsource them."

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[41] Globalisation is not seen as a symmetrical process; stratification into powerful and relatively powerless is partly decided by who is doing the transmitting (powerful) and who is doing the receiving (powerless) of information (ibid:28).

This point about outsourcing may be of relevance for this research on lawyers; the implication is that lawyers to whom work is outsourced (in our scenario, lawyers in large private law firms) will increasingly undertake innovative legal work. This will be discussed in the next chapter of the thesis.

Turning more specifically to the internationalisation of services, Lash and Urry note (ibid:211) that the consolidation of financial services into international networks dominated by European, Japanese and US financial institutions has had the effect of concentrating employment in a small number of global cities, such as London, New York and Tokyo. This idea will be returned to when the work of Sassen is discussed in the next chapter.

They note, however, (ibid:10) that their book neglects the effects of these processes outside the north Atlantic rim (apart from Japan) as they focus on "the major powers in the new world order".

Again, we might wonder whether it is simply too soon to tell whether their theory has predictive properties, particularly as there is little discussion in the book of countries beyond the north Atlantic rim. Many of Hoogvelt's points, seen above in relation to Harvey's thesis, could be revisited. Nevertheless, the following points raised are particularly useful for our purposes:

- "Everything rests upon much greater knowledge and information, on institutionalized reflexivity."

This statement could be used to explain various changes which business and large commercial law firms have already experienced. For example, the amounts and complexity of information which lawyers must process have increased tremendously in the last half century and specialisation has followed in its wake.

The structures of law firm organisation have also evolved - bureaucratic departmental structures have been built and some have been dismantled, in a

move to specialised industry working groups. Some firms have realised the limitations of their managerial knowledge and have employed other professionals (such as full-time managers or management consultants). Law firms might be expected to respond more quickly and flexibly to the demands of clients.

- "Information structures in Britain and the US encourage reflexive *consumption* whilst corporatist governance of information structures in Germany are favourable to a more highly modern, reflexive *production.*"

Broad comparisons are drawn in the next chapter between the economies of the UK and Germany and so this point will be expanded there.

- Global cities are where the "top fractions ... of today's new informational bourgeoisie are primarily located."

Lash and Urry stress that professionals such as commercial lawyers form part of the "knowledge core". Consequently, they sit high in the rankings of those privileged by these global developments.

- Social agents are increasingly "set free" to become "self-reflective."

As individuals (at least those in the 'core') become more reflexive in their choices, we might also expect that lawyers would think more actively about their career decisions. It would be a logical corollary of Lash and Urry's theory if lawyers became more responsible for their own career progression, rather than relying on their firms to make the choices for them. Might we then see more mobility, and perhaps diversity, in the 'market' for legal services?

The last theory now to be considered in this section on the shift to services is that of Jeremy Clegg.

Management theory: Clegg

This theory is drawn from management literature and specifically attempts to theorise the *international* growth of services.

Clegg (1993:87) reports one idea, which was seen above to be part of Harvey's and Lash and Urry's work, that the growth of business services may be attributed, at least in part, to an "increasing division of labour, whereby service activities have become separated from the manufacturing and extractive sectors in which they were formally incorporated." This separation can be witnessed in the increased use of subcontracted services, which are said to lower costs and encourage the growth of small and medium sized service firms. Clegg, however, points out that this cannot alone explain the multinational expansion of service firms. He believes that international business theory can help explain why certain service activities become multi-national.

Drawing on the work of Casson, Clegg (1993:89) lists four reasons why internationally orientated "market-making production" may occur. As this theory aims to explain actual business strategy, a logical way to discuss Clegg's work is to separate out these 'reasons' and discuss their possible applicability to law firms:

> "1 the existence of substantial economies of scale in production, rendering it efficient to supply several countries' markets in an integrated fashion from one location but with market-making activities in each location."

This is difficult to apply to law firm behaviour. Whilst there may be cases, as in some cross-border M&A deals, where one law firm acts as lead counsel and coordinates the work of lawyers in other countries, this does not mean that this is designed to achieve "substantial economies of scale in production". It is more that some cases require coordination. The empirical work (in chapter two) will discuss how international work is carried out.

> "2 where internationally mobile consumers demand the exact replication of services production in several locations, ie, the mutual dependence of sales between different markets."

It is difficult to see how the "production" of legal services could be the same across countries, as the legal content of advice concerning a nation's own law will necessarily reflect the peculiarities of that jurisdiction. However, clients may encourage their law firms to expand abroad to benefit from a *similar* service delivery in different locations - the notepaper will be the same, there will be native language speakers on the staff and so on. This is not the same as stating that the service will be an exact replication of the service elsewhere, though - the empirical work will discuss this further.

> "3 where consumers wish to place orders in one country for supply in another country."

There may be some law firm clients, in some cases, who would want, say, their law firm in New York to engage a lawyer in Frankfurt to provide advice for them. In this scenario, however, it is probable that the advice would be reported back via the New York firm. Alternatively, they might ask their New York lawyer to recommend a lawyer in Frankfurt, whom the client then has direct dealings with. Still, it seems misleading to call this an "order".

> "4 where the firm has an internationally transferable firm-specific, or absolute, advantage in market-making production."

The next chapter of the thesis will discuss the various structural vehicles through which lawyers might channel their international practice. It will be seen there that firms sometimes believe that their own foreign offices (which attempt to replicate their culture, transfer their knowledge base and so on) provide a quality of service which cannot be attained by using other organisational structures, such as networks. This might be considered to be such an 'advantage'.

Nevertheless, Clegg's theory is pitched at such a high level of generality that it could explain almost anything. Most fundamentally, it does not attempt to explain why global markets exist in the first place. It also appears not to consider

the demand-creating activities of the professionals themselves. The focus seems to be on services solely connected to manufacturing - this means that the theory has limited use elsewhere.

However, Clegg also structures an argument concerning the importance of the issue of buyer uncertainty in gauging the quality of services, which may help explain why, for example, some law firms have established foreign offices. Service firms need to reassure their clients as to their reputation for *quality and availability* and this involves the use of four strategies (ibid:90)[42]. Again, these will be considered in turn:

> "1 the control of earlier production stages."

What might constitute the "earlier production stages" of a legal case? Is it the instructions given to lawyers working overseas from head office (or a linked firm/lawyer) either about a case (if the clients do not go to the overseas office/lawyer direct) or the control of how the office itself operates? If it is the latter, then the knowledge that a foreign office is run in a particular manner, with known and trusted lawyers, might reassure the client as to the quality of service. It might also be reassuring for the firm itself and be as much to do with the attempt to maintain quality as to prove it.

> "2 offering output of services in multiple locations."

As stated before, law firms organise their international practice in various ways - by using networked firms, foreign offices, links with overseas friends and so on. Whilst the desire to be available (and not to lose clients) might, for instance, mean that foreign offices are founded, they might also be founded so as to capture new work. Clegg seems to ignore the potentially proactive nature of demand-

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[42] In relation to accountants, Davis, Hanlon and Kay argue (1993:113), similarly to Clegg, that it is "reputational effects" which have primarily driven the need for accountants to go global, as these services are very difficult for clients to monitor: "Cross-border purchasing of services is a hazardous business. Customers - particularly multinational companies opening operations in Ireland - are too ignorant of the market to venture into purchasing services from small, unknown firms. Even if their local Irish management themselves know who the reliable auditors are, the constituency to whom they would like their accounts to appeal to will not."

making and also does not explain why particular organisational structures are chosen.

> "3 the production of components of the market-making service (contact-making, specification and negotiation) in proximity to the consumer."

When cases require face-to-face interaction, then it is obviously more practical (and cheaper) if one's lawyer is not located thousands of miles away. However, not all cases necessitate this - the increasing capability of IT encourages flexibility here. What might be more important is the nature of the legal and business environment in a particular nation. Notwithstanding developments in IT, it may be vital that a lawyer lives in the country in which the advice is to be given - for instance, to contact (and lobby) government officials or simply to understand the cultural environment. Consequently, this has less to do with the proximity of the client than with the legal and business skills required to do the job well.

> "4 the generation and international transmission of market-making skills and other assets, including branding."

Foreign offices, more so than networks, are often praised for being able to provide a 'seamless' service to clients. Contacts can instantly be made with overseas lawyers, who have access to the firm's resources and know-how (such as its precedent bank - its store of model documents). This might be considered to constitute the "international transmission" of an asset. A well-known 'international' law firm name might also reassure clients who are not knowledgeable enough about local firms in a foreign market to choose them. Still, some clients are more informed than this.

I believe that the difficulty in judging the quality of services may be greater at an international level than at a national level[43] and so law firms, for instance, might set up foreign offices to assure their clients of, *inter alia*, the quality of service

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[43] The generalisation is that risk increases with distance.

they can provide. Nevertheless, a potential criticism of this is that the need for the degree of quality assurance may be less where the clients are well informed, as where, for example, the clients of law firms are in-house legal counsel. Alternatively, knowledgeable clients may be more demanding, as they know what might go wrong and so require reassurances that work is organised and carried out in a fashion which will minimise risk. Much depends upon the client (and perhaps also the case in question), though there is insufficient knowledge of the preferences of clients to take this criticism much further at present. The point will be returned to in the later section of the thesis on regulation.

As to the need to establish a reputation for availability, this can undoubtedly be seen within the context of many service firms, although in itself it illustrates little about the dynamics of demand and supply behaviour of firms in different market sectors. For instance, it would not immediately explain why law firms may be opening and closing foreign offices in the same location at the same time[44]. Yet, this does not mean that the notion of reputation can be rejected; it simply means that there is a need to back up this theory with detail on the actual construction of, and responses of firms to, their client base. In effect, although this is a client-orientated theory, it may not work at the level of all clients.

Still, this discussion has raised several points which will be encountered again in the empirical research:

- most generally, both demand and supply must be considered when discussing legal services - both lawyers' active demand creating activities and the influence of clients upon the decisions they make are important.
- the need to ensure quality and availability and the need to impress clients of this influences law firm behaviour and this should be kept in mind.

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[44] It would also not explain why some firms choose to structure their practices through networks rather than foreign offices.

Comment

To sum up this section, there seem to be no watertight answers to the question of why services have expanded so greatly in recent times, and particularly why this expansion has often involved an international or global dimension. Whilst writers such as Harvey and Bell talk about a new stage of societal development, it may simply be that it is too soon to come to any conclusions about the changes described.

To look back at the thesis so far, the review has attempted to shed light on some fundamental questions which contextualise the work of lawyers internationally:

- What is globalisation? What does it entail?
- Why has business expanded globally? What is the nature of this expansion?
- Why have services developed internationally?
- What rôle do commercial lawyers play within the expansion of business? Why do they go abroad?
- Is the expansion of business globally a 'good thing'?

To outline some of the story so far, or a simplified understanding of it, globalisation was seen to be a process which has speeded up in the last thirty years. Geographic constraints lessened and this in turn impacted upon economic, social and cultural life, bringing with it (at least for (many of) those in the core) an increased consciousness of this "compression".

The shape and nature of business and finance have changed greatly within this period of time. Following a crisis experienced by Fordism in the early 1970s (in which the rigidities of Fordism and labour practices, the hike in oil prices and increasing inflation were key), much business metamorphised to challenge the inflexibilities of Fordism and thus to generate higher profits. Flexibility was the new buzz word, as "the emergence of entirely new sectors of production, new

ways of providing financial services, new markets and, above all, greatly intensified rates of commercial, technological, and organisational innovation" (Harvey 1989:32) were witnessed. The service sector grew, and the "time horizons of both private and public decision-making" shrank (ibid).

The place of services within this global expansion has not been fully theorised, although several factors behind the 'shift to international services' have been mentioned, including the increased outsourcing of services (from manufacturing) and an increase in demand for producer service imputs.

We have seen that lawyers working with business are likely to identify closely with global capital and promote its interests. Nevertheless, the changes in global business outlined imply that their personal and professional lives have or will come under increasing strain. Work becomes more pressurised as time pressure increases, as business (and, presumably, clients' policies) and the legal world change ever more rapidly. Lawyers are likely to be under more pressure to innovate (both in their organisational structures and in the actual work they do) and to take responsibility for their own direction. These themes are picked up again in the chapter on regulation.

To consider the final question of the desirability of recent developments, a lawyerly response might be 'good for what/whom'? Lash and Urry 1994 noted that there are those at the core who are highly privileged by these developments - and this group would presumably include commercial lawyers working on international deals for large law firms. Losers include those without access to information and communication networks and those threatened by the inadequacies of the regulation of international business and the unequal distribution of wealth. To take a longer term view, the latter group (of losers) potentially includes everyone on the planet. The discussion in the section on free trade in chapter four outlines critiques of the current basis of some business regulation.

This review still leaves many questions hanging. Most theory was formulated at a macro level and so had little to say directly about the nature of lawyering. To rectify this somewhat, literature on the professions and international legal practice will now be considered.

Literature on professional practice

"Those who think themselves the masters of others are indeed greater slaves than they."

Jean-Jacques Rousseau (1968)

The literature reviewed so far has not focused on the nature of commercial lawyers, their firms and 'lawyering' in any great depth yet I was particularly interested in exploring the following questions:

- What rôle/s do commercial lawyers play within (international) society? How can the nature of professions be characterised?
- How do notions of culture and professionalism interact with large law firm practice?
- How might the relationship between commercial clients and lawyers best be explained?
- What is the typical management style, if such exists, of mega-firms?
- What might 'international legal work' be?
- Who are international lawyers?
- How do they construct an (international) market for their services?
- What effect/s do incoming large law firms have upon host country legal professions?

To consider these issues, sociological literature on the professions and work on management theory was turned to. These issues will be discussed as set out above, in a largely thematic analysis of the literature.

On the rôles of lawyers, on the nature of professions

This section begins with a caveat - an exhaustive review of the literature on the sociology of the professions will not be attempted. Writers have reviewed (and repackaged) work on the professions elsewhere - see, for instance, Abbott (1988), MacDonald (1995) and Krause (1996). Instead, the concern here is more to highlight themes most commonly treated in the literature and to assess their potential relevance to the topic of international lawyering.

Literature on the professions generally has evolved over the last century or so. Theoretical traditions include structural functionalist analyses, grounded in Durkheimian insights, to market control theses (with roots in Weberian sociology), Marxian theory and, more recently, knowledge-based analysis. Each of these perspectives will be considered in turn, to understand better how professionals (and lawyers in particular) have been characterised in sociological literature.

Durkheimian sociology

Functionalist thought was particularly important to, and dominant in, the literature on the sociology of the professions until the end of the 1960s. Fundamentally, it posed the question of what rôle professions played within society and asked which occupations were professions.

For Durkheim (1957) and his followers, a critical issue was social order - following industrialisation, the influence of traditional institutions (such as the family and religion) was perceived to be in decline. This raised the question of what might avert the potentially destructive consequences of a mass of unconstrained individuals acting to secure their own (selfish) gain. The professions offered one antidote to this materialism, being seen as an altruistic, self-regulating community which could preserve moral order and act as a balance to circumscribe state power (Carr-Saunders and Wilson 1933).

In effect, the belief was that, protected from outside interference, professions would use their knowledge for the social good (Parsons 1954). Some writers focused attention upon categorising the characteristics of professionals, their "traits" (as in Goode 1957), and in examining perceived threats to professional autonomy, such as employment.

Yet this belief in the altruism of independent professionals was largely assumed rather than empirically demonstrated. For instance, input controls (such as the necessity for certain educational qualifications) were assumed to maintain the quality of service to clients. The next generation of theorists increasingly thought that these assumptions were dubious. As with the critique of the ethnocentricity of modernisation theory seen above, functionalists were believed to have drawn upon current models of professions from their own (Anglo-American) nations, thus reaching descriptive conclusions (Johnson 1972). Thus, as Freidson argued (1986:35) (following Becker 1970), the term "profession" should instead:

> "... be used in a specific historical and national sense. It is not a scientific concept generalizable to a wide variety of settings. Rather ... it is a historically and nationally specific "folk concept""[45].

One critique focused upon the power dynamics of the relationship between the professional and client, and questioned how far the professional was in control of this relationship (see Johnson 1972). In fact, the professional:client nexus was seen as a particularly important source of constraint upon the autonomy of professionals, as shall be seen in the next section.

However justifications for professional monopolies are still often couched in public interest terminology (as will be seen in the second literature review on

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[45] Freidson further argues that it cannot be assumed that a holistic folk exists that produces only one folk concept of profession in complex societies; thus there is no way of resolving the problem of defining "profession" that is not arbitrary (ibid:36). Nevertheless, while there are a number of different perspectives in a society, some are more consequential than others "if only because they stem from positions of substantial political and economic power" (ibid). These pragmatic definitions represent the "official legitimacy of the present" and set the limits within which everyday professional work continues.

regulation). For instance, lawyers' professional codes of conduct often affirm the commitment of lawyers to work in the 'public interest'. This leaves open the question of how far the commercial lawyers investigated work in such a fashion - this point will be returned to when Hanlon's work is discussed, in the empirical research and in the chapter on regulation.

Market control/Weberian sociology

Several writers who might be loosely termed market control theorists also looked at what motivated professionals, but they reached a very different conclusion - professionals acted in a self-interested rather than an altruistic fashion. Thus they were particularly interested in constructing a market monopoly for themselves.

Larson's work (1977) forms part of the backlash against functionalism. Her analysis draws upon the work of sociologists such as Freidson (1970) and poses the question of how professions organise themselves to attain market power[46]. She views professionalisation as an attempt to secure economic and social rewards by means of the use of special knowledge and skills in the market.

Other sociologists have used this insight as a starting point for their own theses. Abel, for example, has adapted Larson's work to apply it to his analysis of the legal profession in the States and England and Wales. He (1988:4) believes that the fundamental issue to consider is how actors seek and attain competitive advantage within a relatively free market. Protection is sought from "unpleasant" market forces and "social closure" is one of the most important vehicles for this "professional project" to secure market power as (ibid:10):

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[46] In stating this, she acknowledges her debt to the interactionist tradition inspired by the work of Everett C Hughes (1963), who had stated; "... in my own studies I passed from the false question "is this occupation a profession" to the more fundamental one "what are the circumstances in which people in an occupation attempt to turn it into a profession and themselves into professional people?""

> "Producers of a service who succeed in constructing a marketable commodity only become an occupation. In order to become a profession they must seek social closure. This project has two dimensions: market control and collective social mobility ..."

Consequently, professions attempt to close access to entry to the profession, to their knowledge and to their market. This exclusionary strategy may restrict entry to certain social groups, and is intended to challenge the markets of others, to achieve social mobility and economic success (MacDonald 1995). In effect, the legal profession has tried to secure monopolistic markets by controlling the production both of and by the producers, or by seeking to create demand for these services. To reiterate, this is a self-interested strategy, one illustration being the asymmetry between "credentials and actual work" (Abel 1988:12).

Abel's work is not, however, without its critics. Abel may be overstating the control professionals have over their markets or their clients (McCahery and Picciotto 1995:239). For instance, in relation to the profession's attempts to control entry in the USA, such measures are not directly relevant to the practice of large law firms but primarily affect the market for services to individual clients (Nelson 1988:283). Moreover, the market forces affecting large firms in the USA have not been controlled either by the profession as a collectivity or by large firms themselves (ibid:281). Instead, the power of law firms may depend more upon their capacity to produce usable knowledge (ibid). Further, Abel's work omits examination of the nature and process of lawyering itself (McCahery and Picciotto 1995:239). It will be seen in the literature review on regulation that much of this analysis can also be applied to the solicitors' profession in England and Wales.

Nelson further argues (1988:280) that while monopoly theories *may* explain how professional groups gain control over the market for their services, they do not explain changes in the growth or contours of the market itself nor the relationship between the nature of the market and the structure of the professional organisation that produces services for the market.

Others argue that monopoly theories may not, in fact, adequately explain the formation of professional monopolies. The rôle of the state in creating monopolies is often overlooked (see, for instance, Rueschemeyer 1989)[47] as is the importance of status in itself:

> "The data suggests that lawyers have not been consciously motivated either solely or perhaps even principally by a desire to increase their incomes by building a monopoly. They seem to have been motivated as much by considerations of prestige as income and frequently opted for the former at the cost of the latter, both individually and collectively."
> (Shapiro 1990:685 - see also Burrage 1996, commenting on the history of solicitors.)

Moreover, the emergence of professions may have more to do with the possibilities of abuse inherent in expert knowledge than with the entrepreneurial activities of particular groups (see, for instance, Dingwall 1983:5). In effect, it may be difficult to apply this thesis to professionals who are not as entrepreneurial as (some of) those in the US (Berends 1992).

Can this theory offer anything illuminating for the purposes of this thesis? Perhaps we should retain one (perhaps not so startling) insight - that of the potentiality of professions to promote their own interests, as they attempt to earn their living. They may attempt to construct and defend their composition and markets, whether that be by means of demand-creating activities, constructing regulation which prevents other professionals from undertaking work within their traditional areas of expertise or by hiring only from an exclusive cohort of graduates. However, it should certainly not be assumed that a quest for monopoly drives everything and large law firms may be less affected by strategies engaged in at the level of the profession as a whole than others.

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[47] Conversely, bodies such as the Office of Fair Trading constrain monopoly (see Shapland and Sorsby 1996).

Marxian sociology

Here work has worried over the question of where professionals could be placed within the class hierarchy (which itself was described in the section on dependency theory). Are professionals proletarian or bourgeois? What is their relationship to the state? Whose interests are they identified with? Are they being deskilled?

Braverman (1974) placed professions within a contradictory class position between the proletariat and bourgeoisie, although the Ehrenreichs (1979) felt that they occupied an upper middle class position, their main function being to reproduce capitalist culture. However, Nelson and Trubek (echoing the views of many other academics) find it hard to place lawyers within the dichotomy of workers and capitalists. As they argue (1992b:204):

> "In professional firms, where associates can become partners and partners continue to function as workers, the relationship between "capital" and "workers" is far more complicated than in the industrial setting[48]. Several dimensions of the professional organization are strongly connected to institutionally defined status systems ... Analyses that ignore the world view of professionals in these contexts risk misinterpreting the determinants of organizational structure and practice."

The "proletarianisation thesis" is also rooted in the ideas of Braverman (1974), and is applied in the writing of sociologists such as Spangler (1986). The idea is that professionals will become members of the proletariat as a result of changes in their working condititions (Abel 1988:23). Deskilling effectively means that labour's power is constrained and the profit of the capitalist increased (Hanlon 1994:79).

Deskilling is based on the Taylorite idea of the separation and performance of work tasks; this effects greater control of the worker, particularly as technology increasingly controls production. Indices of proletarianisation include ever more

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[48] See also the views of Bottomore (1993) above, which were used to criticise Sklair's notion of a transnational capitalist class.

detailed specialisation, increasing work speed, subordination to external authority and entry of "disadvantaged categories into the profession" (Abel 1988:23). Some of these features can be witnessed in the work of the law firms investigated in this research - they have become more specialised, their work speed has increased, clients apparently have become more demanding and women have increasingly entered the profession. Does this mean, therefore, that such professionals are being deskilled?

Most academics agree that this is unlikely. For instance, increased specialisation may lead to greater autonomy (Derber 1982). Moreover, technology does not always deskill workers; the use of computers may, for instance, actually deepen the knowledge base of professionals such as commercial lawyers, as more routine matters can be increasingly processed by computer programmes, leaving lawyers freer to concentrate on the more complex (aspects of) cases (see, for example, the predictions of Susskind 1998 and the experiences of accountants noted in Hanlon 1994). Indeed, one implication of Harvey's work (1989) was that the work of lawyers is likely to become increasingly innovative. Commercial law firms also still tend to recruit from an exclusive cohort of graduates (see later).

Further, whilst commentators on the behaviour of the commercial clients of Anglo-American law firms agree that clients have become more demanding and work speed has increased, lawyers still have some control over the organisation of work (see Bottomore and Freidson's comments in the section on the work of Sklair above). As Nelson and Trubek argue (1992b:204):

> "Despite the use of forms, increasing computerization, and substantive specialization, work is organized in collegial fashion. Moreover, the proletarianization theory cannot readily explain what motivates lawyers to work so hard."

Hence, the deskilling thesis does not account for the agency of professionals, for their own active construction of their work environment. This leads to the most general criticism of the Marxist thesis, that of economic reductionism, the argument being that the whole functioning of society cannot be attributed to this

relation, a point implied in the previous discussion on the complexity of class position.

Still, even if it is not possible to place convincingly professionals within a Marxian framework, the issues of whose interests professionals (such as corporate lawyers) identify with, and how privileged they are are still pertinent for our purposes. Indeed, these matters have already taxed some of the other theorists reviewed. We have seen (in the discussion of the work of Sklair and Lash and Urry above) that corporate lawyers may associate strongly with the interests of their business clients and that (as "knowledge workers") they hold a particularly privileged position in society. This is a recurring theme in the thesis.

Knowledge-based theory

The final theory to outline is that of Andrew Abbott (1988), whose primary concern is how and why professionals construct and defend their knowledge base, with the relationship between professionals' expert knowledge and their occupational positions.

Abbott argues that one must look at what professionals actually do (in keeping with the views of many other theorists, from Hughes (1963) onwards), as it is the content, control and differentiation of work which gives rise to occupational divisions. He believes that one must analyse several professions as a linked system of competitors for jurisdictions. Whether a jurisdictional claim will succeed will depend on the extent to which a group can formulate knowledge which is not easily acquired by others, but is systematic enough to legitimate the profession's workplace practices. Hence (Abbott 1988:30):

> "The organizational formalities of professions are meaningless unless we understand their context. This context always relates back to the power of the professions' knowledge systems, their abstracting ability to define old problems in new ways. Abstraction enables survival. It is with abstraction that law and accounting fought frontally over tax advice, the one because it writes the laws, the other because it defines what the prescribed numbers mean."

MacDonald (1995:16) has, however, challenged Abbott's view that professions constitute a system:

> "First, that the concept of system seems to me to imply either intentionality behind it (as in 'a legislative system') or a considerable degree of interrelatedness and interaction between the component parts, (as in 'an eco-system' or the digestive system). Professions, by contrast, are competing in a market place where they may or may not impinge on each other and where they compete, conflict and collaborate, in a quite non-systematic way with non-professionals, with their clients and with the state. Secondly, theoretically the notion of 'system' is associated with structure and function, which Abbott has apparently dismissed as inappropriate early on in his discussion. Thirdly, the notion of a system of professions, even when linked to emphases on jurisdiction and professional work, is cut off from that aspect of sociological explanation that lies at the heart of Weber's work, namely the meanings and motives of the actors."

Nelson and Trubek (1992a:20) take up this latter point. They argue that Abbott's work is relatively indifferent to the ideologies of the professional actors who actually compete. They believe that this weakens his thesis (ibid:21):

> "... he emphasizes the margins of professional competition over the core of professional practices in the workplace ... The only reproduction process Abbott is concerned with is for a profession as a whole, rather than for various actors within a profession or professional organization."

Hence, they argue that professional ideology plays a prominent part in the strategies of professionals and it must be considered in order to understand the jurisdictions they claim and their prospects for success in making these claims.

Abbott's approach may also portray jurisdictional conflicts in terms of winners and losers, thus exaggerating the extent to which work became dominated by a single profession and playing down the importance of the ways in which professions cooperate and are interdependent (Sugarman 1993:296, Burrage 1996).

Yet it would be unwise to negate the value of Abbott's work. I believe that Abbott's advice to look at how professionals compete with others is timely. One does not have to believe that professions are *systematically* chained together before revealing data on inter-professional competition can be gathered. In effect,

it is important that competition between professions is considered, so long as this is not the only line of investigation followed. Indeed, competition can highlight what were previously unspoken, or taken-for-granted, norms (Dezalay 1995:5).

Comment

The thesis began by commenting that a literature which could illuminate the work of international lawyers (and its regulation) would have to be pieced together from various theoretical traditions as there was a dearth of research on the international practices of lawyers. This part of the literature review has added further tesserae to the mosaic, drawing out issues which might help contextualise the work of these lawyers. These issues, or research questions, to be teased out further in the later empirical research, include the following:

- In what circumstances, if any, do commercial lawyers work altruistically?
- How might their relationships with clients best be characterised?
- What relationships exist between lawyers and other professional groups?
- Do lawyers adopt a strategy of social closure and market control when working internationally? If so, how?
- How is international work undertaken?
- What ideas of professionalism are held by these lawyers?

The last question will be explored further in the next section.

On culture/notions of professionalism in law firms

"We hear a great deal of talk these days about the 'culture' of an organization. But what we really mean by this is the commitment throughout an enterprise to some common objective and common values. Without such commitment there is no enterprise; there is only a mob."

Drucker (1988)

Flood notes, when discussing his research on the international work of large law firms, that (1996:175):

> "In all my interviews the concept of culture was continuously invoked as a means of explaining many things. I rarely raised the subject myself, but others found it inescapable. Why should such a nebulous concept play so central a rôle at the folk and analytic levels?"

Further, in several of the critiques above, theorists stressed the need to examine the "world views" and ideologies of lawyers. This review is also intended to aid a general understanding of the answers given by lawyers in the interviews reported later. In so doing, it will discuss three (somewhat inter-related) issues:

- What might be referred to when a law firm's culture is discussed?
- What might lawyers mean when they talk about their "professionalism"?
- Why might lawyers talk about the concept of culture?

Culture itself is a multi-dimensional entity, as is captured in Strati's following definition (1992:578):

> "An organizational culture consists of the symbols, beliefs and patterns of behaviour learned, produced and created by the people who devote their energies and labour to the life of an organization. It is expressed in the design of the organization and of work, in the artifacts and services that the organization produces, in the architecture of its premises, in the technologies that it employs, in its ceremonials of encounter and meeting, in the temporal structuring of organizational courses of action, in the quality and conditions of its working life, in the ideologies of work, in the corporate philosophy, in the jargon, lifestyle and physical appearance of the organization's members."

Therefore culture embodies not only non-material concepts, such as values, but also concrete entities, such as language and dress (Gherardi 1995:13).

One of the reasons why culture is seen as important by lawyers is probably due to an understanding of culture as "social glue" (Alvesson 1993:19). This refers to the idea that organisations are integrated and controlled through shared values, beliefs, understandings and norms. Effectively, culture aids the avoidance of conflict.

Alvesson also argues that culture is constructed, maintained and reproduced by people (1993:81):

> "It is people rather than autonomous socialization processes, rites, social practices, a societal macro-system, or key figures that create meanings and understandings. Consequently, culture can be understood by studying people as cultural subjects."

Yet these shared "meanings and understandings" can also become constitutive of the structures of organisations, which in turn impact upon the beliefs and habits of actors; as Flood suggests, the culture of professions is a reflexive entity (1995:145).

Part of a law firm's culture will be the vision(s) held by lawyers as to what constitutes "professionalism." Nelson and Trubek's definition of professionalism is useful: they see it as the "process by which ideas about the appropriate role of lawyers in society and the proper methods of conducting and organising the practice of law are constructed" (1992b:180). Consequently, although they recognise that professional ideologies are used by different groups for different purposes, they argue that such ideologies act as sources of claims about the idealised character of the rôles of lawyers and carry unstated cultural assumptions about professional status.

In this, they feel that the accounts of functionalism and market closure theses might distort understanding of professionalisation, both stressing the unity of the mechanisms that affect professional identity. The former argues that professional pressures promote autonomy and other regarding behaviour whereas the latter insist that self-interest guides lawyers' behaviour at any costs (ibid:184). Nelson and Trubek, however, "see contradiction and complexity where these accounts describe unity and coherence." One example of this is that "... legal workplaces pressure lawyers to discard independence and autonomy in favor of money, status, and security, but they are also the sites where such ideals are reinforced." Yet both stories could be correct; it is important to investigate empirically the

normative orientations of lawyers to find out how they perceive their choices, to investigate relatively.

Nelson and Trubeck's conception of professionalism has been criticised by Paterson (1996) for emphasising too greatly the contingent nature of the concept but he does recognise its value when seeking to explain transformations in professionalism. I also find their work useful in this regard, and especially when analysing the evolving differences of culture within firms. Thus this approach aids an understanding of the diversity of opinion and strategies to be found within and between the law firms visited, particularly so as there was little work elsewhere (discussing culture and international practice) to draw upon.

The corollary of Nelson and Trubek's argument is that workplace contexts develop widely varying and often mutually contradictory "local versions" of professionalism (1992b:199) (see also Kelly 1994:17). Nelson's previous work on large US firms (1988), for example, found differences in professional ideology between partners and associates in the same firm and between firms. Here, he found that official norms, such as codes of practice, were not the source of the professional values existing in the firms researched. Instead these values were witnessed in the organisational policies arising inside the firm. In summary (Nelson and Trubek 1992b:211):

> "... the organizational structures of corporate law firms and corporate legal departments were shaped by the professional ideologies of founding partners and managers. These structures and ideologies have been reproduced and reshaped by succeeding generations of lawyers in response to changes in the material circumstances of practice and shifts in the intellectual climate surrounding the practice of law but often still bear a remarkable resemblance to the structures and ideologies present at the time of formation. Practices that reflected the ideology of earlier generations, once embedded in institutional structure, may appear as given or inherent in the nature of the work or the organization itself. Ideological product thus becomes material reality."

Hence, as Flood argues (1996:172), law firms develop specific cultures which are forced to adapt to changing social and economic circumstances, such as those catalysed by globalisation. If we follow Waters (1995), we can still argue there is

no necessary logic or dynamic at play which will determine the outcomes of changes. Therefore, law firms - upon confrontation with global phenomena - might readjust their frames of reference to look beyond the national arena. Their responses may be very different, and this may rest in some significant part upon the notions of culture held within firms and, of course, the material resources they have available to pursue their preferred strategies.

However, people might not necessarily find it easy to articulate what their organisation's culture is. As Gherardi notes (1995:12), being part of a culture has often been compared metaphorically to being a fish in water, to emphasise what is taken for granted in cultural construction:

> "[F]ish not only find it 'natural' to move through their element (which to us is 'alien'), but they are also the last to notice the water through which they are swimming[49]."

Thus, it might be anticipated that interviewees would experience some difficulty in pinning down what culture actually meant in their organisations. This point will be returned to again when the empirical work is analysed.

To briefly sum up, the culture of an organisation is evidenced both materially (as displayed, for instance, by an office's architecture) and non-materially (as seen in values held by workers, such as beliefs as to what constitutes a "professional" form of practice). It may be seen as an entity which binds the organisation's members together, although members may take the existence of culture for granted and so might not be able to articulate what culture actually is.

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[49] Similarly Salaman states that (1995:91): "Cultures are more than mere clusters of values and attitudes, significant as these may certainly be. Cultures are also important because they define and encourage skills, habits, established 'taken-for-granted' ways of thinking and behaving. That is why it is often difficult to address culture directly and effectively: what the outsider sees clearly as an organizational culture, the managers simply regard as obvious, almost unconscious ways of acting."

The next section discusses the work of one writer who has discussed the concept of professionalism as evidenced in the practice of large law firms in England and Wales since 1930.

On the "commercialisation of legal practice"

Gerard Hanlon has recently put forward the thesis that large law firms in England and Wales are redefining their conception of professionalism to incorporate a strong commercial element. This thesis will now be considered, in the hope that it will help to understand the changes recently experienced by law firms, as outlined in the empirical work and the chapter on regulation.

Following Burrage (1996) and Paterson (1996), Hanlon (1997:798) argues that there was a striking degree of homogeneity within the legal profession for much of the fifty years after 1930 - the profession shared a unified habitus which was based on status improvement, limited competition and a public service ethos (ibid:803). Now, however, those firms serving influential clients in the corporate sector are reorganising their structures and redefining the concept of professionalism held so that it entails a strong commercial-entrepreneurial element. This contrasts with those firms serving individual, non-influential clients and markets which are seeking to retain the "older, more social service, version of professionalism." This "contemporary gulf" between the two halves[50] of the profession can be seen in the huge disparity in income which exists between them, differences in firm sizes and the changing natures of firm work and relationships with clients (ibid:800).

Focusing on the latter, he believes that, since the 1960s, the largest law firms have shifted their market base away from private client work to emphasise company and commercial work. The nature of relationships with their corporate clients has also changed. Previously, companies and firms were effectively run as

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[50] See Heinz and Laumann (1994) on the two "hemispheres" of the legal profession in the States.

private empires, with the owners and/or a small number of senior managers running the business and dealing with their professional advisors on a long term, personal basis. This began to change in the 1960s when takeovers and mergers increased and UK industry moved from an owner-manager structure to a large multi-divisional structure which was increasingly dominated by non-owning professional staff (ibid:802). Management began to treat professionals and professional services in a similar way to other commodities (see also Flood 1991) and increased their professional in-house provision. In response, law firms began to establish modern management structures based on committees and employed non-professionals to run their finances, provide information technology and so on.

Linked to these developments has been a "commercialisation of law", which has entailed a downgrading of values such as a public service ethos ("providing a service to people on the basis of need and citizenship rather than ability to pay, etc"), in favour of "market values encapsulating: control of budgets, ability to generate a profit via entrepreneurial skill, providing the client with what he or she wants, and so on." Commercial criteria have come to be valued more than technical ability (ibid:812) (see also Nelson (1988) for similar comments on the US profession).

However, Boon and Abbey (1997) have argued that some large law firms in England and Wales are currently exploring new ways in which their public service responsibility can be conceived and met. They believe that by redeveloping the culture of pro bono publico and by attempting to recapture practices strongly identified with the emergence of professionalism, large firms are seeking to reestablish or reinforce the integrity of the legal profession in the public mind. They argue that the need to reestablish traditional values (or found a "new moralism" - ibid:650) is felt particularly strongly in a time of profound change to the boundaries of legal jurisdiction (ibid:653).

Still, Boon and Abbey do show some uncertainty elsewhere when relating the possible causes of this increase in pro bono activity (ibid:650). Firms may hope to reverse the perceived decline of the profession's public service ethic or, more cynically, be attempting to pre-empt the introduction of measures designed to tackle the inequalities in access to justice which the presence of large law firms in the market accentuates. Indeed, Galanter and Palay found that their interviews with lawyers in large London firms from 1990 to 1994 elicited little sense of distress about the increasingly commercialised character of legal practice (1995a:201).

Perhaps, then, it is too early to tell conclusively whether the plans of some large law firms increasingly to undertake public interest work constitute a significant development in their professional ideal[51]. Certainly, Boon and Abbey would agree that a commercialisation of law has occured - see below.

In response to the question of "why is this redefinition of professionalism happening now?", Hanlon (1998:51), following Sassen (1991), points to the decline of profitability of capital in the late 1960s and 1970s and the shift from a Fordist preoccupation with the welfare state to a post-Fordist preoccupation with international competitiveness, so that:

> "Social service professionals are viewed as unresponsive to the needs of the client ... and profligate in the use of and increasing demands for resources (Perkin 1989:472-519). In the private sector this has manifested itself through the desire of corporations to force their professional advisors to compete, to rein in their fees, and to demand that the service is tailored to the client's organisational needs."

Indeed, the profession in England and Wales has reacted to policies adopted by the state. The 'New Right' in Britain championed moves to a flexible regime of

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[51] Indeed, Boon and Abbey themselves state that until recently, there has been no published guidance to solicitors regarding the nature of their public service obligations (1997:633). Little is known about the volume of, or patterns of delivery in, the provision of voluntary legal services apart from those which are arguably made through the medium of legal aid. Nevertheless, the available evidence suggests that levels of voluntary assistance to the poor have remained low for most of this century (ibid:634) and there is no evidence of a concerted effort to meet the deficit in services created by the declining legal aid budget.

accumulation and promoted policies such as the expansion of international free trade and the rolling back of the public sector[52] (Hanlon 1999). In fact, Boon and Abbey (1997:637) similarly argue that large law firms in the UK emerged in response to the enterprise culture fostered by government policy in the 1980s and they absorbed the commercial ethic of that period. These firms were the major beneficiaries of work produced by the policy of denationalisation and became identified with enterprise economics[53]. Large firms increasingly placed industry, initiative, responsibility and success over benevolence, altruism and possibly justice[54].

Is this new form of professionalism better for society? Hanlon (1999) believes that the new professionalism with its emphasis on ability to pay and profit will further empower the already privileged whilst further marginalising those groups which are already suffering from the worst excesses of the flexible economy with its peripheralisation of large areas of work. He notes elsewhere that the producer service sector has an almost non-existent middle income category and a wider range of income than manufacturing (1994:21). Consequently, the poorly paid in the service sector are more poorly paid than their counterparts in manufacturing; this means that the sector's growth within advanced economies has serious implications for the equality of the social structure of society.

Hanlon's work raises issues which are very pertinent to the thesis, and will be returned to again in later chapters. Questions to discuss include:

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[52] According to the Office for National Statistics, in 1981 employment in the public sector peaked at 7.2 million. By 1998 the numbers had declined to barely 5 million (or 6.1 million if NHS trusts are included - Gow 1999).

[53] To this I would add that the recession at the beginning of the 1990s in the UK also concentrated the minds of law firms, which then took an increasingly commercial approach to their work - see also Simmons 1995.

[54] In relation to accountants, he also discusses the ideological influence of 'enterprise culture' in the 1980s in Anglo-Saxon countries (Hanlon 1994:108) - here, the consumer is sovereign and so in order to be successful, one must give the consumer what he or she desires. This, combined with increasingly commercially based work, has also effected the "commercialisation" of accountancy.

- Does the empirical work in England and Wales support the conclusion that commercial lawyers have redefined their conception of professionalism to include a strong entrepreneurial element? How are clients viewed by these lawyers?
- What are the implications of such a scenario for matters such as professional regulation?
- Can Hanlon's thesis explain what is happening in Germany today?

It was noted above that commercial law firms in England and Wales began to establish modern management structures from the 1960s onwards. The next chapter will consider how these firms are managed and so it may be helpful to analyse further the issue of law firm management. This is considered next.

On management, strategy and law firms

Unfortunately, the first point to be made is that law firm management is an under-researched area. For instance, there is little literature in existence (beyond some work by management consultants) which deals with the international strategies of large law firms. Nevertheless, the empirical research will discuss several issues which relate to the management of international practice, from choosing the form of practice (foreign office, alliance, network and so on) to recruiting and motivating lawyers. It might, therefore, be wise to consider a little more deeply which issues might jeopardise effective management in law firms. In fact, lawyers in general are rarely considered (from the outside at least) to be particularly effective managers and this section will explore why.

Taking first things first, however, what might management in law firms entail? Two rôles do spring to mind: the first involves business responsibility - deciding strategy, determining what business is to be sought (and through which structural forms), achieving targets and so on. The second is that of managing people. In view of the diversity of law firms and the diversity of managerial tasks, it is

unlikely that there is one model of management which will work for all law firms (Nosworthy 1995). Indeed, the empirical work will consider differences existing between firms.

Nevertheless, law firm managers do tend to work with a set of problems which seems to be common to the profession (Mayson 1997). Thus Mayson argues (ibid:216) that:

> "[T]here is confusion of management and administration, with a tendency to emphasise administration (but not necessarily to value either); there is a culture of autonomy and self-management, with a consequential reluctance to manage (or be managed by) peers[55]; there is an outdated view of the process of managing others, with a tendency to adopt the command and control style with 'subordinates'; and there is a reluctance to understand the need for dual expertise[56], and to develop the skills required by its managerial dimension."

The deficiencies Mayson notes of reluctance to manage (or be managed by) others and the tendency to adopt a "command and control" style with "subordinates" relate to 'people management' skills (getting things done with and through others - Salaman 1995:56). In view of the fact that law firms' most costly asset is likely to be their human capital, this is particularly worrying.

I do not want, at this point, to trawl through literature on management theory to try to come up with some 'best practice' model of law firm management, which can be held up as the blueprint for successful management, mostly as this is likely to be an impossible exercise. Nevertheless, it might be enlightening to consider one model of management which has been favourably received within the last ten

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[55] Freidson believes this to be a characteristic of professionals in general (1986:158): "Professionals ... expect to be autonomous and self-directing, subject only to the constraints of competent knowledge and skill related to their task. They can accept advice, perhaps even orders, if it stems from someone of competence, but it is only competence, not official position as an administrative superior, that is accepted as the source of effective authority over work."

Perhaps, too, an aversion to management might suggest that lawyers are not wholly receptive to the more commercialised form of practice which Hanlon (1997) described above (contra Galanter and Palay 1995a).

[56] By "dual expertise", Mayson means "both professional and managerial know-how" (1997:213).

years (even if not successfully implemented), and to compare it with generalisations of law firm current practice.

Salaman discusses the "learning organisation" (see also the works of popular writers such as Charles Handy 1993) and stresses that managers' primary task is to improve performance by facilitating the learning of others (1995:63). For our purposes, this would mean that more senior lawyers (in charge of a case) are responsible for facilitating the learning and work of fee-earners and support staff. Other lawyers may also be responsible for managing the work of others, as may more senior or experienced support staff.

In setting out what a successfully managed "learning organisation" would look like, Salaman considers one successful organisation whose culture was (1995:102):

> "... highly emotional, highly personal, incredibly egalitarian, non-conservative, group-focused, constructive, integrative, and co-operative in its relations with others. It was evident that it placed value on intimacy, affection, closeness and fun. It stressed commitment, abhorred gossip, admired learning, openness and the process of review. It regarded rank as an indicator of level of commitment, sacrifice and contribution, not as an indicator of social distance, of differences in rewards, of status."

Hence the culture of an organisation should support the practices and values which are necessary for learning, such as openness, discussion, confrontation, and a discouraging of deference[57].

At first sight, many law firms would be hard pressed to claim that they live up to such an ideal, as will be seen in the empirical research. As Mayson noted above (1997), many law firms are enamoured of a "command and control" form of

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[57] By way of contrast, Salaman argues that western organisations are often characterised by loneliness, anxiety, distance, formality and lack of trust (1995:106). The culture in most organisations is probably anti-learning, because of the existence of rules, values and norms (which are probably all implicit and undiscussable) that encourage winning over analysis and understanding, and encourage protectiveness and defensiveness (ibid:109).

interaction. Firms are rarely truly egalitarian[58] (there is usually a 'pecking order' even amongst the partners), in spite of the pull (or rhetoric) of collegiality. Indeed, law firms are often conservative, hierarchical[59] places, where status disinctions are marked. Nor are law firms "highly emotional", at least not in the positive sense implied (see Pierce 1995). Moreover, working with others more often than not means reporting what has been done, as opposed to genuinely cooperating as a team. Gossip is often rife, particularly in firms where only the partners participate in policy decision-making.

Although some law firms base partners' compensation partly on factors such as their contribution to the training of others, such factors are rarely built into the compensation of other employees. For instance, the need constantly to justify how time was spent by filling in time-sheets (and billing as much as possible) may mean that lawyers are reluctant to spend unbillable time helping others (see Kelly 1994).

Moreover, there are pressures *not* to ask open, probing questions which would lead to real learning. As Salaman notes (1995:132 and 133), the style of many managers involves telling others what they know, or at least framing questions in a way that indicates knowledge. These unhelpful patterns of behaviour are said to derive from the the skills learned when managers acted as technical experts in their field. Then, they had to 'master' knowledge and techniques, on the basis of which they made authoritative decisions and gave authoritative advice. Thus, being competent here meant having the answers, being in command, and using this knowledge to hand down prescriptive information and to evaluate others. In effect (ibid):

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[58] Meetings and social events are often rigidly status segregated events. Round table meetings in which both support staff and lawyers openly discuss ideas and suggestions to improve work are not the norm (see Pierce 1995).

[59] As Salaman notes (1995:89), hierarchies typically reinforce the values of conformity. To contradict a superior can be seen as a challenge to her/his authority, so it can seem wiser to discount one's own experience and defer. He also argues that in times of rapid change (as in the present) these processes are often intensified, which may lead to ill-informed decision making. This may hold insights for the later section in the thesis on the future of international work.

> "In these circumstances, asking questions, particularly open questions, is seen as indicating not just curiosity, but, much worse, ignorance. And if competent managers know the answers, asking open questions which carry no implication of the expected or desired answer, suggests you do not know; therefore, in terms of dominant conceptions of performance, that you are incompetent. Otherwise you wouldn't have to ask[60]."

In a similar fashion, it could also be argued that lawyers are called upon to be expert, to know the answers, 'to win' and to work in a protective fashion - after all, they spend a lot of time advising clients about how to limit their liabilities! It would appear logical to assume that they continue working in this mode even when they take on increasing managerial responsibilities[61].

If lawyers, then, tend to be poor at facilitating the learning and work of others, are they any better at strategy and policy, at deciding the direction the firm should take and carrying 'the vision' through? Again, Mayson's (1997) above remarks point to pessimistic conclusions. To unpick this further:

1. Most lawyers receive little formal managerial training, in spite of the increasing efforts of bar associations in some jurisdictions (such as the Law Society of England and Wales) to encourage this. Making long term, or even medium term, strategic plans may be alien activities or activities which are only reluctantly engaged in (and many firms do not undertake systematic study of clients' preferences, or consult external advisers). The preference may be simply to do the work and to avoid planning (Seron 1996). Alternatively, lawyers may be ill-equipped to vote knowledgeably on the proposals of others. Hence Duncan MacDonald, an in-house counsel with a New York financial institution, commenting on the management of large law firms, believes that (1989:595):

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[60] There *may* also be a gender dimension to this, with women finding it easier to ask open questions. The literature in the methodology section quotes a writer who argues that asking open questions is something women are conditioned to do in western societies - see also Tannen 1994.

[61] Indeed most managers are promoted to management because they are good at something else, something other than management. Yet these earlier skills are often an obstacle to the development of managerial skills (Salaman 1995:4).

> "Bigness requires having people with managerial, financial, and marketing skills, none of which are taught by today's law schools or [are] found in great abundance in most law firms. In time, the law schools will have to change their curricula to provide courses on these subjects. Until then, the big firms will have to adapt to newer business structures via trial and error, via emulation".

2. Decision-making mechanisms in some partnerships are unwieldy as group decisions by large numbers of partners may be impractical. In very large partnerships, there are strong arguments for delegating more managerial matters to fewer individuals. Indeed, many law firms have already streamlined their managerial 'systems'. However, this does not obviate the need for inclusive, consultative management, as seen next.

3. There may be difficulties in implementing policy as many members of staff are not consulted when policy is formed. Not only might extremely useful insights and information be overlooked, but also the implementation of strategy might be poor as workers are uncommitted to the 'edicts' of others.

4. The 'market for legal services' (particularly internationally) is difficult to predict - hence, even the best laid plans might go astray.

Of course, some firms and lawyers are better managers than others and such a discussion runs the risk of over-generalising. Nevertheless, several of the points raised will be referred to again when the interview material is discussed.

Now, however, it is time to move on from generalising about lawyers and law firms to look at their international practices. The first issue to be considered is what might be meant by the term 'international work'.

On the "international work" of lawyers

One reflex developed by legal training seems to be the need to define terms. I certainly felt the need to define key concepts at the outset of the research but found the concept of "international work" to be particularly nebulous. What

might "international work" refer to - the type(s) of work lawyers did and/or its location, the location of the client and/or the location of the lawyer?

I was aware that it was important not to adopt uncritically definitions used elsewhere for, as Dezalay (undated) comments, quoting Bourdieu:

> "... in attempting to think about any social subject-matter which presents itself with all the appearance of being natural, such as the State, the law, or the professions, the analysis is liable to be conducted on the basis of conceptual categories created by and for these institutions themselves."

However, there was an absence of work elsewhere to be drawn upon[62]! My first attempt at a definition of international work was "legal work[63] which impinges on the law or business of a jurisdiction other than the home jurisdiction of the lawyer." This would cover the work of lawyers living away from their home jurisdiction, in the host state, even if they were only advising on their home state law, as advice would be likely to cover business relating in some way to another jurisdiction. It would cover the work of lawyers advising on foreign law whilst based in their home state, as well as those based abroad and advising on foreign law.

Yet these examples may serve to illustrate that this definition potentially includes almost everything commercial lawyers do, and some part of what other lawyers do, some of the time. As the International Bar Association (1994:31) note:

> "It is increasingly difficult to imagine any lawyer whose practice is viewed as purely "local", nor are globalisation and its effects limited to business practice. It is not uncommon to encounter transnational issues relating, for example, to domestic practice involving divorce or child custody issues."

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[62] Van Wambeke, Franssen and Van Loon (1996:4), however, have formulated their definition of internationalisation: "... we understand "*a process in which the field of activities of an individual or group is extending, in some form, across the border of one country.*" "(italics in original). Thus they do not consider immigration to be a form of internationalisation as the action remains located within one country.

[63] An ambiguous concept in itself.

Hence, few lawyers today would be able to say that their work has never moved beyond the domestic arena. Furthermore, the advent of supra-national institutions such as the EU and the ever growing fluidity of national boundaries necessarily mean that this tendency will increase.

Another idea was to concentrate solely upon the location of the client. This would mean finding out where the clients of law firms were based. International work could then be seen as work effected for clients based overseas. However, several forms of private client work were likely to evade this definition. This might rule out immigration work, as the clients were now residing, however tenuously, in the lawyer's home state. It might even exclude the conveyancing of holiday properties overseas for clients whose main residence was in the country of their home based lawyer; the fact that such work would probably include the involvement of foreign professionals would have to be ignored.

Moreover, the complexity of business was likely to render a definition based upon client location problematic. Gilpin's and Dicken's work revealed earlier the complexity of 'international business' and its organisational structures. How could one define the location of multi-national corporations? What problems would be raised by the more recent structural vehicles used for business, such as the franchising of American businesses world-wide (as seen most visibly in the MacDonald's restaurant chain)?

It is worthwhile analysing at this stage, for comparative purposes, one example of the problems encountered in defining international residency. Picciotto notes the difficulties experienced by English courts and the Inland Revenue in trying to formulate a definition of whether companies were resident in the British Isles for tax purposes (1995:28):

> "The courts decided that companies were 'resident' if controlled from the UK, and could therefore be liable to British taxes on profits even from business carried on wholly abroad."

However, this became increasingly untenable by the 1970s, as the rule became widely avoided (control was taken to mean where board meetings were held and so could be manipulated with ease). By 1988, the Finance Act provided that any company incorporated in the UK is deemed resident there for tax purposes (ibid:30) but the test of central management and control has still not been replaced:

> "[A]nd this, as well as the requirement of approval for the issue of debentures by foreign subsidiaries, remains as a fall-back for the Revenue."

One imagines that the developments noted earlier which have increased the complexity of organisational structures have further increased the reliance of the Revenue upon discretion.

Similarly, focusing exclusively upon the location of the lawyer in defining international legal work is likely to effect an arbitrariness in which legal work is included and which is excluded. Home based lawyers may advise on Italian law, for example, just as English solicitors working in New York may only advise on English law.

These are problems which I have yet to resolve and which may, in fact, not be open to easy resolution. For the purposes of this thesis, the issue has been decided pragmatically - I decided to study the practices of large law firms from several jurisdictions, in several locations, as will be seen in the discussion of methods and methodology. I have not focused upon studying the type of law used in international business transactions, nor has an ethnography of how cases are dealt with been attempted. Instead, the primary focus is upon on the organisation of work and strategies of these firms. Nevertheless, the types of cases undertaken will be mentioned, although it is recognised that some types of work may sometimes involve only the home jurisdiction (such as a M&A transaction involving domestic companies and domestic finance) whereas on other occasions the work may involve some non-domestic element (as in a cross-national M&A transaction).

The next issue to be discussed does, however, concentrate on lawyers themselves. In so doing, we switch to an empirically-based discussion of the socio-economic background of international lawyers.

On who performs international work

"From the hour of their birth some are marked out for subjection and some for command."

Aristotle, from *The Politics* (1992)

"The leading position of large firms is historically linked to their ability to recruit the best graduates from the best law schools."

Robert Nelson (1988)

Several theories already outlined raised the topic of the social composition of the profession. For instance, the deskilling thesis suggested that "disadvantaged groups" were entering the profession whilst market control theorists argued that controlling the social make-up of the profession, and thus its status, is a fundamental part of the project of market control.

Therefore the question of who actually undertakes international work might prove to be particularly interesting. Indeed, if one concentrates upon lawyers in the largest firms, most typically those with overseas offices (the subject-matter of this thesis), there are a number of points to note:

1. **Gender -** It would be interesting to examine how far women participate in various types of international work, and where. The body of work discussing women professionals has grown considerably in recent years[64], although nothing has been written specifically on women lawyers working overseas. There do, however, appear to be significant barriers to their progress; the interviews

[64] See, for instance, Witz 1992, Thornton 1996, Hagan & Kay 1995, Menkel-Meadow 1989, Harrington 1993, McGlynn 1998, Sommerlad 1998, Eggert 1998 and Schulz 1989. For very recent statistics on the States, see the March 1999 edition of the American Lawyer.

reported in the next chapter occasionally raise these issues although much more comprehensive research is needed.

2. **Class** - Various theorists discussed earlier raised issues of class, including Sklair 1991 (who thought professionals were part of a transnational capitalist class), Lash and Urry 1994 (who placed professionals such as business lawyers amongst "today's new informational bourgeoisie"), Marxist sociologists of the professions (who disagreed as to whether professionals could be located within a contradictory class position between the proletariat and bourgeoisie or whether they occupied an upper middle class position) and market control theorists (who discussed the implications of control of the social composition of professions). Criticisms of these views were set out above.

To look more closely at work specifically on lawyers, whilst commentators on the national legal professions of the US, UK and Germany[65] agree that lawyers are overwhelmingly middle class[66], the issue of class as it relates to lawyers who mostly undertake various forms of international work has been less thoroughly documented.

However, Bourdieu breaks the silence by arguing (1995:xii) that international strategies are only accessible to those who due to a highly privileged social origin have special aptitudes and competencies (especially linguistic competencies).

This is echoed by Dezalay who notes the importance of the big American universities in providing an education which opens access to practice in international law to (would-be) practitioners, not just from the States but from

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[65] See, for instance, Abel 1988 and 1989, Heinz and Laumann 1994, Bermingham et al 1996 and Blankenburg and Schulz 1995 and 1997. Schulz, for example, relying on research from the early eighties, suggests that German jurists traditionally come from rather homogeneous backgrounds with a clear overrepresentation of parents employed by the civil service (1997:57).

[66] Less than one in four law undergraduates have working class fathers, compared with over one in two in the general population (Halpern 1994:92).

other countries too[67]. He argues that the prohibitive fees of these universities make them the preserve of the richest students (1995a:15). The point is expanded in later work with Garth (1996:60):

> "The social capital[68] and charisma (and even idealism) of elite lawyers respected for their careers and accomplishments helps to legitimate the legal institutions and approaches that they favor."

It would, though, be helpful if these arguments were backed up by references to statistics on, for example, how many lawyers in the foreign offices of Anglo/American law firms hold such qualifications, and how they were financed through their courses[69] - ideally, one would like to see empirical research on the socio-economic backgrounds of these lawyers prior to undergraduate education. The next chapter does consider some data on these matters.

3. **Race/Ethnicity** - Again, although work exists on ethnicity and the composition of the legal profession at a national level (see, for instance, Abel 1989, and Heinz and Laumann 1994, Wilkins and Gulati 1996 and Johnson 1997 on US lawyers), there is a dearth of literature on race/ethnicity as it interacts with who becomes an "international lawyer" (specifically those working overseas) and where[70]. A few comments may, nevertheless, be made.

To examine the practices of the large English law firms one is struck by the virtual absence of partners from ethnic minorities[71]. Ethnic minority applicants

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[67] Thus education is seen as a strategy by which the cosmopolitan bourgeoisie maintains its privileges, in an age when wider access to higher education has increased national competition.

[68] Their views on social capital are further discussed in a later article (Dezalay and Garth 1997).

[69] For instance, it would be useful to know how many overseas students are funded by grants (and the selection criteria of grant making bodies).

[70] Abel (1989) examines how the family backgrounds of lawyers affect their careers (ibid:110) and also notes the very small number of black lawyers in New York City law firms (ibid:106).

[71] Law Society statistics show that 4.3% of solicitors in private practice are from ethnic minority groups (Heaney 1998b), which is lower than the figures for ethnic minorities in the national population. A recent ABA (American Bar Association) survey also found that the proportion of ethnic minority partners in the 'top' 250 US firms has remained frozen at 3% for the past eight years (Heaney 1998b).

find it particularly difficult to gain training contracts in law firms (Shiner and Newburn 1995:xii) and ethnic minority law students are most concentrated in the new universities and least concentrated in Oxbridge colleges, from which most City firms recruit (Halpern 1994:91). In relation to the international offices of UK law firms, Page notes the reluctance of many firms to make local lawyers partners[72]. He recounts charges of racial discrimination in recruitment policies levelled at UK firms and believes that this attitude will manifest itself in overseas activity. He argues (1994:5):

> "[H]ow can a firm really consider itself to be - or expect others to see it - as truly international while all the senior positions are held by white anglo-saxons[73]?"

This point will be considered again in the next chapter when the issue of local partners is further discussed. In fact, this is obviously an issue ripe for research[74], which would tie in specifically with the literature on law firm culture considered earlier.

On the demand for international legal work

The importance of demand creation in the scheme of monopoly theorists has already been seen. In turn, criticism countered that measures employed by lawyers are often reactive, and that professionals may have little control over markets or clients. The argument also failed to discuss the nature and process of

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[72] This may be particularly the case with equity partners, although there are some firms which do make 'local' partners full partners (Cleary Gottlieb Steen & Hamilton being one such firm - Schatzman 1998). Also, the remuneration of both associates and partners in some foreign offices is lower than that of those working at the 'head office', as will be seen in the empirical research. Thus law firms may mirror the practices of their corporate clients, in benefiting from lower labour costs in different countries. Tsang (1998) argues that this sometimes leaves local partners feeling like second class citizens. She also feels that the issue involves trust - many firms are reluctant to share profits with foreign partners in a start-up office in an emerging market, or at least not until the office is "safely bedded down and profitable".

[73] I did not come across any black lawyers during my research.

[74] Other so-called 'minority' issues such as disability and non-heterosexuality as they interact with law firm practice are, of course, also vastly under-researched, if investigated at all.

lawyering itself. It will be useful to bear this in mind during the following discussion.

Dezalay's writing has focused upon the large firms of US lawyers who work internationally. His writing has emphasised the active rôle these lawyers take in creating demand for their services. In relation to Wall Street lawyers, he believes that (1991:800):

> "Having a common history with the 'robber barons' of triumphant capitalism, and in a strong position due to the capital of knowledge and connections they have since accumulated, the Wall Street law firms look upon themselves as 'luxury stores', providing 'top drawer' products for clients who are much more concerned about quality than with the effect of its cost on their pockets ...
>
> [Yet] [t]o stay competitive, as much in the market for big deals as small and medium-sized enterprises, these firms have had to break with the dilettantism cultivated in the epoch of 'gentlemen lawyers.' The race for massive expansion, commercial aggressiveness, the cultivation of technique rather than good manners, staff poaching from competitors, and the exploitation of new generations, are some of the manifestations of this 'counter reformation' policy that some observers have been quick to describe as a genuine mutation[75]."

These lawyers construct the devices of international regulation needed for the emergence of a transnational market and then use their knowledge to guide their clients through the loopholes they themselves have helped to create, most specifically through forum-shopping (Dezalay 1995a:2) (see also Whelan and Barnett 1992). Bourdieu agrees (1995:xii):

> "In the conquest of new markets for their legal services, the big law firms rely on the fact that legal capital plays a determining role in the regulation of trade, and also in organizations defending 'human rights' which, with the big international institutions such as the World Bank and the IMF, are quite often the Trojan horse of the 'Chicago boys' and their strategies of legal-economic import-export, which combine ethical idealism and economic realism."

I wonder, however, how far this argument might be subject to the criticism aired above that lawyers' work is often reactive, that they do not have such great control over markets or clients. Is all international work as proactive as this?

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[75] Nevertheless, such behaviour is unlikely to be the exclusive preserve of large law firms - see, for instance, the work of Seron (1996) on personal injury lawyers.

How can we account for the fact that many large firms of US lawyers have not internationalised, have not opened foreign offices? Do we need to consider the nature of the firms themselves, their cultures and/or the types of work undertaken? Dezalay may be overstating his case, perhaps as a result of focusing upon the most creative, fast-emerging forms of practice.

Certainly, other writers have tended to emphasise the opportunities presented by the development of international markets and the organisational advantages of large firms in servicing this work, focusing less upon demand creation[76]. Flood, for example, notes the influences of both politics and economics in creating work (1996:173):

> "The internationalisation of markets is a function not only of capital's desire to maximise profits and extend its reach, but also of the political movement of the past decade (Picciotto, 1988; Richardson, 1991). The moves towards deregulation and reregulation and the privatisation of state industries are cases in point (Holmes, 1985; Maynard, 1988). Much of this trend arose from the international debt crisis of the early 1980s when a number of countries' debts had to be rescheduled. The 1980s saw the emergence of a global securities market and the increased inter-governmental cooperation in dealing with global issues of securities."

In fact, Flood steers a mid-course between the push/pull theses, by also noting how lawyers have marketed their own legal frameworks, so that English law and New York state law now dominate global transactions (ibid:172).

This debate will be referred to again in the next chapter.

On the effect of international 'mega-lawyering' upon continental Europe

This final section will look at the views of writers considering the effects of the export of 'mega-lawyering'[77] abroad (most specifically as practised by large US firms in foreign offices) upon the practice of law in European countries. The

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[76] Abel (1994), for instance, argues that opening foreign offices is largely client-driven.

[77] A definition of mega-lawyering can be found in the glossary.

work of Dezalay is outlined first, as he has written most in this area and sets the argument to which others have responded.

Dezalay argues that the rise of the market in international expertise has brought with it the need to adopt new forms of organisation and work methods, "from the artisan model to that of the supermarket or factory" (1995:3). The main model, in particular, for European firms to adopt is that of the large American law firm.

He believes (Dezalay and Trubeck 1993:23) that when American firms arrived in Europe, they were "quick to grasp the opportunities created by the development of European law and the competition among national legal orders" as they had the following advantages over local legal professionals:

- they were used to providing full legal services, bringing specialists together in all areas of law relevant to business operations[78];
- they were used to managing large scale legal services operating in many jurisdictions[79] at once, combining legal and financial skills and using the law aggressively and tactically for their clients; and
- they were better prepared to develop contractual regimes needed for the governance of economic conditions under conditions of rapid legal change and uncertainty[80].

Hence Dezalay and Trubek conclude that lawyers in countries such as the Netherlands and the UK have reorganised themselves in the fashion of the US

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[78] Lee also states that UK firms have benefited from their "linguistic attractions" and ability to provide one-stop shopping (1992:34).

[79] They had learnt in the US how to exploit a federal system on behalf of their corporate clients.

[80] Flood also comments that Anglo Saxon firms enjoy benefits which are denied to many of their continental counterparts - such as owning well-known names, which can be retained when partners change, enjoying the capacity to advertise in the US and UK and the possibility of merging freely with other law firms in their countries (1995:153). However, it should be noted that today regulation in many European countries has been significantly liberalised - for instance, French, Dutch, Belgian and German firms can merge. Thus it may be that restraints may be more cultural than structural.

firm, with additional features added (resulting in a "Euro-hybrid" form of practice ibid:19).

Dezalay and Trubek argue that these firms (American and Euro-hybrids, together with the large accountancy firms) are affecting the entire mode of production of law in Europe, and this challenge affects the relationship between the old academic and judicial élites and practitioners and the regulation of the professions (ibid:19).

In relation to practitioners, Dezalay feels that large sections of the European professional élite have become part of a process of reconstruction. The most ambitious of the local professionals *imitate* the foreign incomers, thus accelerating the internationalisation and penetration of their own markets (1995b:89). Their aim is to occupy the *next best position* to the big American firms in the market for legal consultancy. At his most extreme, Dezalay argued that European professions would lose their national traditions under the influence of these pressures.

This thesis is, however, open to a number of challenges:

1. It is doubtful whether US firms have had the influence that Dezalay assumes. US firms have faced problems in several countries (although they have been more successful in Paris), not least in London and in Germany where legal competitors are traditionally viewed as being strong, as my empirical research will show[81]. US firms also experienced difficulties when lobbying in Brussels, due to differences in national lobbying styles and have often suffered from their lack of local long-standing connections (Ogliati 1995).

[81] Indeed, it is much more likely that City firms have developed in response to client demands and opportunities afforded by state policies, such as de-regulation and privatisation, rather than in response to the US law firm incomers.

We should also not assume that all US firms have the same strategy, that they want to practise extensively in the host state. Several prefer to service only US clients overseas and have been wary of upsetting local professionals (as will be seen in the next chapter).

2. It may be misleading to say that local professionals *imitate* the Americans. Instead, both US and local law firms may 'learn' from each other when they work or compete together. The influence of client preferences should also not be overlooked. As Abel argues (1994:755):

> "To the extent that clients have common interests in speed, efficiency, cost and accuracy, competition stimulates different legal cultures to produce similar services. Participation in a common legal forum encourages the emergence of a common style. For example, American lawyers learn to restrain their aggressive lobbying tactics and their avalanche of paperwork before the EC, while French advocates become less florid and English barristers put more in writing."

Indeed, pressures to adopt such a "common style" should not imply American dominance. As Flood notes (1995:160), it is unclear what actually constitutes the skills of American lawyers, as little evidence exists which could be used to test hypotheses. Thus rather than assuming American superiority, it might be wiser to talk of the export of American techniques which adapt to local cultures and so become local knowledge.

3. Dezalay's focus on common law commercial lawyers may obscure an appreciation of the wider 'market' for legal services in individual European countries.

Shapland, for example, believes that focusing on the "globalisation of practice, on world-wide lawyering" may obscure the daily cross-national business dealings which open up national perspectives and legal practice without necessarily leading to the dominance of one particular model, as many countries are involved (1996:1):

> "Cross-national lawyering may well lead to an increasing similarity in regional legal culture (in the EU, or in any other active trading bloc), but may not produce imperialism by any one country within that. [82]"

Moreover, EU policy may actually reinforce national diversity amongst European legal professions. Ogliati (1995:173), for instance, argues that EU programmes relating to professional services promote decentralised strategies and EU decisions and directives duplicate professional monopoly devices, ensuring that legal professions in Europe are anchored to national bodies [83]. Thus, 35 years after the Treaty of Rome, there continues to be great variety in professional modes of practice within Europe.

Further, as Halliday and Karpik (apparently focusing upon Anglo-American lawyers) argue (1997:353):

> "Through their partial incorporation into the state, and their participation in the inertial weight of legal tradition, lawyers are significantly more local in their orientation than any other profession, except the military[84]."

In effect, it is not possible to develop an all-encompassing model of the impact of mega-lawyering on Europe without distorting the experiences of different countries. As Waters argued (1995), globalisation does not necessarily imply homogenisation. The social, political and economic structures and cultures of countries and their legal professions in Europe are often very different and this

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[82] Jones (1994a) also argues that, in China, the impact of cultural values and practices such as *guanxi* limit the degree to which foreign ideas and practices are able to penetrate Chinese social and political structures.

[83] Ogliati's previous paper provides further detail (1994:7) "... noone is seriously willing to challenge even technically the symbolic nature of the Latin-type model. After all, the above mentioned EU (State members) law-policy demonstrates that, notwithstanding the formal declaration of political unionism, the political issue of coupling Civil law/Common law legal systems - as well as "harmonizing" (?!) Monarchical/Republican political systems (not to mention Anglican/Catholic State confessions) - is a question of historical conditions that are not yet given in present day Europe!"

[84] McLachlan (1989:359) also argues that most law is domestic in its origin and scope. Hence the content of the legal system in which a lawyer is trained is likely to be radically different to that encountered by a counterpart in a neighbouring jurisdiction. This marks lawyers out from other professionals, such as doctors and accountants.

will have a significant influence on what happens when law firms set up overseas[85].

Indeed, Dezalay himself (writing with Garth and when discussing internationalisation more generally) moves to a much more moderate position at the end of his later work on arbitration (1996:316/7). It is there argued that the "international legal field" should be seen as a virtual space for "battles" that may vary in intensity in different places and times:

> "Internationalization can in fact best be characterized as the opening of breaches in national spaces that are otherwise more or less closed, at times almost watertight. The opening leads potentially to a redefinition or a blurring of the boundaries established and maintained in the national settings."

Yet the impact of internationalisation should not be seen as automatic or determined in advance:

> "It depends in every case on the relative power and relations between the protectionist and the internationalist groups from among legal elites."

The case studies in the next chapter illustrate some of the complexities involved in this area but this section, and the literature review, will end with the words of Lash and Urry (1994:211):

> "It might initially be thought that the internationalization of service industries, of producer service companies, hotel groups, international airlines, huge banking conglomerates and the like, will simply eliminate differences between places and effectively make them all the same ... For the moment, three points should be noted: that the history of internationalization is uneven and does not involve the internationalizing of all services in all countries; that increased internationalization often entails *increased* sensitivity to local features, of labour and property markets and place-myths; and that the way that internationalized industries intersect in particular places will result in locally specific combinations ..." (italics in original)

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[85] The differences of strategies amongst firms themselves should also not be overlooked.

Final comment on the first literature review

This part of the literature review aimed to examine the nature of (international) professional practice; in so doing, it raised issues to be further discussed in the empirical work. Several questions to address were posed at the beginning of the section, and these will now be reiterated, together with some of the conclusions drawn from the literature analysed:

- "What rôle/s do commercial lawyers play within (international) society? How can the nature of professions be characterised?"

This question raised yet more questions to consider in the research, partly as the literature on the sociology of the professions is so contested and partly as there is little work on the nature of international lawyering. However, the "market control" charge that professions pursue self-interested strategies was thought to hold limited explanatory value; large law firms may be less affected by strategies pursued by the profession as a whole. Following Nelson (1988), they may be more dependent upon their capacity to produce usable knowledge.

Chapter four also discusses the importance of the individual reputation of a large law firm to the client (and relations with powerful corporate clients more generally). For the moment, suffice it to say that commercial lawyers are likely to be close to their clients (Sklair 1991) although they may not determine their clients' strategies (Bottomore 1993).

Following Abbott (1988), one should look at how professionals compete with others (for instance, how lawyers compete with accountants) but how they co-operate with others should not be overlooked (Sugarman 1993). Professional ideology also plays an important part in the strategies of professionals (Nelson and Trubeck 1992a). The latter point is considered next.

- "How do notions of culture and professionalism interact with large law firm practice?"

The culture of a law firm, which is a reflexive entity, might be believed to hold the organisation together (Alvesson 1993) although members might take the existence of culture for granted. One aspect of a firm's culture will be the visions(s) held of what constitutes a 'professional' form of practice.

There is evidence to suggest that large law firms in the UK are redefining the concept of professionalism held so that it entails a strong commercial-entrepreneurial element; part of this commitment involves an increased responsiveness to client desires.

- "How might the relationship between commercial clients and lawyers best be explained?"

The relationship between clients and lawyers was touched upon by several theorists, as when the increasingly innovative nature of work and the increased outsourcing of services were discussed. Hanlon specifically raised the issue of the relationship between commercial clients and lawyers in large UK law firms, but this issue will be addressed in more detail in the second literature review.

- "What is the typical management style, if such exists, of mega-firms?"

Although it would be dangerous to generalise too much on the similarities of law firm management, it was suggested that many lawyers are not particularly effective managers and, for instance, often adopt a "command and control" approach to interaction with "subordinates". This may mean, for example, that formulating an international strategy is rendered all the more difficult.

- "What might 'international legal work' be?"

This proved to be an extremely difficult phrase to define, the conclusion being that a choice had to be made about what aspect of international legal practice was to be studied - this might include investigating a certain category (or categories) of lawyers or clients, their location and/or the location of the work and/or the type of law governing a transaction. For the purposes of this thesis, the primary focus

is upon the international organisation of work and strategies of large law firms from three jurisdictions.

- "Who are international lawyers?"

Several writers have suggested that lawyers who work internationally (and for large law firms) are privileged creatures. Thus, for example, Bourdieu argued (1995:xii) that international strategies are only accessible to those who due to a highly privileged social origin have special aptitudes and competencies (especially linguistic competencies). Ethnic minorities are underrepresented in the lawyer population of large law firms and women are likely to face obstacles in their career progression within such firms.

- "How do they construct an (international) market for their services?"

The work of Dezalay was considered but it was felt that he focused too exclusively on how large law firms created demand for their services. Other factors should also be considered, such as the opportunities presented by the development of international markets, the types of work undertaken by firms and the cultures of large law firms.

- "What effect/s do incoming large law firms have upon host country legal professions?"

The conclusion drawn after reviewing the literature was that it was not possible to develop an all-encompassing model of the impact of incoming mega-lawyers on host states without distorting the experiences of different countries. Differences in the social, political and economic structures and cultures of host states and their legal professions have a significant influence upon what happens when law firms set up overseas.

This ends the first literature review. The methods and methodology of the thesis will be discussed next.

Part three - Methods and methodology

In this chapter, the stages of the research project will first be considered before moving on to discuss the reasons for the choice of research methods and the status granted to the interview data. Hence, what was actually done is discussed before the rationale behind these choices is considered. This separation might allow the reader first to gain an overview of the project in its entirety and that this would improve the clarity of the following theoretical discussion.

As outlined in the introduction to this thesis, the research aimed to discover what happens when the work of lawyers (and their regulators) "moves beyond the national arena". For this, it was necessary first to chart which lawyers and law firms often work internationally and then to choose a set of law firms and places for which data could be amassed. I wanted to consider both what firms (and their lawyers) were intending to achieve abroad and also the experiences and views of lawyers based in offices outside their home country. The research led me to look at English and US firms based in England and Germany, and German law firms in Germany.

Consequently, the research splits into two empirical stages, covering work which took place in Britain and that undertaken in Germany. The following section will discuss these stages in turn.

1994/5 - the British research

Perhaps it should first be said that, from the outset, England and Wales appeared to be a very interesting jurisdiction to investigate. My work at the beginning of the decade for a young lawyers' association included contributing to a project, a book (Inaraja 1993), which compared the jurisdictions of Europe, their professions' sizes and organisation, and so on. This first alerted me to the huge differences in legal provision existing between nations in Europe and, for instance, that the size and international spread of the big City firms at that time

were at odds with the operation of most commercial law firms elsewhere on the continent.

This interest effectively meant that I hoped not only to document the work of the home profession, but also to chart the extent to which foreign qualified lawyers were involved in the provision of legal services in England. The professional legal press had reported that England and Wales was a liberal jurisdiction in regulatory terms for foreign lawyers wishing to work there. It seemed pertinent to check this and to map the extent to which foreign lawyers were acting upon this. This in turn might be revealing of the nature of the expansion of non-UK firms abroad. In effect, it was necessary to document the work of these lawyers in England and Wales further, to determine more precisely the nature of their practice.

Following the preparation of an initial research plan, with estimated timings for each stage of the project in Britain, the literature searches[86] undertaken aimed to find books, research reports, papers and articles on the themes of globalisation, the legal profession and regulation.

Simultaneously, a search was undertaken of possible sources of data on the location and numbers of English and Welsh lawyers and law firms abroad and foreign lawyers working in England and Wales in one given year, 1994. From this, the sample group of lawyers would be determined. Information was found mainly in directories such as The Law Society Directory and commercial directories (such as Chambers - Lyle-Smith 1994) whilst tables of data published in journals such as The Lawyer were also analysed. The use of several data sources was necessary as there is no one "official" source of comprehensive data on international services to use. Indeed, to bemoan the limitations of

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[86] These searches used a variety of media, including CD roms, on-line databases, the indices of periodicals and library catalogues.

international statistics on service industries would not be new[87]. As Dicken notes (1992:18):

> "Unfortunately, the statistical data on the services sector in general and on commercial and business services in particular at an international scale are abysmal. There is no statistical series comparable to that available for merchandise production and trade. Only in 1989, for the very first time, did the GATT Report on International Trade include data on world trade in commercial services. It is generally agreed that all the official data on services at the international scale grossly understate their actual level and importance."

This inevitably hampered my investigation; consequently, several sources of information were used, in the hope that those weaknesses in each individual work, which were not shared by others, would be balanced.

Associations such as The Law Society, the International Bar Association ("IBA") and other interest groupings of lawyers (such as cross-national lawyers' associations) were also contacted by letter, to gather written information on their organisations, and to find out whether they participated in the regulation and/or the promotion of the international work of their members. The aim was to chart the extent of 'international work', the forms it took and its regulation. For instance, the basic question of what regulation existed and how it was formed and enforced had to be answered. In turn, this could provide questions which could be incorporated later into the interview schedules and so lead to a discussion of the scope and efficacy of the current 'system'.

I soon decided to research solicitors in private practice and not, for instance, barristers. Solicitors are now the dominant branch of the profession (Hanlon and Shapland 1997:106) and my strongest interest was in those firms in the legal profession which have expanded abroad *en masse*, particularly through the establishment of foreign offices. These were the firms which had both been mentioned most often in the literature (as has been seen in the literature review

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[87] One interesting point is that the section of the European Commission's 1994 document "Panorama of EU Industry" on the legal profession in Europe was written by the Law Society of England and Wales as they have better data than the Commission!

above) and were seen as wielding most power within the profession. The intention was to consider what work they did, how, where and what its significance might be, internationally. As both the USA and Germany do not divide the profession of advocate, the question of which type of American and German lawyer to study did not arise.

I decided to focus upon those large English commercial firms which had over six[88] foreign offices to gain some idea of their perceptions regarding the internationalisation of work and its regulation[89]. These firms are headquartered in London and include the largest and richest English firms, as will be seen later. The expectation was that these would be the firms which had the greatest global coverage; I hoped to learn more about how they conducted their operations overseas.

This necessarily meant that many law firms which do engage in international work at different levels and through different structural forms would not be studied. In particular, the high street practitioner who may deal with occasional cases with an international element would not be considered, nor would those providing a niche service, such as foreign property conveyancing. Firms which structure their international practice solely through alliances or networks were also not the focus of this study. I was more concerned with issues which had been raised in the literature such as the influence of large Anglo-Saxon law firms (see Dezalay and his critics above) and how their work was constrained (as discussed in the second literature review). These firms were much more likely to use foreign offices as the foundation of their international strategies.

The angle was therefore narrow, focusing on the commercial world and not on services provided for individuals ("private clients") - these large firms rarely deal with private clients (Lewis and Keegan 1997).

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[88] This figure was chosen as the directories showed that few firms had over six foreign offices - and these were the largest firms in England and Wales, the group that I was most interested in.

[89] I did, though, carry out pilot interviews, as will be discussed later.

The decision was also taken not to interview the clients of commercial law firms[90], although this would, no doubt, have been extremely revealing. For instance, clients may have been able to provide interesting data on topics such as how far they are able to influence the delivery of external legal services. This might have included discussing what they look for in a law firm and when (perhaps debating the value of extensive foreign office provision). Hence, by canvassing a broader section of opinion and seeing lawyers through their clients' eyes, the discussion about how far lawyers are driven by client demands as opposed to their own strategies and structures might be taken further.

Nevertheless, it is perhaps enough to say that the danger of attempting too much (by interviewing clients) was real. Research on clients would have to wait until a future date.

To return to the data, when considering foreign lawyers in England and Wales it was discovered that London was host to the vast majority. Perhaps this is not surprising, in view of the commercial dominance of London within the UK, as will be outlined in the next chapter. It also became clear that lawyers from the USA outnumbered lawyers of any other nationality. In fact, much had been written in the solicitors' professional press about intra-professional rivalry between the large City firms and certain US law firms in London. In particular, a number of lateral hirings (also known as 'cherry picking' - this occurs when a firm hires a lawyer from another firm) from both sides had been reported, mainly in the area of international capital markets work[91]. There had been a two-way flow of lawyers between English and American firms. I believed that this merited further investigation. Comparison of the two might reveal differences in international strategies, and this might provide a fuller picture of the nature of

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[90] Such clients would probably have included the heads of the in-house legal departments of companies (those responsible for choosing external counsel) and/or other managers of the budgets for legal services in businesses.

[91] Now even the Wall Street lawyers have entered the fray - see Griffiths (1996b).

international work. It was also hoped that this work would be of particular value when discussing the dominance of American lawyers overseas, a theme dealt with by several writers in the earlier literature review. Most specifically, had US lawyers been able to dominate the market for legal services in London?

The decision was then taken to interview US lawyers rather than lawyers from other nations. The group was further narrowed to include only those US law firms which had over six lawyers, to try to capture those which undertook capital markets work (the field of lateral hiring at that time). I wanted to visit some of the law firms involved in this form of competition and those which might already have English lawyers working in their offices. The expectation was that this would also generate comparative data on the similarities and differences found within and between UK and US firms.

Thus lawyers of other nationalities in London were not interviewed. The initial focus was to be on US and City law firms, those which had travelled most widely internationally and which, as large law firms, were particularly dominant in their home states. The significance of their work at an international level had yet to be fully documented. Whilst this decision was a little arbitrary, in that interviewing lawyers of different nationalities might have provided a more general overview of 'foreign lawyering' in London, the sample group chosen did facilitate preparation of a manageable project. It was also only after the British empirical research had ended that the possibility of extending the work to Germany presented itself, so German lawyers in London were not initially chosen to be interviewed.

As can be seen, no lawyers were interviewed at home in the USA[92]. The disadvantage of this is obviously that the 'view/s from HQ' was/were not elicited and that the views of lawyers in the foreign offices of their firms might differ

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[92] Similarly, it would also have been extremely interesting to have undertaken comparative work in other European countries, to place the experiences of German lawyers within a wider context. This may have generated further data on issues such as the effects Anglo-American incomers have upon host jurisdictions, who undertakes international work in different jurisdictions and the ways in which international work moulds to its local environment.

from the policy pronouncements made 'back home'. US interviews might have led to a greater understanding of the character of this form of international practice, highlighting, for instance, the importance of international work and the rôle culture and strategy have in the formation of policy and the reality of practice.

Still, it was essential to attempt to construct a realistic research project - the time and the money were not available to extend the work further. As such, the thesis can be seen as a starting point for future work.

Setting up the British interviews and participation

As relatively little has been written about 'élite' law firms in the UK, and hardly anything about gaining access to these firms, the somewhat inevitable issue arose of how best to secure participation.

Both the credibility of the researcher (and the researcher's work organisation) and how the proposed research threatens or helps those involved in the research are factors which are likely to determine whether or not access is agreed (Form 1973). Form, for instance, notes (ibid:107) that researchers typically experience most resistance in studying "top levels of organizations, where decisions are made." Powerful organisations are often able to deny access for a variety of reasons - they do not wish themselves or their decision-making processes to be studied, it is inconvenient, they are busy and wish to assert their rights to privacy, and so on (Hornsby-Smith 1993:55). Managers often deny researchers access to their organisations as they recognise that research exposes how managers use their power and authority[93]. Following Moyser (1988:121):

> "Thus, in general terms, agendas that seem to the potential respondent to be highly sensitive, peripheral to his or her interests, or refer to matters which might show them to be inexpert, will create access problems."

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[93] Bell (1978:33) and Encel (1978:47) further discuss this issue.

The potential difficulty of gaining access is also compounded by the lack of knowledge stemming from the novelty of research in a new field. Hence, the challenge for the researcher is to find out about 'the field' rapidly enough to anticipate access problems and to design tactics to meet them (Form 1973:110).

Bearing this in mind, I decided to write an introductory letter to law firms, to attempt to convince them of the need for the research and to set out how participation in the project might benefit them. I imagined that law firms might be suspicious of a 'cold-caller' and would require further written information about the study before they would consider participation. It was stated that the addressee would be contacted a week later by telephone, to discuss the project and who might be interviewed.

The letter was written on the headed notepaper of Sheffield University (for the sake of credibility) and included the contact number of my supervisor whom addressees might wish to contact, for instance, to confirm the validity of the study. The intention was to show that the research was genuine and to allay fears which the prospective interviewees might have. To this end, the subject of confidentiality was raised; it was stated that no firm or individual would be identified in any publication resulting from the research. For the avoidance of doubt, the fact that I would be more than willing to attend their offices to conduct the interviews was stated.

The opening paragraph of the letter described the subject matter of the research in broad terms ("international work and regulation"), so that the topic did not sound too contentious. My status as a research student at Sheffield University was recorded, as was my qualification as a solicitor. As Moyser notes (1988:121), the capacity to point to shared experiences can assist in gaining access (see also Medhurst and Moyser's (1987) experience in studying the Anglican episcopate).

The novelty of the research was stressed; at the very least, it was hoped that the firms might believe that "somehow the cause of science and education" (as Spencer (1973:94) phrases it) was being served by their participation. They would, however, receive a publication as a 'thank you' for having participated in the research.

The letter stated that the preference would be to interview two partners within the firm, if possible. The intention was to note any similarities and differences of opinion between the lawyers and/or to discuss the experience of working in a foreign office (with a partner who had been overseas).

The letter was addressed to a named individual, the managing partner of the firm (the name having been found in a directory or by phoning the firm itself). The aim was to try to direct the correspondence to an individual who would be in a good position to consider who might be the most appropriate person/s to be interviewed.

In total, letters were sent to the managing partners of 14 English (London-based) law firms and 22 US firms (again London-based)[94].

Pilot interviews were also undertaken with two senior partners in two English regional firms, which had offices in several sites around the country. My supervisor knew these lawyers and so access was gained through her. Such interviews can help to clarify the researcher's conceptual framework, identify issues which are important to the respondent but which the researcher might not have considered, indicate the vocabulary respondents use to talk about their situation, and generally improve the wording and ordering of the schedule (Arber 1993b:40).

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[94] These numbers are slightly higher than those found in the tables of the number of English law firms with over six foreign offices and US firms with over six fee-earners shown in later chapters of the thesis. This is because more up to date information was found in the legal press and firms were written to which then fulfilled the criteria.

These interviews did, in fact, enable me to become more comfortable with the schedule and to reorder sections so that the interview flowed more logically. Some early indication was given as to the issues which interviewees were most concerned with, whilst the international strategies of the regional firms provided an insight into other forms of international working practices. Hence, data from these interviews will be referred to in the following chapters when they add to the discussion, although it will always be mentioned that these are pilot data, so the responses are not mixed with those of the City firms.

Of the non-regional English law firms approached, access to six London firms (that is, just under half of the fourteen approached) was gained. Three replied to the first letter, whilst the remaining three agreed to be interviewed after further chasing via a phone call and a letter. One firm asked me to send a research proposal through to its personnel department, so that the request could be vetted further. After this, I heard no more and decided not to follow this up[95].

In relation to the US firms, access was easier to arrange. Nine firms wrote back without further chasing on my part, and so I decided to write again to only one firm and they then agreed to be interviewed. Hence, again, lawyers in just under a half of the firms in the sample group were interviewed. This quicker response left me wondering whether US lawyers were simply more open than English lawyers. Perhaps they also believed that research in itself was an interesting exercise to take part in, or hoped to show the outside world that they had nothing to hide? They might have had fewer opportunities than their English colleagues to express their opinions to 'outsiders'. During the interviews, most seemed less reserved than their English counterparts, more of which later.

Not all firms agreed to my interviewing two partners, but fifteen US lawyers in ten firms and ten English solicitors in eight firms (including the two lawyers in

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[95] Spencer also notes that forcing bureaucratic delays is one means by which élites may prevent research (1973:95).

the regional firms, as noted above) were interviewed. In those two English (City) firms where two partners were interviewed in each, the second had first-hand experience of working in one of the firm's foreign offices.

Ten people involved in regulation and policy direction at the Law Society and the International Bar Association were also interviewed. No one refused access and all these people agreed to be interviewed immediately.

The 'adequacy' of these samples will be discussed later.

The British interviews - process

The decision was taken to try to tape as many interviews as possible. The obvious benefit of this would be that the interview would be recorded in its entirety, so that I could concentrate harder on the dialogue. Taping also guards against the interviewer substituting her/his own words for those of the interviewee (May 1997:125). It was hoped that the interviewees would soon forget that they were being taped, as they settled into the interview (the least threatening questions were asked first - see later). However, the potential disadvantages of this method might be that interviewees would be inhibited by the machine (ibid:124). The issue of taping also has to be broached, obviously enough, right at the start of the interview, before interviewees have become used to the setting and rapport has been built.

The average length of the interviews was one hour, although the interviews were of an intense nature - I was amazed at how much ground could be covered within that time! All the firms except one consented to my use of a tape recorder. The (US) partner who did not want to be taped approached the interview with great caution. All the interviews apart from two were conducted on a one-to-one basis. Of the two that were conducted jointly, this occurred as the lawyers themselves said that they would prefer this. My preference, however, would have been to interview the lawyers separately, as the lawyer lower down the hierarchy may

have qualified her/his views due to the presence of the other. Only one lawyer was female - she was the only lawyer interviewed who was not a partner[96].

It turned out to be difficult to predict in advance whether the interviewee would initially show any reservations at all about being taped. Nevertheless, notwithstanding the exceptional case above of the US lawyer who refused to be taped, most US lawyers did not appear to be inhibited by taping. This may be due to a greater cultural openness, as has been discussed above. On the other hand, the English solicitors did vary amongst themselves, some taking more time than others to relax into the situation. However, it is difficult to assess how far personality, the culture of the firm, the tape recorder or the novelty of the situation (or a combination of factors) were behind this.

In respect of the regulators' interviews, some of these interviews were taped[97] and others were not; two interviews were untaped group interviews (with two people in one group and three in the other) and the rest were individual interviews. In relation to the group interviews with regulators, the groups felt that they wanted to join together to bounce ideas off each other - they felt that as international work and its regulation comprised such a small part of their work, they needed to pool their ideas. In this group situation, taping did not seem practicable, so copious notes were taken. I was also less concerned about the issue of interviewees being constrained by the presence of colleagues as their working relationships struck me as being more egalitarian and less hierarchical than those displayed in the joint lawyer interviews.

These interviews with regulators varied considerably in length, as the matters to discuss were very different, each person having their own specialisms and the

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[96] She was a last minute substitution for a partner who could not make the meeting.

[97] In those two individual interviews which were untaped, taping did not occur as these were the shortest interviews, held in offices where the background noise or office layout made it difficult to tape.

topics relating to international regulation were often a small part of the workload of interviewees.

In addition to taping, some comments were noted on the interview schedule, which listed questions to be asked thematically, at the time as a form of guarantee in case there were problems with the quality of the tapes. This form of note-taking did not turn out to be particularly distracting, and did afford an opportunity to look away and so not subject the interviewee to constant eye contact!

My experience did bear out Moyser's (1988:126) caution that in practice:

> "[I]t is almost impossible to stick to [the interview schedule] in any very strict or rigid way and still maintain the sort of conversational style that is required. For instance, it is often the case that in responding to one question another will also be answered."

Wagstaffe and Moyser (1987:197) also note that how to pace the interview is something which must be learned from experience. Indeed, my ability to keep the discussion moving in a fluent fashion improved through time, by becoming more accustomed to how interviewees might respond to questions. It was also essential to be flexible, for instance, when lawyers entered the room apologising that an urgent case meant they had less time to spare than they had hoped (or when lawyers stayed longer than expected).

All the interviews were conducted at the places of work of the interviewees (and so this involved extensive travel). The lawyers were interviewed in various settings within their firms (from personal offices through to the firm's dining room and board/client rooms, as will be discussed in the next chapter).

The letters were sent out at the beginning of April 1995 and interviews took place over a three month period, starting at the end of April. 'Thank you letters' were sent to participants.

The British interviews - content

To put interviewees' minds at rest, before any interview began, they were asked if they had any questions at all about the research, and questions were answered thoroughly. The issue of confidentiality was discussed and consent to tape the interview was requested.

The interviews followed a semi-structured interview schedule[98]. The first questions dealt with the interviewee's career history and background information on the firm (such as the types of work undertaken, the organisation of work and the firm's client base). Gaining background information on the firm was often a case of checking information already found elsewhere (in directories and so on). This had the advantage of saving time and also showing the interviewee that I was taking the interview seriously. It also, obviously, provided information which could act as a starting point from which to discuss who performed international work, for whom and how.

The importance of international work and the reasons for its development were discussed, as were the skills demanded of an "international lawyer", all themes noted earlier in the literature review. Policy surrounding the setting-up and running of foreign offices was considered, together with potential difficulties which foreign offices encountered. The firms' participation in other organisational forms, such as networks, was also discussed, as was the promotion or 'marketing' of international work. The idea was to gain a deeper insight into the nature of international work and the constraints firms faced when working internationally.

The 'market' for international legal work in London was then considered, with several questions here considering the impact of US lawyers in London. Again,

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[98] The reasons for this choice of method will be considered in the second half of this chapter.

this is an issue which was discussed in the literature so these questions provided data with which to reexamine that work.

Questions relating to regulation and professional conduct were also posed, within the context of practising internationally. These might be possible constraints and/or shapers of international work. As this topic might be considered to be a little sensitive, it was left towards the end of the interview.

Finally, and finishing in an upbeat fashion, questions relating to the future of international work closed the interview. The aim was to analyse what different lawyers/law firms expected of the future - this could then be linked into a discussion of the firm's strategy (if that had been articulated). This might be particularly revealing of the relationship between law firm culture(s) and policy.

Some of the questions were slightly different for the US firms, to take into account the differences in practice. For instance, questions were asked about lawyers' lengths of stay in London, how different it was to work for an office in London as opposed to the firm's office(s) in the States, and whether they would consider requalifying as an English solicitor.

The interview schedules for the regulators were drafted individually, as the experience to be drawn upon was so different. Thus, the interviews with staff at the former Solicitors' Complaints Bureau focused upon such matters as which kinds of complaint had an international element to them, whether complaints were made against large law firms, what contact they had with other regulators and so on. Staff at the guidance unit were questioned on issues such as if and when guidance involved international matters, whether large law firms sought their help and the unit's policy-making functions. The Law Society's international section in London provided information on many matters, from the regulation of foreign lawyers in London to the Law Society's promotion of the international work of solicitors abroad. The IBA discussed (*inter alia*) its

organisational structure, aims and views of the regulation of international lawyering.

Indeed, every interview schedule was 'customised' to some extent, for instance to ask about an English solicitor's experience abroad (if they had worked in an overseas office) or to ask why a US firm had recruited a particular English solicitor, if that had been reported in the press. This bore in mind Moyser's advice (1988:123) that:

> "[I]f the researcher is to realize to the full the benefits of an open-ended and flexible exchange then the ground must indeed be worked over very thoroughly ahead of time ... This will in turn help both to build the necessary degree of seriousness and rapport with the respondent and to avoid being fobbed off with trite, standardized or superficial answers."

Effectively, the hope was that finding out more about the interviewee before the meeting would help identify the areas where the interviewee could contribute most to the discussion and build rapport.

The British interviews - analysis

The analysis of data does depend upon the aims of the research in question and the researcher's theoretical interests (May 1997:125); it should, therefore, be borne in mind that the methods of analysis outlined below do result from the theoretical choices discussed in the second half of this chapter.

Data produced in qualitative research are likely to be multi-stranded, deriving from multiple sources, in multiple forms (transcripts, fieldnotes, documents and so on - Fielding and Lee 1998:56). Furthermore, as one cannot specify in advance what might eventually be significant, data of all kinds are collected "just in case" (ibid). Hence, qualitative researchers tend to gather large amounts of information.

In the case of semi-structured interviews, responses to questions, except in the case of some semi-structured forms, are unlikely to be uniform (May 1997:124). Taken together, the bulk of the data collated and the complexity of the data tend to ensure that analysis is a time-consuming and complex task.

There are a variety of methods of analysis for the researcher to choose from, ranging from 'Straussian" grounded theory (Glaser and Strauss 1967) to discursive approaches (which include conversation analysis, deconstructionism, semiotics, dramaturgical analysis and so forth). My approach followed from my basic position, outlined below, that "a researcher with an interest in, and open mind about, a particular topic can, with practised care, take an analysis beyond its face value." This meant that I was attracted to the work of Huberman and Miles (1994), who outline a method of analysis which is sympathetic to such an epistemology.

To condense their work hugely, their practical data management strategies involve the use of summaries, codes, memos and review procedures. Coding is particularly important - codes draw the work together and highlight possible themes in the data. Such codes are both descriptive and interpretive. Code words are written in the margin of transcripts and Huberman and Miles advise the drawing-up of a provisional list of codes before the fieldwork begins - although this list can be later modified.

I did not follow the last piece of advice as I wanted to see first the emerging data (as Glaser and Strauss (1967) would advise). The tapes were transcribed as soon as possible after the interviews, whilst the material was still fresh in my mind. This helped to see "the character of the 'evidence'" that was emerging (Moyser 1988:129) and enabled me to become very familiar with the data. Emergent themes were highlighted in the text and short-hand codes noted on the sides of the pages. In fact, themes gradually became clearer as the research progressed, and this allowed the revision of earlier codes.

Once all the interviews had been carried out, the technique of 'cut and paste' (using Word for Windows) was then used. The responses to questions which had closed answers (such as the question of how many lawyers worked for the firm) were totalled together.

For the open questions, all the sections of text which related to a code were copied and 'pasted' onto a clean page (that is, a new document in Word), together with information on the speakers. This allowed all the responses to be seen together, to work out minority and majority opinion and so on[99]. These pages were then printed out and re-read. They provided the raw material from which the chapters in the thesis were then built.

Packages specifically designed to assist the analysis of qualitative data, such as *Nudist*[100] or *Ethnograph* were not used in this research. The reasons for this are pragmatic rather than theoretical - my portable computer did not have enough RAM memory to run a programme and - as I moved (institutions and homes[101]) so much during the research - the research had to be very portable. Analysis had to be undertaken at home and I did not have access to a computer with the appropriate software elsewhere.

Use of a software programme, however, might have proved helpful when analysing the data. Fielding and Lee (1998:57-63), for instance, list some the potential advantages of programmes thus[102]:

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[99] In retrospect, it would have been easier (or have saved time) to have embedded these codes in the interview transcripts, so that Word's search facility could have been used to find all the sections of the text attached to a specific code.

[100] From May 1999, the latest software (*NVivo*) from the developers of *Nudist* has been available in the UK (Richards and Richards 1999).

[101] During this research, I was based in four different academic institutions and moved home eight times.

[102] See also Durkin (1997).

- data *management* is facilitated - mechanising manual procedures potentially offers considerable benefits in terms of time, efficiency and more thorough analysis;

- the *capabilities* of qualitative research are potentially extended - for instance, replication becomes a possibility, a log of analytic procedures can be kept, and creative work might be boosted;

- an effective data management system potentially encourages researchers to produce analysis which is explicit, systematic and documented; and

- the *acceptability and credibility* of qualitative research might be enhanced - for instance, analysis by software may reassure policy-makers of the validity of qualitative research.

Still, Fielding and Lee do point out that meticulous data analysis is possible without such help and, as one of their respondents stated, "if you are unsystematic without computers I am sure you can be unsystematic with them" (ibid:61).

At present, suffice it to say that the manual methods used in this research did attempt to be systematic. In the future, however, given the necessary tools, I shall be more than willing to try out a qualitative data analysis package.

Now the German stage of the research will be discussed.

1997/8 - the German research

This section begins with some discussion of why cross-national research was thought to be worthwhile in the first place (in spite of its difficulties) before discussing why Germany (and Frankfurt) provided a challenging research environment.

Most generally, cross-national research has the potential to force revision of our interpretations of data collected in one country, to account for cross-national differences (Kohn 1989). It allows a much broader range of comparisons to be made than other types of comparative research afford, enabling the comparision of political and economic systems, of cultures and of social structures (ibid:93). As Gutmann argues (quoted in Manaster and Havighurst 1972:2):

> "In effect, we create data by stepping out of our accustomed ecologies, and by changing in relation to them."

On the other hand, cross-national research is costly in time and money - and is difficult to do (Kohn 1989:77). As May argues (1997:189):

> "One of the primary problems with comparative analysis is not only the ability of researchers to understand adequately cultures and societies which are different from their own, but more specifically, to generalize and explain social relations across societies and social contexts[103]."

He adds that researchers cannot assume that what will be appropriate for their culture will necessarily be appropriate for another (ibid:191).

Nevertheless, it was hoped that the length of time I spent in Germany for this research (two years) and my previous experience of working for a small German law firm on a placement would be of great assistance when attempting to understand the research environment. Moreover, and beyond academic texts, I read a variety of books on social and business culture in Germany, including literature designed to introduce British ex-patriates to different aspects of German culture.

I also met many people, often from very different backgrounds. The empirical research in Germany began during my six month stay at the Max-Planck-Institute in Freiburg in 1997. I then moved to Frankfurt and continued the work there (from home and with the assistance of a DAAD scholarship). This provided the

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[103] As Kohn (1989:78) states, in cross-national research, the critical issue is how to interpret similarities and differences when they are found.

possibility of living and working in two very different parts of Germany, a very direct way of witnessing the great regional differences to be found there (which are mentioned in the next chapter).

Still, the question of why Germany was thought to provide an interesting comparative research venue must be answered. To this end, Kohn argues that the choice of country to be studied should always be determined by asking whether comparing this particular country will shed enough light on important theoretical issues to be worth the investment of time and resources which the research will require (1989:96).

For this research, Germany struck me as being a particularly interesting location for two primary[104] reasons. Firstly, the largest law firms in Germany were growing quickly (and increasingly setting up offices overseas) and this segment of the profession had the reputation (in the professional press) of such strength[105] that Anglo-American law firms setting up offices there did not have an easy time (Keohane 1996). Such well-known firms as Slaughter and May and White and Case had left the city[106]; others, such as Skadden Arps, had scaled down their operations. This appeared to be in stark contrast to the experience of Anglo-American firms in France, the jurisdiction upon which Dezalay appeared to be basing much of his writing. Thus Germany presented a fascinating location in which to explore this theme further.

Secondly, there was the apparent paradox that the few academic writers who had commented on the German 'legal market' had noted the external and internal limitations that German firms faced. Some views were that the German legal profession in general was held back by professional regulation (Flood 1995:154) or that the determination of corporate lawyers only to provide "precise and

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[104] There was also the challenge of studying a jurisdiction founded upon civil law, to investigate another approach to law.

[105] See, for instance, Balzer and Jensen (1996).

[106] White & Case re-established an office in Frankfurt in 1999 (Unattributed 1999q).

informed legal advice which justifies an exceptional fee" restricted their firms' growth (Rogowski 1995:126). There was no writing which reconciled these apparent conflicts.

A third reason for the interest of Germany presented itself (somewhat fortuitously) whilst I was there. From the end of 1997 onwards, a continuous stream of press reports outlined a series of mergers between German firms and - possibly more significantly - link-ups between German and British firms. "The first merger of a German law firm with an English firm"[107], "The first cross border merger of a German law firm"[108] and "Euro threat prompts CC merger talks"[109] are three headlines of typical articles.

Yet as recently as 1994, Rogowski noted that (1994:26) "The American and British law firms that have established offices in Frankfurt and in other German cities are not taken seriously by the snobbish German firms." Yet, within the space of months in 1997, two alliances between two major City law firms (Freshfields and Linklaters) and two large German commercial law firms were formed. It seemed that significant change was occuring.

Knowing where and how to begin the research was not, however, easy. It took some time initially to work out where information on the legal profession could be located in Germany. Cross-national research does take some patience in this regard (Barrett and Cason 1997:65), to become acquainted with what is often a very different 'system'.

I decided to seek out those researchers at the Institute who had some knowledge of the profession - in their capacity as qualified lawyers[110], 'snowballing' from

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[107] Editorial (1998).

[108] Editorial (1997).

[109] Stewart and Lindsay (1998).

[110] No one at the Institute was studying lawyers *per se*.

one individual to the next. As a result of this interaction with members of staff at the Institute, one individual helped me gain access to a friend of hers (who was a practising lawyer in Freiburg) who agreed to be interviewed as my 'pilot' interviewee[111]. Another person gave me a list of all the law societies (Rechtsanwaltskammern) in Germany and another told me of a law firm directory which was of some use.

Literature searches to find information on the German legal profession had been undertaken in Britain, prior to my arrival in Germany. In addition, library searches were also undertaken (in both the German and English languages) in Germany (in several libraries in Freiburg and Frankfurt[112]), to find out what literature was available in Germany on the profession. Internet searches were also made[113], lawyers' monthly and weekly journals scanned, directory data found and analysed[114], and the national and local law societies were contacted for further information on their membership. Academics in other institutions which might undertake research on lawyers were also written to (in German), but little came of this.

Little information was gained from the national Rechtsanwaltskammer (and the institution which analyses its membership data[115]). Information on the profession is, however, provided in the organisation's magazine, which is sent out to all qualified lawyers. Articles from these publications were analysed, as were entries

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[111] The data gathered from this interview are treated in a similar fashion to the British pilot data described above.

[112] Frankfurt houses one of the two branches of the "Deutsche Bibliothek" which receives copies of every publication produced in the German language; I obtained a season ticket to work there. In addition, I obtained library cards for the University and city libraries.

[113] The internet was, for example, also used to find out more information on research institutes - a list of publications (on professional ethics) of one institute in Cologne was obtained by this means.

[114] The *Yellow Pages* directory was not of much help - the next chapter notes those directories which were of use.

[115] This organisation was written to but it was unable to share its data.

in directories and other articles (found in academic journals, newspapers and the professional press). The aim was to gain a deeper understanding of the size and nature of the legal profession in Germany and the business environment in general. This included charting the location of the different types of law firm to be found in Germany and their foreign offices, and comparing the sizes of firms with those in England and Wales and the USA.

I was also interested in the foreign lawyer population in Germany and so data were collected and analysed on their firms. In particular, it would be interesting to see how far Germany was seen as an attractive location for overseas expansion (and by whom). The intention was to find out where these lawyers practised, what work they did, how and why.

In order to draw comparisons with the British data, I decided to research the largest German commercial law firms which had foreign offices and the offices of foreign firms.

It quickly became apparent that the German legal 'market' is distinctly federal in nature (as will be discussed in the next chapter), but that most foreign law firms[116] chose to locate themselves in Frankfurt and that all the largest German firms had offices there. Hence, I focused upon investigating law firms in Frankfurt as this appeared to be the site where the firms I was most interested in were located.

Setting up the German interviews and participation

As research in this area was so new, no work existed on how access to these firms might best be achieved. Nevertheless, one lawyer at the Institute did suggest that I should try to make my letters to German firms look "as impressive as possible", particularly noting any academic titles as formal academic qualifications are

[116] All the foreign law firms in Frankfurt are from England and the United States, except for one Swedish law firm.

taken very seriously in Germany (see also Ardagh 1995:181 and Rogowski 1995:116).

Although the Institute did not allow visiting academics to use its letterhead, the connection with the Max-Planck-Institute was mentioned in the covering letter to firms (as was the scholarship from the DAAD and my link with Sheffield University). The letter also noted my qualification as a lawyer, status as a research student and that this was the second stage of the research - if these firms' London offices had participated in the British stage of the research, then that was mentioned in the hope that this would encourage participation.

As with the London letters, confidentiality was discussed, as was the possibility of contacting my supervisor if desired. Again, two interviews in each firm were requested, although it was stated this time that these lawyers would ideally be "one partner who is deeply involved in formulating the office's strategy and one associate." The aim was to interview one partner involved in the firm's international policy formation and an associate, preferably one who had worked in a foreign country (in order to question the associates about their careers - this would be particularly useful when discussing regulation).

Possible 'benefits' of participating in the research, which were noted explicitly, were that interviewees would be sent a copy of a publication arising from the research and that previous interviewees had tended to appreciate the opportunity to speak to an 'outsider'.

This time, firms were asked to contact me if they were interested in participating in the research, to speed up the process of arranging the interviews.

All the letters[117] requesting interviews from law firms were not sent out at the same time, as had been done during the British stage of the project. It was

[117] Letters were sent by fax.

thought advisable to leave more time between the interviews to reflect fully upon what interviewees had said, to further develop and modify the interview schedule. Moreover, it was impossible to predict what the response from firms would be and so it seemed wise to test the 'demand' cautiously.

All the German firms were listed so that those with the lowest number of foreign offices were placed at the top of the list and those with the highest number were placed at the bottom. The first letters were sent out to those in the centre of the list and later letters were sent out to those downwards and upwards of the centre. The intention was not to interview all the smallest or largest firms first, to avoid jumping to early conclusions.

Foreign firms which have offices in Frankfurt were written to[118] (in English) as were all the twenty-eight German firms there which had offices abroad. There were seven English law firms and thirteen US law firms in Frankfurt. In relation to the foreign firms, the letters were addressed to senior partners there (as listed in directories or press reports). Many German firms do not have managing partners so when it was unclear to whom a letter should be addressed, I phoned the firm to see whether there was a person they might suggest contacting. The identities of other senior lawyers were found in press articles and directories. As with the German firms, my preference was to interview a partner involved in the office's policy formation and one associate/assistant (that is, junior lawyer).

The following table sets out the final number of law firms visited and lawyers interviewed:

[118] Including a Swedish firm, although they turned down my interview request.

Table one - the total number of interviews undertaken in Germany

Type of firm	*No of firms visited*	*No of senior partners* interviewed*	*No of associates/junior partners interviewed*	*Total no of lawyers*
German**	13	12	4	16
English	5	5	1	6
US	6	5	3	8
Total	24	22	8	30

* I have considered partners to be "senior" if they have considerable knowledge of their firms' strategic policies.

**The partner interviewed in a law firm in Freiburg is included in the above figures.

Five of the lawyers interviewed in US law firms were German lawyers (and German nationals), with two of those being additionally qualified as US lawyers. Two of the lawyers interviewed in the English firms were German lawyers.

The speed of the responses contrasted markedly with the British experience. This time, English firms were the quickest to reply - three of the seven firms phoned immediately after receiving my first letter to agree to be interviewed. Of the two other firms which agreed to be interviewed (two firms never replied), one firm agreed to an interview (following a fax reminder) two weeks later, whereas the other firm took three months (a fax and phone call later) to make up its mind[119].

In relation to the US firms, six[120] of the thirteen firms were visited. However, only two firms agreed at once to be interviewed. One agreed following a reminder phone call and a further two agreed following both a fax and phone call reminder, three months after the first communication (lawyers with American firms in Frankfurt seem to prefer phone calls - I was put straight through to these

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[119] I had interviewed people at the London offices of two of the five English firms visited in Frankfurt.

[120] I had interviewed people at the London offices of two of these firms.

people). The remaining firm at first refused to be interviewed, then another lawyer in the firm wrote to me and asked for a sample of my written work before eventually agreeing to be interviewed.

One other US firm agreed to be interviewed but then refused to return any of my calls and faxes attempting to arrange a date. The other firms either did not reply to my communications (each firm was contacted twice or three times) or refused the invitation.

One can only speculate about the reasons behind the different responses of the offices of US and British law firms in London and Frankfurt. For instance, are British lawyers more interested in talking to other British people once away from home - the 'ex-pat effect'? I doubt that the workloads of some of the Frankfurt offices of US firms were heavier than those of their London offices, and that was why they did not want to be interviewed. To the contrary, all but one of those US offices which did not reply or rejected the opportunity to be interviewed have either (according to the press) decided not to expand their Frankfurt offices (at least for the present) or have been unsuccessful, so far, in their attempts to do so; they might not have wanted to tell me of their disappointments. Thus it was not possible to interview some of possibly the least 'successful' or least 'expansionist' US firms in Frankfurt (although my other interviewees commented on the problems of these firms).

The response of the German firms was also interesting. Unlike their American counterparts, they do not seem to like telephone calls! Certainly, it was unusual to encounter a telephone operator (or personal assistant) who did not appear to be suspicious (under instructions?) of my calls (in contrast to the operators at the US firms who were friendlier and more helpful in manner[121]), even when the law firm

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[121] Anecdotally, I wondered how far this response was triggered by my being female after a German lawyer told me that women calling German law firms would be assumed to be low down within the hierarchies of their respective organisations, and so would not be taken seriously.

later did actually agree to be interviewed. This will be mentioned again in the next chapter of the thesis.

Of the thirteen German firms which took part in the research, the majority (nine) decided to do so immediately, following the first letter. Of the remaining four firms, two ignored my reminder phone-calls but agreed to be interviewed following reminder faxes. Another agreed following a reminder fax only. The final firm was somewhat odd in that it ignored both faxes and phone-calls, only to agree to be interviewed (out of the blue) six months after my original letter. In effect, just under half of the firms written to were visited. Of the remaining firms, three refused outright to be interviewed and thirteen ignored my communications (at least a letter and a fax reminder was sent to each firm).

To categorise these firms further by setting out the number(s) of foreign offices they had leads us into ethically dangerous waters. As the group is small, it is possible to identify firms in this manner as there may, for instance, be only one firm in Frankfurt with three foreign offices. To avoid this dilemma, categories will be used which group more than one firm together.

Thus, four of the German firms that were interviewed had one foreign office (there are twelve such firms in Frankfurt), six firms had between two to five such offices, and three firms had between six and ten foreign offices.

Two of the interviews were arranged after asking an interviewee whether anyone at another firm who might wish to be interviewed could be recommended. An academic also suggested one other lawyer whom he had interviewed before and who he felt might agree to be interviewed. These interviewees were contacted towards the beginning of the research, when it seemed possible that not enough law firms would want to participate. This 'snowball' technique does have its potential problems - it only includes those within a certain network (Arber 1993:74) - but as the technique was used in such a limited fashion, the benefits appeared overwhelming.

An interview was also undertaken with a member of the local Rechtsanwaltskammer to discuss the regulation of national and foreign lawyers in Frankfurt (this lasted one hour and thirty minutes). The member of the national lawyers' association written to turned down my request for an interview. However, this did not appear to pose too much of a problem as the official at the local Rechtsanwaltskammer answered most of my questions and I also read academic articles and articles in the professional legal press which discussed the issues raised.

The German interviews - process

Interviews began, as with the British interviews, by allowing interviewees to raise any questions they had, and discussing the issues of confidentiality and taping.

The average length of the interviews with German lawyers was 1 hour and thirty minutes, those with the English lawyers was just over 1 hour and twenty minutes whilst the US average was 1 hour and thirty minutes. Thus the interviews were around thirty minutes longer, on average, than those in Britain. This may in part be a reflection of the novelty of this kind of research in Frankfurt, with interviewees perhaps finding the process more interesting, and wanting to talk more, than those in London. It may also be in part a reflection of my increasing ease with the subject matter and process of the interviews, with the development of my interview skills.

The interviews were conducted in English (with forays into German), the most important reason for this being my doubts as to the adequacy of my spoken German at that stage to cope with the complexity of the issues raised. I also knew that the level of English spoken at these firms tends to be very high (and this was confirmed in the interviews themselves). My experience as a teacher of English as a foreign language perhaps also helped when attempting to communicate clearly - for instance, by avoiding unneccessarily complex verbs and sentence

structures. However, some German was used, particularly in respect of culturally unique words (such as those describing specific professionals, such as the two types of German accountant). As May notes (1997:192), this helps to maintain meaning equivalence, which can be difficult to achieve in translation.

Anecdotally, a German lawyer also told me that some non-native English speakers might be interested in the opportunity to speak in English, to practise their English, and so might be more inclined to accept the request for an interview in English as opposed to an interview in German![122]

Only three lawyers (all German, one working for a US firm, two working for a German firm) did not want to be taped, appearing to be somewhat uneasy about the prospect of having their words recorded. I decided not to record three other interviews, either as there was too much background noise or as it seemed easier to gain the interviewees' trust without the tape recorder. The response to taping appeared to rest in large part upon the confidence of the individual (as Barrett and Cason (1997:100) also note).

Lawyers were interviewed jointly at two (German) firms, as the lawyers themselves wanted this.

The interview with the regulator was untaped as it seemed easier to establish rapport this way.

All the interviews were held at the places of work of the interviewees (in the interviewees' own offices or boardrooms), except for one which took place in a restaurant.

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[122] The generalisation is that many German people are keen to practise their English and would prefer to speak in English unless one's command of German is excellent. It must be stressed that this is very much a generalisation, but there is a discernable enthusiasm for English which is much less apparent in other countries (France being an obvious example).

The first letters were sent out in November 1997 and the final interview took place in July 1998. 'Thank you letters' were again sent to interviewees.

The German interviews - content

As with the interviews in Britain, a semi-structured interview schedule was used, and some comments were written down during interviews (in addition to taping). There were four interview schedules produced - one for partners in UK and US firms, one for partners in German firms, one for associates in UK and US firms and one for associates in German firms. These schedules were then customised to take account of the nationality of the interviewee - for instance, several lawyers in US firms in Frankfurt were German nationals and they were asked why they had decided to work for a foreign firm. US or UK partners in such firms were asked why they came to Frankfurt, whether they were there permanently and so on.

To discuss the schedules for partners together, interviewees were asked to confirm information on the firm's personnel. Additionally, partners in UK and US firms were asked about when and why the Frankfurt office was set up and its development since that date. It was hoped that this would provide information with which to reconsider the literature on what drives international expansion ('pull/push' factors) and also provide data with which to compare the experiences of US offices in London.

The types and importance of work the firm undertook were discussed, together with the firm's organisation and client base. This enabled discussion of the nature of international work, its sponsors and its value - this might feed directly into the discussions seen in the literature review, for instance, on who stands to benefit most from globalisation.

Marketing and referral networks were considered, to find out how proactive these firms were. German firms were also asked about the expansion of commercial firms in Germany and the development of their own firm in the last decade, so

that some insight could be gained into the motivations behind changes in this legal sector. They were questioned about their foreign offices and other forms of international practice such as networks (to provide useful comparative data with that gathered in London). Partners were asked also about the regulation of their work in Germany.

Frankfurt's position as a centre for commercial legal work was then discussed. Interviewees were asked to name those firms which did the same kinds of work as their firms ('competitors' for want of a better word). The influence of, and challenges facing, foreign firms in Frankfurt were unpacked, providing data with which to compare the London case study. The issue of British and German mergers was raised, to gain an insight into why certain firms were reconsidering their strategies (and why others were not).

Finally, the future of international work was again discussed.

To move on to discuss the schedules for associates, associates were asked about their career and educational history, with questions including how long they had worked for the firm, what had attracted them to join that particular firm, and what kinds of work they did. US/UK nationals were also asked why they had come to Frankfurt, whereas German associates were asked why they had chosen a German or foreign firm. This investigation into the backgrounds and career choices of these lawyers was driven by the need to consider who does international work, where and why.

Associates were asked to describe a typical working day, including the hours they often worked and how they were trained and supervised. It was hoped that this would help form a picture of the realities of work. Relations with clients were also discussed, to gain some idea of how client relationships moulded the work, to assess the influence of clients.

Professional conduct issues were raised, to find out which organisations were responsible for the formal regulation of work and the importance of professional associations. This would feed into the work about the constraints on work, as discussed in the second literature review. Questions were also asked to determine how common it was to encounter professional conduct issues and how they would be dealt with.

Finally, associates were asked about what they thought would be the most important challenges facing firms like theirs in the future and what they would like to happen in their own career. This helped to ascertain how far associates were thinking ahead, thinking and planning in strategic terms, in addition to showing how aware they were of changes in the profession.

The interview with the regulator in Frankfurt covered a lot of ground, from the work of his organisation and the regulation of German lawyers at home and abroad, to the regulation of, and interaction with, foreign lawyers in Germany and Frankfurt.

The German interviews - analysis

The tapes were transcribed in the days immediately following the interviews. Some preliminary analysis of the interviews undertaken in the period up to March occurred in April 1998, when a conference paper was written. This act of writing did in itself reveal new insights (as Gilbert also recognises - 1993:333). The rest of the analysis took place in the summer, following the method described above.

A total of sixty-six people were interviewed for this research, in the UK and Germany.

Writing up - dates, content and style

The British stage of the research was written up in the summer of 1995. Writing thereafter had to fit around working commitments elsewhere until the beginning of January 1997, when I moved to Germany.

The rest of the research was written up continuously in Germany and in London, upon my return to the UK just before the New Year (1999).

This two-pronged collation of data and writing up did allow my reading to widen out considerably. My tendency was to read *after* the interviews, when themes to explore had been identified; hence the work was mostly inductive in approach.

Finally, a note on style. In a similar fashion to writers such as Riger and Gordon (1981), I have decided to use the first person singular in this thesis when discussing choices made, in order to emphasise my view of the research process as a contextually located phenomenon[123]. The next section unravels this idea.

Choice of methods

At the outset of the research, I started with the basic premise of a denial of 'objective truth'; knowledge must be treated as being contextually located. This notion was drawn from reading several interactionist texts, some being feminist texts. For instance, as Stanley and Wise argue (Stanley 1990:39):

> "Our position is that *all* knowledge, necessarily, results from the conditions of its production, is contextually located, and irrevocably bears the marks of its origin in the minds and intellectual practices of those lay and professional theorists and researchers who give voice to it." (italics in original)

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[123] According to Barnard (1990:74), Bourdieu thinks that reflexivity is not achieved by the use of the first person, but it is achieved by subjecting the position of the observer to the same critical analysis as that of the object at hand. Nevertheless, I believe that use of the first person can remind the reader of the researcher's epistemological stance.

Thus, there was to be no value-free position in social science research. Silverman also notes that a reading of Weber reveals that the choice of subject-matter, method/s and implications to be drawn from a study are "largely grounded in the moral and political beliefs of the researcher" (Silverman 1993:172).

My own choice of subject matter was influenced by my interest in cross-border legal practice, which was sparked by working for a European young lawyers' association and for a law firm in Germany in the early 1990s. Primarily, I wanted to study lawyers' and regulators' opinions about the work they did internationally. The intention was to explore in depth my interviewees' thoughts, in the hope that this would contribute most fully to the theoretical development of my ideas.

The main research method chosen was the semi-structured interview, as seen above. More quantitatively driven, statistically-based techniques did not seem appropriate to my need to engage in a dialogue where it would be essential to follow up interviewees' ideas and to explain and clarify what was meant. The flexibility of interviewing (Moyser and Wagstaffe 1987:18) was appealing.

Perhaps one of the biggest drawbacks of this concentration upon questioning law firms' policies is the great reliance which is then necessarily placed upon interviewees' ability to reflect broadly upon their firms' strategies. Interviewees might not have previously spent much time thinking certain issues through (Fielding 1993:138) or the firm itself might not have clear formal policies capable of lucid explanation. Moreover, as Fielding points out, the assumption that language is generally a good indicator of thought or action would nowadays make "a social psychologist cringe" (1993:148). Asking questions might simply elicit the responses interviewees felt to be most politically correct or acceptable, rather than those which reflected more accurately their practice, (this might also have been true had questions been asked which posed practical scenarios to 'solve'). Nevertheless, Fielding does believe that there is some value in documenting people's attitudes, provided that we do not claim that by doing so we have proven

what they do. This point will be discussed further in the section on "production and status of the data" below.

Still, certain issues might have been better researched by means of observation, of obtaining access to a firm to observe its work over a period of time. These issues included those of lawyers' notions of professionalism, particularly as displayed in their interaction with clients. As May notes (1997:138), ethnography is particularly valuable when attempting to understand action. However, the main focus of the research was an examination of the international policies of firms[124] and so the possibilities of an ethnographic approach must be left to future research.

The possibility of sending out a mail questionnaire was also discounted, as the need to discuss complex issues was most important. Mailed questionnaires are less useful when issues are complex and the researcher wishes to probe beyond the answer given (May 1997:90)[125]. It is useful to use open questions when beginning work in a new area (Newell 1993:103). Telephone interviews were also not chosen as it was felt that visiting the law firms themselves[126] and interacting face to face with interviewees (and noting their reactions to questions) would provide interesting data. Moreover, interviewees may be more likely to break-off a telephone interview than an interview in person (May 1990:91). Consequently, although these methods may have been more convenient to administer and cheaper than face to face interviews, the need to collect in-depth data on a little-researched area was overriding.

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[124] Visiting a large number of firms to sit in on their partners' meetings which discussed international policy did not seem feasible.

[125] Non-standardised interviews can find out what kinds of things are happening as opposed to determining the frequency with which predetermined things occur - Fielding (1993:137).

[126] However, interviewing at the interviewee's place of work rarely means that one gets to see the whole office - particularly so in English City firms, where one usually only sees the reception and meeting room (which is free from client files, preserving client confidentiality).

Production and status of the data

Now the status accorded to the information gathered in these interviews must be treated more explictly. Silverman notes that interactionists (1993: 107):

> "(A)re not too sure whether interviews are purely 'symbolic interaction' or express underlying external realities."

Alternatively put, are we in the process of judging the truth or falsity of interviewees' accounts or should we treat them as accounts whose interest is not in their accuracy but in their construction (1993:15)? Silverman feels that a more helpful tendency is not to hear interview responses as true or false *reports* on reality but instead to treat them as *displays* of perspectives and moral forms. This would recognise the ambivalence of people's opinions and avoid searching for an interviewee's *true* attitude. However, everything depends on the purposes at hand, so it might make sense to seek potentially true reports, for instance, in quantitative studies of voting intentions but less so when investigating matters such as adolescents' self-images.

I have been greatly influenced by this approach as reflection upon interviews I have undertaken (for this research and for other projects) and read about has led me to see them as sites where 'reality' was constructed and 'stories' were told. There is no one 'true' view of the interviewees - their accounts might change with time, experience or according to the purpose at hand[127]. Similarly, Baruch (quoted in Silverman 1993:110) discusses parents' responses to congential illnesses in their children, and focuses on how - in telling their stories to a stranger - mothers skilfully produce demonstrably "morally adequate" accounts.

Indeed, the interviews undertaken for this research did not appear to be occasions where some unequivocal truth was sought. The interviewees were extremely

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[127] Similarly, the fluidity of identity is, of course, one of the major themes of postmodern discourse.

verbally articulate individuals (with limited time on offer[128]) who were often concerned to establish the uses to which their words could be put and could be viewed as checking their statements accordingly (see later). Perhaps this is unsurprising - if lawyers are not able to qualify their words to counter possible criticism, it is hard to think of an occupational group who could! Or as Wagstaffe and Moyser phrase the point (1987:184), élites can be "acutely aware of the political dimensions of the production, control and dissemination of information, such as arises from social scientific inquiries."

Hence I basically accept the contingent nature of these findings. I constructed myself in a way which I imagined would gain maximum trust on the part of the interviewee[129], whilst the interviewees were conscious of how they imagined their views might be interpreted and acted accordingly. The response of interviewees will be considered in the next but one section.

Similarly, Shapland argues (1997:21):

> "... there is no obvious entity at the heart of a law firm which speaks for the firm itself. The firm is the collection of partners and other fee-earners who work within it at a particular point in time. When one talks to a partner about the firm's strategy[130], what is expressed is the partner's understanding of the corporate decisions that have been made (whose rationale and history may be hard to disentangle), together with that partner's view of what a fruitful strategy might be for the future and some comment on whether other partners might think the same."

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[128] Most seemed concerned to give the impression that they were extremely busy people. Certainly, their hourly charge-out rate would be somewhere in the range of £100 to £500 per hour and these lawyers usually have formal or informal billing targets to meet. I was particularly sensitive to this and so if interviewees appeared to be in any way uncomfortable, I would check how much time they had. This usually put their mind at rest (and built rapport) and often the inteview then went on to last longer than planned, as the interviewees were enjoying themselves.

Still, interviewees might have had to make up for the time spent in the interview by staying later at the office. If not, and if there was a clear subsitution of billing time for interview time, then this research cost a lot in terms of lost charging time.

[129] Wearing a suit was a somewhat inevitable part of this.

[130] The literature review above also discussed strategy and law firms.

To this could be added that the partner's response is also influenced to some extent by what s/he imagines is acceptable to the researcher or/and the outside world. It is because of this that Fielding (1993:139) cautions researchers to be very careful about their initial explanations of the focus of the interview.

This approach would not, of course, appeal to the committed positivist and may, if not justified further, cause difficulties when proposing research to, for instance, outside funders in search of "hard, factual answers" (see Silverman 1997:19).

However, I would not take an interactionist position to the extreme and argue that interview data has "no further credibility beyond the interview setting" (as phrased by Melia 1997:34). I agree with Melia (ibid) that "a researcher with an interest in, and open mind about, a particular topic can, with practised care, take an analysis beyond its face value." This might mean that lawyers' accounts can be used as a basis for theorising more widely on the nature of the profession itself, as Melia herself similarly discussed the nursing profession (moving beyond her student nurses' interview accounts).

Applying Silverman (1993), one area in which the truth/falsity of data might be considered is when distinguishing between the types of data collected. When gathering basic data on law firms from interviewees, such as the number of lawyers working there and the number of offices established by the firm, the interviewees' responses have been treated as verifiable (through, for instance, consulting directories on law firms). Conversely, in relation to matters such as lawyers' opinions on, say, the impact of foreign lawyers in their jurisdiction, I have been less concerned to establish whether their views are those of the firm as whole, but rather to treat these statements as "plausible stories"[131].

Ultimately, my aim has been to follow the advice of Edwards and Ribbens (1998: 4):

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[131] As Melia (quoting Strong) expresses it (1997:35): "If we can collect data with which to tell a plausible story, perhaps we should settle for that."

> "We suggest that, rather than a relativistic despair, we need high standards of reflexivity and openness about the choices made throughout any empirical study, considering the implications of practical choices for the knowledge being produced."

Yet, the question "How plausible are these stories?" might be asked if the issues of validity and reliability are raised. Reliability is described by the Penguin dictionary of sociology (Abercrombie, Hill and Turner 1994:356) as follows:

> "The reliability of any test employed in research is the extent to which repeated measurements using it under the same conditions produce the same results."

Alternatively, Hammersley defines reliability as the (1992:67):

> "... degree of consistency with which instances are assigned to the same category by different observers or by the same observer on different occasions."

One could argue, though, that if social reality is always in flux, then it makes no sense to worry about whether our research instruments measure accurately. However, such a position would rule out any systematic research as it implies that any stable properties in the social world cannot be assumed (Silverman 1998:87). Consequently, if reliability is to be calculated, researchers must document their procedures. It is hoped that the detail given on the methods used in this research goes some way to providing such information.

To turn to the issue of validity, Silverman argues (ibid) that this is another word for truth. Or, as the Penguin dictionary on sociology (Abercrombie, Hill and Turner 1994:356) states:

> "Reliability differs from *validity*, which is the success of a test in measuring correctly what it is designed to measure. For example, an attitude scale may be reliable in that it consistently produces the same results, but have little validity since it does not in fact measure the intended attitude but some other." (italics in original)

Again, the extreme interactionist might argue that validity, or a search for truth, has little merit when social phenomena are so contingent in nature. Nevertheless, if a less extreme position is adopted, the reader might be reassured that the researcher has attempted to deal fairly with all the data. The detail given previously on the research and the following sections might go some way to addressing such concerns.

Locating the researcher

"Why should anyone trust a snooping sociologist?"

William H. Form (1973)

Edwards notes, logically enough, that (1993:187):

> "Among other factors, racial, class, and sex differences and similarities enter into the consciousness of individuals and groups and determine their conceptions of themselves and others as well as their status in the community. This has implications for research."

One obvious implication for research are what effects the social characteristics and manner of the researcher might have upon the interviewee, how they influence the story that is told. In relation to the issue of the gender of the researcher and its impact upon the research process, Heikes notes (1993:290):

> "Clearly, all interviews are gendered contexts, whether they are single - or mixed - sex. No Archimedean point exists outside the sex/gender system where "unbiased" interviews can be conducted; every understanding about the social world and social identity is necessarily and inevitably partial."

In the context of my own project, it is obviously difficult to evaluate how far my own characteristics and background influenced the responses of the interviewees. Indeed, one can only speculate as to whether senior male lawyers find it easier to talk more openly to younger women as opposed to younger men[132].

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[132] Some writers have argued that men are less likely to feel threatened by women (although I imagine that would depend on the individual, the subject-matter discussed and the context!) Reinharz, for instance, argues that (1992:20): "Asking people what they think and feel is an activity females are socialized to perform, at least in contemporary Western society. According to US gerontologist Kathy Charmarz, interviewing draws on skills in the traditional "feminine" role - "a passive, receptive, open, understanding approach ... recognizing and responding to the

Another issue to address might be that of my nationality. Might, for instance, the US or German lawyers interviewed have qualified any criticism they might have had of the British on account of my nationality (and so supposed 'loyalties'?) Again, it is hard to move beyond speculation, but there were a very small number of occasions when interviewees were assured that I had no vested interest in the situation. I also adopted a non-threatening interviewing style, as will be discussed later.

The final issue which will be addressed in this section is how far my training as a lawyer became part of this site of construction and influenced the interviews. Certainly, my experience appeared to help in building rapport with interviewees. Klatch also notes how interviewers might use their identities to help establish rapport with interviewees (1988:78). Consequently, there may have been the feeling that I was "one of them" and so could be trusted and/or would understand/empathise with what was said (and this may have helped me to gain access to these firms in the first place). Interviews could also run more swiftly as I understood much of the jargon used. Unsurprisingly perhaps, Form (1973:84) notes that the relative sophistication of the interviewer and interviewee concerning the subject matter investigated is one of the key factors determining the "success" of the interview.

Beyond the interviews themselves, my training as a lawyer might leave me open to "accusations that I am desensitised by overfamiliarity" with the legal profession (Greed 1990:147). Judgement must ultimately and obviously rest with the reader, although a couple of points will be made. I left the profession some time ago (and have worked in very different organisations since) and so, to some extent, I am now seeing it afresh. I also have spent a significant amount of time discussing the Anglo-Saxon legal world with people from other countries and

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other's feelings and being able to talk about sensitive issues without threatening the participant ..." "

with people who hold completely different jobs; this might have helped me to see this 'world' through different eyes.

Conversely, my experience as a lawyer did help in establishing concepts to investigate. As Greed (1992:147) notes (when describing her experience as a quantity surveyor turned researcher on quantity surveyors):

> "My past experience enables me to develop 'sensitising concepts' more readily, because I already have an awareness and empathy with the issues that an outsider would not be able to develop so effectively in the time available."

Locating the researched

As noted above, it is important to consider how the interviewees themselves engaged in the research.

To consider first the form of the interview, at the outset of the research I was particularly interested in what patterns of interaction would emerge during the interviews. Some feminists have argued that the researcher should be concerned to minimise hierarchy when interviewing, as Oakley believes (1981:41):

> "[I]t becomes clear that, in most cases, the goal of finding out about people through interviewing is best achieved when the relationship of interviewer and interviewee is non-hierarchical and when the interviewer is prepared to invest his or her own personal identity in the relationship."

Yet, my worry was that 'investing personal identity' in the relationship (and perhaps treating the interview as a conversation) might mean the researcher would lead the interviewee to render the story s/he felt the interviewer wanted to hear, although I appreciated the concern to minimise subordination in the interview process[133]. My approach was pragmatic - the most important need was to create rapport with the interviewees as individuals, to create an open atmosphere and a pattern of interaction which they found comfortable. To this

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[133] However, I am not convinced that it is possible to *avoid* hierarchy in interviewing nor élitism in analysis, when we always may be implying that we see through, or see things more clearly than, our interviewees.

end (and similarly to Klatch 1988), I adopted a non-argumentative approach although it was also necessary to be sensitive to the forms of interaction which each individual seemed to prefer (see also Moyser 1988:126). I also showed a lot of interest in the interviewees' opinions. As Klatch notes (1988:78), "an open show of interest is the major currency by which the field researcher rewards those being studied".

Hence, at the beginning of the interviews as has been seen above, the interviewees were asked whether they had any questions at all about the research and questions were answered fully. The issue of confidentiality was also discussed - the names of lawyers or their firms would not be revealed in anything that was written as a result of the project. Taping was for my own use and tapes were not for the ears of third parties. The idea was to create an understanding of what was involved in the research, and to dispel any worries or doubts interviewees might have.

One other means of attempting to establish rapport with interviewees, which has been mentioned earlier, was by asking some general questions about the interviewee's career and the number of lawyers in the firm at the beginning of the interview (as advocated by Newell 1993:108), to focus upon issues which the interviewees could talk knowledgeably about.

One interesting feature of the interviews was the tendency of *all* my male interviewees (except one, and that was an unusual case as the interview took place over lunch) to ask me questions[134] only once the tape-recorder was switched

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[134] The most typical question being "Do other firms say the same thing?" For the most part, this did not strike me as being a question designed to test whether I would withold information given under guarantees of confidentiality - largely as they had already spoken to me by that stage. It seemed more as if lawyers were interested in other firms and/or were insecure about their own firms' policies (as will be discussed in later chapters). In response to such questions, I did not name other firms which had participated in the research and would state that obviously I could not quote what other firms had told me. Nevertheless, it was usually possible to make some broad statements about how law firms did differ without revealing anything which would incriminate anyone in any way.

off (that is, before or after the questions on the interview schedule were asked). This contrasted with the five women lawyer interviewees. Three [135] asked what would be my answer to the questions posed at several points during the interview and seemed to seek validation of their own opinions before then feeling secure enough to reveal more. Thus, in contrast with the interviews with male lawyers, interaction here appeared to be a necessary part of establishing the trust of the interviewees. Of course, this evidence is somewhat anecdotal and age could also be a factor in this (four women were close in age to me) but - also anecdotally - male interviewees who were of a similar age did not act in the same way as their women contemporaries. There are a variety of issues to unpack here, one being gendered speech patterns[136], but more research is necessary to move beyond anecdote.

In the final analysis, it is important to stress that I was very pleased, and often surprised, at the openness shown by the interviewees. Most German interviewees were frank - on the whole, probably more so than English solicitors in London. It seemed that they often had little experience of being interviewed[137] but warmed quickly to the process. As has been seen above, US interviewees in London tended to be more open than their English counterparts in London whereas English solicitors in Frankfurt seemed to be more open than their London colleagues. As mooted above, the latter phenomenon might to some extent be accounted for in terms of an 'ex-pat effect', lawyers being more willing to help their 'countryfolk' when sharing the common experience of being abroad. Certainly, the overwhelming impression was that lawyers did appreciate the

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[135] One was an unusual interview as this lawyer was unable to spare much time for the interview (she was called upon to see me at the last minute), although she did ask a series of questions about my personal background at the beginning of the interview and referred to this information during the interview. The other interviewee asked me several questions at the end of the interview about my own opinions about the issues raised (rather than about the strategies of other firms).

[136] See, for instance, Tannen's work (1994).

[137] As mentioned previously, German academia has yet to conduct similar research on law firms. Apart from job interviews and interviews with the professional press in Germany (which traditionally has been a lot quieter than the Anglo-American press), the only other experience of

opportunity to talk about their concerns and interests to someone outside the firm. As Easterby-Smith, Thorpe and Lowe argue (1991:81):

> "... many individuals find benefit in talking to an independent outsider about themselves or learning something about future changes in the organisation as in action research. Researchers should be able to recognise and capitalise on these situations and offer them as benefits or advantages to interviewees in exchange for participation. The more willing they are to be open, the more they are likely to gain."

Collating and checking the data

All the interview schedules were 'pre-tested' as preliminary interviews with lawyers in England and Germany were undertaken, as has been described above. In Germany, a German lawyer also looked at a copy of the interview schedule for German lawyers, so that we could discuss whether anything had been included which she felt German lawyers would not understand.

Representativeness

How representative were the interviews? This question might mean we should consider how representative the answers given by interviewees were both of the opinion/s to be found within their firm and within the group of firms which were researched, beyond commenting upon how many people were interviewed.

If one believes that interviews are solely a site of construction, then this is a pretty unhelpful question. Silverman, for instance, argues (1993:169) that case-study work derives its validity from the thoroughness of its analysis and not from the representativeness of its samples. Certainly, it would be very difficult to find out the differences between and within members of firms without carrying out extensive survey research. Indeed, this discussion might easily rehearse the arguments above concerning the status given to the research and to my

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being interviewed the lawyers might have had was meeting representatives of (British based) legal directories.

conclusion that one can, albeit cautiously, take an analysis "a little beyond its face value".

Still, a couple of points will be made. As noted above, on average, just under half (about 45%) of the firms contacted agreed to be interviewed, a sizeable number of firms. Consequently, a range of views were expressed, although the following chapters show that some issues/questions revealed significant uniformity in responses.

The following chapters do note both majority and minority opinion. Lawyers also often commented on the strategies of other firms and compared their firms with them. Lawyers were asked to compare their firm with others, particularly if their answers appeared to be unusual.

Comment

This part of the thesis has attempted to provide some understanding of the choices made during the research. I hope the reader finds that the following chapters tell a plausible story.

Chapter two - The international work of the legal profession

"Now is the globe shrunk tight ..."

Ted Hughes (1972), from the poem *Snowdrop*

This part of the thesis dives into the core of what corporate international legal practice actually is. First of all, the rôle of "global cities" such as London and (possibly) Frankfurt[138] will be discussed. Most specifically, some thought will be given to London's rôle in the creation of work opportunities for lawyers, to provide some background to the work of the London interviewees. An overview of the business community in Germany and Frankfurt will also be given.

The analysis of the empirical data gathered in this research will then begin. To give some impression of where (and how many) lawyers work abroad, a series of tables present statistical findings. These findings are contextualised by figures on the national legal professions of England and Wales, Germany and the US.

Finally, the interview data will be discussed. It is here that the nuts and bolts of international legal practice are scrutinised, as the interviews in London and Frankfurt are reported. Issues raised include:

- What are the skills of an international lawyer?
- How important is international legal work?
- Why has it developed?
- How and why are international legal practices structured and promoted?
- What impact have US lawyers had upon the City? How successful have Anglo-American lawyers been in Frankfurt? What problems have they encountered and why?

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[138] I am less sure whether Frankfurt can be seen as a "global city". Germany is very much a federal country and Frankfurt's population is less than 700,000 people.

Two case studies bring the chapter to a close, when US law firms in London and foreign law firms in Frankfurt are discussed.

The rise of the global city will first be documented.

Part one - Global cities and the positions of London and Frankfurt

"Swarming city - city gorged with dreams."
Baudelaire (1993), from the poem *The Seven Old Men*

Here we look at the importance of global cities within the 'world economy'. This hopes to clarify why the lawyers interviewed were located in London and Frankfurt.

The work of Lash and Urry (1994:319) has already suggested that global cities are where "today's new informational bourgeoisie are primarily located." Sassen (1991) analyses this issue further. Her analysis is particularly useful in spotlighting the dimensions of these cities and the importance of services (and thus the work of commercial lawyers) within them.

She believes (1991:3) that the phenomenon of the "global city" is the product of a spatial configuration of the global economy which can be traced to the breakdown of the Bretton Woods agreement in the early 1970s and the subsequent restructuring of business. This effected a " spatially dispersed, yet globally integrated organisation of economic activity" as the work process was split into a "global assembly line" (as described in the sections on dependency and globalisation theorists seen in the first literature review), facilitating the production and assembly throughout the world of goods at lower costs. Typically this meant the closing of plant in major industrialised nations and the transfer of production to lower wage locations (aided by developments in communications, from telecommunications to transport).

This, she argues, in turn created the need for an increased centralisation in the management and control of business, encouraging dependence upon producer service firms, as not all services could be provided in-house by corporations themselves. This development was mirrored in the greater centralisation of management of the financial industry in the 1980s and the need there for specialised services.

Hence the combination of spatial dispersal and global integration has created a new strategic rôle for major cities (ibid):

> "Beyond their long histories as centers for international trade and banking, these cities now function in four new ways: first, as highly concentrated command points in the organization of the world economy; second, as key locations for finance and for specialized service firms, which have replaced manufacturing as the leading economic sectors; third, as sites of production, including the production of innovations, in these leading industries; and fourth, as markets for the products and innovations produced. These changes in the functioning of cities have had a massive impact upon both international economic activity and urban form: cities concentrate control over vast resources, while finance and specialized service industries have restructured the urban social and economic order. Thus a new type of city has appeared. It is the global city. Leading examples are New York, London and Tokyo."

Whether this pattern of geographic clustering will continue into the future is, however, another story. Susskind, for instance, argues (1998:249) that IT (information technology) will radically affect the way work is dispersed:

> "In the IT-based information society, it is hard to imagine carrying on as we do, clustering so intensively in but a few centres. Geographic focal points for face-to-face meetings, camaraderie, and court appearances, will remain important, of course. But we can safely expect some considerable spread and dispersal, as clients and lawyers alike recognize the potential savings and benefits."

Be that as it may, Sassen's argument does not explicitly explain why London (and possibly Frankfurt) rather than, for instance, Lisbon, has become so important as a "global city." London's position will be considered first.

London

Moran (1991:55) argues that London's eminence rests upon its importance as an international financial centre. This importance is based, in turn, upon London's prominence as an international banking centre[139], which in itself is the product of many factors, from the importance of English as the world business language to (ibid):

> "... the equally accidental geographical consideration that has placed London in a 'time zone' intermediate between the two other great centres of New York and Tokyo; to a long history as an economic capital, which endowed London with the commercial and physical infrastructure needed to support markets; to the country's enviable history of political stability; and to the simple fact that for the American bankers who led the first wave of international banking, London was a congenial place in which to live."

However, London's fortunes have not been guaranteed by this. In fact, Moran argues that regulative policy has been of great importance in sustaining the city's importance. The first example of this can be seen in the creation of the original eurodollar markets in London from 1945 which he believes was the result of a conscious act of the Bank of England[140] which welcomed the euromarkets, which were particularly attractive to the American houses.

The second example is that of the "Big Bang". By the end of the 1970s, there was an increasing feeling that the City's place in the world financial markets

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[139] Elliott (1995:10) notes that: "There are more foreign banks in London than in any other city in the world, with well over 500 overseas banks. In addition, more international insurance against disasters is conducted there than anywhere else, and the City accounts for more than half the world's trading in international stocks and shares."

[140] Flood explains the eurocurrency markets as follows (1995:142): "Transnational or multinational corporations (MNCs) ... have successfully exploited the decline of empires and post-war booms producing supplies of cheap labour and materials and new markets for their products (Picciotto 1988; Sassen 1991). As a consequence of this success, MNCs amassed substantial earnings overseas and had to construct methods to use the money without repatriating it. One mechanism for resolving the problem was the eurodollar market, based primarily in London. British banks and law firms became proficient in servicing this market. By the late 1980s the eurodollar market was worth $2,500 billion (McCullough 1988). The eurobond and other eurocurrency markets followed. Since 80 per cent of the eurodollar market was in dollars, there was a strong incentive for American law firms to become involved (Lewis and Davis 1987) - For example, Cleary Gottlieb Steen & Hamilton has a strong footing in this business. The Big Six accounting firms were also significantly involved in eurocurrency."

could be threatened. Thus, many observers feel that it was the de-regulation of the financial markets in the 1980s (the "Big Bang") which assured London of its place as a world financial centre. This is worthy of a little more analysis, particularly as the financial markets provide the background to much of the work which many of the lawyers interviewed engage and have engaged in.

Moran (1991:56) describes the de-regulation as follows:

> "The decisive changes happened in the space of a few short years in the 1980s. In that period, restrictions on price competition, notably in the domestic securities market, were lifted. This in turn led to major changes in ownership and in trading practices, the result of which was to link British markets closely to the international system, and to transfer the control of numerous British firms into the hands of foreign multinationals. Almost simultaneously the institutional structure of regulation was reorganised in the 1986 Financial Services Act. A dispersed system of meso corporatism loosely coordinated by the Bank of England was replaced by more elaborately codified, institutionalised and juridified arrangements."

Why did this occur? It is Moran's thesis that this "revolution" was shaped by state intervention overriding business interests hostile to radical reform. Its aim was to pursue competitive advantage. In effect, the state intervened to ensure that the sector was not hampered by the restrictive practices which were limiting the competitiveness of the markets[141].

Deregulation combined with competition, promoted growing specialisation and diversification and a leaning to the global market. As did risk taking and speculation. "Product innovations" also ensured that a large number of financial assets became marketable instruments - for instance, bank loans became less

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[141] McCahery and Picciotto (1995:266) do, however, criticise Moran's thesis as being too deterministic:
"In Moran's view, the regulatory changes, orchestrated by decisive state interventions, are shaped by the alliance with large market players ... While it is no doubt the case that the shifting alliance of private actors and the state is responsible for the changes in regulatory form, we find that Moran's thesis places undue emphasis on almost deterministic changes in state structures, which fails to capture the dynamic and contingent nature of the processes of change. We argue that a key focus must be the interactions of government and private-sector lawyers. Hence juridification is the result of the strategic competition amongst different players within the juridical field."

popular as bonds and equities and transformed previously illiquid instruments to gain market share. Work increased in volume and in pace.

Such developments were obviously of importance to those lawyers who worked with the capital markets in London. Examples of other sources of demand for specialised commercial legal services in London in the 1980s were mergers and acquisitions, joint ventures and privatisations. As Boon and Abbey (1997:637) noted earlier, large law firms were major beneficiaries of the work produced by the policy of denationalisation.

Daniels, Leyshon and Thrift (1986:9) summarise their view of the most significant reasons behind the City's continued eminence as follows:

> "The judicious use of social exclusion, the constant creation of new credit money markets (such as Eurocurrency markets) and allowing the selective entry of foreign institutions have so far enabled the City to retain its position as the leading international financial centre, unbolstered by any significant national market."

Germany and Frankfurt

Turning to Germany now, it might be useful to provide a brief outline of the German economy[142] before considering the position of Frankfurt, as this will help to contextualise the national 'market' for commercial legal work.

Germany has Europe's largest economy, its GDP being almost as large as those of France and Britain combined. It is the world's third largest economy and its second biggest exporter of manufactured goods. Mittelstand companies (small to medium sized enterprises) are important generators of manufactured goods (the German Mittelstand sector is proportionately nearly twice the size of its British counterpart - Hutton 1996:266) although the top 30 companies account for over 40% of turnover in the industrial sector. However, Mittelstand companies are

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[142] The statistics in this brief section will be drawn primarily from Buckley (1996).

strong exporters, Simon believing that they are largely responsible for the strong export performance of the country (1996:69).

Nevertheless, Lash and Urry argue that Germany is principally a national and not an internationalised economy; it has far lower levels of foreign direct and portfolio investment (both inwards and outwards) than Japan and the States (1994:191).

The service sector is relatively underdeveloped, although some commentators believe that this will change significantly over the next couple of decades. At present, service sector employment is 57% (UK 68%, USA 73% and Japan 60%). To explain this low development of service activity in Germany, Lash and Urry (1994:191) argue that this is due both to the country's low level of internationalisation and the slow development of individualistic lifestyles.

Discussing the latter, they argue (1994:150) that Christian and corporatist welfare states such as Germany and Austria protect the family, but not necessarily in the interests of women, through the assumption of a family-wage paid to male workers, plus generous transfer payments to the jobless. These assumptions of an intact family with a single male wage earner and a wife performing a high proportion of welfare services in the home results in low female labour market participation rates, and a concentration of women in low paid, non-professional service jobs (1994:182)[143].

Hence they argue that as many welfare and consumer services are in effect produced in the home by women, Germany is still a surprisingly industrial rather than a post-industrial society[144]. The German model is "extremely

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[143] Bates (1997) notes that 31% of German women of working age (between 25 and 59) described themselves as housewives as opposed to 27% in Britain, in a EU survey. He reported that women still bore the brunt of child-rearing - 69% of women as opposed to 27% of men estimated that they spent more than 4 hours a day with their offspring.

[144] This contrasts with liberal welfare states such as those of the USA and UK which are based on universalist minimum and means tested public assistance and do not pay the same level of family

undifferentiated, unindividualised and unreflexive", as corporations and the family do much of the deciding for individuals (1994:191)[145].

Further, Germany has a long history of collaboration between government and business and had a (relatively) meritocratic education system and proto-welfare state long before the Second World War (Perkin 1996:21). In effect, it is a "social market economy", combining private enterprise with a generous welfare state (ibid). There are higher marginal tax rates for high earners - the gap between the remuneration of management and workers is smaller than those of UK and USA).

Perkin also argues that (1996:115) because of the "German tradition of responsibility to the state, unalloyed by Marxist ideology or by extreme free-market theory" corporations in Germany have prided themselves on working for the public, their customers and workers. The basis of ownership of companies is qualified, in that not only shareholders have rights but so too do employees, managers, and creditors.

However, the picture is changing today, and the vital question is whether Germany can, or wants to, retain its commitment to a strong welfare state and high wages in an era of increasing globalisation - to use Perkin's terminology (1996:122), the fear is that the pressures of a global economy will force Germany into "competitively beating down the social market down and out of existence." On the one hand, many people did think that the election last year of the Social Democrat led government marked a shift at Europe's centre "towards greater bureaucracy, more intervention in markets and more anti-business policy"[146]

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wage. It has been increasingly assumed that women in these countries will work at least part-time.

[145] Lash and Urry (1989) acknowledge that in those countries where Fordism is strongest, such as Germany, the process of 'disorganising' is weakest.

[146] Although the operation of the electoral system of proportional representation makes it difficult to know in advance which policies parties will pursue in office, as coalitions usually result - the former Chancellor (Helmut Kohl) stated during pre-election campaigning in 1998 that it was easier to pin a blancmange to a wall than to know what the SDP's policies were!

(Bowley 1998). On the other hand, reports on businesses in Germany (and banks such as Deutsche Bank, which is increasing its activities world-wide[147]) describe an increasing willingness to ship jobs overseas to lower wage economies and to invest abroad. As Buckley notes:

> "In the past, German industrialists have been less inclined to invest abroad[148] than their British or Dutch colleagues, but that situation is changing. Germany's total overseas investments now exceed DM 250 billion, compared with inward investment of about DM 200 billion[149]. Many German companies are transferring at least part of their manufacturing operations abroad, a development which alarms labour unions but which is an inevitable result of the globalisation of business[150]."

German companies are also increasingly restructuring their operations - for instance, German conglomerates are selling off subsidiaries which no longer fit the core business - Joy 1999). Two explanations have been given for this restructuring (Bowley 1998):

- Companies have had to cut costs and dispose of parts of their businesses to cope with increasing international competition[151];

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[147] See, for instance their 1997 Mid Year Review (Deutsche Bank 1997). Their website is at http://www.deutsche-bank.de.

[148] Forster (1997b) contradicts this to an extent, but both writers agree that outward investment is increasing. Forster comments as follows: "The third largest country for outward investment in 1996, Germany has traditionally been a source of acquisitive companies while being less of a target for foreign investment, with foreign hostile takeovers unheard of. In 1996 outward investment by German firms was up 18% on the back of a strong Deutschmark and US companies were the prime target."

[149] Gow (1998) adds that 1997 was a record year for German industrialists investing overseas: "Investment overseas last year was a record DM57.5 billion as firms sought to escape high labour costs within the domestic market".

[150] See also Plender (1997).

[151] Labour costs in Germany are the highest in Europe and although German productivity tends also to be high, it appears to be becoming more and more difficult to compete with workers in lower wage economies (Buckley 1996). This is seen in the strategies and restructuring of firms such as Hoechst which has sold off several operations to concentrate on its life sciences business.

- Germany's traditional sources of capital, the big commercial banks are either reducing their industrial holdings[152] or demanding higher returns on the stakes that they retain. Companies are turning to the international capital markets to an unprecedented degree (see below) and need a simpler structure which is more presentable to modern shareholders.

These developments should provide increasing opportunities to undertake international work for ('in-house' and 'out house') lawyers. As will the predicted increased interest of family-owned group companies in the capital markets[153] (Unattributed 1998g). For instance, The Lawyer reported in March 1999 (Callister 1999a) that the Neuer Markt, the German stock market set up in 1996 to allow medium sized companies to list, is attracting many Mittelstand companies[154] - in 1998, there were 68 flotations on the Frankfurt Stock Exchange and as many as 350 companies are expected to float in 1999. US investment banks are already established in Germany, and their favoured law firms hope to pick up more work from them. In addition, US pension funds seeking to invest in EU private equity may also increase their business through UK venture capitalists and their firms (Rice 1998b).

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[152] The reasons for this divestment vary, depending on which review one reads. For example, when discussing Deutsche Bank's strategy, which included the $24 billion "spinning off" of some of Deutsche Bank's industrial holdings in December 1998, the bank's chairman said that the strategy was necessary in order to compete with competition from American banks which had showed corporate Germany that there were alternatives to German banks (quoted in Rhoads 1999). Thus, this was part of a move to become a "more focused" international bank.

Other commentators (including Coleman and Aalund 1998) have noted that the bank has come under pressure in recent years from a variety of sources, including shareholders, to sell off holdings. The critics argue that industrial holdings give the banks too much power, and that they use that power to control German industry, discourage risk-taking and stifle competition. Alternatively, the holdings may have been seen as an obstacle to the listing of Deutsche Bank's shares in the States, a priority after the proposed acquisition of Bankers Trust. The acquisition would cost $10.1billion (Editorial 1999a).

[153] They may also be increasingly in need of management buyout expertise, due to succession problems (Rice 1998b).

[154] Caspar Lawson, a partner at Linklaters' Frankfurt office (quoted in Callister 1999) explains the situation as follows: "Traditionally, the Germans are very risk averse and tend to put their money into bonds instead of equities. That is because they have had hyper inflation twice this century, and very severe stock market crashes. So, when the Germans see share prices falling, those memories come back... But now there is a new generation coming along that is prepared to take a risk."

To focus on Frankfurt, services account for 86.3% of its GDP, a high figure for a German city. The city is home to 655,000 people, over 11,000 of whom are from the USA and 8,000 of whom are British (Wirtschaftsförderung Frankfurt GmbH 1996).

Perhaps most significantly for foreign firms, Frankfurt is Germany's major financial centre[155]. It is home to more than 400 banks, including the Bundesbank and the European Central Bank. Two hundred and sixty-five of these banks are foreign banks - of the world's 30 largest banks, 25 are present in Frankfurt (Wirtschaftsförderung Frankfurt GmbH 1996). Pritchard wrote about Frankfurt as a legal centre for banking as follows (basing his analysis on data from 1995, as seen in 1997 on the "Legalease" website at www.legalease.co.uk):

> "Frankfurt am Main has been, and remains, the centre for banking and finance work in Germany, particularly in the light of the fact that the city has been chosen as the location for the European Central Bank. There are three main German banks - Deutsche Bank; Dresdner Bank; and Commerzbank. They have huge in-house teams - it is said that the in-house team at Deutsche Bank is the largest law firm in Germany - which handle most of their work, although the banks do instruct law firms, particularly in the event of litigation[156]."

Nevertheless, he argues that the main source of banking and finance work for law firms in Frankfurt (both German and foreign) comes from foreign banks in the city, such as Citicorp, JP Morgan, Bankers Trust NY Corp, Merrill Lynch & Co, Crédit Suisse and the Bank of China.

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[155] To locate this within management theory, Clegg argues (1993:91) that the location of production in services is determined by comparative advantage and barriers to trade. Services tend to locate together, as there tends to be joint demand for other goods and services, thus accounting for regional concentrations of service activity.

[156] He further notes (1997a:237) that developments in German corporate culture suggest that external law firms will be required more in the future, perhaps implying that this will come about due to the restructuring of business which will result in the increased outsourcing of legal work.

Indeed, interviewees mentioned that less work would be done in-house in the future (and that in-house legal departments had been outsourcing more work in the last five years) and that Mittelstand companies will increasingly require international legal services.

That said, Frankfurt cannot yet rival the City as a global financial centre[157] (Fisher 1998b), although it has recently entered into an alliance with the London Stock Exchange, which could evolve into the first pan-European market for equities (Ascarelli 1998). In fact, Frankfurt's stock exchange has only really come to life in the last decade in spite of Frankfurt being a site of commerce for several centuries[158].

Beyond its importance as a financial centre, the city is also situated at the centre of the Rhein-Main industrial area. Hence, it is a base from which to serve German industry, which is increasingly internationalising (as seen above), in addition to affording access to markets in the east of Europe. As such, it presents the opportunity of a market which is growing and so has been the most popular location for foreign law firms 'setting up shop' in Germany.

This, then, sets out some background to the work of the interviewees. It is now time to analyse the statistical data gathered.

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[157] Although the derivatives exchange (Deutsche Terminbörse) in May 1998 for the first time overtook the London International Financial Futures and Options Exchange in relation to the volume of all contracts traded in that month (Luce 1998).

[158] Boyle (1998) notes that the German stock market "soared last year" (1997) by 48%. However, its market capitalisation value was $671 billion, still much lower than the figure for the UK ($1,740 billion) (Buckley 1998:3).

Part two - International lawyers and law firms

As discussed in the previous chapter (when outlining the methods and methodology of the research):

> "... the research aimed to discover what happens when the work of lawyers (and their regulators) "moves beyond the national arena". For this, it was necessary first to chart which lawyers and law firms often work internationally and then to choose a set of law firms and places for which data could be amassed. I wanted to consider both what firms (and their lawyers) were intending to achieve abroad and also the experiences and views of lawyers based in offices outside their home country. The research led me to look at English and US firms based in England and Germany, and German law firms in Germany."

To this end, information was gathered on the following four groups of lawyers, law firms and interviewees:

- English solicitors and law firms abroad and British interviewees in London;
- US law firms, lawyers and US interviewees in London;
- German lawyers, law firms and German law firm interviewees in Frankfurt; and
- Foreign law firms, lawyers and UK and US law firm interviewees in Frankfurt.

The next section sets out the data collated. First, the largest law firms in the world will be considered before information on English and Welsh firms and solicitors abroad is looked at. A similar exercise is undertaken in respect of German firms before the foreign lawyer populations of London and Frankfurt are analysed.

Finding information on these firms was not, however, easy; the methodology discussed problems encountered when attempting to obtain comprehensive data on the international practices of these firms. Further problems with the data will be mentioned in the ensuing text where they are encountered.

It will be seen that statistics have been organised to differentiate between the continents which see the most global business for as Flood notes (1995:143,144):

> "... for the most part international business is located primarily in three super-regions, namely, North America, Europe and the Pacific Rim."

It is hoped that this approach, homing in on continents as opposed to individual countries, will better chart patterns of global spread.

The largest law firms world-wide

The Law Society noted in 1994 that (1994: **24**-18) of the ten largest firms in the world, seven were American firms and three were British. In Europe, of the largest thirty firms, twenty-five were British and five were Dutch. Figures on these firms must be kept in perspective, however (1994: **24**-15):

> "Even in the American legal profession, generally characterised as the most aggressively competitive and internationalist, foreign branches contain fewer than 2000 lawyers - or less than a quarter of a percent of the profession (and many of them are foreign qualified lawyers practising local law). The only country that even approaches that proportion is the United Kingdom. Elsewhere no more than a handful of firms have even the barest toehold outside their borders."

To consider the Anglo-American firms in greater detail (using more up to date figures), tables two and three are useful. These tables aim simply to give an idea of the size of the firms in question. The chapter will subsequently discuss the firms in greater detail.

Table two shows the largest US firms world-wide:

Table two - the 10 largest US law firms world-wide[159]

Name of firm and origin	*Total number of lawyers world-wide*	*No of lawyers in the US*	*No of foreign offices*
1. Baker & McKenzie (Chicago)	1998	Unknown	36
2. Jones, Day, Reavis & Pogue (Cleveland)	1152	1058	9
3. Skadden Arps ... (New York)	1109	1020	11
4. Morgan Lewis & Bockius (Philadelphia)	844	804	4
5. Sidley & Austin (Chicago)	800	767	3
6. Mayer, Brown & Platt (Chicago)	732	698	4
7. Latham & Watkins (Los Angeles)	727	705	5[160]
8. White & Case (New York)	680	Unknown	20
9. Gibson Dunn & Crutcher (Los Angeles)	646	630	4
10. Weil Gotshal & Manges (New York)	640	567	5

It is interesting to note that New York firms do not dominate this table. When comparing the figures for firms with the highest numbers of lawyers abroad to those for firms with the most numbers of lawyers based in the US, the rankings remain broadly the same. Baker & MacKenzie and White & Case, fall from the table of the largest 10 firms (perhaps unsurprisingly as they are the most international of the US firms, as judged by the number of foreign offices owned), Weil Gotshal & Manges slips to place 15 whilst the legal advisers to the Big Six accountants of Deloitte & Touche and Ernst and Young join the 'top ten'. The reasons for these differences will be discussed at the end of the chapter.

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[159] Figures from Lee (1997), except for the data in the last column which are from Martindale-Hubbell (1996) and which do not count several offices in the same country.

[160] Figure from Lee 1998.

Table three is drawn from an article in "The Lawyer: Focus" (The Lawyer:1997 VI) and the 1995 Martindale-Hubbell directory and looks at the largest law firms in England and Wales:

Table three - the 10 largest law firms in England and Wales

Name of firm	*Total number of fee-earners world-wide*	*No of foreign offices*
1. Clifford Chance	1,695	19
2. Eversheds	1,227	2
3. Linklaters & Paines	1,016	7
4. Freshfields	965	11
5. Dibb Lupton Alsop	894	3
6. Allen & Overy	875	14
7. Lovell White Durrant	760	8
8. Cameron McKenna	700	6
9. Simmons & Simmons	654	7
10. Wilde Sapte	640	5

This table reveals that the most international (as seen in the numbers of lawyers abroad) US and English firms have similar numbers of lawyers world-wide. However, if the unusual firm of Baker & McKenzie is ignored, the City firms tend to have more foreign offices than most of their US counterparts. The reasons for this will be discussed later, but first these firms, and their solicitors, will be considered in greater detail.

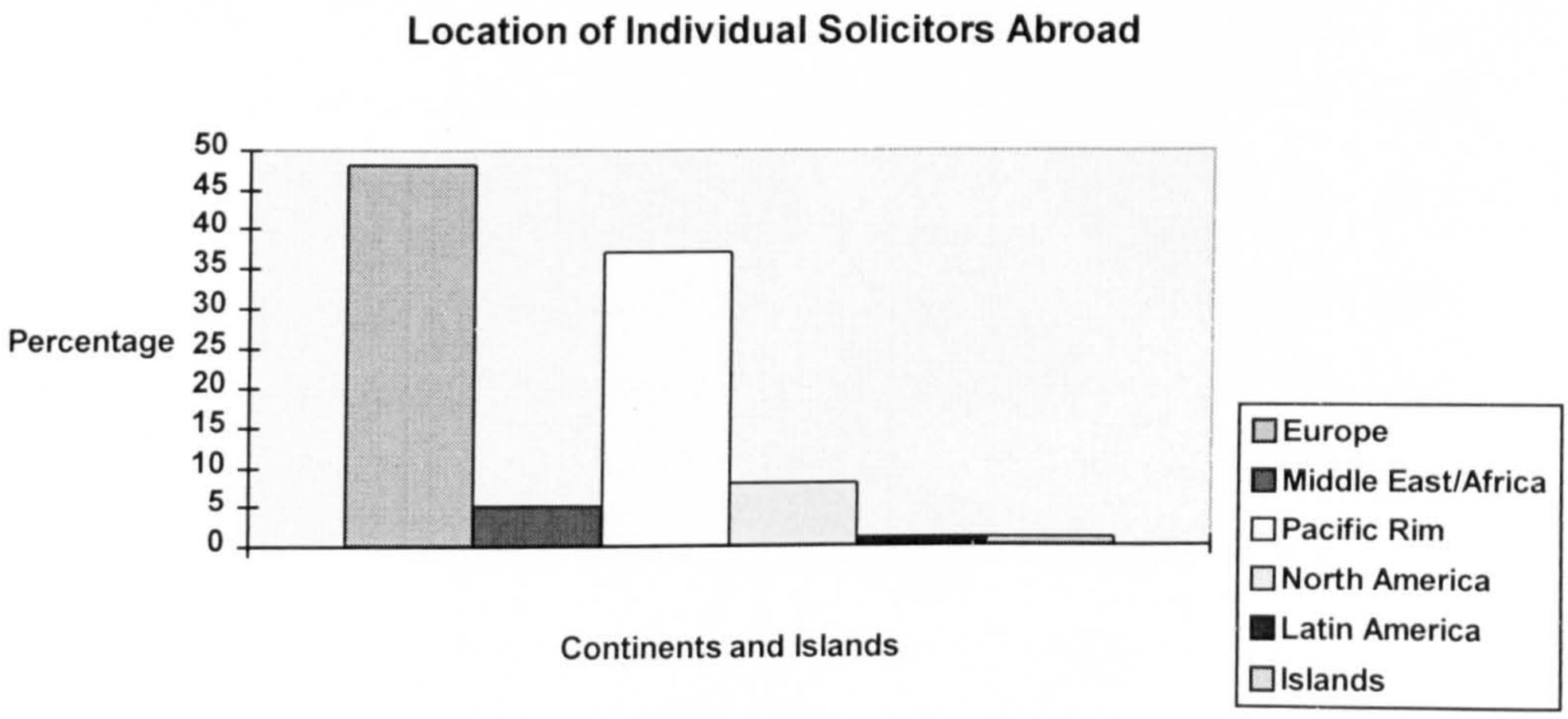
English and Welsh solicitors and law firms overseas - locations and numbers

To consider English and Welsh solicitors working overseas first, at the start of the research the number of individual solicitors overseas was calculated using the 1994 edition of The Law Society Directory. However, these data suffer from the fact that often firms state that they have an office abroad (the assumption being that it is staffed by home solicitors, as this is in the section of the Directory on solicitors overseas) but then the Directory fails to give details of the number of solicitors there. When this happens, the assumption is made that one solicitor works in that office - this may have, unfortunately, skewed these figures.

Table four - the number of English and Welsh solicitors abroad

Continent	*No of solicitors*
Europe (inc. Russia)	680 (48%)
Middle East/Africa	75 (5%)
Far East/Pacific Rim	538 (37%)
North America	120 (8%)
Latin America	12 (1%)
Islands	13 (1%)
Total Number of Solicitors Abroad	1438

To illustrate this graphically:



To put this into some kind of context, there were around 63,000 solicitors who held a practising certificate in 1994. Hence, this figure in itself only represents a fraction of the profession (around 2%). Almost a half of these solicitors stayed close to home, working in Europe.

Perhaps more importantly, information on the foreign offices of English and Welsh firms was also collected, initially using figures from The Law Society Directory of 1994. Then, there were about around 100 firms which had foreign offices. Table five takes 97 firms and looks at how many countries each of these firms had offices in. Thus, the number of foreign offices of firms in each

individual country is not totalled when this is more than one, so that a more accurate idea of the densities of development can be gauged[161].

Table five - the number of countries covered by law firms which have foreign offices

No of countries	*No of firms*
1	53
2	16
3	12
4	3
5	2
6 to 10	10
11 to 15	1
TOTAL	97

In effect, over a half of the law firms with foreign offices were only based in one other country, typically a European country (as will be seen in the next table). However, around 11% have offices in over six countries. These are the few large commercial law firms which have a significant number of overseas offices and the firms in which I had most interest (as was discussed in the methodology).

Table six and the following chart show the location of these foreign offices. The percentage figures are shown so that some indication is given as to the geographical spread of the offices of English and Welsh firms abroad:

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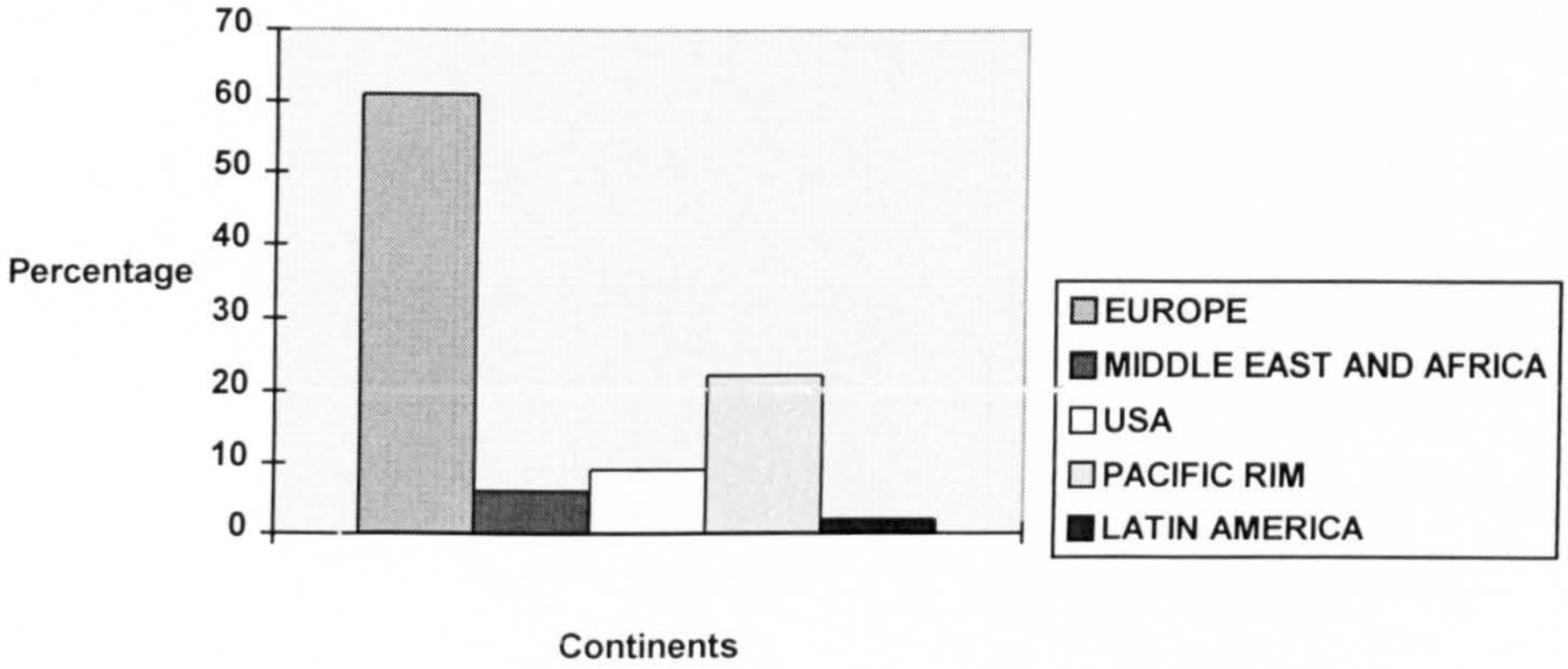
[161] There are, however, several problems with these data. They are more out of date than those found in commercial publications, such as Chambers, and the Law Society class some offices as branch offices whereas other publications state that some firms only have an associated office there.

Table six - the location of foreign offices of English and Welsh firms

Continent	*Percentage no of firms*
Europe (inc. Russia)	61
Middle East and Africa	6
USA	9
Far East/Pacific Rim	22
Latin America	2



As with the location of solicitors overseas, Europe is the most favoured location for law firms. Ties with the Far East are also strong, with only a few firms having offices in other parts of the world. Reasons for this distribution will be considered, once the information on German firms has been analysed.

Data on German law firms and lawyers will now be considered.

German lawyers, law firms and interviewees

Some background information on the German legal profession will be set out first, as this might be the profession British readers know least well.

Background information on the German legal profession

The information in the following tables was drawn from a variety of sources, from articles to directories and even phone calls. The methodology previously

outlined problems encountered in data collection, which were compounded by the fact that little research is undertaken in Germany on the legal profession. The articles by Braun (1993), Blankenburg and Schulz (1995) and Passenberger (1996), however, all used data from official sources, such as bar association records.

The national bar association ("Bundesrechtsanwaltskammer") does not produce a directory of the profession, even though all advocates ("Rechtsanwälte/innen") must belong to their local Rechtsanwaltskammer. It does, however, produce an annual table in its magazine ("BRAK Mitteilungen") which sets out the number of lawyers in the profession. The lawyers' association, the Deutsche Anwaltsverein (of which around 40% of advocates are members), does produce an annual directory. Commercial directories do not exist in Germany as they do in Britain; in fact, the only commercial directory in the German language which I have found and used is written by the British writer John Pritchard, of Legal 500 fame (Pritchard 1997b).

Before the tables are set out, one caveat will be made: it can be very misleading to look at the size of German firms and from that alone to estimate their market strength (for instance, their reputation and profitability). For example, the firm Hengeler Müller Weitzel Wirtz is often considered[162] (along with Bruckhaus Heller Löber) to be the joint top commercial firm in Germany, yet it has less than half the number of lawyers of the largest firm in the nation, Oppenhoff & Rädler. Niche law firms are also neglected by this form of analysis; for example, a Bonn based firm, Flick Gocke Schaumburg, has a particularly strong reputation for tax work, yet there are only 39 lawyers in the firm as a whole and its main office is in Bonn. Hence, it would have been fruitful to have considered other factors such as

[162] See, for instance, Pritchard (1997a:242).

the income of the largest law firms, but this kind of information is not readily available in Germany[163].

The first table in this section provides an overview of how many registered advocates (Rechtsanwälte/innen) there are in what was the former East and West of Germany. It can easily be seen that the vast majority of advocates are to be found in the West of the country. The population of Germany is about 81 million (Buckley 1996:10).

Table seven - the total number of registered advocates in 1990 and 1994[164]

	1990		*1994*	
	No	**%**	**No**	**%**
West Germany	55282	96.5	64938	92
East Germany	1800	3.5	5500	8
Total	57082	100	70438	100

Looking at the profession as a whole, the next table shows the different types of lawyer to be found in Germany:

Table eight - the types of lawyer in 1990[165]

	No	*%*
Judicial office (incl. prosecution)	22400	14
Government service	40000	25
Private employment	41600	26
Practising advocates*	56000	35
Total	160000	100

* As at February 1997[166], there were 8,352 advocates in Frankfurt and 78,822 in the whole of Germany[167].

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[163] Indeed, the lawyers' professional code ("Berufsordnung") forbids lawyers from publicising their profits (Bundesrechtsanwaltskammer 1997:5). Notwithstanding this, Griffith stated in 1992 that profits per partner in the major Frankfurt law firms were believed to be at least £400,000.

[164] Data from Blankenburg and Schulz (1995).

[165] Data from Blankenburg and Schulz (1995).

The gender breakdown of these figures is also interesting. Passenberger (1996) notes that although the number of women in the profession quadrupled in the period from 1973 to 1995, they still account for less than one fifth of the profession (whereas women in Germany make up 41.5% of the labour force). In England and Wales, women account for 33% of solicitors on the Roll (Lewis 1996:6). The next table looks more broadly at the representation of women in the law, to put this in context:

Table nine - the representation of women in the law in 1993 in Germany[168]

	%
Law students	50
Probationary judges	43
Tenured judges	22
Appellate judges	9
Advocates	17.5

The comments of Lash and Urry, noted above, outlined the corporatist assumptions of the German state, which were (1994:150) "not necessarily [in] the interests of women". Women, in fact, are concentrated at the lower rungs of the judiciary (Schulz 1989), although the judiciary tends to be seen as a more flexible career option for those who want children (due to generous maternity rights and so on) than private practice (Hommerich 1988)[169]. In fact, working for a law firm might be seen as a particularly difficult option - because lawyers in Germany only qualify in their late twenties or early thirties[170], this could lead to putting off plans

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[166] Personal correspondence with the Bundesrechtsanwaltskammer.

[167] The number of solicitors with practising certificates in 1996 was 68,037 (with 87,081 being on the Roll) (Lewis 1996).

[168] Data from Blankenburg and Schulz (1995).

[169] The judiciary in Germany is still an attractive career for those concerned with security, independence and social prestige, even if the pay is "quite moderate" (Schack 1991).

[170] The educational system is greatly criticised but the conservative nature of the profession makes change very difficult. Indeed, a recent national meeting of lawyers concluded that the

to have children indefinitely[171]. Schulz (1989) has argued that the culture of the profession itself is hostile to women.

To look more closely at the profession of advocate, the first point to note is that the private practice of law in Germany is not only disproportionately engaged in by men but also by solo practitioners (as around 40%[172] of advocates work in this fashion, once statistics have been adjusted to take account of in-house lawyers - Schulz 1997:59[173]). Schulz does believe, however, that the number of solo practitioners is declining (ibid).

Turning to larger law firms, the next table gives a breakdown of the size of firms in Germany and the number of advocates working there, in 1991. The total number of advocates in Germany at that date was 59,455:

Table ten- partnerships in Germany (as of 1991)[174]

No of partners	*No of firms*	*%*	*No of advocates*	*%*
2-3 partners	6557	82	14943	64
4-9 partners	1329	17	7010	30
10+	91	1	1356	6
Total	7977	100	23309	100

"Einheitsjurist" principle (the principle that all types of lawyer should have a common - judge focused - training) should stay (Bohl 1998).

[171] In the States, Menkel-Meadow (1989) has argued that the women's "peak" child-bearing years (their twenties) clash with those years in which they must work hard to prove they are partnership material. Seron (1996) has also documented the "double shift" that women attorneys in the States work, at home and in the office. The situation may be even more difficult for German women in heterosexual relationships who start work so late in life, particularly in a society where men's contribution to family and household work is "negligible" (see Rerrich 1996:28).

[172] Although Bohlander et al (1996), working on 1994's figures, believe that 45.5% are sole practitioners in the West of the country in contrast to 60% in the former East.

[173] The figure for England and Wales is around 10% (5130 solicitors work in sole practitioner firms - Lewis 1996:35).

[174] Data from Braun (1993).

Hence, only 1% of firms (firms with 2 partners and above) had over 10 partners. They employed just over 2% of the advocates' profession as a whole. Only 5% of supra-local partnerships (that is, partnerships with offices in more than one city) had more than 30 partners (Passenberger and Kaimer 1996). By way of contrast, the figures for England and Wales in 1996 (Lewis 1996:27) were that 415 firms had over 11 partners, totalling 8% of law firms. However, they employed 23,968 solicitors, around 45% of those working in private practice. Thus, the German profession is less stratified than that in England and Wales and also the States (see also Blankenburg and Schulz 1995:109).

Finally, this section will look at the number of German lawyers abroad, their numbers and locations. The following table lists the number of German advocates (Rechtsanwälte/innen) who work abroad, using figures from the 1996/7 DAV (German lawyers' association) directory:

Table eleven - the number of German lawyers abroad

Location	*No of lawyers*	*%*
Europe	315	85
Pacific Rim/ Far East	11	3
Middle East	3	1
Russia	6	1.5
Latin America	6	1.5
North America	31	8
Total	372	100

It is interesting to compare this with table four, which noted the number of English and Welsh solicitors abroad. In that table, the number of solicitors abroad was 1438, almost 4 times the number of German lawyers abroad. As there were 78,456 lawyers in the German advocates' profession in 1996, this means that only 0.5% of German lawyers worked abroad in private law firms in 1996. We saw above that the Law Society reported in 1994 that less than one quarter of a percent of the American legal profession worked in foreign branches (as opposed to the figure of 2% of English solicitors who work abroad).

The distribution of lawyers abroad also contrasts significantly with the English and Welsh picture. 48% of English and Welsh solicitors abroad were in Europe, the figure contrasting sharply with the total of 85% for German lawyers. The percentage proportions of lawyers in the Middle East and the Americas are similar but the strongest difference is the small number of German lawyers in the Far East/Pacific region (538 (37%) of English solicitors based overseas are there). These differences are probably in part due to the more recent expansion of German firms abroad (so they have choosed the security of staying closer to home) and historical factors, such trading patterns, as seen in the connection of Britain with Hong Kong. This will be further discussed once figures for the largest German law firms have been analysed.

Data on the largest law firms in Germany and their foreign offices

The next table provides data on the largest law firms in Germany. It sets out the total number of fee-earners[175] in firms as a whole in Germany together with the number of fee-earners in Frankfurt and the number of foreign offices they have. Germany is a very decentralised country, so these firms tend to have offices in the major commercial and industrial cities of Germany, (many of which were the offices of separate firms which then merged, as will be seen later). The figures in bold and in brackets in the second column are figures for the firms as a whole, world-wide[176]:

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[175] The term "fee-earners" is used to include those firms which employ a small number of accountants or tax advisers. Para-legals, in the Anglo-American sense, are not used in German law firms.

[176] These world-wide figures aim to aid comparison with the next table. I personally contacted the firms to obtain these figures.

Table twelve - the 10 largest law firms in Germany[177]

Name of firm	*Total fee-earners in Germany*[178]	*No fee-earners in Frankfurt*	*No of foreign offices*
1. Oppenhoff and Rädler	252	51	5
2. Pünder, Volhard, Weber & Axster	226 **(240)**	101	6
3. Bruckhaus Westrick Heller Loeber	183 **(270)**	71	6
4. Wessing Berenberg ...	119	15	2
5. Beiten Burkhardt ...	144	15	9
6. Hengeler Müller ...	106	46	4
7. Feddersen Laule ...	108	40	2
8. Boesebeck Droste	151	49	5
9. Gleiss Lutz Hootz Hirsch & Partners	107 **(135)**	23	4
10. Haarmann, Hemmelrath & Partner*	96 **(220)**	16	5

*This firm has set up two new foreign offices in the last 12 months.

Pulling these figures together, the next table shows more clearly the overall size of the group:

Table thirteen - the 10 largest German law firms: no of personnel in Frankfurt offices

Number of fee-earners	*No of firms*	*% No of firms*
10-19	3	30
20-29	1	10
30-39	0	0
40-49	3	30
50-59	1 (Oppenhoff)	10
60-80	1 (Bruckhaus)	10
Over 100	1 (Pünder)	10

[177] Data from Legal 500 (Europe) (Pritchard 1997a), Martindale Hubbell on Frankfurt (1997) and my own enquiries.

[178] Partners are included in these figures.

If tables two and three are referred to, it can be seen that the US and English firms are much larger than the German firms[179], and the City firms (as opposed to the more regionally based firms of Dibb Lupton and Eversheds) are more international (if this is gauged by the number of foreign offices they have). If the largest figure for the German firms is taken from table twelve, that for Bruckhaus which has 270 fee-earners world-wide, then Clifford Chance is still over five times that size.

Table twelve showed the numbers of foreign offices of the German firms. The following tables look a little more closely at those German law firms in Frankfurt which have foreign offices.

These tables are based upon figures in the Martindale-Hubbell directory (1997) and so coverage of the profession will not be comprehensive (as this is an advertising directory, so not all firms in Frankfurt are included[180]) but it does include the most well-known firms. I have made a few amendments to the data, based upon my own investigations:

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[179] Disterer, for instance, notes (1998:39) that when comparing the list of the largest 100 US law firms with German firms, the largest German law firm was only comparable in size to the 100th largest US firm.

[180] I tried to use the DAV directory to list the number of foreign offices of German firms but this did not prove to be particularly successful. There was no way of distinguishing between the listings of foreign firms which employed German lawyers and the overseas offices of German firms. Obviously, I recognised the names of the largest German firms which had offices abroad, but (even after cross referencing all entries with Martindale-Hubbell) it would have been impossibly time-consuming to identify a reliable number of firms (as the DAV directory itself - consisting of almost 2000 pages - lists German law firms in Germany by locality and does not provide an index of law firms).

Table fourteen - the number of foreign offices of selected German firms in Frankfurt[181]

Number of foreign offices	*Number of law firms*
1	12
2	4
3	1
4	3
5	5
6	2
7	0
8	0
9	1
10	0
Total	28

It can be seen that over a third of the firms in Frankfurt which have foreign offices have only one such office.

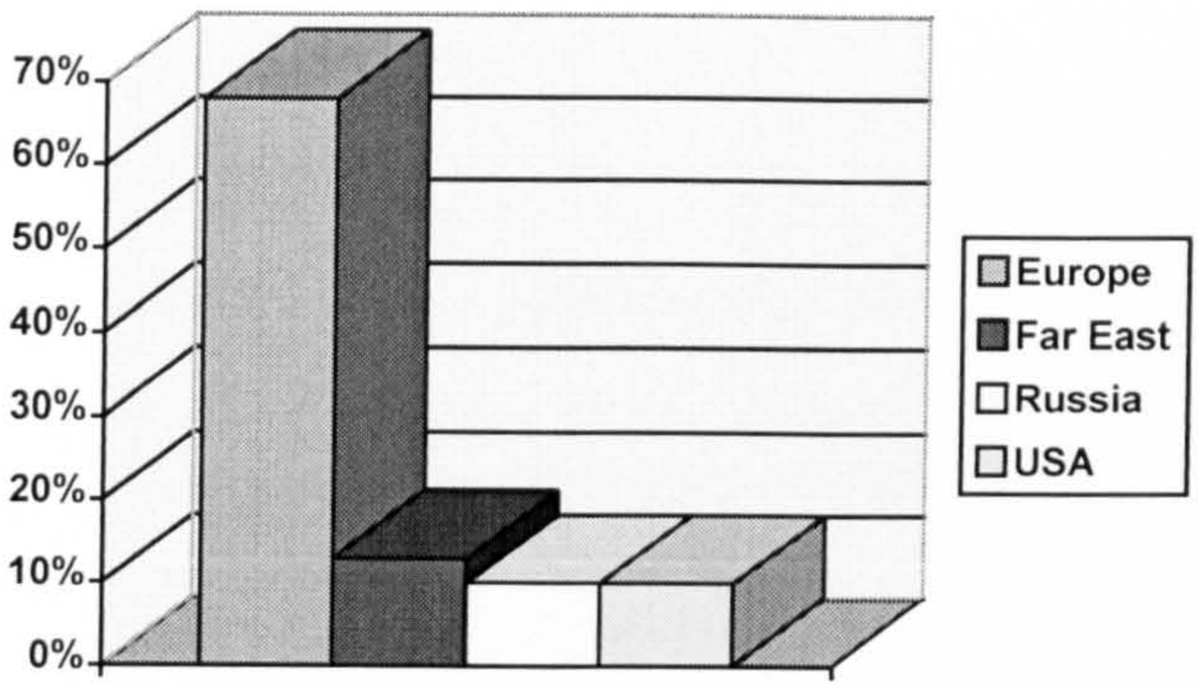
Table fifteen shows the location of these foreign offices:

Table fifteen - the location of foreign offices of German firms (which have offices in Frankfurt)[182]

Location	*Number of offices*	*%*
Europe	49	68
Pacific Rim/Far East	9	13
Russia	7	10
USA	7	10
Total	72	100

[181] I have counted the total number of foreign offices of each firm, as only two of the above firms have more than one office in the same overseas country (such as two offices in Spain).

[182] Source: Martindale-Hubbell (1997) and own amendments.
Again, I have only counted one office in those cases where there is more than one office in one country, to give a more accurate idea of the geographic spread of the firms.



As with the English and Welsh firms seen earlier, Europe is the most popular location for the foreign offices of these firms, although the distribution of the foreign offices of English firms across the globe is more comprehensive than that of the German firms and a higher percentage of the German firms are in Europe.

The locations of the foreign offices of those 12 German firms above which have just one foreign office are as follows:

Table sixteen - the location of foreign offices of Frankfurt firms with one foreign office

Location	*No of firms*	*%*
Brussels	6	50
Milan	2	17
Paris	1	8
Moscow	2	17
US	1	8
Total	12	100

The statistics on the German law firms have shown that their practices differ greatly in size and global spread from the Anglo-American firms. Abel believes that global patterns of distribution can be explained as follows (1994:742):

> "When firms begin to think in international terms, they naturally start expanding within regions defined by history, culture, language, and trade. The global economy has three obvious dimensions: the Pacific Rim, North America and Europe ...

> The colonial experience has left its imprint in the favored position of British lawyers in Hong Kong and American lawyers in Tokyo (some admitted during the Occupation), the pull of Canadian and Australian firms to London, the continuing role of Parisian firms in Francophone Africa, the links between the Iberian countries and Latin America, the Netherlands and Indonesia, the newly unified Germany and Central Europe."

The tables showed that Europe is still the most popular location for the foreign offices of English and German firms. However, this static picture inevitably does not show the areas in which firms have been setting up offices more recently.

Godfrey's analysis (1995:12) of the history of law firm expansion overseas is very useful in this regard. He states that until relatively recent times, the practice of law by a lawyer in a country other than her/his home state was rare. However, the picture began to change in the early sixties, when the first English law firms established themselves in Brussels, in anticipation of Britain's entry to the EC:

> "They were the forerunners of a considerable wave of law firms which set up offices on the European continent, the favourite locations being Brussels and Paris. To some extent, this was linked to the phenomenal growth of English law firms in the seventies and eighties, which led to a need and a capability for expansion overseas. In the course of time, and with the growing size of the leading continental firms, many of them have also become multi-national, at least to the extent of having a Brussels office for their EC practice, and other cities, including London, Frankfurt, Madrid and others, have become well populated with foreign lawyers. Of course, the influx of foreign lawyers has not been limited to lawyers from within the Community; American law firms were in the field at an early stage in many of the major European cities, and have been joined by lawyers from a variety of places, such as Canada, Australia, Sweden etc."

German firms generally opened up foreign offices later than English firms, as will be seen below, although they are particularly strong in Eastern Europe, as Abel suggests. Africa as a continent has as yet remained quite free of international law firms, interviewees stating that the region in general was not stable enough to support sufficient business at present.

The following postscript outlines a little of the history of commercial law firms in Germany, in an attempt to further explain differences between German and Anglo-American practices. It also contextualises the work of foreign firms in Frankfurt, which is discussed later.

Postscript - The growth of German commercial law firms

In 1967, only 5.4% of law firms in (the former west of) Germany had five or more lawyers (Rechtsanwälte). This figure had increased to only 8% by 1987 (Schack 1991). Further, there was no firm with more than nine lawyers in 1967[183] and only 42 were that large by 1985 (Abel 1988a). However, between 1960 and 1994 the number of lawyers in Germany increased almost fourfold, from 18,347 to 70,438 (Blankenburg and Schulz 1995:95)[184]. Hence, Germany saw a great increase in the number of lawyers but the size of firms tended to remain small.

To look at Frankfurt, there were only 60 lawyers practising there in 1945 and most were sole practitioners (Rasor 1998). Of the law firms which did exist, two were two-lawyer firms, one was a three-lawyer firm and one was a four-lawyer firm (Rasor 1998:176). By 1951, the lawyer count in Frankfurt had increased to 440 lawyers (with thirty two-lawyer firms, four three-lawyer firms and one four-lawyer firm). The figures had increased again by 1955, so that 600 lawyers were to be found in Frankfurt, there being sixty two-lawyer firms, thirteen three-lawyer firms and one firm with five lawyers (the rest being sole practitioners) (ibid). To compare the years of 1955 and 1985, the following table (based on figures from Rasor 1998) shows the total number of lawyers (Rechtsanwälte) practising in Frankfurt in those years, together with the total number of lawyers practising in law firms (that is, not as sole practitioners), and the size of firms:

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[183] In England and Wales, it was only after 1967 that partnerships were allowed to have more than 20 partners.

[184] In England and Wales, in 1950 only five firms of English solicitors had 6 or more partners and the largest had 10 (Burrage 1996:69). By 1977, 217 firms had six or more principals and 25 had more than 20 (ibid). Between 1976 and 1996 the solicitors' profession grew over twofold, from roughly 30,000 to 70,000 solicitors (Hanlon 1999:36).

Table seventeen - the size of firms in Frankfurt in 1955 and 1985

	Total no of lawyers	*No of lawyers in law firms*	*No of firms*	*No of 2 - 4 partner firms*	*No of 5 - 11 partner firms*	*No of 15 - 19 partner firms*
1955	600	164	74	73	1	0
1985	2,350	810	247	221	21	5

It is impossible, however, to consider this growth within the framework of historical work on commercial law firms in Germany, as such a body of literature simply does not exist. Nevertheless, there is one account, a chapter in a book written in 1998, by Dr Alexander Rasor of the development of firm in which he and his father were partners. The firm later became (upon merger) Oppenhoff and Rädler. It is hard to know how representative the firm's history is of the very small pool of other law firms which also grew to become large commercial firms in Germany, although the account does raise interesting issues which would merit further investigation. For this reason, this section will set out 'edited highlights' from Rasor's piece, to attempt to give a flavour of the firm's development.

The firm was founded in 1933 and by 1945 had grown to become the largest law firm in Frankfurt (with four lawyers). Rasor notes that the founding members of the firm were involved in politics and lawyers' professional assocations (raising the unanswered question of how prevalent such connections were and whether they helped to develop business). They were also qualified as notaries. As notaries, they drew up the articles of association of companies and by this means came to understand these clients' businesses well (which apparently was an advantage when securing other work from these clients). Rasor himself also showed an interest in international work by spending time in the United States in the early 1950s. In the 1950s, the firms took whatever work the clients brought although they did try to specialise in commercial work and undertook more advisory work than cases which involved going to court. After World War Two, a lot of Mittelstand companies came to the firm with all their legal work. At that time, legal literature in Germany was manageable so it was still possible to be a generalist lawyer.

The development of the federal states and the Bundesrepublik increased the amount and complexity of legislation. In 1967, Dr Oppenhoff (then of a different firm) gave what came to be a very influential speech at the annual lawyers' conference ("Anwaltstag") on the modernisation of lawyering and the importance of specialisation. Specialisation did increase in Rasor's firm from the sixties and seventies onwards (as it did in the UK - see Lee 1992), although professional rules did not allow the advertisement of specialisation. Clients also often had loyalties to certain lawyers and so would insist on their favourite lawyer doing all the work, even if that lawyer was not a specialist in the particular area in question.

The firm was unusual in that, by the 1950s, it had several members of staff who acted as office managers. Partners decided issues by unanimous votes at weekly meetings. Office hours then (from 1945 to 1955) were from 8 - 12.30pm and 3 - 6.30pm on Mondays to Fridays and from 8 to 12.30pm on Saturdays[185]. Rasor believes that this efficient management structure enabled the firm to grow and also notes that most German law firms were very badly managed.

The firm remained small, however, until it merged with Oppenhoff's Cologne firm in the late 1980s. Yet, by 1993, all the largest firms in Germany had offices in Frankfurt. The small size of the law firms described above makes all the more remarkable the speed at which many commercial law firms in Germany have grown over the last decade.

The following table charts this growth in the early nineties and also gives some idea of the extent of law firm merger activity seen recently. It can be usefully compared with table twelve which gives the figures for 1997:

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[185] It will be seen in chapter four that lawyers in the largest German firms today work longer hours - which leads us back to Harvey's (1989) work on time-space compression.

Table eighteen - the size of the largest German firms in 1989 and 1993[186]

Name of firm	*Total no fee-earners in Germany 1993*	*Total no of fee-earners in Germany 1989*
1. Boden Oppenhoff Rasor & Raue	92	41
2. Rädler Raupach Bezzenberger	117	35
3. Pünder Volhard Weber & Axter	105	30
4. Bruckhaus Westrick Stegemann	126	75 (3 firms)
5. Wessing Berenberg ...	90	24
6. Beiten Burkhardt ...	87	Not known
7. Hengeler Mueller Weitzel Wirtz	68	43 (2 firms)
8. Feddersen Laule ...	99	44 (2 firms)
9. Boesebeck Barz & Partner	40	Not known
10. Droste Killius Triebel	75	Not known
11. Gleiss Lutz Hootz Hirsch & Ptr	80	27
12. Haarmann, Hemmelrath & Ptr	75	Not known

Many of the largest law firms in Germany have more than tripled in size in the past decade. Much of this growth was achieved by supra-local mergers, which only became possible, ultimately following a decision by the Federal Court, in 1989[187] (Manz and MacGregor 1996:163). Prior to that, supra-local practices (and foreign offices) were not thought to be permissible, due to the principle of localisation (whereby lawyers are admitted only to one court which they can appear before[188]).

The marketisation and privatisation of the former GDR economy also acted as an incentive for West German corporate law firms to set up offices[189] in the GDR[190].

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[186] Figures from the 1993 edition of the International Financial Law Review 1000 Directory (1993), Rogowski (1995) and Abel (1994:846).

[187] This follows the trend in Germany to liberalise the regulation governing the legal profession. As Rogowski notes (1995:114): "The recent reforms of legal services, which are the result of European legal harmonization as well as national legislative, judicial and professional efforts, have led to the relaxation of the strict professional rules concerning the organization of the law firm and the specialization of lawyers. These reforms enabled German corporate law firms to achieve strategic advantages within the German legal profession."

[188] The date set for the final repeal of this principle is 2004 (Bohlander et al 1996).

[189] A few West German firms had also set up in the East towards the end of the old regime, under GDR government issued licences. The (former) London firm of Frere Cholmeley was the only

The East offered a green-field site upon the proverbial doorstep of these firms, which opened offices (mainly in Berlin, Leipzig and Dresden) often to find new clients. As one lawyer said (in a manner which might encourage market control theorists):

> "We set up there less for existing clients but more because we hoped to find new clients there."[191]

Other factors behind expansion were that many of these law firms began to specialise more than ever before and they needed to be able to field larger numbers of lawyers in large scale transaction work, such as M&A work (Rogowski 1995). M&A work has also continued to accelerate apace recently (Fisher 1998 and Böhmert 1998), which is at least in part a reflection of the restructuring of industry, as medium companies are sold to conglomerates[192]. In fact, one lawyer interviewed estimated that half of the firm's workload came from M&A cases. Moreover, as Hoult and Lindsay note (1998b), M&A work is a key source of revenue and prestige for firms with global ambitions. All the law firms visited were very heavily engaged in transactional work[193]. A German partner summed up the situation as follows:

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non-German firm which opened in the former GDR in the days prior to unification (Campbell 1991).

[190] Scheifele (1994) notes that when the Berlin Wall came down, there were only about 600 lawyers in the entire former GDR, although the population was about 15 million (there being then about 50,000 lawyers to the population of around 60 million in the West). Hence, it was an "opportune region" for the West German lawyers.

[191] This West German presence in the former East leads Markovits to state that (1996:2307): "At present, legal business in the former GDR seems to be distributed in line with the pre-*Wende* structural differences between the two legal systems: personal matters, like family or labor law disputes, tend to go to East German attorneys, moderate-size financial disputes go to both East and West German lawyers, and the big, complex, and financially rewarding litigation is handled by West German law firms or by their East German branch offices."

[192] Although the global market meltdown in 1998 significantly affected this work - see Hiday 1998.

[193] A German interviewee gave another reason for the growth of firms, that of client perceptions: "One reason why we merged was that we needed to secure an image. If we were at a beauty parade, for instance, we would be competing with the largest German firms. A client picking our (smaller) firm would have to justify the choice of a smaller firm." Clearly, it is not only lawyers who are forcing the pace of change (contrary to the logic of the market control thesis), a point returned to in the chapter on the future of international work.

> "Transactions require that many more lawyers are thrown on a job, as it were, but before that growth was not possible but now it is[194], so that's what people are doing now."

However, not all firms have grown in this way and one explanation is that of culture for, as Rogowski notes (1995:120):

> "Law firms which are not able to grow and to transform their internal organisation according to needs of flexible specialization have recently lost their status as corporate law firms. Reasons were that their firm philosophy was, for example, dominated by the idiosyncratic interests of their founding patriarchs, and that they were thus losing out in the M&A business and then dropping rapidly from the expensive club of corporate law firms."

Several interviewees also told me that the threat of competition from international firms (both within and beyond Germany) had spurred the growth of their firms[195], as will be seen later[196].

This ends the discussion of the German firms for the time being. Now the phenomenon of foreign firms in London and Frankfurt will be analysed.

Foreign law firms in London

This section will give some idea of the size and nationality of foreign law firms in London, to contextualise the later discussion in case study one of US lawyers in London.

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[194] A reference to the allowing of supra-regional firms in Germany.

[195] Corporate German law firms do much work for clients who are not German based and owned. In my interviews, I found that, on average, about 40% of their work was for such clients. This compares with about 50% for the City firms (London Economics Ltd 1995).

[196] One partner in a German law firm (Knopf Tulloch & Partner, which formed an exclusive link up with S J Berwin & Co in 1998) stated that: "The purpose of a lot of the domestic mergers was to gain size so as to be able to look the UK firms in the eye and merge as equals" (quoted in Rice 1998b).

Initial surveys of data in 1994 found that over a half of the foreign lawyers in England and Wales were US lawyers. As there are no formal registration requirements for foreign lawyers when setting up there (at present), information on these lawyers was not obtained from an 'official' source such as the Law Society. Consequently, table nineteen gives a breakdown of information from several commercial publications[197].

Table nineteen- the origin of foreign law firms in London

Continent	*No of firms*	*No of firms*
	Chambers	**Kimes/Butterworths**
Europe (inc. Russia)	32 (29%)	33 (31%)
Middle East/Africa	5 (5%)	4 (4%)
North America	58 (52%)	57 (54%)
Far East/Pacific Rim	7 (6%)	7 (7%)
Latin America	9 (8%)	5 (5%)
Total No of Firms	111	106

I was interested in the figure that around a half of the foreign firms in London were from North America, (according to Chambers, 52 firms were from the US and six firms from Canada), so this was analysed further. Table twenty shows the number of personnel in the 44 US firms in London, found in Chambers, for which such information was given[198]. This is also compared with figures given in an article of The Lawyer (26 July, 1994:16), to highlight the variability of statistics in this area. The Law Society's own estimates in 1994 were that there were around 70 US firms in London and 500 individual US lawyers[199].

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[197] The information comes from the Chambers 1994/5 Directory and a joint analysis of the Kimes 1992/3 Directory and Butterworth's 1993 Directory, as it was possible to compare their data easily.

[198] Thus, figures for eight US firms were not given.

[199] Personal correspondence.

Table twenty - the composition of US law firms in London in 1994

No of lawyers	*No of firms*	*No of firms*
	Chambers	**The Lawyer**
1	9 (20%)	1 (3%)
2 to 5	22 (50%)	15 (46%)
6 to 10	9 (20%)	6 (18%)
11 to 15	4 (10%)	6 (18%)
16 to 20	0	2 (6%)
21 to 25	0	2 (6%)
26 to 29	0	1 (3%)
Total No of Firms	44	33

As an aside, it is also interesting to note that there are far more US lawyers in London than English and Welsh solicitors in the States.

Similar data on foreign law firms in Frankfurt will next be analysed.

Foreign law firms in Frankfurt

Frankfurt tends to be the place where foreign law firms set up their offices in Germany (as previously discussed), although a few offices are also to be found in centres such as Düsseldorf, Berlin, Cologne and Munich. These firms are overwhelmingly from the UK and the USA.

The arrival of Anglo-American law firms in Frankfurt began in the late eighties and has continued throughout the nineties, although some offices opened and then closed. Table twenty-one shows the number, origin and composition of foreign firms in Frankfurt. The figures in brackets in the third column indicate the number of lawyers who are German qualified within these offices:

Table twenty-one - the names, nationalities and composition of foreign law firms in Frankfurt[200]

Name	*Origin*	*Total no of lawyers*
Allen & Overy	UK	20
Ashurst Morris Crisp	UK	6 (3)
Cleary Gottlieb Steen & Hamilton	US	21 (15)
Clifford Chance*	UK	45
Curtis Mallet-Prevost, Colt & Mosle	US	4 (2)
Davis Polk & Wardwell	US	4 (0)
[Baker & McKenzie[201]	US	55]
Faegre & Benson	US	5 (1)
Freshfields	UK	14 (12)
Jones, Day, Reavis & Pogue	US	25 (18)
Kenyon & Kenyon	US	3 (0)
Linklaters & Schön[202]	UK	10
Mannheimer Swartling	Swedish[203]	6
Morgan Lewis & Bockius	US	16
Osborne Clarke[204]	UK	2 (0)
Pritchard Engelfield	UK	Not known
Rogers & Wells	US	9 (8)
Shearman & Sterling**	US	9 (6)
Skadden Arps.	US	2 (0)
Sullivan & Cromwell	US	6 (1)
Wilkinson Barker.	US	3 (0)
Total	20 (21)	204

*Clifford Chance is growing rapidly, so these figures are out of date.

** Shearman & Sterling also has a Düsseldorf office, as does Clifford Chance.

To my knowledge, there are only two women partners in the above firms.

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[200] Source: Martindale-Hubbell (1997), the European Legal 500 and my own amendments.

[201] Otherwise known as Doeser Amereller Noack, this office is treated as a German firm by most observers, so I have not included its figures in the totals.

[202] Linklaters has now split with Schön Nolte and has formed an alliance with Oppenhoff and Rädler.

[203] It is interesting to see that there is only one foreign law firm which is not from Britain or the States.

[204] This office is now associated with a German firm.

I have estimated the number of English solicitors in Frankfurt to be around 20, with around 40 US national lawyers in US law firm offices there.

The next table condenses this information, so that some comparisons regarding the respective sizes of foreign firms and German national firms in the city can be made:

Table twenty-two - the number of lawyers in the foreign offices of overseas law firms in Frankfurt[205]

No of lawyers	*No of firms*	*%*
1	0	0
2 to 4	6	31.5
5 to 9	6	31.5
10 to 14	2	11
15 to 19	1	5
20 to 29	3	16
40 to 49	1	5
Total	19	100

It can be seen, once these figures are compared with the earlier tables on German firms, that these offices are smaller than the largest German law firm offices in Frankfurt, (although the foreign firms obviously have the back up of their offices back 'home' and/or world-wide). Only Clifford Chance has over 40 lawyers in Frankfurt, whereas six out of the ten largest German firms' Frankfurt offices have over 40 lawyers. These data will be referred to again in case study two, when intraprofessional competition between German national firms and foreign firms in Frankfurt is considered.

To very briefly sum up, we have seen that the largest German firms tend to be much smaller than the largest law firms from England and the States (although

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[205] Data from Martindale-Hubbell 1997 and my own amendments.

their Frankfurt offices are larger) and have fewer foreign offices. The City firms tend to have the largest number of foreign offices.

The lawyers and firms interviewed are the subject of the next section.

Interviewees and their firms

US law firms in London and the US interviewee firms

Pritchard (1994:C3) outlines the types of work undertaken by US firms in London. He states that:

> "The US firms in London fall into several main types, according to the services they have chosen to offer from their London offices: some firms, such as *Sidley and Austin*, offer US legal advice only to American and European corporate clients. In contrast, there are firms like *Coudert Brothers* and *Baker and McKenzie* that recruit locally with a view to competing with the City firms and their local (London) offices are now viewed as UK firms ... In addition, there are the major US firms such as *Shearman & Sterling* and *Cleary Gottlieb Steen & Hamilton* which are heavily involved in stateless financial transactions such as capital markets work, and which successfully compete locally for work. Finally, there are a number of US firms with general practices doing a wide range of work ...
> However, the foreign scene in London is changing with the major US firms increasingly adopting new strategies for their London operations to help them compete with the traditional City practices for top-end work." (italics in original)

My sample was pitched to gain access to those involved in corporate and financial work and all the firms visited were engaged in those areas, albeit with their own specialisms. Several were 'Wall Street' firms and so were heavily involved in capital markets work and finance. Some others were more broadly based and took on a wider range of commercial work. Only two firms dealt to any significant degree with private client work and this was for wealthy individuals[206], in matters such as tax planning. However, some lawyers pointed out that the work can vary significantly from year to year within these categories.

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[206] 'High net worth' individuals, or 'high nets' as they are commonly called.

The development of these offices will be examined in the first case study, towards the end of this chapter.

When generalising about clients, one perennial problem in this area is how to define the status of clients when they are corporate entities located all over the world, as seen before when the difficulty of defining 'international work' was discussed. Suffice it to say a large proportion of the clients of these US firms have a significant geographical spread. A typical figure given by the interviewees for the firm's client-base was that around 50% of clients had a UK base.

The US firms visited tended to have been established in London offices from the 1970s onwards. The average number of lawyers in each London office was sixteen and the typical number of partners was four. Some had English qualified lawyers in their London offices (the number varying from two to eight) and others did not. Within the firms world-wide, the total number of lawyers ranged from 400 to 750, and the total number of partners ranged from 100 to 250.

Every firm had several foreign offices, although the number and location varied. For instance, the Wall Street firms unsurprisingly clustered around the major financial centres of the world whereas those with a broader practice could be found in other locations.

US interviewees in London

All except one of the lawyers interviewed had been partners for several years, on average 10 years, and some had been in London for longer than that. Most were qualified at the New York Bar.

I checked the biographies of the lawyers interviewed in Martindale Hubbell prior to interviewing them and found that they had all attended noteworthy academic establishments[207] in their home country.

English interviewee law firms in London

The English firms visited were almost wholly engaged in commercial work. To categorise the work of these firms further, the research of Lewis and Keegan (1997:7) will be used. They state that the largest law firms are broadly engaged in three areas of activity - corporate/commercial, property and litigation[208] - with departmental titles encompassing the following types of work[209]:

> "* property: sales and leasing of commercial property, property finance, property development, environmental law, town and country planning
> * litigation: arbitration, alternative dispute resolution, tort claims, defamation, litigation within specific areas of practice (eg banking, employment, insurance)
> * corporate: joint ventures, mergers and acquisitions, corporate reorganisations, management buyouts
> * tax: corporate tax (and personal tax planning where no private client department)
> * employment/pensions: pension implications of mergers and acquisitions, establishment and maintenance of pension schemes, contracts of employment, immigration advice
> * intellectual property: patents, copyright, confidentiality
> * banking/project finance: bank lending, debt rescheduling, project finance, securitisation, aircraft and ship finance
> * international capital markets, equity issues, money raising
> * private client: family law, probate, tax planning, trusts[210]."

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[207] Heinz and Laumann (1994:10) distinguish between US law schools in terms of their standing - their "elite" category comprises Chicago, Columbia, Harvard, Michigan, Stanford, and Yale Universities whereas their "prestige" category includes Northwestern, Georgetown, Wisconsin. Virginia, Pennsylvannia and New York Universities.

[208] It must be borne in mind that élite lawyers do not spend much time in court (Flood 1991:48). At least 70% of all civil cases in Germany do not go to court (Schack 1991).

[209] The list is further broken down at pages 12 to 14 of the report.

[210] However, they note that private client work is not undertaken by all firms and formed a very small proportion of the work of those firms which do continue to practise in this area.

Five of the eight firms visited had over six wholly owned foreign offices, one firm had no such offices but had strong associations with firms overseas[211], another had a couple of small offices and belonged to a network (a provincial firm) and the last firm had a number of associated and joint venture offices.

The number of lawyers in the firms ranged from just over 200 to around 1300, and the number of partners varied from around 60 to 270.

As might have been divined from the differences in the organisational structures of these firms, their client bases varied significantly. Those which had over six foreign offices (the largest City firms) typically said that around 50% of their business was sourced outside the UK[212]. For other firms, this figure varied from around 5% of the firm's total business, but others felt unable to give an accurate estimate.

English interviewees in London

All the solicitors interviewed were partners of several years standing. This varied from around 10 to 20 years. All were, or had been, commercial lawyers - a couple spent their time now wholly engaged in managerial work. Two of the solicitors had worked in an overseas office, for three to four years, and two others regularly visited their firms' foreign offices as part of their managerial responsibilities.

It was less easy to find information on the educational backgrounds of these solicitors in advance of the interviews as directories often did not state where they were educated. I decided not to ask about this at the interviews as I was more concerned to focus on the interviewees' firms in the limited time available.

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[211] This was a firm I visited to 'try out' the interview schedule.

[212] Confirming the estimate in the London Business School publication (1994) that 50% of the business of the largest English law firms comes from outside the UK.

It will be remembered, however, that Dezalay (1995) did argue that lawyers from countries other than the States go there to be educated to further their international aspirations and that these students are from highly privileged socio-economic backgrounds[213]. Nevertheless, it would have been useful had he distinguished between the different nationalities involved and the education different types of international work might require. Indeed (and as has been seen the section in the literature review which discussed the definition of international work), international work can cover both work carried out by lawyers located in their home state or by those working overseas. Are different skills or educational requirements required for different types of work?

To consider first what might be required of would-be lawyers hoping to work for large UK and US commercial law firms *per se*, social class does significantly influence education[214] and recruitment[215] to the 'upper reaches' of the profession although, as Dezalay also argues (1993), the Cravathist mode of production of law in the large law firms stress meritocratic criteria and academic performance in law school.

However, King et al (1990) have shown how Oxbridge graduates are heavily overrepresented amongst those entering articles in large firms. Oxford and Cambridge still recruit proportionately more students from private schools and privileged socio-economic backgrounds than any other university (Major 1998

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[213] Following Bourdieu (1973), the education system's function is to reproduce the hegemonic culture of the most privileged classes, thus helping to assure their continued power.

[214] Students entering old universities are twice as likely to have come from middle or upper-class families as those starting at the former polytechnics (the 'new' universities) (Major 1999).

My own work on Access courses, the one example of affirmative action in entry to higher education in the UK, reported the failure of these programmes to recruit students from 'manual' classes and ethnic minorities (Lace 1996).

[215] Recent work by the Law Society in Britain (reported by Sherr and Webley 1997:113) has suggested that the social class of an applicant significantly affects her/his chances of obtaining a training place ("articles") in a law firm. Work in the States also reports the significance of class when accounting for the distribution of lawyers in different forms of legal practice (see, for instance, Heinz and Laumann 1994).

and 1999[216]). More recently, Shiner (1997:viii) demonstrated that trainee solicitors "who had graduated in law from Oxbridge were 16 times as likely to be doing a training contract in a City of London commercial firm as those who had graduated in law from a new university". Even when academic performance and levels of interest in various types of firm were taken into account, trainees who had graduated from Oxbridge were more likely than their equivalents from other types of institution to be working in a City firm or a large provincial firm (ibid). City firms pay the highest salaries (ibid:ix).

Nevertheless, the large English law firms do not as yet require from national entrants the international education that *some*[217] larger continental law firms do. This then leaves open the question of what qualities law firms look for in those working abroad. This issue will be considered later in the chapter when the skills of an international lawyer are discussed.

German interviewee law firms in Frankfurt

As has been seen before, my sample was pitched to gain access to those German firms in Frankfurt which had foreign offices. The smallest firm visited had a total of 40 lawyers working for the firm world-wide whereas the largest firm had over 250 lawyers in the whole firm. The average number of lawyers in a firm was 130. The number of partners in firms ranged from 16 to 103, the average number being 50 (the average partner to assistant lawyer leverage ratio being 1:2.5). Hence, the firms tended to be much smaller than those visited in London. The number of foreign offices owned by the firms was set out in the methodology.

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[216] Access to the élite education of Oxbridge has long been under attack, the most recent research (reported by Major 1998) revealing that half of all independent school students attaining three A grades at A level in 1993 went to Oxbridge as opposed to just under a third of those with the same grades from state schools.

[217] For instance, large German firms look for UK/US LLMs (see Rogowski 1995 and my empirical research in the next chapter) but Dutch firms do not (Shapland 1996).

The typical types of work these firms as a whole do are shown in the following (non-exclusive) list:

- Company and commercial
- Banking and finance
- Mergers and acquisitions
- Commercial property and construction
- Intellectual property
- Media and entertainment
- International and national anti-trust
- IT and telecommunications
- Tax
- Administrative and environment
- Labour and employment
- Litigation[218] and arbitration

Interviewees were asked what types of work were most important to the Frankfurt office. M&A and banking and finance were the most common responses, the work being primarily transaction-based. As Rogowski noted (1995:120), M&A cases are very lucrative for these firms, the largest German law firms estimating that they constituted 20 to 30 % of their turnover.

The work of the offices of the firm in different German cities did vary. Stuttgart generally did work for Mittelstand companies whilst Hamburg was strong on corporate, media, trade mark and unfair competition. Berlin was important during the first half of the nineties (but less so now) for privatisations, in addition to being a gateway to Eastern Europe and a centre for property work and some anti-trust business. Other offices in the former East of Germany served business

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[218] Litigation is dealt with somewhat differently in German firms as opposed to large Anglo-Saxon law firms. As Pritchard notes (1997a:266), lawyers who advise their lawyers in a particular case will often represent them before a court, so there are fewer litigation specialists within firms.

in the Neuer Länder (the newly formed regions). Düsseldorf was said to focus on industry and international business whilst Munich offices had a varied workload.

Pro bono work was not widespread; as one German partner put it:

> "This [pro bono] is not known in Germany - the high taxes we pay are our contribution to society."

Another was similarly blunt:

> "The only work we do for free is when our clients go bankrupt."

However, a couple of lawyers did mention that they took on such work on a case by case basis, although they had no established programme to channel this work. This might mean taking on work for what they considered to be a nominal fee, mostly in relation to work for cultural or public bodies. Only one lawyer mentioned ever having worked pro bono for an individual. Notions of culture and professionalism held in these firms will be discussed towards the end of the chapter.

The clientele of the interviewee firms was overwhelmingly corporate; most rarely undertook work for individuals and then these would be wealthy clients. The exception to this was the smallest firm visited; private clients brought in around 25% of its work.

The firms worked for German medium and large companies, although the ratio between the two types of client varied (with law firms whose main base was in Stuttgart tending to do more work for Mittelstand companies).

All the firms worked to some extent for non-German clients, the proportion of their work for such international clients ranging from 20% to 90%. The average figure was 50% (the same figure was seen during the British stage of the research, although the range of figures here is broader). Those undertaking most work for foreign clients often referred to their firm having a long history of international

connections, or stressed that their firm had always taken this type of work seriously. This leads us back to Nelson's (1988) discussion of the development and reproduction of culture (from the founders onwards) in law firms.

German interviewees in Frankfurt

Of the German lawyers interviewed, only one was an associate (that is, an assistant lawyer). Five of the fourteen partners interviewed had been partners for over ten years, three had been partners from five to nine years, and six had been partners for less than four years. Of course, as has been seen, German lawyers start work in their late twenties and early thirties, so one might expect these lawyers to have been in practice for shorter periods of time than their Anglo-Saxon contempories. The youngest partner interviewed was thirty two years old and the oldest was sixty-five (their average age being 43 years old).

To consider again the issue of the education and class of these lawyers, it is difficult to deduce a student's socio-economic background in Germany from the name of the university s/he attended. As Berends (1992) notes, in civil law countries in Northern Europe, law faculties have more or less the same quality levels and the costs of study are low[219], so the less wealthy are less disadvantaged[220]. Moreover, class structures in different European countries vary greatly, although we have seen that Blankenburg and Schulz (1995) stated that most German law students come from middle-class backgrounds.

Whilst the profession of Rechtsanwalt/Rechtsanwältin does attract a range of people (from "some of the brightest people" to "many others with sparse

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[219] At undergraduate level, almost 80% of German students finance their studies themselves; there are no undergraduate student loan schemes and grants and scholarships are quite rare, although there are few tuition fees (Bierwirth 1998). Today, more than 60% of students in Germany work and study.

[220] Nevertheless, Reisinger and Davies (1994:16) note that between 1982 and 1991 in the former West of Germany, the proportion of students from "lower" and "middle" social class backgrounds in higher education fell from 57% (23% and 34% respectively) to 43% (15% and 28% respectively) although interpretation of this is problematic.

qualifications who did not find any other job" - Schack 1991), the empirical work will show that large German law firms do look for recruits who have studied abroad, preferably in the States. Many of the lawyers interviewed had studied or worked abroad, usually in the States. Does this mean that Dezalay is right when he states that such an education ensures that international careers are thus preserved for an élite[221]? Before drawing such a conclusion, it should be noted that several foundations in Germany provide international scholarships to academic high achievers for study at graduate level. It would be useful to know how extensive such funding is, effectively who provides what and to whom. Further, students can work overseas whilst completing their legal training (which is paid for by the government)[222]. It would be helpful to know how many gain international experience in this way and what their backgrounds are. This discussion will be picked up again when the issue of doctorates is later raised.

US law firms in Frankfurt and the interviewee firms

The foreign firms visited arrived in Frankfurt in the period from 1989 to 1997, the first cluster arriving 1989 to 1991, then the second main tranche arriving in 1993 and 1994.

Pritchard stated (on the "Legalease" website at www.legalease.co.uk), basing his analysis upon data from 1995, that banking and finance is the main area in which foreign firms with a presence in Frankfurt have been able to make their mark on the German market place. In the 1997 (hard copy) edition of the European Legal 500, however, he noted that (1997a:239) some foreign firms "have made some sort of a breakthrough in the German domestic market" with predominantly

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[221] Both Rogowski (1994) and Blankenburg and Schulz (1995) have noted that the largest law firms in Germany tend to attract "ambitious young men". Blankenburg and Schulz (1995:115) pose the question of whether this development (and the increased number of women joining the judiciary) is causing the judiciary's status to decline.

[222] However, graduate placement services are uncommon, so presumably those with the relevant cultural capital to understand the job market are at an advantage in attaining posts (such as practical work placements and jobs - most German law students find these through personal contacts or adverts in a lawyers' weekly, the NJW - Neue Juristische Wochenschrift).

German legal teams and now see themselves as "bona fide German firms, albeit with good international contacts". This will be considered further in the second case study but first some general information on the foreign firms visited in Germany will be given.

The US firms visited varied in size from the very small (one firm had only three lawyers working there) to larger concerns (one firm had over twenty lawyers). The average number of lawyers in these firms was, however, 10. Firms had from one to five partners, the average being three (and the average leverage ratio being 1:3).

Whilst two firms interviewed were niche firms, specialising in one area of practice only, the other firms undertook a greater variety of work. All worked in the field of M&A and corporate law more generally albeit with their own specialisms. One firm, for instance, was strong on investment funds and leasing, another did a large amount of capital markets work and a large part of another firm's work concerned distributorship contracts. Pro bono work was rare (although their offices in the States might have a pro bono programme), bearing out Abel's work (1994), to be seen in the second literature review. One firm had once undertaken pro bono work (for a friend of a partner). Another did pro bono work assisting its home state in the US in its dealings with Germany.

As might be expected from the differences in work undertaken, the client bases of these firms were very different (although private client work was rare). One firm worked almost exclusively for very large US and German corporations (50% of its work was for each type), whereas another worked predominantly for German Mittelstand companies. Another firm worked mostly for US companies doing business in Germany whereas one firm did US work for large German companies. 90% of the work of another firm was for the German Mittelstand subsidiaries of US companies whereas the final interviewee was unable to break down the firm's sources of work.

US law firm interviewees in Frankfurt

Of the lawyers interviewed in US firms, three were associates and five were partners. The oldest partner interviewed was forty-nine years old, whereas the youngest was thirty-seven (the average age being forty-three, the same figure as for the German interviewees). The average length of time spent as partner ranged from two months to eight years, the average being six years. This somewhat shorter average length of time spent as partner (in comparison to the German partners) can be partly accounted for by the fact that all except one of these partners had been recruited in Germany, and had worked for other law or accountancy firms before.

As regards the educational backgrounds of the interviewees, three of the five German lawyers interviewed had either worked or studied in the US (the other two had worked and studied overseas although not in the States) whilst the US lawyers had attended élite or prestigious (following Heinz and Laumann's (1994) classification) universities in the States.

UK law firms in Frankfurt and the interviewee firms

Again, these offices varied in size, with three of the five firms having fewer than 10 lawyers and only one firm employing over 20 lawyers. Firms had from one to 17 partners (the average leverage ratio being 1:3.5).

These firms were predominantly engaged in M&A and capital markets work, although one office primarily served German clients requiring English legal advice (and so work such as litigation would often be sent to the English offices of the firm) and another also had additional practice groups in IT and media law. Pro bono work was again rare.

The client bases of these firms also varied considerably although work for private clients was not significant. As mentioned above, one firm focused on English

legal advice for German companies, whereas another dealt almost exclusively in advice on German law for predominantly German clients, but also for companies from the UK, France and the US. German legal advice was also offered by the other firms. Two firms had clients from the UK, USA and other European countries, with one of those firms also serving German companies. The final interviewee said that his firm's clients were of different nationalities depending upon the type of work undertaken. For instance, 50% of their banking clients were German but on the corporate side their strength was in inward investment together with work for the German subsidiaries of international companies (which were mostly from the UK and Europe). The sheer diversity of work undertaken here underlines the difficulty of defining what exactly is international work, as discussed in the previous chapter.

UK law firm interviewees in Frankfurt

Five of the six interviewees in these firms were partners, with from one to eight years' experience as partner (with three years as partner being the average). The ages of these partners clustered around the mid to late thirties, and so they were slightly younger (on average) than the US and German interviewee groups.

All but two of the interviewees were British, and were English qualified solicitors (and partners). I was only able to find out about the education of one of these solicitors, who had been to a red brick university. The German lawyers had studied abroad (although not in the States).

Prior to examining the substance of what the interviewees themselves said, the next two sections briefly discuss the language of interviewees and their offices.

A note on the language of interviewees

The literature review's section on culture noted that the language used in organisations is part of organisational culture. Gherardi argues that business jargon is dominated by an archetypal masculinity (1995:11):

> "Thus business reverberates with the great male saga of conquest (of new markets) and of campaigns (to launch new products)."

In the interviews, I found examples of such usage of the English language. Business lawyers' jargon is often couched in terms of sexual conquest. For instance, merging with another firm is termed "getting into bed with someone" and interesting new legal developments are "sexy". Interviewees rarely referred to other lawyers (and never clients) as being female. The impression created was of the dominance of macho 'norms'[223].

Terminology can also be used from games, M&A work providing numerous examples of this. Dennis Levine, a former Wall Street trader (who was imprisoned for insider trading) noted (quoted in Korten 1995:210):

> "When a company was identified as an acquisition target, we declared that it was "in play." We designated the playing pieces and strategies in whimsical terms: white knight, target, shark repellent, the Pac-Man defense, poison pill, greenmail, the golden parachute."

He added that it was easy to forget that the billions of dollars they dealt with had a material impact upon the jobs and daily lives of millions of Americans. Wall Street appeared to be a "giant Monopoly board" and the winner was the one who finalised the most deals and took home the most money. In effect, language had several values, including those of underlining the competitive culture and distancing "the players" from the consequences of their actions.

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[223] As Gherardi also notes (1995:19), organisational cultures are gendered but they claim to be de-gendered because they are committed to principles of universality. Following this, one could argue that law firms might be committed to the concept of universality more than most, as the law itself lays ultimate claim to that character and claims to the legitimacy of legal work might be brokered through this concept. Hence lawyers might be particularly reluctant to admit that their firms' cultures are "gendered".

This almost concludes the analysis contextualising the work of these firms. Just one more descriptive section remains - that describing the architecture, location and furnishings of the offices of interviewees.

The firms' offices

"It is interesting to note how the transformation of London has more or less paralleled that of New York - for Canary Wharf read Battery City Park with its World Financial Center. There is a striking similarity in their 'landscapes of power', in vertical as opposed to horizontal vernacular landscapes, as well as in an aestheticization of space since these are partly public places to be consumed by those with appropriate cultural capital."

Lash and Urry (1994)

Gherardi notes (1995:11) that the physical environment, the exterior of a building and its interior decor send out cultural signals. This, she believes, can also be analysed in gendered terms:

> "When the architecture and the design of the rooms emphasize straight lines and height, or conversely curves and breadth, the observer is reminded of the archetypes of masculinity and femininity."

The offices of City firms were to be found relatively close to one another, in the heart of the financial district (confirming Flood's work - 1989:574). The Frankfurt firms were more spread out, but most were located in clusters near each other.

"To nurture the appropriate sort of repute and to conserve it once it has been attained, corporate lawyers engage in various kinds of status display. Their furniture is often upholstered in leather and their walls are lined with books, whether those books are consulted or not ..."

Heinz and Laumann (1994)

The City solicitors' offices tended to look as if a significant amount of money had been spent on them, although the images one imagined they were attempting to project through their receptions' decor did vary. The overall impression was, though, of clean uncluttered space (in shiny minimalist receptions, some reminiscent of airport business lounges), the one exception being a firm which had floral sofas in the reception area. The latter firm was, however, about to move premises, so its decor might have changed to the more lean (and perhaps archetypically masculine - Gherardi 1995) style. In itself, this might be a material embodiment of the hard-edged, commercial approach to practice, which Galanter and Palay (1995a), Lee (1992) and Hanlon (1997) have written about.

The US offices varied considerably, both amongst themselves and often from the English firms' offices. The smaller offices tended to look cluttered, with the library extending into the waiting area (giving the impression of learning, of traditionalism - see Fennell (1996) below). Still, the largest and most well-known of the Wall Street firms tended to occupy plush business suites. Thus the nature of accommodation in part reflected their different sizes and clienteles.

It might also have been that some US firms were housed in accommodation which they had now outgrown. One lawyer whose firm was then situated in less glamorous surroundings than those of some other firms explained that the firm had rented premises that were not too ostentatious upon arrival in London twenty years earlier, so as not to alarm the local profession. Now that they had "arrived", and wanted to raise their profile within the London market, they would move elsewhere. This supports MacDonald's (1995) view of the importance of using

accommodation as a tool to help establish reputation. As Fennell notes, discussing the interior design of offices, (1996:41):

> "In general, London firms aim for a very modern look to blow away any suggestion that they are fuddy-duddy or rooted in the past. American firms, by contrast, are keen to counter any suggestion that they are from Hicksville by dressing the offices out with antiques and traditional trappings of the "Establishment"".

Hence, the interior decor of US firms visited leaned towards the traditional, often giving the impression of a 'gentleman's city club'.

Interviews with English solicitors took place in meeting rooms whereas interviews with US lawyers were more likely to occur in the lawyers' own offices, due to the US offices' smaller sizes[224]. Samen notes that the smaller size of US offices might mean that all office space has to be of a certain standard (quoted in Fennell 1996):

> "Clients of English lawyers do not penetrate the outer rim of reception, meeting, and dining rooms, so there is often a marked difference between back and front of house. In US firms, by contrast, clients usually have to walk through their working areas to reach their lawyers' offices, so there has to be a uniformity of image."

Frankfurt

The German law firms visited were housed in various accommodation, from some of the most modern high rise office blocks in town to a beautifully maintained period house. The most common choice was, however, tall office blocks, usually those with mirror glazing outside.

Inside, the reception areas tended to be much more modest than those in the City[225]. Five of the firms visited had small reception areas (and two had medium

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[224] I was not, however, ever left in these offices on my own, and the lawyers did not leave files lying around in such a way that client confidentiality could be put at risk.

[225] The support staff was overwhelmingly female (receptionists usually take your coat and secretaries show you to the meeting room) whilst the lawyers were overwhelmingly male.

sized receptions), with a few black leather chairs and newspapers for visitors. None of these firms displayed their brochures in the reception area (in contrast to their City contemporaries), even though there are no regulatory reasons to stop them - perhaps this hints at some cultural reluctance to openly promote their firms or perhaps they felt they had little need to promote their firms (see later). Four firms, in fact, had no real seating area in the reception to speak of - I waited in hallways or corridors (and, on one occasion, next to the lifts!). I wondered whether this reflected the possible rarity of client visits, the (smallish) size of the offices or reflected a lack of consideration for the comfort of clients (the second case study will unravel the relationship of German law firms with their clients).

By way of contrast, one firm had decided upon a grander approach, using a larger space for its reception, with red leather seating and a frieze on the wall. The image that it seemed to project was both innovation (the *red* seating and unusual artwork) and traditionalism (the traditional *leather* seating). The only firm that displayed its brochure in the seating area also had modern art/sculpture on display there. These were two of the largest Frankfurt firms.

Interviews usually took place in meeting rooms, which often had panoramic views across the city. Otherwise, lawyers were interviewed in their (usually spacious) offices (again, no revealing client information was lying around).

Less surprisingly perhaps, five of the foreign law firms in Frankfurt also had small reception areas, three displaying their firms' brochures either in the reception or in meeting rooms, (and so they seemed less reticent about self-promotion than their German counterparts). Three firms had no reception area to speak of (these were very small firms) whereas another (the largest firm) had a medium sized reception, with both newspapers[226] and brochures on display.

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[226] The newspapers themselves might be used to symbolically suggest that the firm and its lawyers were up to date with events in the world (presumably including developments in the legal and business worlds).

The firms were housed in a greater variety of accomodation, from the highest office blocks and period housing to an unusual modern lower rise office block. The latter building's design again suggested innovation (a feature of the firm's work which it was itself keen to express) and was particularly well designed for the entertaining of clients. One firm had moved several times since arriving in Frankfurt in the early nineties, outgrowing previous property.

Interviews again took place in both meeting rooms and in lawyers' offices.

Now we are ready to move beyond the scene-setting, to look at international practice itself. The interviewees' own analysis of their skills will first be considered.

The skills of an international lawyer

Flood (1996:190) states (basing his analysis upon interviews with Anglo-American lawyers) that international lawyers claim to have the following attributes:

> "International business lawyers argue that they are not technicians[227] but rather they have a method of working and a clear understanding of how their clients work[228]. It is the ability to rise above the technical level that provides the springboard for global lawyering. Three attributes have been suggested by some lawyers as the sine qua non of the international lawyer: a mastery of the English language, which is the common language of international business and finance; an ability to draft contracts, more in the prolix Anglo-Saxon style than in the concise continental way; and an understanding of private dispute resolution systems, such as arbitration. On occasion a fourth requisite is claimed, namely, admission to another jurisdiction, notably the New York Bar."

The next section looks at how the interviewees defined their skills and qualities.

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[227] Nelson (1988) has also argued that the importance of the technical aspects of work in large US law firms has increasingly been underplayed (see Hanlon (1999) for a similar argument in respect of UK firms).

[228] Business awareness and contacts are also noted by a general counsel at Nestlé, quoted in Fennell 1995b : "I want my external lawyers to know the right people and have the right social contacts as well as being good quality legal experts."

Views of interviewees in London

As all the London interviewees were native speakers, the question of competency in English was not an issue.

I posed the question *"How far are the skills demanded of an 'international lawyer' different from those of a domestic lawyer?"* to encourage the interviewees to reflect upon how they worked. The responses of interviewees are taken together, as responses did not seem to hinge upon nationality. In itself this was interesting, as lawyers did not appear to make a distinction between working at home (albeit on cases which had an international aspect to them) and working overseas. This raises the question of the significance of the national base of the lawyer, which will also be discussed later.

Some suggested that their skills were not so different from those of domestic lawyers as one primarily had to be a "good lawyer grounded in one's own home jurisdiction." This obviously leaves open the question of what it takes to be such a "good lawyer" and whether that in itself varies from jurisdiction to jurisdiction (more empirical research on this is needed). Furthermore (and contra Dezalay), ideas such as forum shopping were often irrelevant as clients presented lawyers with a transaction where location had already been decided. One example of such a scenario would be when clients instructed their lawyers to deal with the legalities of an agreed company purchase in another country.

However, many interviewees felt that there were qualitative differences in their work when compared to that of domestic lawyers. They had to be more flexible, able to work sensitively within different cultural environments and frameworks, finding out what were the important questions to ask in other legal systems[229].

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[229] Whether US and UK firms are wholly successful in this is, of course, another matter and it would be unwise to take their assertions of universal competence at face value. One interesting example of arrogance is detailed by Kurczewski (1994:7). He states that during the privatisations

They could not assume, for instance, that another country's legal system weighted the elements of a transaction with the same degree of importance as did their home jurisdiction. They often had to take an overview of other systems and guide clients through this - clients needed more guidance at an international level ("There is more hand-holding of clients at an international level," as one lawyer put it)[230]. They needed good management skills for complex international cases and might also find that they worked longer hours on such cases due to differences in time zones, if they had clients working in more than one time zone [231].

One other 'skill,' mentioned by a US lawyer, was that one had to cope with high visibility - one was more exposed than a lawyer in a US home office:

> "Everyone in the firm in the States knows who you are!"

Lawyers did not, however, mention Flood's points on drafting, private dispute resolution and dual qualification. This might have been due to the phrasing of the question.

Views of interviewees in Frankfurt

In Frankfurt, I posed the question *"What skills and qualities should an international lawyer have?"* to see how far Flood's points might be mentioned.

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of state enterprises, foreign firms were either invited to Poland or came with the support of foreign aid and investment. However, these lawyers often showed "... shocking ignorance, for instance, assuming naively that law in East Germany and Poland were alike and that knowledge of the first would suffice in the second."

[230] This will be referred to again when we look at regulation, as the view that even corporate clients are more reliant upon their lawyers here challenges the idea of the 'empowered' corporate client described by some writers.

[231] This in itself could be seen as a source of exclusion or closure to those lawyers who are unable or unwilling to make the sacrifices in terms of their own personal life that this would demand (in the absence of universally accepted flexible working patterns). See Seron (1996) for an account of the difficulties women with domestic responsibilities experience due to the absence of the time which men freed from domestic responsibilities enjoy.

The views of interviewees together will also be shown here, as there is so much consensus across the group.

Again, lawyers noted that one had to have good legal expertise, to have a good understanding of your own law as a starting point, "the technical skills to do the job". One US lawyer added that he dealt with only a small amount of routine work, so you had to like thinking creatively. The non-native English speakers added that good English skills were vital, and other language skills were a bonus.

As the London interviewees also stated, you must have the right personality to be a successful international lawyer, to be able to appreciate other cultures, to understand the context within which you operated, to be able to communicate across cultures and to develop good working relationships with the people you worked with (be they lawyers, clients or others). This does bring us back to the issue of who becomes an international lawyer, as this may suggest that those brought up within a cosmopolitan (probably affluent) environment might find such communication easier than others. Hence, an appreciation of other cultures would be heightened by previous experience of people from that culture, although such experience could be gained through postgraduate study/work experience (which it was suggested earlier - when considering the work of Dezalay - is not always, necessarily, dependent upon family background).

A German lawyer (working for a US firm) felt that there were basically two types of international lawyers:

> "You can't paint one picture of the international lawyer - there are different personalities on the market. On the one hand, some lawyers like to travel, to stay in hotels, make contacts in bars there. On the other hand, there are those lawyers who understand what a foreigner would expect in another country and are able to understand the differences in culture and to explain them to the client. For instance, US clients like to have a German lawyer in Germany, as opposed to a US lawyer, as they think that US lawyers won't understand the culture, the business environment. They like their German lawyer to understand US culture, to be able to explain the differences between the two cultures."

Once more, Flood's point about knowledge of private dispute resolution was not mentioned. Lawyers also did not comment on their drafting skills, although this point was raised when discussing differences between German and Anglo-American lawyers, seen in case study two. Dual qualification was also not mentioned here, with only one lawyer (a German associate who worked for a US firm) stating that some knowledge of US law was useful.

Case study two will further look at what law firms in Frankfurt looked for when recruiting lawyers.

It is interesting to note that lawyers stressed the importance of their home base, although it was not too clear which skills made a good national lawyer and how far these skills would vary as between, say, a US attorney and a German Rechtsanwältin. As discussed in the literature review (when the impact of Anglo-American lawyers on host states was considered), the internationalisation of services does not imply that national differences will be eliminated or that service providers will effectively look and be the same. Indeed, as Halliday and Karpik argued (1997), lawyers are significantly more local in their orientation than almost any other professional; this is something which globalisation may not radically alter although lawyers may become more sensitive to the peculiarities of other jurisdictions and may develop additional skills to service international work.

Nevertheless, there may be some areas of law which require less national knowledge than others and so may be more accessible to foreign lawyers (with the appropriate language skills and clients). For instance, some UK lawyers have been able to build up experience in US capital markets law. Much of this work is procedural in nature and, over time, relationships with other relevant parties (such as officials at the Securities and Exchange Committee) can be formed which will improve the ability to handle cases well. This suggests that lawyers need not be bound to take on work which deals only with their own national law. Indeed, tests designed to enable foreign lawyers to qualify in the host state (such as the

Qualified Lawyers' Transfer Test, which is discussed in the chapter on regulation) could potentially encourage mobility although it might take time for foreign lawyers working on host state law to establish credibility.

The importance of the national base of lawyers will be returned to again at several points in the thesis.

The importance of international work

Lawyers were asked how important international work was to their firms. This was obviously going to be a difficult question to answer in view of the difficulty of being clear about what was meant by 'international work' and the fact that those 'converted' to international practice were consulted.

To take a financial stance on the importance of this work, the Law Society estimates that solicitors contribute around £500 million per year to the nation's invisible exports[232]. The Office for National Statistics also recently published figures indicating that the overseas earnings of solicitors in 1997 were £644 million[233].

It was previously noted that London Business (1994) estimated that around 50% of the business of the largest English law firms comes from outside the UK. This figure can then be contextualised by Flood's note that (1995:150):

> "... the top twenty City law firms accounted for a third of English lawyers' total fee income of almost £4 billion in 1990."

Clearly, this work is not financially insignificant and, in fact, accounts for half the income of the most lucrative, and élite, practices in England. It might thus be

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[232] Source - personal communication.

[233] Source: personal communication. They also stated that the overseas earnings of barristers in 1997 were £47 million.

interesting to see how important the firms themselves believed their international practices to be.

Views of US lawyers in London

I asked the interviewees how important they felt international work was to their firm as a whole. Responses to this question varied and this in large part was due not only to differences in subjective assessments, but was also due to the nature of the firm's work and client base. For instance, one lawyer from a firm which was largely engaged in capital markets work stated that the nature of the work meant that the international element was integral to what they did in the firm as a whole.

Others undertaking a wider range of work stated that in overall terms such work was a small proportion of what the firm did as the firm had a strong domestic law base. However, developing the international base of the firm was still seen as a major growth area, often due to perceived saturation of the home market. International work provided 'green-field' sites, or at least sites which were greener than those in the States. Hence, expanding international work in this sense was a demand-creating tool (reflecting the thrust of Dezalay's (1995) argument).

Views of English solicitors in London

Similarly, the importance of international work to the firm varied[234]. For those with several foreign offices, this work was crucial to them, although for one provincial firm which did not have such a global presence, the firm's strategy was to consolidate its domestic position. However, that solicitor added:

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[234] Legal Business (Edwards 1995:42) reported that 1995 was a particularly good year internationally for the "Big Five" firms of solicitors (Allen & Overy, Clifford Chance, Linklaters, Freshfields and Slaughter and May).

> "... the internationalisation of the capital markets has meant that it's difficult to say that one is not an international firm ... but there are only 3 or 4 truly international English law firms ... including Clifford Chance, Freshfields and Linklaters."

Views of German lawyers in Frankfurt

Again, the importance of international work related directly to the client base of the law firms, with some law firms doing more work for an international clientele than others. One lawyer added that that international work was also important as it tended to be lucrative[235]:

> "International work is important to us as many cases involve a lot of time."

Another lawyer believed that the nature of the "big ticket" work in Frankfurt was international (and indeed many other significant business developments were international in nature) and also that high quality international work attracted good employees (as will also be seen later) so:

> "In Frankfurt, you must work internationally if you have the ambition to grow and be in the first tier of law firms".

Views of UK and US lawyers in Frankfurt

This was not a question which these interviewees were directly asked, as the questions later posed about the future of international practice dealt with this, data had been collected in London on the issue and I decided the time could be better spent on other issues.

How work is actually structured at home is the subject of the next section.

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[235] Fees for commercial legal work in Germany were estimated by a leading bank recently to be worth around £6 billion annually, marginally more than the UK market (Wilkins 1999).

The organisation of work at home

English law firms in the City

In relation to the structure of practice, firms ran on a departmental (or 'divisional'/'sectoral') basis. This meant that the firm was divided into a series of departments within broad subject areas, such as litigation, corporate work and property. This super-structure was then broken down into smaller working groups; for instance, a corporate department may have several teams within it dealing with specific subject areas such as employee benefits. There could also be cross-departmental teams, including country-specific teams, so that lawyers with an interest in a particular country could work together on specific cases. Some were moving, or had moved, to include industry based teams within this structure, such as construction industry teams. Teams could be formed for specific transactions on an ad hoc basis.

For some firms, the committee structure was still in place; policy was formulated via this 'collegial' vehicle. However, some of the larger City practices had moved one step further and had delegated more power to managing or executive partners, whilst retaining a governing board which met regularly and was representative of all the partners. They had found that the size of the partnership had meant that it was impossible to include all partners in all decisions and so some modification of their structures had to be made. As Lee argued (1992), firms have moved/are moving to more modern management structures. Perhaps this is an example of what Lash and Urry (1994) called "institutionalised reflexivity".

German law firms in Frankfurt

The organisation of work varied across the firms, but themes emerged. Five of the twelve firms said that lawyers worked mostly on their own, although they

would form teams for work such as M&A. However, one associate noted that he did not think that genuine team-work happened:

> "Life is very individualistic; we rarely discuss things. It's really a reporting system [telling partners what you've done] and not genuine teamwork."

Three firms had a loose departmental or group structure, with groups focusing upon areas such as corporate work or banking and finance, with teams forming for transactions like M&A. The last three firms formed teams for each job (although a 'team' might only consist of a partner and an associate). One partner described how his firm handled cases as follows:

> "Typically an assignment is dealt with at least by a partner and an associate. A lot of the bigger transactions are dealt with by bigger teams which are not typically working constantly on an assignment - but let's say if we have an acquisition of a company then there would be one partner in charge. If it was a major transaction, then maybe two partners in charge. And then you would also retain from time to time experts in tax, labour law, public law, merger control and so on and so forth. And so if you add up how many people worked on the transaction at the end, then this is a group of around 10 or so people, but that does not mean that those people are continuously working on the deal - in the main negotiations, it is more typical that only two people are involved."

The common denominator was that when lawyers did work together, you would see smaller numbers of lawyers working together than you would usually find in Anglo-American commercial law firms.

The management of firms was by committees of partners, although the precise number of partners (elected or unelected) on management committees and the existence and nature of other committees varied. The typical number of partners on management committees was six. Firms may also have local administration committees in each local office. Each of the following additional special committees were mentioned once only - an IT committee, an "informal strategy" committee, a committee for associates, a finance committee, and a conflicts of interest committee. Recruiting committees (for new associates) were mentioned by half the firms interviewed and two firms had marketing commitees. Only two firms had a managing partner. The impression given was that management was rather low key and not particularly proactive.

The implications of these differences in management and working methods will be examined in much greater detail in case study two. The next issue discussed is the marketing of international work.

The promotion of international practice

"In the classic model, professionals seek to distinguish themselves from business persons by claiming to be above self-promotion of their skills and services."
Carroll Seron (1996)

Hanlon has argued (1997:816) that marketing is used by those law firms which are large enough to operate in a number of specialist areas. These specialist areas suggest that consumers are informed and thus marketing is required to increase client awareness of the service provision and to facilitate client decision-making[236]. As such, he believes that this is one instance of how client knowledge may be forcing lawyers to alter their behaviour.

Marketing is obviously used as a tool to increase demand and as such those firms which use marketing techniques are demonstrating their willingness to attempt to proactively create market opportunities. To this extent, their cultures must be open to using blatantly commercial strategies and, indeed, such strategies may have to be more sophisticated at an international level. Matteson (1994:94), for example, states that:

> "[I]n this (global) market, much more can be done and needs to be done to get your name out there than is the case with one's own domestic market. In the global market, the old-boy network[237] and word of mouth are not as effective.

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[236] Shaffer and O'Hara (1995:180) also suggest that providing brochures, newsletters and organising seminars for clients are used to establish one's expertise, competency and ethical orientation and so enhance perceptions of trust.

[237] It would be interesting to study further the gender implications of this - this argument would seem to implicitly indicate that women lawyers might have a better chance of acting as 'finders' of work at an international level. However, the picture that Matteson then conjures of the internationally mobile practitioner, dashing off to conferences and dashing out articles, may penalise those who are primarily responsible for the home. This obviously requires further investigation.

> Marketing tools must be used and invested in much more heavily. Thus, it is important for ... us to organize or participate in international conferences, write articles in international periodicals, and be active in international organizations like the IBA/SBL[238]. Subject to a cost-benefit analysis (which is hard), it is important to use every means possible to become visible.
> Cross-selling is also critical here. You must keep your present clients up to date on your foreign initiatives and expertise and also keep up to date on their global strategy and plans."

We shall now see how far the interviewees agreed with this view and how they approached this issue.

Views of interviewees in London

Most Anglo-American law firms have full-time (non-lawyer) personnel in their home jurisdiction dedicated to the marketing of their firm. However, there were some differences in the promotional strategies of the firms. Some lawyers said that their firms (most commonly, firms with broad-based practices) ran the gamut of conventional marketing methods, from speaking at conferences to attending beauty parades[239] - the restrictions on this being, as one lawyer stated, "cost and good taste." The latter comment brings to mind Abel's view (1988:18) that restrictions on promotion can be seen as instances of producers controlling production, for economic reasons and to enhance status. Perhaps law firms are imposing their own notions of "good taste" to enhance their status, to promote the image that they are indeed 'top drawer' firms. The literature review on regulation considers the importance of reputation to law firms.

Some US firms were more selective in the strategies they adopted and this was in part related to the types of work they undertook. One US firm concentrated on gaining access to decision makers within client/potential client organisations as

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[238] These abbreviations refer to the International Bar Association, more of which later, and the Society of Business Lawyers.

[239] This ties in with the belief that international work, particularly work relating to international financial markets, is largely transaction based (London Business School 1994). "Beauty parades" are held when a potential client asks several firms to tender for work and to give a presentation on their firm.

this was viewed as the most effective way to canvass the specific type of work they were interested in. Perhaps this approach also reflected this firm's low key approach to business seeking; the interviewee seemed to want to give the impression that his office had more than enough work to do and did not want to expand (largely for cultural reasons which are explored more fully in the first case study).

Indeed, I did not find one US firm who used marketing brochures that were as glossy as those produced by large commercial English law firms. Some felt that English firms were better at promoting themselves than US firms ("It may be a case of who does something last does it best"). Another tentative explanation might be that this subdued approach would play down the clichéd image of "brassy" American incomers and so highlight firms' cultural awareness that a less reticent approach might offend (some) clients and perhaps even local lawyers. If this analysis is correct, it would undermine Dezalay's earlier work which trumpeted the superiority of US law firms and instead support the idea that even 'mega-firm' lawyering has to be sensitive to its locality if it is to be successful.

Some lawyers stated that cross-selling within the firm should also not be overlooked. However, most agreed that the best marketing tool was being seen to "do a job well"; that way, existing clients would be retained and they might tell other potential clients that they were satisfied with the firm's work[240]. Perhaps this seeming reluctance to give credit to more overt marketing techniques reveals some aversion to the increasingly commercialised form of practice which seems to exists today. It might particularly highlight the low regard in which some lawyers view management tools (see Mayson 1997). This returns us to Nelson and Trubeck's (1992b) point that contradiction and complexity is to be found in law firms. Whilst, on the one hand, an increased use of marketing techniques might indicate that a more commercial form of practice (à la Hanlon 1997) is

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[240] For New York small firm attorneys also, the single most important source of new clients is referrals from former clients (Seron 1996:52).

evolving, the reluctance of some lawyers to take such techniques seriously might indicate some attachment to a less commercialised version of professionalism.

Views of interviewees in Frankfurt

German firms

Almost all the German firms also stated that the best method of marketing was to do a job well. One (extremely successful) firm even went so far as to say "This is basically all we do." The firm that was an exception to this was the smallest firm interviewed, which undertook a lot of research for clients and said that its main marketing method was publishing. The second case study will discuss further the notion of a "traditional" form of professionalism (which was said to exist within some of the German firms) but for now it may be sufficient to reiterate the point made above about aversion to a more commercialised response.

One young partner in one of the smaller German firms did say, though, that although the senior partners were satisfied with this "word of mouth" approach, he felt they were too conservative and should do more:

> "We should not only do a good job - we should make sure that others know that we're doing a good job."

This in itself may indicate that there is some concern amongst the younger generation of partners in these firms that something has to change and the traditional ways of providing legal services might have to adapt to changing times. Increased competition might therefore lead to the further use of demand-creating tools.

Nevertheless, all the firms provided seminars for clients on matters of interest and half mentioned giving speeches at conferences. The majority also mentioned publishing articles, and even books (yet Anglo-American lawyers in London never mentioned publishing as a tool). It seemed, therefore, that lawyers were

comfortable with marketing techniques if they adopted an academic, a learned approach. Again, however, one younger partner in one of the most successful firms was sceptical of the benefits of publishing and favoured a more proactive, commercial approach:

> "Maybe, *maybe*, in certain fields publishing helps to build your reputation. But we don't know that. So if I had a choice between writing an article and calling 20 people to introduce myself, I'd go for the phone calls."

Again, such a response may indicate the evolution of notions of professionalism held in Germany, a point which will be returned to later.

Making contact with decision-makers in business was only mentioned explictly by a third of the firms. This might have been because they were reluctant to discuss such strategic marketing. Alternatively, perhaps they felt that they already had excellent contacts or perhaps they simply found this to be too proactive an approach. Advertising was not used, even though regulation governing this has been increasingly relaxed over the last decade. Lawyers felt that:

> "Clients are not ready for advertising. They think that lawyers who advertise need the business[241]."

> "Advertising would just bring cost and no additional advantage."

Using social contacts and brochures, attending beauty parades and cross-selling were also rarely mentioned (although most firms did produce brochures on their firms and would give me a copy upon request). Cross-selling, in fact, was only mentioned by one firm and this firm is often considered to be one of the more 'aggressive' commercial firms in Frankfurt.

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[241] In the absence of research on clients, such statements have to be treated with some caution. It is possible that clients' assumed views are used as a cloak for lawyer conservatism. Shapland and Sorsby (1996:43) also note the lack of research on clients' perceptions of the advertising of professional services (in the UK). However, they state that it "seems to take a considerable amount of time for professional cultures to change" (1996:30).

Hence the general impression given was that marketing was still undertaken mostly at the individual level and not at the level of firm-wide initiatives[242], even though seminars were widely used.

US and UK firms

The responses to this question from lawyers in both US and UK firms will be taken together, as differences in responses appear to be more indicative of the nature of the firm than its nationality.

In contrast with the German firms, only a half of the interviewees mentioned doing the job well to be a marketing tool (but for most of those firms it was their most important marketing tool).

In fact, the firms which had grown the most in Frankfurt stressed that making contact with decision-makers in business was very important. As one English partner said, they had to build relationships within client organisations:

> "[I]t's important to ensure that there are ties at various levels, so that whoever is the decision-maker [in a client organisation] in Frankfurt or London or Spain knows his counterpart [in the law firm], knows he can pick up the phone. A lot of it is long-term relationship building, being prepared to answer quick queries, give free advice."

This strategic approach seems, at least in part, to reflect the relative novelty of foreign firms in Frankfurt. They cannot sit back and wait for work to arrive (as Matteson above pointed out), as some of the most successful German firms have been able to. The loyalty of German clients will be considered in the second case study; suffice it to say here that foreign law firms have not necessarily found it easy to prise clients away from their German counsel. This might, therefore, mean that the foreign offices of firms might adopt a more entrepreneurial

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[242] Only one firm mentioned having (recently) appointed a person to consider its marketing efforts.

approach to business-getting than the firms' home offices. This might create a different kind of culture to that found back home; a point returned to later.

Publishing was rarely mentioned by foreign interviewees as a marketing tool used, although around a half mentioned putting on seminars for clients. One English solicitor described his office's approach thus:

> "For some banks, we do education programmes for them in-house ... for one bank we're doing a three day seminar for a financing unit so we want to do a day on documentation, so we're seeing two senior lawyers for a day and we're taking them through the documents, why they're different, why they need different things [in different countries]. No charge or anything; we're just hoping it's good will[243] ... It's basically marketing professional skills in different targeted ways at different groups. For the private equity houses we've done a number of seminars on particular tax and structural issues, an hour and a half or two hours long with drinks afterwards. It has two functions - a gossip shop, a chance to catch up on what's new in the market and hopefully learn something from it; they walk away knowing we're good people and next time might give us a call."

Half of the interviewees also mentioned giving speeches at conferences, but one American lawyer was not convinced about the usefulness of this method:

> "I did some public speaking at conferences when we first set up here, but I can't see any meaningful connection between making speeches and getting work ... I came to the conclusion that those who were the best in their fields were not there, not giving speeches, as they didn't have time to do that!"

Attending beauty parades and cross-selling were mentioned more often by these interviewees than by the German interviewees, but these lawyers were still in the minority.

Lawyers agreed that regulation in Germany had not held them back when promoting their work. Although various instances of foreign law firms clashing with regulators (of local Rechtsanwaltskammern in Germany) were known, regulation had not proved to be a significant impediment to work:

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[243] If pro bono work is considered to be purely work undertaken for no fee (without there being a public interest justification), then this type of work falls within its definition (even if the lawyers did not seem to treat the work as pro bono).

"The Frankfurt Bar is not as strict as other Bars, so there have been no problems."

"We practise conservatively, so we've had no problems."

To briefly sum up, it seemed that foreign firms in Frankfurt were more likely to try to actively generate demand for their services than German firms, although several German firms were increasingly scrutinising their marketing efforts.

Referral work and Frankfurt firms

Interviewees in Germany were specifically asked about referral work and this section reports their responses.

German law firms

The general impression given was that work gained by referral from other law firms was not a particularly important source of work for these firms.

The smallest firm interviewed did proportionately more litigation than the others and would be referred cases when the localisation rule prevented the referring lawyers attending court in Frankfurt (they would likewise refer cases on). It was not common for other German firms to refer work on, unless they were conflicted out of a case, as they might be scared of losing a client to the new firm. Two firms mentioned referring work on to foreign law firms, when the matter in question was beyond their area of expertise. Two firms did mention foreign firms referring work to them - they were firms which undertook a large amount of work for an international clientele.

Referral work is mentioned again in the section on networks.

UK and US firms

Again, nationality did not appear a factor in responses here so the answers are taken together.

The smaller offices' interviewees stated that they would refer work on to German firms in areas beyond their expertise (and would choose lawyers who were not their competitors). However, all interviewees agreed that they did not receive much referral work from German firms.

For several firms, work referred from their firms' other offices was important, although these firms did different types of work. Two English partners mentioned acting as a coordinator in some of the firm's cross-national deals, one expressing his opinion about why clients liked this ('one-stop shop') as follows:

> "The main advantage is that clients can walk into a firm with a similar style, with a similar approach, reliable service, good quality and at the same time, if they don't like what they get, they can shout that back to the home office and someone will sort it."

Again, case study two analyses in more detail why the firms interviewed differed in their working methods and structures and the chapter on the future of international work considers the pros and cons of 'one-stop shopping'.

Reasons for the development of international work

This section will look at why interviewees felt their firms had developed their international profile in the first place. First, however, the views of three commentators will be briefly noted.

Matteson (1994:85) argues that for a law firm to "go global":

> "First, you need to have a global vision and some leadership, which I define as having someone who is willing to stand up and advocate becoming global ... Second, you need a consensus because it will take time, effort and assets - both people and money to get the job done - and there are lots of risks ...

> Evaluating the pros and cons of globalization is not easy. For the pros, expanding your client base, retaining important clients, diversifying risk, developing a more interesting and stimulating practice, attracting the best and the brightest students, working in a less competitive market, avoiding some of today's domestic fee pressure - all of these benefits may be real ..."

In effect, Matteson argues that both the law firm's culture must be receptive to the idea of international expansion and the firm must have the resources to put its ambition into effect. An international strategy can increase demand for the firm's work (by expanding its client base) and ensure that the firm continues to recruit the most highly qualified candidates (thus potentially acting as a strategy of social closure).

Abel also argues that a firm, presumably a commercial firm wishing to establish foreign offices, must emphasise transactional lawyering rather than advocacy, become national[244] and reach a size sufficient to carry the losses that foreign offices typically make for some time (1994:743).

Susskind notes the work of Michael Porter in the States which suggests that the most "outstanding commercial organisations in the international arena" are those from highly competitive domestic markets with demanding customers and formidable competitors and (1998:253):

> "It is reasonable to suppose that the best law firms internationally will have similar domestic profiles. In that event, law firms seeking to be the best in the world market should want to have (but outperform) very strong local competitors[245]."

Susskind does not go into greater detail than this, although his work may imply that law firms working internationally are driven abroad to escape the pressures of a demanding domestic market and/or that these firms are particularly entrepreneurial as they have prospered in extremely competitive circumstances at home (and might therefore have the money to fund international expansion).

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[244] National status is unlikely to be a prerequisite of other structural forms of international practice, such as networks.

[245] For a similar argument, see Simon 1996:146.

Views of interviewees in London

I asked the interviewees about the forces which had driven the international development of their firms. Perhaps unsurprisingly, most talked about the internationalisation of business. US lawyers in London agreed that US businesses had increasingly expanded overseas and non-US enterprises were doing business in the States and in other foreign locations[246]. One instance of the latter scenario would be when a non US-based client felt that the local profession was not developed enough to do their international work and so a US firm was chosen. The internationalisation of capital markets was also important. One lawyer felt that:

> "We can't influence how world-wide economies develop or how influential English law will be, but we can follow business."

However, another point made by some lawyers was that they had to find new markets to grow and so that was one reason for the development of work. One solicitor said that the UK market was very competitive, a "mature market," whereas they sometimes found some "green-field" sites abroad where there was not much competition. In effect, as Clegg's work (1993) implied, both demand and supply must be considered when discussing legal services.

Several lawyers also stressed the rôle of their firm's culture and history in relation to the development of international work (thus supporting the opinions of Matteson (1994) and Nelson (1988) above). Often there had been an important lawyer within the firm who had a great interest in expanding the international work of the firm[247], usually into overseas offices. This lawyer was sometimes

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[246] See also Spar (1997:15) who argues that after WW2, US corporations spread across the globe, "thrusting US law firms into an exceedingly strong position."

[247] Linklaters can, for instance, point out that one of their early solicitors, Harold George Brown, worked on a case in New York with either Thomas Thacher or his brother Alfred (of the US firm which is today Simpson Thacher & Bartlett) in 1909 (Slinn 1987).

referred to as a "visionary" who convinced other partners that this was the right course to take[248]. Or it may have happened that a lawyer had an interest and connections in a particular part of the world and so developed work there. Some firms could also trace their firm undertaking some form of international work back many years and this was seen (as with the German firms below) as evidence of an "international culture" within the firm.

One US lawyer did feel that UK firms had been much quicker to develop international work than US firms, when one looked at firms in both nations as a whole. He believed that this was due not only to the saturation of the domestic market, but also that UK lawyers culturally found it easier to look beyond their own country whereas US lawyers tended traditionally to be more parochial.

At this point, it may be helpful to refer back to the criticism that was made of Abel's thesis of the importance of demand creation to professionals. The critique was that lawyers' work is often reactive, they do not have such great control over markets or clients, and of his failure to consider the nature and process of lawyering. We saw that Dezalay's argument also, however, stressed the importance of demand creation in international work but wondered whether he was overstating his case: "Is all international work as proactive as this? How can we account for the fact that many large firms of US lawyers have not internationalised, have not opened foreign offices? Do we need to consider the nature of the firms themselves, their cultures and/or the types of work undertaken?"

Other writers had emphasised the opportunities presented by the development of international markets and the organisational advantages of large firms in servicing this work, focusing less upon demand creation, and Flood's argument noted that lawyers were both proactive and reactive.

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[248] This confirms Nelson's (1988) analysis of culture, seen in the section above on culture and professionalism.

The evidence from the present research supports Flood's middle ground. Whilst law firms do, for instance, actively look for green-field sites, they also follow business and react to client demands, for example, setting up foreign offices in particular locations, as will be seen in the later discussion of foreign offices.

Views of German law firm interviewees in Frankfurt

Here, the discussion mirrored that of the London interviewees. Only two (highly successful and long-established) firms stated that they "simply followed clients". All the other firms saw their international expansion as being a proactive and reactive affair. As one partner stated:

> "We set up our Brussels office for two reasons: we thought it would lead to international credibility with clients - it was an image thing. We also needed connections in Brussels, to lobby for our existing clients."

Several firms mentioned that specialisms in certain fields of law, such as in Latin America or in Italy, had come about due to the interest of a particular lawyer in that area. Often this lawyer was married to a national of the foreign country in question.

These points will be returned to in the next section. This will examine in more detail the structural vehicles through which international practice can be channelled.

Structural forms of international practice

The following discussion of the main structural forms of practice facilitating international work aims to clarify the frameworks within which international legal practice has grown, list their perceived advantages and disadvantages and specifically to consider why large law firms have chosen particular organisational structures.

Some caution is advisable, however, when reading these accounts. As was seen in the literature review's section on management (and as will be seen in the chapter on the future of international work), law firms do not often subject their (international) strategies to rigorous scrutiny, seeking systematic feedback on their successes and failures. This means that much of the perceived advantages and disadvantages of various strategic choices may be based more on belief than upon empirical evidence.

Correspondence arrangements

These are the most basic form of relations which may exist between lawyers operating in different jurisdictions - lawyers sometimes refer to their contacts as a "network of friends." Lawyers will be acquainted with certain lawyers and/or firms and so will work with these lawyers as and when the need arises.

All the lawyers interviewed said that their firm had informal connections with lawyers abroad whom they may work with. Several firms extended this network by running schemes for foreign law students and secondments or exchanges of lawyers.

An English firm[249] visited used this "preferred firm" approach as the basis of its international 'structure' - it did not have foreign offices and was not part of a formal network:

> "Foreign offices are very capital intensive ... and some overseas markets can be hard to break into these days as they are overlawyered ... People in networks are often very variable. Once you are in a network, you don't have much choice ... It's more sensible for us to establish a network of non-exclusive affiliations with similarly minded firms, to look for a mutual referral of work."

In effect, the firm itself decided which firms it wanted to work with abroad. This implied a degree of exclusivity in practice, although they were always free to

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[249] I gained access to this firm through my supervisor; it was one of the pilot interviewee firms.

instruct a firm which was not part of their chosen list. It was stated that firms chosen were "monitored carefully."

Such informal relationships may sometimes become more formally established. This will be considered next.

Networks

Roodyn (1994: 5) describes networks as follows:

> "The essential element of a network is that the relationship, which may have been built up over a number of years between specific firms, becomes multi-lateral. By multi-lateral, I mean that each of the firms in the network is actively encouraged to deal with each of the other firms. Not only does this provide more extensive access to overseas lawyers who are known to, and approved by, the members of the network, but it also may allow for greater referral of work."

These points about access to overseas lawyers and referrals will be mentioned frequently by the interviewees, some arguing that they are more interested in the former than the latter. To describe more fully how work (including referral work) might be generated, Roodyn writes:

> "A question I am often asked ... is why is there a necessity for "Eurocabinet" if you already have correspondent law firms? We have dealt with Rechtsanwalt Muller for 15 years ... Why formalise it? My answer is this: by giving the group a format you will intensify the generation of work ... In terms of the work, I would identify three benefits:
> i. the agency work generated within the group;
> ii. the attraction of new clients because of the European resource;
> iii. the intensity with which existing clients use the practice through the provision of a European resource."

Jones (1994b:19) also argues that a network increases the confidence of referring lawyers that work will be done competently and to their own standards.

In fact, this structure could be seen as a means of establishing a reputation - as Evans, Hanlon and Kay note (in relation to accountancy 1993:116):

> "... some corporate identity is a prerequisite to success, because it is only by one member of the club putting its reputation on the line, that the other members of the club benefit from joining."

How a network structure is crafted varies. Some form of centralised administration may be set up. Regular meetings of partners are usually scheduled and developments such as joint marketing initiatives and staff exchanges may occur. Bond believes that the success of a network depends upon its members' involvement (1994b:30):

> "At the end of the day, a network must, of course, pay for itself but the success of any network will be dependent upon the commitment and resolve of its members."

Hence, and on the assumption that work generation is the primary motivation for the network, as Carmichael (1998) argues, an international network must deliver fees to partners, or risk being seen as a cost - "a source of endless non-chargeable meetings which achieve nothing."

The network may be exclusive as far as membership is concerned and/or as far as the use of member firms is concerned, although the latter may run the risk of infringing professional conduct rules (which provide that the best interests of the client should always prevail over the interest of lawyers in giving and receiving referrals[250]). The closer a network becomes, the more likely it is to face the issue of conflicts of interest - it may be difficult for the firms to act on opposite sides of a case without a conflict of interest or the appearance of a conflict.

Views of interviewees in London

Figures in Chambers (Lyle Smith 1994) suggested that there were 46 networks to which English and Welsh firms belonged in 1994.

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[250] Codes of conduct will be discussed later in the thesis, but it is worthwhile noting now that article 2.7 of the CCBE code states that the client's interests must come first.

None of the US law firms visited belonged to networks; one lawyer viewed them as the response of weak continental firms to international competition.

However, one of the English firms[251] was involved in a network of business law firms, which had over 3000 lawyers. Although the network was non-exclusive, relations did tend to become more exclusive over time as lawyers became more comfortable with other members.

This form of association had the perceived advantage that the work generated through referrals would add to the local economy so there was not the potential problem sometimes experienced by foreign offices of local resentment to their presence. It was seen as particularly useful when they urgently needed access to a law firm overseas.

The network did have to be constantly kept up to date and monitored, though, on such matters as quality of service[252]. One lawyer interviewed expressed his mistrust of networks in that partners may lack a sense of "commerciality":

> "UK and US firms to some extent work in a defined way and suffer from the belief that they do work the best way. In Europe and the Far East, there can be problems of delivery on time ... You need to work with people time and time again to get over this and you need to be specific in what you ask them to do."

This particularly stresses the importance lawyers place upon the 'control' of work - this issue will be referred to again in the section on foreign offices.

Abel also notes that network firms are likely to face a dilemma in balancing referrals (1994:746):

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[251] This was a smaller provincial firm.

[252] Shapland notes, for instance, the reluctance of both Dutch and Finnish lawyers to rely on network lawyers to undertake work for important clients unless the individual lawyers were known[252] (1996:22). Informal networks were preferred as partners wished to decide whom to use themselves.

> "Firms face a constant challenge of trying to balance inward and outward referrals, which makes relationships tentative and fluid[253]. Competition within the same market increases the risk that a client referred for a particular problem will take other work to the new firm. To avoid such a threat, some firms refrain from opening branch offices or acquiring a local law capacity."

Perhaps more significantly, he also argues that referral networks can confirm the marginality of participants (ibid:747):

> "Although referral networks provide an inexpensive, relatively risk-free structure for smaller firms and provincial lawyers, the solution may simply confirm and perpetuate their marginality, especially since their correspondent firms also tend to be smaller and provincial."

The discussion on possible cross-national mergers, in chapter three, also raises doubts about the viability of networks and the next structure to be considered, alliances.

Views of interviewees in German law firms in Frankfurt

Three of the firms interviewed belonged to a network, but they all stated that the aim was not to gain referrals but to be able to call on other lawyers for advice, as these partners stated:

> "The success of a network depends on why you set it up. If you start it for referrals, then there will be problems, but that won't be the case if you have it simply to get the best possible service in another country."

> "We set up a network as we couldn't afford to set up foreign offices but we wanted to be able to call foreign lawyers for advice. It wasn't really for referrals."

Three firms participated in alliances (see next section). Those which belonged to neither networks nor alliances felt that they did not want to be tied to other firms (which might, for instance, be strong on certain types of case but weaker in other areas) or to lose referral work as a result of joining a grouping; they had contacts

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[253] This confirms Flood's point that (1996:198) European continental firms who can service international work are likely to be over-courted by English firms, due to their relative scarcity: "... it was all very well to talk of referral networks, but the referrals went *all* one way - UK to Europe."

already. One firm had, in fact, pulled out of a network as it believed that its partner firms were not the foremost firms in their own jurisdictions and that the links were losing it referral business[254]. One partner felt that networks were declining in importance:

> "We belong to a network, which is a tool to serve clients abroad, but now transnational law firms are emerging, the power of networks is weakening. Smaller firms just don't have enough people to do the work[255]."

The only unusual firm interviewed was a law firm with strong links to a Big Five accountancy firm, as part of the accountant's international chain of law firms. The partner interviewed there stated that a lot of time was expended in making the network work. They held annual meetings and were trying to establish a common brand name[256] across the group. People were employed to try to find law firms to join the group in jurisdictions such as those in the US and UK. London was a difficult market:

> "The problem in London is to identify the right firm, as you can't start from scratch there as it's a sophisticated market."

They employed people to try to find potential firms (see also Hoult 1998).

However, the overwhelming majority of firms placed their energies in the development of their foreign offices.

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[254] An English partner added that the networks brought the problems of "... monitoring quality and service levels as different firms have different cultures and you have to sell a certain culture - but it's difficult to standardise this across a network."

[255] Moreover, the managing partner of Pünder Volhard Weber & Axster, when announcing the breakdown of his firm's alliance commented (quoted in Rice 1998c): "The era of alliances is over. Clients expect to receive advice from one source. We are convinced by the principle of the one-stop shop."

[256] Creating a single brand name as soon as possible is one of consultant Colin Carmichael's (1998) points on his seven step list for a successful network.

Associations/alliances

The use of terminology in this area can be a little confusing, although usually an alliance refers to a relationship between a more limited number of parties than those involved in a network. Firms may work on joint projects together, perhaps sharing office space in certain locations.

Sheldon, however, notes some scepticism of these structures, (1994:61). He feels that associations do not:

> "... deliver an integrated service to the client; nor, within the association, does each participant have quite the same interest in promoting the business of the other. At best, it seems to me, an association might form a satisfactory first step towards a merger as part of a pre-agreed programme designed to lead by a specified target date to a full merger, failing which there would be provision for an agreed divorce."

Views of interviewees in London

One of the City firms visited did, however, have an associated office abroad which had merged with a local firm. This had been seen as a means to expand quickly to obtain coverage abroad. It was felt that more than a few lawyers were needed to provide a competent service within the jurisdiction.

An alliance had also been established by one of the smaller City firms with another firm in Eastern Europe. Originally, it was non-exclusive, although the assumption was that one would use the partner firm, if possible.

The alliance partners then took this one stage further and established joint offices, some of which ran as joint venture offices. Local lawyers were employed in the joint venture offices, and it was felt that this strengthened the alliance, creating a greater sense of commitment from the partners who jointly developed work. They could cross-market the services of each other's firm. This does confirm Abel's view that such collaborations have the advantages that they (1994:745):

> "... save money and facilitate closer cooperation and possible merger. Such an endeavor is beneficial since neither firm fears its turf is being invaded."

It was admitted, though, that the alliance did bring with it some difficulties. Decisions took longer and there were the problems of consolidating the two firms' structures. However, it was felt that:

> "The firms were attracted to each other in the first place as there were great similarities in terms of their size, types of clients and culture."

Hence, some of the advantages of establishing foreign offices were gained, with the cultural certainty that brought. In this sense, this could be seen as a "culturally-based economising relationship" (Cox, Clegg and Ietto-Gillies 1993:10):

> "Where culturally-based economising relationships are in evidence, this would imply that firms need not themselves become large in order to capture economies of scale and scope, that is to say that the monolithic corporation need not be the culminating form of international business."

This point will be returned to when the future of international work is considered.

The majority of interviewee firms had, however, concentrated on establishing their own foreign offices, being convinced of their advantages.

Views of interviewees in German law firms in Frankfurt

Three (of the thirteen) firms interviewed were members of alliances. Still, two of these firms did not publicise the alliance as they believed that they would lose referral business if they did so. One of the interviewees said that they had joined the alliance in order to pick up referral work from the partner firms.

The third firm's alliance consisted of continental law firms and had been established as the firm was unable to afford the expense of opening foreign offices alone and the partner firms could pool their resources together to do this. It was seen as building the group up prior to merging with a UK or UK firm at an

unspecified date in the future. How these offices are run will be considered in the section on overseas offices.

European economic interest groups ("EEIGs")

These are structures permitted by the European Commission to facilitate cross-border co-operation between European businesses, including law firms. They are created by a contract between members which requires registration giving the EEIG full legal capability (enabling it to enter into contracts and to incur debts, for example)[257]. EEIGs must include members of at least two member states. There is unlimited, joint and several liability of members, so there is no duty to disclose financial information about activities (Whelan and McBarnet 1992).

EEIGs still fall short of a merger or multi-national partnership. They are usually non-exclusive - although they may operate on a limited exclusivity basis. They are prohibited from giving advice in their own right and - most importantly - members retain their separate identities. Activities must be ancillary to the principal activities of the members[258].

Keogh (1994:20) argues that the strength of an EEIG is its flexibility - it can mean as much (or as little) as its members wish[259], although a sense of identity can be created by organising exchanges of lawyers. Whelan and McBarnet (1992:54) also note another advantage of EEIGs: they can use flexible forms of funding, as there is no capital requirement. They argue that (1992:55) the EEIG

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[257] Flood notes (1996:198) that some firms like to keep their membership of clubs secret - one of his interviewees rejected joining an EEIG as it leaves "a document of record."

[258] Article 3(1) of Regulation 2137/85 provides that:
"The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities of its members and must not be more than ancillary to those activities."

[259] Hence (ibid): "Management of an EEIG is very much what its members wish it to be. In our Grouping, we have a Board of Directors consisting of one or two representatives of each member firm, who meet about four times per year. A Chairman is appointed annually, but ... we have decided that a permanent Secretary General is necessary in order to ensure the continuity of business development."

provides a way of engaging in cross-border practice without significant risk or expense.

Although all lawyers in the EU can become part of a EEIG, participation can be restricted by national laws and rules of conduct - such as those relating to publicity. As Olgiati notes (1995:192) "... the rules governing this type of association are coupled with current national professional legislation."

The EEIG Regulation does not state that participants can only be members of the same profession (the Law Society, for instance, has seen no objection to solicitors entering into EEIGs with non-lawyers, although it still maintains a prohibition on multi-disciplinary practices). However, some bars in France seek to prevent their members forming EEIGs with any participants other than lawyers.

Other criticisms which could be made of EEIGs are similar to those made of networks, such as the difficulty of ensuring quality is consistent across the board in such organisations. One interviewee at the Law Society was unimpressed by EEIGs:

> "They are a bit of a damp squib, as they can't be more than service companies. They are only useful in countries where there are no other structures available."

Figures in Chambers (Lyle Smith 1994) suggest that there are 18 EEIGs to which law firms in England and Wales belong.

None of the Frankfurt interviewees mentioned being part of an EEIG.

The next issue to consider in this section is the structural form of practice called the multinational partnership, available in England and Wales.

Multinational partnerships *("MNPs")*

MNPs have been allowed in England and Wales since 1992 - under these rules, a MNP consisting of solicitors and registered foreign lawyers may be formed and may operate in England and Wales[260]. By 1995, there were around 50 such firms registered with the Law Society and this figure had only increased slightly by 1999, when the Records Section of the Law Society at Reddich reported that there were between 50 and 60 such firms in England and Wales[261]. They stated that most of these firms were from the US but would not break the figures down further. If, however, we estimate there to be around 70 US law firms in London, then a sizeable number of them are practising English law (as case study one discusses).

Effectively, the previous ban on partnerships between solicitors and non-solicitors was removed by the Courts and Legal Services Act 1990 and the Solicitors Practice Rules were amended as from January 1992, permitting English solicitors to practise in partnerships and incorporated practices with foreign lawyers[262].

The foreign lawyers in the partnership must be registered with the Law Society on payment of a registration fee as an initial contribution to the Solicitors' Compensation Fund (equal to 2/3 of the amount of the practising certificate fee -

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[260] Similarly under New York rules, a New York partnership can admit as partner anyone who is a lawyer - and a lawyer is someone who is subject to educational and professional requirements comparable to those in effect in the State of New York.

[261] Source - personal communication.

[262] By virtue of section 89(3) of the Courts and Legal Services Act 1990, the Solicitors' Practice Rules, Publicity Code, Introduction and Referral Code, Indemnity Rules, Accounts Rules, Accountants' Report Rules and the Investment Business Rules have all been amended so as to extend to registered foreign lawyers (RFLs) (see later) and MNPs those provisions which apply to solicitors and solicitors' firms. Certain rules contain special provisions in respect of MNPs - such as the Publicity Code.

which was £280[263] in 1994) and confirmation that their home state allows them to practise in partnership with English and Welsh solicitors. Thus registration ensures that lawyers are properly qualified. Professional indemnity insurance from the Fund is then given, up to the amount of £1 million. Upon annual renewal of registration, registered foreign lawyers (RFLs) who have held clients' money in the course of their practice in a MNP pay an annual contribution to the Compensation Fund and may be required to pay a special levy. The annual contribution is reduced where a RFL practised mainly from an office(s) outside England & Wales. There is a discretion to reduce or remit a RFL's contribution/levy where the RFL claims and the Law Society Council agrees that there is a substantial reduction in the risk to the Fund in respect of that RFL's practice because the RFL has alternative cover.

RFLs are subject to the same forms of regulation as English and Welsh solicitors, but registration does not grant the status to do the work which is reserved to the home lawyers, a point which is discussed in the chapter on regulation. Hence, registered foreign lawyers practising in partnership or in "recognised bodies" (a company) with solicitors are subject to the same rules and principles as solicitors and MNPs are broadly subject to the same regulation as solicitors' practices.

It follows that RFLs are subject to the jurisdiction of the Solicitors' Disciplinary Tribunal and may be struck off the register, suspended or fined. The RFL's registration is automatically suspended on the RFL being made bankrupt or on the RFL being struck off or suspended from practice within her/his own jurisdiction[264].

One should obviously question why lawyers would wish to set up MNPs, if they are expensive and do not give the foreign lawyers greater rights to practise

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[263] The figure had only risen slightly, to £285, by 1999, with lawyers in England and Wales paying an additional £15 to the Compensation Fund and those outside the jurisdiction paying £10 (Source: personal communication with Law Society).

[264] The regulatory powers of the Law Society, such as the inspection of accounts and intervention in a practice, are also exercisable in respect of MNPs.

locally. One criticism of the rules has been that they discriminate against the large foreign law firm by requiring all the partners in all their offices world-wide to register and pay the fee (even if the lawyer is not in England[265]).

Several of both the US and UK firms visited were, in fact, MNPs. Others had decided against this for the present or were still considering the possibility.

The major complaint of interviewees against the rules was that it was unfair for every partner in the firm to pay a levy. As a result, firms were forced into creating subsidiary London partnership structures to avoid this. The process was also seen as "bureaucratic" and potentially lengthy.

However, other lawyers felt that such problems were *de minimis*. The cost of the fees was low in relation to the benefits gained, which are considered below. Another mentioned that tax reasons may be more important in relation to how a practice is structured. They did not think that the potential loss of referral work from other firms was too significant.

The main perceived attraction of a MNP for US lawyers was that of promoting client credibility. For instance, if they were at a beauty parade, they did not have to explain to clients why they were practising English law but were not solicitors. One firm also stated that they had been giving too much work away and needed the capacity to answer English legal questions and wanted to take solicitors into the partnership. Another benefit was that English law was often the preferred law of finance and so the firm wanted to be able to deal with that governing law by employing English lawyers to do the work.

English firms felt that a motivational advantage was secured by forming a MNP. Lawyers' motivation was said to come from "partly money, partly status and

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[265] This may result in a hefty financial burden. The Law Society was, however, reported to be hoping to modify this rule (Gilvarry 1992), although it has not done so yet.

partly 'belonging to the family' ", and so the firm could show its commitment to foreign lawyers by making them partners. The firm could be seen as one partnership:

> "We set up the MNP following to follow our business philosophy ... being one firm is important for the motivation of our foreign lawyers." (English partner)[266]

Troen (1994:27) agrees and believes that becoming a MNP:

> "... adds dimension to the practice, and enables partners to adopt a truly diversified and international approach based on the different experiences that national and foreign lawyers have had ...
> [O]ur clients have expressed confidence in the knowledge that all the partners, of whatever legal qualification, are responsible for each others' advice and instructions and find it reassuring that advice can be or is given in the native language if required. They have also confirmed my own experience that the one-stop advice which we are able to give is less costly than the usual international advice and also given more quickly."

In this regard, MNPs raise issues which will continue to be discussed later in the thesis, including the employment of local lawyers, the rôle of firms' cultures (and finances) in determining international strategies and whether 'one-stop' advice is desired by clients. It might be interesting to monitor how far the vehicle of the MNP is used in the future to truly localise practice, perhaps to move further in line with the structures of the Big Five accountancy firms.

The next section now moves on to look at the most visible vehicle of international practice, the overseas office.

Overseas offices

Overseas offices can be extremely diverse (Bain and Marriage 1994:24):

> "An overseas office can take different forms: it can be a joint venture with other firms (English or foreign), can be partly "owned" by the home firm and partly local "partners" or can be a branch of the home firm."

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[266] Although, as seen before, foreign partners (in some firms in some locations) may receive lower compensation.

Offices vary tremendously in size and what they actually do[267], as is illustrated by the diversity to be found in the foreign offices of firms situated in London and Frankfurt. Some may, for instance, be geared up to compete in the local legal market for domestic work, whereas other may simply act as 'postboxes' for the throughput of work to a firm's other offices.

This section will set out the interviewees' thoughts on overseas offices.

London interviewees' views on foreign offices

In this section, US and British interviewees' views will be taken together, as differences appeared to relate more to the culture of the firm in question rather than its nationality. Nevertheless, there will be a section at the end of the chapter on the differences between firms.

- Why choose the organisational structure of foreign offices?

These offices are often seen as "the most cohesive and committed form of truly international practice." One of the solicitors interviewed said that foreign offices maintained a degree of closeness not possible with other forms of organisation, such as networks and this meant that the quality of advice they could give was better. Lawyers stressed the importance of maintaining firm culture in foreign offices[268], as will be seen below. They could also export their "Anglo-Saxon common law way of thinking," applying the law for clients and not merely stating it, as some lawyers abroad were perceived to do.

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[267] And in their structure: Page notes that some overseas offices have been set up as separate partnerships within the firm structure, as will be seen later, although he doubts whether this is a wise strategy in the long term (1994:4).

[268] This 'one firm' culture may contrast with the Big Five accountants whose practices tend to consist of looser federations.

In effect, interviewees believed that although foreign offices were of different sizes and so their strategies had to be different, their firms saw themselves as one firm. Foreign offices of the larger firms had business plans which were reviewed and co-ordinated from London. London was also on call to supply central support in various matters, from information on professional conduct to staffing.

Yet some offices were organised as local firms with a permanent staff whereas others kept to rotation periods for staff. The latter was usually the case with representative offices and those in which the work flow was patchy. This renders the notion of 'one firm' much more complex - for instance, the long-established Paris offices of the largest firms tend to operate with a significant degree of autonomy from London and so this would appear to derogate the universality of one firm rhetoric[269]. It may be that that this rhetoric is needed to reassure clients[270], and perhaps regulators, as to issues of control and quality. It may also be that this would reassure lawyers within firms who are less enamoured with global strategies than some of their less cautious contemporaries. In this way, the use of the concept of one firm culture might be appealing as an assertion that the firm is together, bound by an all-pervasive understanding of how things should be, and that the firm retains the quality of its work wherever its lawyers are.

Indeed, one solicitor did refer to the ubiquitous notion of culture again, to note that integrating various cultures was not always easy:

> "Our culture is that of a UK based firm trying to integrate lawyers of different countries ... We try not to impose our culture on foreigners as we want to make our culture accessible to lawyers in all the countries where we operate. It's quite tricky ..."

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[269] Lewis and Keegan confirm that foreign offices vary (1997:4): "The degree of autonomy exercised by overseas offices varied, with some operating almost as a subsidiary of a London office or department, and others having a high level of independence."

[270] Although the issue of how much knowledge clients have and what clients want is open to debate, as is constantly noted throughout the thesis.

This quote in itself implies that culture is relative - it will itself adapt to new environments and, in fact, must, as the realities of practice within different offices will be so different[271].

- Why open foreign offices?

The first point that lawyers tended to make was that international expansion via the establishment of foreign offices was a client-driven phenomenon[272]. Clients wanted their lawyers in other jurisdictions[273].

Offices were often set up for strategic reasons, to serve existing clients going to new locations. This may also be a defensive move, to prevent other firms with overseas offices poaching their clients (similarly, see Hanlon 1994:153 for a discussion of this in accountancy).

Yet other factors were often involved in making the decision to open up offices. The possibility of attracting potential clients by establishing a foreign office in a particular jurisdiction was significant; moreover, as one lawyer stated, occasionally one "takes a punt" and anticipates client demand. Thus, one had to determine how much business could be generated in a particular location, and this meant business for the firm as a whole, as some foreign offices were particularly important in acting as a conduit for work to other offices of the firm. This could often be a very imprecise art; one US lawyer felt, for instance:

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[271] This leaves unanswered the question of how far the existence of foreign offices can change the 'head' office's culture. One would imagine that if a significant number of lawyers worked in different foreign offices before returning to the home country, this may have some impact on how affairs at home were ordered. This issue was not, however, examined in the interviews.

[272] Heinz and Laumann (1994:163 and 164) also note that opening branch offices might be one means law firms use to curry favour with clients, particularly so when the profitability of branches is not assured.

[273] To put this in numeric terms, during the period from 1950 to 1970, the percentage of 'Top 100 UK' manufacturing firms with interests abroad increased from 29 to 58% (Hanlon 1994:48). US firms were similarly active (ibid).

> "... if you asked the US lawyers coming to London in the 1980s what they imagined they would do and what they actually did, there would not be too much common ground between the two."

Again, the difficulty or lack of law firm success in formulating strategy is to the fore.

In effect, this tension between seeing lawyers as reactors to the demands of their clients and as proactive generators of that demand became blurred ("the move to foreign offices is partly client led and partly design")[274]. To some extent, the balance between the two sides of this equation might be weighted one way or another depending on the location of the office and the nature of work itself. For example, one lawyer stated that they had opened in Brussels as they needed to be able to advise clients on EU law. However, they had moved into one Eastern European location to be the first international law firm there[275]. They had a couple of lawyers who were personally interested in the area and establishing an office seemed to be a good financial risk. Goldberg quotes David Barnard (1993:52) of (the firm formerly named) Linklaters & Paines, who stated that his firm decided (presumably in partnership meetings, although that is not discussed) to set up offices as follows:

> "L & P's first foreign offices were opened in New York, Hong Kong, Brussels and Paris in the early '70s. The latter two were established as an "act of faith" when Britain joined the Common Market, says Barnard. The next surge of activity came in the late '80s, at the end of the M & A boom. Offices were set up in Tokyo in 1987, and in Singapore and Frankfurt in 1992.
> Singapore and Tokyo were designed to be "feeders" of Pacific Rim clients, and to "catch the Hong Kong overflow," notes Barnard. Frankfurt made sense, not simply because it is a financial center, but as a gateway to a Central and Eastern European practice, he adds."[276]

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[274] This again brings us back to the argument of demand creation, and the arguments of Abel, Dezalay and Flood in particular.

[275] Clifford Chance opened in Bangkok after the firm's market research "revealed an internationally orientated community frustrated by local legal services" (International Financial Law Review Editorial February 1996:5).

[276] One consultant quoted in Stevens (1987:141) posits his own view of when offices *should* be set up as: "The moral is that you don't open an office in a distant city just to keep a client. Not unless that client is so big that the firm would collapse without it. You open a new office only if you believe you can build a substantial business there either from scratch or through a merger

The specific point was made, though, that if one measured the value of the work of foreign offices by balancing fee income against the cost of running the offices, they would often lose money as their own cost centre[277]. However, there were other reasons to run such offices. Apart from preventing clients from going to competitors, offices generated work for lawyers in the other offices and so helped to maintain a strong client list, as mentioned before (although firms did not mention whether they tried to quantify such referral work). Other less tangible factors mentioned were that foreign offices helped to recruit the "best young lawyers" who found such work appealing and also:

> "It prevents partners becoming bored in their middle years!"[278]

It must be said, however, that it is difficult to evaluate law firms' strategies as so much appears to be based upon guesswork. Indeed, foreign offices may not necessarily be seen as a "good thing" by all clients. Some may feel that foreign offices (and networks and alliances for that matter) may potentially deprive clients of the most qualified legal advice. As Schraven (1994:81) argues (in relation to the provision of advice on local law):

> "Let me simply say that multinationals like Shell do not need global firms. We went abroad a long time ago, and we have been enjoying the services of good local firms which were carefully selected for their quality - and sometimes - their local contacts. Only in a few countries is such quality matched by local branches

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with another law firm. Should either of these options fail, should you find yourself in the wrong city for the wrong reasons - we are, after all, human - my advice is to turn off the lights, cut your losses, and take the first nonstop home."

[277] Legal Business reported (Flintoff 1995:12) that the cost of closing down a foreign office in itself can easily rise above half a million pounds.

[278] The importance of a New York office has been specifically described as follows (Marks 1995:22): "The importance of a New York presence is more a question of strategy than bottom-line profits... Contacts, referrals, enhanced profile and inclusion on the A-list of the world's most important financial and industrial institutions are what lure firms to New York. "If you are not in New York, other law firms and corporations do not recognise you as an international firm," says Rafael Sebastian, of Uria & Menendez." This lawyer seems to be saying that how law firms are regarded by other law firms is important, that status is significant. Why might this be important? Status might matter in relation to the referral of work (assuming this is of significance to a firm, which it might not be), and might be useful in attracting lawyers to the firm. There might also be a certain fear of being the 'odd one out', whether a justifiable fear or not.

> of international firms. I must add that the situation is somewhat different in countries without a tradition of business law. Those Western law firms which were the first to arrive in such countries have been called upon for advice in connection with new trading or investment activities. However, I suspect that over time we will prefer relationships with good local firms, if and when these have been formed."

Those law firms which had invested heavily in foreign offices, unsurprisingly perhaps, are quick to justify their investment by arguing that clients have driven the opening of offices, that clients want these offices. In this regard, clients might be self-selecting, so that those who go to large firms are mostly convinced of the advantages of using firms with a string of foreign offices, whereas those which are less enamoured of foreign offices (such as Shell above) make their own arrangements. The importance of this debate will be considered in the chapter on the future of international work.

German law firm interviewees' views on foreign offices

- Why open foreign offices?

German corporate law firms first began to recognise international competition in the mid-eighties, when many established offices in Brussels (Rogowski 1995). However, German national rules formally prevented the establishment of foreign offices until 1989, when bar regulations were brought into line with a EU decision (of 1984) which ruled that they should be allowed.

Thus, although some German firms did flout these rules and did set up a limited number of offices abroad in the decades prior to liberalisation, the bulk of these offices have been set up in the nineties.

To compare this with Anglo-American 'mega-firms', the contrast is revealing. Many founded offices in Brussels and Paris from the 1960s onwards (and occasionally before) and then continued to expand into other jurisdictions in the

following decades. Hence, German firms' foreign offices tend to be more recently established although this does depend upon the location in question.

As noted before, almost all German interviewees stated that their decisions to expand abroad had been both client and firm-led (although, again, it is unclear how far these firms attempt to evaluate the (potential) success of strategies). One German partner commented that they had opened an office in a certain country as:

> "[O]ur clients did business there. We also thought that it would become a good market in the future and we were one of the first firms to open up."

Consequently, foreign offices were set up for offensive and defensive reasons - to keep and attract clients:

> "Foreign offices create more and better clients, and maintain the firm's client base."

Only one firm stated that its decisions were wholly firm-driven (as opposed to being client-driven), this being one of the youngest firms which felt that it could not rely on its reputation alone to expand:

> "Opening foreign offices for us is not normally client-driven. We decide to open them as entrepreneurial decisions, when we feel we can compete in a market."

Clients might, however, expect one to have a foreign office, even if the work could be done at home. One interviewee stated that its EU work could have been undertaken in Germany, but that clients expected them to have a Brussels office. As another commented:

> "If you want to be a recognised player in EU law, you need an office in Brussels."

Other offices, however, might be set up primarily to undertake local law, most typically seen in the East European offices and so a base in these countries (with local lawyers working in the offices) was viewed as being necessary.

Hence, there was much in common between the responses of the interviewees in London and Frankfurt.

- The organisation and staffing of the foreign offices of German firms

All the German firms interviewed treated their foreign offices as belonging to the national partnership, so there were no local profit centres. They stated that they believed in the "one-firm" concept, as did most of the interviewees in London. There was a great deal of consistency in the interviewees' views here.

This "one-firm" concept was promoted by ensuring that foreign offices were managed by a German partner, who knew the German firm's culture well:

> "It's vital to choose the right lawyer - otherwise they could ruin us."
>
> "We have German partners in our foreign offices, to ensure that the office is integrated, but we usually want to practise local law as it's essential to understand the local legal environment."
>
> "You must practise local law to survive."

However, one firm will soon have a foreign office which is wholly run by local lawyers (when the current German partner managing the office returns to Germany) and it may be then that these firms face the cultural conundrums of the City firms, seen above.

Indeed, how long German lawyers stay in the foreign office varies, and this does raise the question of how far lawyers lose touch with developments 'back home'. Lawyers in the Brussels offices were usually there permanently ("it's a lifestyle choice and they can practise local law"). Rotation periods were not rigidly defined, but the most common length of stay was about three years. This was most likely to be the case when lawyers often did not want to stay in the host country permanently, which might be particularly true in certain Eastern European countries. One lawyer also commented that in the long-run, having ex-pats in most foreign offices would be too expensive. Only one firm's lawyers

always went abroad permanently - the reason given was that if lawyers returned to Germany, client relationships would have to be established all over again. However, this firm's offices were based in locations which lawyers usually found to be attractive.

Certain offices were treated as representative offices, acting mostly as a referral point for business. This was typically seen in their London and New York offices, where the feeling was that the markets were already over-lawyered.

These lawyers usually volunteered to go abroad, or were asked:

> "We've never forced anyone to go abroad ... Who you can't replace at home, you probably can't send. There is no rule about at what stage they go but they are usually between 35 and 45. The older they are, the less likely they are to move, and if you don't have a family and children, it's easier to move."

No firm mentioned that they thought it essential that partners should go abroad after making partner.

Interviewees were also asked about their policies on sending younger lawyers abroad. The consensus was that most young lawyers stayed in Germany (although, as will be seen in the case study, they have usually had foreign experience before joining the firm).

Several interviewees commented that they had few suitable positions abroad for young lawyers, although they could be sent to another firm or even clients (or language schools overseas to improve their language skills).

Those who did go to foreign offices had worked in the home office for at least a couple of years before going, as they needed some experience to be able to do the job once there. They had to be willing to go, and two interviewees added that they would need to have a particular interest in that country or useful skills.

One interviewee believed that by going abroad the lawyers would gain an understanding of another legal environment, become more culturally sensitive to the country and develop business contacts. However, another interviewee was in the process of analysing how far young lawyers actually benefitted from their time away. To the question *"What do you think they gain from the overseas experience?"* he replied:

> "That's something I'm asking myself! I'm sure they work hard and I hope they have a nice time, but I'm wondering whether they get any more international exposure. Many have some legal training abroad already. Like all the leading German firms, we recruit at the New York job fair. Among the top 10% of graduates are there."

One associate felt that those who went away risked their relationships with clients. Another partner felt that it actually might be difficult to make partner if one went away:

> "It's very difficult for us to promote someone to partnership if they have only worked in Brussels with one or two partners. We have a system here where people work with a lot of partners before they become partners themselves and so it's indispensable for people to work in a major office for some time. You need to get to know them."

To compare this with the policies of City firms, as most City interviewees were not asked about working overseas it might be useful at this stage (as a postscript) to consider the advice Alison Beardsley (Allen & Overy's graduate recruitment partner) recently gave to UK graduate applicants who hoped to work in a foreign office of a City law firm, as part of their training contract ("articles"). She believes (Beardsley 1998):

> "Firms tend to welcome applications from candidates with language skills, although they are by no means essential. But if you can get by in a foreign tongue your integration into the office will be smoother. Firms usually recognise this and provide training to improve skills and vocabulary before you leave or on arrival.
> However, it is your *legal skills* that secure your seat and these stay paramount. Regardless of where you go, you will frequently work for multinational clients who discuss contracts in English and you will often deal in English law. So unless it is your mother-tongue, it is not the best idea to test your pigeon Russian when negotiating a deal for an important client." (italics added)

Hence (contra Dezalay, for British lawyers), language skills are a bonus but not essential as much work is likely to be conducted in English. Good "legal skills" are essential; although it is not clear what is meant by that, one would imagine that the section above on "the skills of an international lawyer" would provide some clues.

Comment

This discussion showed there to be much agreement between Anglo-American and German firms as to what the advantages of foreign offices are and why they might be set up. Differences between firms can be accounted for by the different histories of national professions and their regulation, the types of work undertaken by firms, their client-bases, and cultures (specifically their risk aversity and consequent fear of losing control over the quality of work) and in the financial resources firms have to pursue their ambitions.

These factors can lead to great variation in the number and types of foreign offices opened. For instance, some US law firms have only opened a handful of foreign offices whereas others have tried to establish much more comprehensive global coverage. This will be discussed in greater depth at the end of the chapter, when differences existing between firms are analysed further.

Even if firms tended to view the structure of the foreign office as their preferred vehicle for international work, though, this did not mean that offices were unproblematic entities, as the next section will show.

Problems in establishing and running foreign offices

This section begins the analysis of the problems which foreign offices may pose for law firms. This is intended to act as an introduction to some of the issues considered in the two case studies. The views of the interviewees will be taken together, as there was so much agreement about the difficulties which could arise.

A useful starting point is Abel's passage on potential problems (1994:745):

> "Foreign branches pose distinctive problems for law firm governance. Size alone undermines collegiality among the partners. Large amounts of non-billable time and energy must be devoted to overcoming centrifugal forces ... Branches are susceptible to the perils of both economic failure and success. Their high cost, initial unprofitability, small size, and dependence on providing a fairly narrow range of services to a small number of clients makes them economically precarious. Just as they are often created by cherry-picking, so they are also susceptible to similar raids and defections by lawyers with personal reputational capital, who take clients with them. Some locales, such as Kuwait and Beijing, are subject to political turmoil."

The biggest problem perceived by interviewees was that of finance and financial risk, a point made above[279]. The partnership structure itself could limit expansion, as this is funded from partnership profits and so may engender a short-term approach[280].

Offices often had high overheads and one had to take on financial commitments when the nature of the work was uncertain. Insurers may have to be convinced as to the acceptability of the potential risk involved. Yet, as Simon notes (1996:83) in relation to companies, risk can be difficult to gauge:

> "[T]he globalization process itself holds considerable risks. Doing business and having subsidiaries in many countries can be a major addition to the complexity of a company. It is difficult to judge the potential of risk in new areas. Markets in emerging of culturally alien countries carry objectively higher risks."

Partners also usually had to spend more time engaged in administration and less time in direct fee-earning work. Opening a foreign office was usually very expensive; some German firms noted how foreign offices could make a serious dent in one's profits.

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[279] Mattheson's analysis of the "con side of going global" (1994:85) is that:
"... going global involves risking capital, dislocating people, realizing losses in new offices, evaluating intangible pluses - all of which are complicated and controversial problems."

[280] Again, this may be in contrast to the Big Five accountants who are more able to carry short-term losses and who pass on rewards more directly to local partners (Page 1994:5). It may be that opening limited liability company offices will become more appealing to more law firms in the future.

Other problems included finding the right personnel to staff the offices, as seen in the views of German interviewees above. For instance, some potential candidates might view moving abroad to be too much of a personal and professional risk. They may have commitments at home and/or feel that they did not want to spend a lot of time trying to build up a business which might fail.

Recruiting local lawyers was sometimes difficult, particularly if the "locals" were suspicious of the firm's long-term commitment to the area and if there were local firms which offered a comparable career which was seen as being more secure, or of higher status[281]. In certain jurisdictions, local lawyers could also be very expensive. One solicitor thought that potential employee lawyers:

> "... have to have a bit of a dream about working for a big international law firm."

Overseeing the quality of work of local lawyers may also be a problem when one was unaccustomed to the jurisdiction. Indeed (Abel 1994:744):

> "Hiring local lawyers raises a host of issues. For example, (1) will the local profession permit it; (2) will local firms resent the branch's local law capacity and cut off referrals; (3) can local lawyers be taken into partnerships; and (4) will the foreign firm do so? Referrals are likely to depend strongly on market forces; if the branch continues to refer work out, local firms will reciprocate. Partnership, on the other hand, can be touchy."[282]

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[281] As Lewis and Keegan note (1997:4), when discussing large English law firms: "[T]he extent to which overseas offices practised local law appeared to vary, both between firms and between different jurisdictions. It was said, for example, that the local regulations in some countries made it impossible for a London-based firm to employ local practitioners, and that the strength of locally-based firms (for example in New York) made it difficult for a London-based firm to offer a competitive service within the local jurisdiction. In other countries, however (for example in Eastern Europe), a London-based firm was seen to be able to compete with local firms in establishing a local law practice."

[282] Page argues, however, that the best way of solving the problem of staffing would be to concentrate on staffing offices with locals who feel secure within the global partnership (1994:6); this would mean granting them full partnership status.

The latter point relates back to Page's view noted earlier on the relative absence of true multi-national partnerships and the possibilities of racial discrimination in recruitment and promotion of lawyers.

The logistics of staffing could be hard to manage if staff were subject to rotation; one must teach newcomers whilst returnees had to be reintegrated into the firm upon their return. Yet choosing the "right" lawyers was seen to be crucial if the firm was moving into a potentially hostile location; the staff would have to be culturally sensitive to the new environment. Both case studies take up the issue of hiring local lawyers.

Regulation was seen as being a problem in certain jurisdictions (although not in London and Frankfurt) if the government, business community or legal profession were suspicious of new-comers and regulation protected the home profession, imposing restrictions on the work of foreign legal professionals. Effectively, one English partner thought that they were encountering a "traditional view of professionalism and outright protectionism." This was usually seen as being related at least in part to the "weak" strength of the local bar who protected their turf unjustifiably in the fear of being swamped by the incomers:

> "... this is a reflection of the weakness of local professions which worry about our competitive threat. [Are they justified?] No, as they are using the regulation to protect themselves, not the clients." (US partner)

> "We are free-traders ... Restrictions are not justified from a client's point of view, although developing professions often want to protect themselves ... but that is usually self interest and is not pro the consumer."[283]

The point was then often made that the local bar would not be sophisticated enough to do the work they would do anyway and that they would generate work for local lawyers.

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[283] This theme will be returned to later, in the later chapter on regulation.

However, the reception of foreign governments varied, some being more protectionist than the local legal profession, who sometimes agreed that the international lawyers could generate local work for them. On other occasions, firms themselves might be working in another country on the invitation of a foreign government, for instance, in relation to debt rescheduling. One example was given of one particular government licensing foreign lawyers to practise to "bring the local profession up to speed" through the competition and then withdrawing the licences once this had been achieved![284]

Interviewees state that their firms tried to find out what was and was not allowed in the new location, although this may not even be widely known by the local profession. As one US lawyer stated:

> "In England, we have practised the local law for a long time, but we still found some solicitors who were hostile to us as they believed that we were not entitled to this ... This has ended now, though, with their knowledge of the MNP rules."

Problems which were more practical in nature included language difficulties and infrastructure problems, such as getting the computer system to function properly.

To reiterate, foreign offices could encounter financial, regulatory and staffing difficulties. These issues, and more, will be illustrated in the two case studies.

Comment

This part of the thesis has aimed to provide information on how lawyers work and how their work is organised internationally. When the skills of an international lawyer were discussed, it was seen that the national base of lawyers was still relevant as one still had to have good knowledge of one's home jurisdiction. Whilst international lawyers might share certain skills and also are likely to come from privileged backgrounds (as seen earlier), this would imply that they might not turn into some form of rootless, standardised global professional. In itself,

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[284] An anecdote running counter to the logic of Dezalay's thesis.

this undermines to some extent the work of Sklair (1991) as it does not appear that a homogenous transnational service class will necessarily be formed (or exists).

When considering the promotion of work internationally, it was interesting to note that lawyers were often cautious in their choice of marketing methods. This might have been because firms were anxious to give the impression that they were 'top drawer' firms, being beyond crass commercialism, to emphasise their status. Perhaps too this showed that lawyers might have reservations about an increasingly commercialised approach to practice, even though there might be pressures (particularly in Germany) to move beyond traditional approaches to marketing, to adopt a more commercialised form of professionalism. This might suggest that globalisation (seen in the increased competition to some extent caused by the presence of foreign firms in Germany) is challenging the old ways of operating.

Yet, and again, this does not mean that some standardised version of professional practice is forming. US lawyers in London, for instance, appeared to be concerned to play down the image of the brazen American incomer, which might reassure both potential clients and competitors. Instead, it seems that law firm culture is likely to adapt to fit its local surroundings, to "relativise" (Waters 1995).

Why law firms had developed their international work in the first place was seen to depend on their cultures and resources, in how they reacted to forces affecting demand and supply. They might decide to follow clients and/or to actively seek out 'green-field' sites; this affirms Flood's analysis. The law firms visited preferred to focus on developing foreign offices rather than using other structures such as networks, even though foreign offices often experienced problems such as those of staffing and finance. Interviewees felt that foreign offices maintained a degree of closeness not possible when other forms of organisation were used; however, the notion of "one culture" spanning the firm worldwide was

problematic. Indeed, if the development of a local culture is likely, this does have implications for regulation. Can the home office of law firms be assumed to control its outposts work effectively? Should foreign firms be regulated in the host state? Issues such as these will be considered in the second half of the thesis.

First, however, the case studies will be discussed.

Case study one - The London offices of US law firms

"In the beginning, all the World was America."

John Locke (1976)

This excursion into the work of the City offices of US firms aims to ground some of the above discussion by considering a concrete example of foreign offices in one location in some detail.

As has been mentioned before, I found the presence of so many US law firms in London intriguing, particularly as there was so little published information about what they were doing there. Thus, to put the work of these offices into context, some information on the development of these offices and their impact in London since arrival in the City will be given. How these offices are organised is then discussed, before the issue of the employment of local lawyers is analysed.

The development of work since arrival in the City

Pritchard before (1994) stated that US law firms fell into several categories - those which offered only US advice to corporate clients, those which competed with local firms, those which were involved in "stateless financial transactions" such as capital markets work and those with general practices doing a wide range of work. However, new strategies were being adopted.

As has also been mentioned before, the firms visited tended to have been established in London from the 1970s onwards. The interviewees were asked about the development of their offices' work since their establishment in London.

Several lawyers said that the work of the office was now radically different to that when the office opened. Some had come to London specifically to serve one client, such as those involved in oil exploration. Often, the development and expansion of the office since that date was due to the development of the capital markets and the de-regulation and privatisations of the 1980s. This again suggests that firms both react to market opportunities and help to create them. Moving overseas is often a precarious business and firms must be flexible if they are to respond to potential new areas of practice.

One of the significant events in the development of work for US firms was the British Telecom privatisation (confirming the views of theorists such as Moran 1991); it founded a lucrative area of practice. Indeed, in such areas, products often change quickly and work is of high value. As Moran (1991:3) points out:

> "It is the markets of New York and London that have supplied the greatest engineers of financial innovation."

Wall Street firms in particular have been at the forefront of such innovation and have profited considerably as a result.

For other firms, the development of work has been less dramatic. One of the firms which undertook private client work stated that the practice had not changed much but there had been an increase in their resources; they could not rely upon the work generated by one relationship with a large investment bank as some US firms could and so had a broad range of clients. It was hard for them to predict on a day to day basis where the work would come from. The workplace was now "harder and faster"; the amounts involved in cases were higher and the work was more intellectually demanding.

The impact of US lawyers in London

In a macro economic sense, most interviewees (both US and UK) felt that the presence of US lawyers in London had not been of great import. However, certain US firms had been particularly successful in niche areas, such as in international security offerings, and had made life more competitive in those areas for local lawyers.

Nevertheless, the advent of both US financial institutions and lawyers was felt to have been significant in changing the work practices of the leading English commercial firms. As Moran (1991:4) points out:

> "When American institutions marched into London, American power and American preoccupations marched with them. London is the most important arena through which the American financial services revolution has been exported."

Interviewees felt that, traditionally, US lawyers were more proactive and result orientated than City solicitors; they worked alongside their clients, and around the clock, as business advisors. The English were more reticent, reactive, waiting for clients to come to them with a transaction, working set office hours.

This has changed immensely. A few US lawyers said that this was due to their competitive influence in London, but most felt that it was due to the impact of the US financial institutions, which moved in from the 1970s onwards. US bankers looked for a certain type of lawyer, choosing those whose business style suited theirs - open, flexible, proactive lawyers. English firms chose lawyers to appeal to those bankers.

Whether US lawyers have been influenced by anything in the English way of working is more difficult to discern. Certain lawyers mentioned that they now recorded stages of a transaction more thoroughly and that some of their documents were less complex. However, the balance of the flow was seen to have been mostly the US way.

To take one step back from this, we should recall Dezalay's thesis (1995) of the effects US lawyers have had upon local legal markets. To lay the largest part of responsibility for changes in the practices of UK solicitors at the doors of their US clients, as opposed to their US legal competitors, is to turn Dezalay's argument somewhat on its head. It brings us back to the critique of Weberian theory such as Abel's, which might overestimate the ability of lawyers to 'control' their clients and affirm's the views of Nelson (1988) and Hanlon (1997), that clients have done much to change their lawyers' ways of working.

This implies that a fuller view of the impact US lawyers (may) have upon host state professions necessitates consideration of factors such as the 'strength' of the local legal profession (in its ability to compete with the US incomers), the extent and significance of the types of work undertaken by the incomers, the nature of relationships with clients, and the business culture/s of the host nation.

The organisation of the work of the US offices

To move on to look now at how US firms organised their work, in the States most firms had a committee which took overall responsibility for the firm's direction, typically the "Policy and Planning Committee". Other committees formulated policy in areas of specific interest, such as technology, geographical areas (such as South East Asia) and practice areas, such as litigation. Most partners in London had an interest in one or several of these committees, particularly the international practice committee.

In London, however, the organisation of work tended to be informal, due to the relatively small size of the offices. Contacts with the States were regular, through means such as e-mail, conference calls and working jointly on cases. Some London offices were particularly close to their European colleagues in the other European offices.

It is here that almost all the interviewees raised the concept of culture as an explanatory device. It was proudly stated that all the foreign offices retained the "firm's culture", although this entity itself was not defined explicitly. It seemed to be seen as something which made the firm different to others, perhaps respectable, helping to maintain control over the quality of work, and determining the working atmosphere within the office. The Wall Street firms were particularly keen to ensure that the firm's culture was retained in overseas offices, and we shall see later that this stance was reflected in their caution in establishing foreign offices and hiring local lawyers. This brings us back to Alvesson's (1993) notion of culture as "social glue" and also Clegg's (1993) stress upon the importance of reputation to international service firms.

The lawyers reflected that they did have autonomy over many matters, such as decisions about the promotion of business. However, one commented upon the relationship with the main office in the States, qualifying the foreign office's autonomy:

> "If a foreign office is doing well, they will make their own decisions. But if they are not, someone in the States will want to know why."

Hence, the idea here is that the home office is only concerned with the foreign office's money making - and not how the money is made. This raises the issue of control over the work of the office - does an overarching firm culture exist which ensures that foreign offices can be trusted to manage their affairs well? Do foreign offices have too much autonomy? How is their work regulated? These issues will be discussed in the chapter on regulation.

The American interviewees stressed that they had been tempted to come to London both because the work was interesting and as the lifestyle here appealed to them, (bearing out Moran's (1991) assertion that London has been an attractive place to live for the "incoming Americans").

Within the last 10 years, most firms have moved away from set rotation periods for partners[285]. The advantages of having partners here permanently were seen to be that they could get to know the local environment and establish good relations with clients, so clients had some sense of continuity. Furthermore, under the previous system, lawyers were seen as just becoming useful when it was time for them to go back home. One lawyer, however, said that that was the "official reason" for the end of rotations. The "unofficial reason" was simply that partners liked working here - "it is satisfying to be within a big firm but within a small unit with a certain amount of autonomy"[286].

This quote suggests that foreign offices may have a certain amount of freedom which is not possible in the nation state and that a local culture forms in the office. This might mean that the foreign office does things very differently to the office in the States - for example, the overseas office might not undertake pro bono work and programmes and policies, such as mentoring schemes and anti-discrimination practices, might not be implemented or carry the same weight. This could be due to a variety of reasons - the size of the foreign office might mean that home state and office programmes are not feasible or lawyers might be glad to be free of such obligations. There may be a certain amount of freedom from regulation at an international level; this theme will be considered in the chapter on regulation.

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[285] The system of rotation ensured that lawyers spent a limited period of time in the foreign office before returning to the States. This might be of particular use if the workload of the office was irregular and so there was little need for continuity in its staffing.

[286] This reference to the importance of autonomy bears out the significance some lawyers place upon elements of what Gordon and Simon (1992) refer to as the traditional ideal of professionalism.

Employing local lawyers in foreign offices and the lateral hiring of US and UK lawyers in London

This section builds on the earlier discussion of the problems that the hiring of local lawyers might pose for foreign law firms. The intention is to illustrate some of that discussion within the context of the London legal market.

Some UK and US firms try to employ local lawyers in all their foreign offices:

> "We aim to practise local law wherever we can, as to be credible to an international clientele you have to be amongst the best lawyers in any jurisdiction."
>
> "You need local law to do major deals ... and it can be cheaper and more efficient if you have your own locally trained lawyers and do not subcontract them ... but this would depend on the office."[287]

Others (predominantly the Wall Street firms) said that they keep a home-trained core to carry on the firm's culture. The firm's practice areas were a major factor influencing this decision - some involved in capital markets work may not have the same need, for instance, as a firm engaged in other areas with greater domestic impact to hire local lawyers.

In fact, some capital markets firms did not employ local lawyers in any of their foreign offices. They suggested that the nature of their work meant that they were not interested in local practice. If they needed local legal advice, they would find the best lawyer for the job in the jurisdiction. As transactions were so complex, this ensured that the client received the best legal advice. If they employed only a few local lawyers the firm may not be able to provide a credible and competent service, as "critical mass" logic dictated a minimum threshold level of lawyers. As one lawyer stated:

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[287] The view of Michael Richardson, of Lawrence Graham, is that clients bringing international work (Richardson 1996:9) : "... frequently seek guidance on a range of subjects related to their business objectives: local economic conditions, market opportunities, the availability of finance, the labour market and often the political environment and outlook."

> "We have three problems: getting the right people and enough of them; finding enough of that kind of work for the lawyers to do; and how to deal with ancillary specialities."

However, such policies are not carved in stone and this is a particularly thorny issue for many firms at the moment. Lawyers noted a tendency for clients to prefer a 'one-stop-shop' and this pressure entailed a constant re-examination of firm policy in this area.

This provides the background to the recent spate of 'cherry-picking' (lateral hiring[288]) within the capital markets sector (in securities and mergers and acquisitions work) which will now be considered. The lateral hiring of both US and UK lawyers in both London and New York has been the source of various articles in the professional legal press. The London market will be considered, although one lawyer felt that it was the initial encroachment of UK firms into the New York market[289] which had started the "US retaliation."

This should, though, be kept in perspective. Some lawyers felt that a disproportionate amount of attention had been given to the issue in view of its overall impact on the market. Gordon, a partner at the US firm Mayer Brown & Platt, also states that movement of partners across the top five City law firms is "almost non-existent" (1998). Nevertheless, lateral hiring appears to be increasing in frequency and it now seems that the "top" firms have become the leading recruiters at partner level, according to an article published by the Commercial Lawyer in 1999 (Chambers and Wilkins 1999). Their statistics, which list all lateral hires at partner level[290], are shown in the following table.

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[288] In England and Wales, there is no general rule which prevents a solicitor from acting against a former client of her/his former firm (Sherr and Webley 1997:128) although the provisions on conflicts of interest apply.

[289] At the beginning of the 1990s, the New York Stock Exchange made it far easier for foreign companies to list there with the 144A rule, opening up international capital markets as never before (Lindsay 1998a).

[290] However, Chambers and Wilkins state that the decision to offer local law in their overseas offices is one of the main reasons why firms like Clifford Chance, Linklaters, Allen & Overy and Freshfields have actively embarked on lateral hiring (1999:30). Foreign partners account for 52% of these hires. Other reasons for increased lateral hiring are specialisation and competition - in

The figures in brackets indicate the number of partners hired from US law firms, if any:

Table twenty-three - lateral hires in 1998 and partners leaving

Name of firm	*Gains*	*Losses*
Freshfields	16 (6)	1
Linklaters	12 (3)	1
Dibb Lupton Alsop	10	12
Eversheds	10	3
Pinsent Curtis	9	5
Allen & Overy[291]	7	2
Clifford Chance	7 (1)	9
Masons	7	1
Bevan Ashford	6	2
Halliwell Landau	6	0
Herbert Smith	6	2
Lovell White Durrant	6	2

Slaughter & May did not take on any lateral hires in 1998 and did not lose any partners. The table is obviously limited as only one year's figures are given. Further, the section on MNPs above did state that the majority of MNPs are from the USA. Indeed, although the level of lateral hiring appears to be limited in this table, there may be more recruitment taking place at associate/assistant solicitor level.

However, the following table (derived from data published Legal Business magazine in April 1999 - Sellers Klein 1999) provides more information on the specialisms of what they categorise as "prominent" English partners who moved to US firms in London in the period from 1997 to 1999:

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the past, when firms wanted to move into a new area, they would persuade lawyers within the firm to move into this area. Nowadays, due to increased competition, firms feel as if they cannot wait until these lawyers are up to speed and so bring in specialists. This in itself confirms one of the implications of Harvey's globalisation thesis, of the influence of increased time pressure.

[291] Allen & Overy also took on another twelve partners in 1998 when they merged with the Italian firm Brosio Casati.

Table twenty-four - the specialisations of English partners moving to US firms in London

Type of specialism of partner	*No of partners recruited with this specialism*
Project finance	3
Derivatives	2
International securities	1
Asset finance	2
Structured finance	4
Corporate finance	3
Banking	1
Corporate restructurings	1
Restructuring	2
Aviation	1
Corporate	4
Tax	2
Telecom	1
IT/Tech	3
Insurance	1
IP	1
Litigation	3
Employment	1
Trusts	1
Total	37

Although these figures may not be comprehensive, the table does suggest that almost half of the lateral hiring undertaken by US firms (at partner level) in London is taking place in the field of finance law.

Studying lateral hiring might be particularly interesting as it is an example of intra-professional competition within an 'élite' sector of the profession, involving firms of considerable economic power. Hence, it might highlight some of the motivations of 'actors' within this field.

Stevens (1987:13) feels that lateral hiring is an issue which is bound to raise much controversy, as it challenges traditional concepts of professionalism and collegiality. In his opinion:

> "Talent raids (lawyers prefer the euphemism 'lateral transfers') violate an archaic and somewhat emotional belief that a law firm should groom its associates and anoint its partners exclusively from within. While this is touted as a quality-control measure, its true appeal relates to the dated notion of the law firm as a club. If partnership is unrestricted, if outsiders are admitted for wanton commercial objectives, does membership retain its privileged status?"

He quotes (ibid:49) the views of Dick Pogue, a US lawyer:

> "When you've assembled a collection of lawyers who have joined the firm not for the joy of practising law together but solely because that firm bids highest for their services, they'll depart as soon as business declines and the money is better elsewhere. Because there's no loyalty, no collegiality, the firm will come unglued. I hate to dignify that kind of thing with the designation 'law firm.'"

Yet this analysis might not have the potency it once had[292]. The US firms visited were all at different stages of decision making in accepting the need for English solicitors in their City offices. Some had already taken on solicitors, others were intending to do so and others were not, although they did keep this decision under review. A few UK firms had taken on US lawyers, some to work in financial services niches and others elsewhere, simply as they were "excellent lawyers[293]."

Factors which might tilt the balance for some firms to take on English lawyers in the future will, to a very large extent, depend on the nature of the firm's practice and its perceived culture. The degree of risk aversion within the firm to involvement in an area which has not been a traditional part of their business is important. The degree of fear of lack of competency and consequent problems in quality control is weighted differently between firms and within firms. This may mean that the greater the extent to which a specialism based upon local law is seen as "stand-alone", the more appealing it will be to develop. This may lead to

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[292] Galanter and Palay note (1995:24) that in the USA in the 1960s lateral hiring was almost unheard of. But starting in the 1970s, lateral hiring became more common (ibid:31), enabling firms to enlarge the specialities and localities they could service and to hire "rainmakers" who might bring or attract new clients. In itself, this was part and parcel of changes in the market place effected by the new aggressiveness of in-house counsel, the breakdown of retainer relationships and the shift to discrete transactions which made conditions more competitive.

[293] One UK lawyer (quoted in Griffiths 1996) stated that the only way UK firms can compete with US firms in relation to US practice is through the "geographical convenience" of being in London.

taking on a few English lawyers in such niche areas, particularly if profits are potentially high and the possible loss of referral work from English practices is not significant. One US lawyer felt that:

> "This is a very fluid working environment[294]. It can make sense to take on foreign lawyers practising a different law if you have a narrow speciality where there is a perceived service need for clients. It's harder to add on a few lawyers and hold oneself out as practising the local law if one doesn't have the expertise. The question is: At what point do you establish credibility?"

Taking on a limited number of lawyers would also mean that potentially difficult problems of differences in remuneration between the UK and US lawyers would not be so "disruptive to the firm's financial structure." Firms could also consider such strategies as hiring a few lawyers, who would maintain contacts with their old firm and could service the work together. In this sense, hiring could be seen as both a defensive and co-operative move. This would avoid the concern expressed by one solicitor that in hiring one UK lawyer, the firm was:

> "... banking the reputation of an individual with non-resident professionals and the market-place for legal services is conservative. The biggest threat to this strategy is client inertia ... Niche based hiring may backfire as people's reputations are based on where they are and so clients go for firms which have a brand. By picking individuals, they will not necessarily pick a client base with some credibility.[295]"

Client demand is a major concern and may be difficult to predict or to respond to. One lawyer at a US firm which had taken on UK solicitors said that they had felt that clients wanted to give them their English law work and that there were other potential clients whom they believed would be attracted by this service (although

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[294] In 1998, for instance, the "white shoe" Wall Street law firm Simpson Thacher Bartlett started hiring European and English qualified lawyers (and retraining them in US law), as a "precautionary" measure, in case it became necessary to move into local law, as a reaction to the euro and the "vibrant" market it will create for transactions (Lindsay 1998c). Sullivan & Cromwell also hired its first English partner in London (a project finance partner) in May 1999 (Unattributed 1999c).

[295] Obviously, this view contains a number of assumptions as to market and firm behaviour which are difficult to prove. For instance, it may be that in certain types of work, the lawyer's reputation counts for more than the firm's.

it did not seem that the firm was attempting to quantify this "feeling" more precisely). For other firms, they were still weighing the pros and cons.

However, the number of solicitors employed in US firms in London increased from 414 to 625 in 1997, according to a lawyer quoted in The Lawyer (Unattributed 1998r)[296].

By 1998 many US firms had taken on UK lawyers, as the following table shows:

Table twenty-five - the largest offices of US firms in London and their fee-earners[297]

Firm	*Year set up in London*	*Fee-earners in UK*	*No initially qualified in UK*
Weil Gotshal & Manges	1996	71	59
Sidley & Austin	1974	47	26
White & Case	1971	43	22
LeBoeuf Lamb Greene & MacRae	1978	40	32
Dewey Ballantine	1996	40	18
Coudert Brothers	1962	38	36
Mayer Brown & Platt	1974	38	15
Davis Polk & Wardwell	1974	36	0
Skadden Arps ...	1988	35	6
Cleary Gottlieb ...	1971	32	8

It seems that US firms have increasingly thought that the risks of hiring local lawyers are outweighed by the business they can potentially bring to the firm.

Again, this section has brought up issues that were referred to in the literature review - demand creation, the effect of US lawyers on a local legal profession and the ever-prevalent notion of firm culture. The overall scene was one of complexity - lawyers sometimes followed clients, sometimes pre-empted them,

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[296] The American Lawyer also published an article in April 1999 (Morris 1999) confirming the City firms' continued interest in the American securities market.

[297] Source: Tyler 1998f.

some were cautious and others were more willing to take risks. Dezalay's early suggestion that US law firms have been able to colonise their host states, however, did not find much support.

Perhaps also the point must be made again that law firms are not noted for their strategic decision-making prowess (see also Seron on smaller firms at 1996:58) and that it can be difficult to formulate successful international strategies (Simon 1996:83). This will be discussed again in the later chapter on the future of international work (discussing law firm mergers); suffice it to say for now that some law firms appear to follow the lead of other firms (through fear), rather than forming their own strategy. This may partly account for the fact that US law firms in London have increasingly taken on board lateral hires.

Before further conclusions are drawn, case study two will be considered.

Case study two - The Frankfurt offices of US and UK firms

The second case study focuses upon UK and US law firms in Frankfurt. First of all, the reasons why foreign law firms set up in Frankfurt will be outlined, before the organisation of their offices is described. The development of these firms and their impact in Frankfurt is considered before German and Anglo-American practices are compared. The problems experienced by Anglo-American law firms in Frankfurt are next discussed, together with the impact this has had upon their strategies. At the end of the section, the two case studies will be compared and differences between law firms further analysed.

The decision to set up in Frankfurt

As mentioned earlier in the chapter, foreign firms first arrived in Frankfurt in the late 1980s, and have continued arriving ever since.

US firms

Four of the six US firms visited stated that they had set up in Frankfurt as they had US clients doing business in Germany who wanted them to undertake their work there. Three of these firms had US partners who had already built up a German practice.

One interviewee said that the changes following the revolutions in Europe in 1989 meant that their European clients could no longer be wholly served from their London office. Frankfurt was chosen as the site for another office as it had a large domestic market and it could act as a springboard for investments into Europe. The final interviewee also suggested that there was an element of speculation in the decision to open up:

> "A German partner in the US had established business in Germany. When we told our (German) clients that we were thinking of setting up a Frankfurt office, they were overwhelmingly positive ... We chose Frankfurt as it could act as a base for the whole of Europe."

UK firms

The UK firms were, however, more likely to cite strategic policy as the reason for setting up in Frankfurt. All the firms mentioned that Germany was considered to be an important market in Europe, and Frankfurt was the financial centre of Germany. Two interviewees stated that their firms had identified, via the process of formulating an international strategy, Germany "as a market we wanted to be in". Indeed, these lawyers seemed proud of their firms' foresight in these matters, and appeared to view such strategic thinking as a mark of their "professionalism". Two firms were concentrating on inward investment into Germany, another mentioned its German practice group in England and how work could be referred back to the home office.

One interviewee at first said that the decision to open up was "client-driven" but later added that the regional firms in England posed a strong threat to City firms and that was part of the reason for opening up in Frankfurt:

> "This is an extra service we can provide."

Again, we can see lawyers responding to demand and hoping to stimulate demand.

The organisation of the Frankfurt offices of US firms

The lawyers in US firms worked in teams. The offices had business plans or budgetary processes worked out together with the offices in the States. However, it was often said (similarly to the London interviewees) that they had a lot of autonomy in deciding how to develop and manage the office. One lawyer stated that his colleagues in the States knew nothing about the running of a foreign office. Many were totally uninterested in management:

> "They just go into the same office for thirty years, they know where the books are, where the coffee machine is, where the toilets are. They do the work, then go home."

Another partner said that he doesn't use all the power he has:

> "I've more autonomy than I exercise. I keep the States informed and invite comments, but that's mostly done through the budget procedure."

The offices in the US could provide support on a whole variety of matters, including administrative support (such as the typing up of documents) and acting as a resource on legal questions:

> "When you've got a question on US law, you can just call someone up in the States and they get right back to you. You might not charge for that, it's done as good will. German firms would have to go to an outside law firm to get that kind of advice and it could be expensive for clients."

All the offices participated in the profits in the firm as a whole and so were not local profit centres.

All the German national partners were there permanently. Only one US national interviewee was there for a limited period of time, but that period had been extended several times. One other (German) interviewee mentioned that his office had US partners and associates working there for limited periods of time. This again raises the question of whether these offices do lose touch with developments in their firms' offices in the States.

Of those interviewees in US firms who were German nationals, all stated that they had made a positive decision to work for US firms (as opposed to German firms). German firms were seen as being "too local" - they were unable to provide the international experience that they desired. This point will be returned to later.

Another interviewee stated that she had heard that women in German firms were badly treated by the partnerships there. She felt that US firms were more enlightened in their treatment of women and that had influenced her choice of firm.

The organisation of the Frankfurt offices of UK law firms

These lawyers also worked in teams (although the teams might, of course, be very small). Again, business plans or budgeting processes were important, with interviewees agreeing that they had a lot of autonomy in deciding what to do:

> "I've pretty much total autonomy. We agree a budget and then we spend it on what we want."

One partner saw his office as:

> "[B]oth independent and part of the [firm's name] family. There is a world-wide budgeting process which follows agreed guidelines. Everything goes into one world-wide pot so you have to trust your fellow partners. In terms of things like making new partners and opening new offices, the decision is by the partnership, while the rest is management by consensus and in practice it is about information and communication, to explain what you are doing and why you're doing it."

Offices in England again provided broad support, one interviewee in particular pointing out that the London office's research support was very useful. One of the firms visited was a local profit centre, whereas another compensated certain partners partly on the basis of local profits.

One of the English partners was here permanently, another was on an open-ended stay[298] and the others were on extendable "tours of duty". The German lawyers were permanently based in the Frankfurt offices, although UK associates would visit the offices for limited periods.

The development of foreign firms in Frankfurt

The success of US and UK firms in Frankfurt has been mixed; they certainly did not arrive and overwhelm the local legal profession. These incomers were entering a market where the local profession was in a strong position. As one German partner stated:

> "German law firms are not that bad at all!"

An English partner agreed:

> "Germany is probably with the US and UK one of the best lawyered markets in the world."

As mentioned before, well-known firms such as Slaughter & May and White and Case both opened offices only to then leave the city; Skadden Arps has experienced problems in getting its office off the ground. Some offices remain very small (as has been seen in earlier tables in this chapter). Others tried practising in association with German law firms, only later to split with them (as did Clifford Chance).

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[298] This firm did not have a policy of tours of duty. Instead, partners were made up as partners in a particular office and needed permission to transfer elsewhere.

On the other hand, Clifford Chance grew, without merging with another firm[299], to house over 60 lawyers by 1998 (and also opened a Düsseldorf office), whilst the offices of US firms such as Jones Day Reavis & Pogue, and Cleary Gottlieb Steen & Hamilton have grown steadily. There have also been a series of recent link-ups between English and German firms (as will be seen in the later chapter on the future of international practice). Table twenty-six might illustrate these changes more clearly:

Table twenty-six - the size of selected[300] foreign firms' offices in Frankfurt in 1993 and 1997[301]

Name of firm	*No of fee-earners (1993)*	*No of fee-earners (1997)*
Cleary Gottlieb Steen & Hamilton	8	21
Clifford Chance*	5	45
[Baker & McKenzie[302]	39	55]
Curtis Mallet-Prevost, Colt & Mosle	Unknown	4
Davis Polk & Wardwell	Unknown	4
Faegre & Benson	Unknown	5
Freshfields	7	14
Jones, Day, Reavis & Pogue	4	24
Kenyon & Kenyon	Unknown	3
Linklaters**	Unknown	10
Morgan Lewis & Bockius	3	16
Rogers & Wells	6	9
Shearman & Sterling	8	9
Skadden Arps ...	3	2
Sullivan & Cromwell	Unknown	6
Wilkinson Barker ...	Unknown	8

[299] It announced a merger with Pünder Volhard in 1999 (see chapter three).

[300] The reason why this is a "selected" table is that some firms have set up offices after 1993 and others have closed down their offices since 1993.

[301] Data from the International Financial Law Review 1000 Directory (1993), Pritchard (1997a) and my own amendments.

[302] Otherwise known as Doeser Amereller Noack, this office is treated as a German firm by most observers, so I have not included its figures in the totals.

* Clifford Chance have taken on around another 20 lawyers since this figure was published.
** Linklaters formed an association with Oppenhoff and & Rädler in the summer of 1998.

Several German interviewees (in German firms) felt that some of the UK and US law firms had hoped only to do work involving their home jurisdiction's law when they arrived in the city, but had soon found out that this was not possible (Slaughter & May was usually cited as an example here). An English partner believed that many foreign firms had been "massively successful" in their home countries but had transplanted themselves into a totally different culture and expected to be successful again:

> "That was difficult for them and a lot had to lower their expectations. They were not able to do things their way but had to adapt to the constraints here ... To be successful in a foreign country, you need to be able to offer advice on domestic law as well, otherwise you are just filling a small niche."

German partner similarly commented:

> "Only those firms which were prepared to play by the rules of the market have been successful - markets are local. [And what are those rules?] Practice local law, have some knowledge of it, have German lawyers, don't think that you can import the practices of other jurisdictions. You have to be top here - it doesn't help if you are top in New York or London[303]."

Another English interviewee described the firms' strategies and success in the following fashion:

> "First of all, I'd draw a distinction between foreign offices and local firms within international firms. We think of ourselves as a German firm here, practising German law and providing a full service. And we have this advantage in that we are part of this international family and network. Baker & MacKenzie is another way of doing that, you can easily call them names like a franchise firm, the MacDonalds of the legal world and so on ... Cleary's has obviously gone the local route[304] and then you've got people like Davis Polk[305] who are doing US

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[303] One English interviewee did state, however, that his firm's international reputation in banking and finance had been a big help in gaining business.

[304] That is, by employing German lawyers. In Cleary's case, they started with German partners who moved from the firm's other offices and recruited young German lawyers - no laterals were hired.

> securities here. Linklaters tried that when they opened, as did Slaughters, advising on English law, not going local, and I think it's proved to be a failure for all the firms that've tried it that way. Most of the firms who've tried it by association with a German firm have not been satisfied by it ... And you can see that there are a handful of firms who have made it to a point of being serious competitors in Germany and that includes Clifford Chance, Shearmans and to a lesser extent Cleary, Freshfields and Allen and Overy. And they've done it by taking local talent on board and having a local presence with German lawyers."

At this point we might recall the experiences of the US law firms in London. It is only recently that these firms have taken on English solicitors, even though US firms first set up 'shop' in the City in the 1970s. Why is Frankfurt so different?

There are probably several factors at play here, some of which are hinted at in the above quotations. First of all, American clients were very significant clients in London, as seen before in the influence of the US investment banks. Whilst clients such as the investment banks do provide work for US firms in Frankfurt (such as Sullivan & Cromwell, Davis Polk & Wardwell, Shearman & Sterling and Cleary Gottlieb), they do not appear to have had the same overall impact on the Frankfurt market that they had in London.

Potential German clients might also be more conservative in their approach and choice of lawyer (as will be seen in the section on "client loyalties"). One English interviewee mentioned that some German clients preferred to go straight to London for their English law advice as:

> "They like visiting London and they think that the best lawyers are there."

Sensitivity to the local market is also important and that is hard to develop without both good language skills and knowledge of the local law. As a German partner noted:

> "You have to develop a feeling for which mechanics are at work in the German financial and industrial community and that may be different from other countries and that takes a lot of time."

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[305] The other well-known US firm (similarly culturally conservative) which is believed only to do US law in Frankfurt is Sullivan & Cromwell.

Obviously, many German lawyers should have this knowledge, but in the absence of lateral hiring, it is difficult to build up a practice quickly with novices; it takes time to build up a practice which could compete with the strong German firms, as one German partner commented:

> "If you start with foreigners and only hire graduates, then it takes time of course to build up a practice, so it is not surprising that those firms, I don't want to say exclusively but primarily, are primarily successful in those areas of law which are more international and where the US/UK firms have some advantage. So, for instance, in some standard financing things, the US/UK firms do much much more than we do and in the standard documentation they are more advanced than German firms, typically. So this is where they have an advantage in the German market. Whereas if you are advising on German corporate law, it takes a lot of time to build up German corporate expertise and without having more senior German trained people, it is difficult to have a similar standing in the market."

This discussion will be returned to again in the discussion on the problems faced by US and UK firms in Frankfurt, but first the impact of these firms on the 'legal market' there will be examined.

The impact of UK and US firms in Frankfurt

Several German interviewees commented that it was difficult to know what impact UK and US firms had had upon the 'market' for legal work in Frankfurt as the demand for legal work had been growing[306]. However, interviewees agreed that they had made life more competitive. As one German partner commented:

> "If I compare it to the market when I started work in Frankfurt, the market was relaxed. We were all good friends and had enough to do. Now we are still good friends but we are also competitors[307]."

However, the consensus amongst interviewees in German law firms was that the impact of foreign firms had not as yet been great and they had had most success

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[306] Perhaps a similar point could be made about London when the US firms arrived - throughout much of the eighties, the legal market was growing and so it might be difficult to determine the US firms' impact too.

[307] Or as an English partner put it "This has been a very closed, cosy market for far too long."

in areas such as banking and capital markets work where German law was not the standard for documentation. Yet some of these firms did want to become "normal" German firms and so may become more important competitors in the future.

Two German interviewees were unsure as to how far US and UK firms were doing work which they had previously undertaken in their home offices. One of these interviewees thought that only Clifford Chance had had much of an impact on the market.

The UK and US firms, perhaps unsurprisingly, were more upbeat. They believed that they had made life more competitive for German firms. One English solicitor felt that German firms were not at all pleased to find English firms competing with them:

> "The German firms do not like competition, they are not used to it in the same way that English and American law firms are and if you speak to German lawyers, very few will honestly welcome the presence of firms such as Clifford Chance which are taking away from them big value commercial work[308] which was previously theirs for the asking[309]."

Another English partner agreed that the US and UK firms had an advantage over German firms in relation to several international forms of work and that meant that they could challenge the German firms in those fields:

> "One thing is product competence and internationalisation of business and they [German firms] know that in a lot of particularly financial or finance related areas, the products come out of a system they don't see, driven by a mentality they don't instinctively slot into. You know, the globalisation of capital markets, the number of US IPOs[310], that kind of stuff, is a big challenge to them ... The US

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[308] And, in keeping with Nelson's (1988) analysis in the introduction to this thesis, such work ensures that lawyers in these firms earn the highest salaries, work on intellectually challenging cases for resourceful clients and maintain their high status.

[309] Indeed, one German interviewee stated that after Anglo-American firms began arriving in Frankfurt, in the early nineties, several newspaper articles appeared in the Frankfurter Allgemeine Zeitung which were critical of foreign law firms. Several interviewees stated that these articles had been sponsored by the big German law firms.

[310] International public offerings (of shares).

> merchant banks are dominant at the moment ... and they tend to choose the brandnames they know, so it's harder for firms like [X, one of the most highly regarded German law firms] to establish with JP Morgan [the US investment bank] internationally an approved counsel status ..."

Those that did advise on German law stated that although it had taken time to convince clients that they had the capacity to undertake the German side of transactions, they now were gaining much more acceptance with German clients. Clients were now increasingly realising that they could do German work, and that that boded well for the future. If this is accepted, then this again indicates the importance of clients in influencing legal service provision. The discussion will be returned to in the section below on client loyalties.

Leading on from this, the next section discusses whether the UK and US firms have influenced the way German firms practise law, and vice versa.

The influences of German, and Anglo-American firms on each other's practice

One English partner stated that his firm had learnt a "German way of doing things" since arrival in Frankfurt. This related to documentation - German documents were usually shorter than Anglo-American documents, so:

> "We have learnt two different ways of working - there's an international way that works for international transactions and a German way of doing things which is better for most big deals. You know, most of our documentation we now have in two styles, one I call a hybrid which mixes an international approach with what you need for German law and then there is the old-fashioned German approach. You know, if you are dealing with a 60 year old individual selling his company, the last thing he wants is a 50, 60 pager, it's counterproductive to deliver that, you have to produce something that gives your client the comfort he needs in a format the other guy can swallow. You have to be able to draft documents in both languages and styles. I think we have learnt something about 'Germanisation' of the client."

German firms had, however, also taken steps to counter the potential competitive challenge of the Anglo-American firms. Various interviewees felt that the advent of these firms on German soil had been one of the factors behind the waves of

mergers which had taken place between German firms; these had made it harder for foreign firms to break into the market[311].

Several interviewees believed that some German firms had amended their documents on international deals to show an "international flavour" and were continuing to do this. Some German interviewees also felt that UK and US firms were more client-orientated and that their clients preferred this service orientation. This was an issue they had to deal with:

> "Traditionally German lawyers just concentrated on the legal issues and were lousy at service and at presentation skills ... Clients think that the presentation skills of the foreign lawyers are more advanced than ours. The markets they are from are much more competitive than ours and so German firms have to learn those skills."

This issue will be discussed further in the section on differences in firms' working styles.

Comment

At this point, we might wish to remind ourselves of the discussion in the literature review about the possible effects Anglo-American lawyers might have upon jurisdictions in continental Europe. We have seen that the development of Anglo-American firms in Frankfurt has been mixed - they certainly did not arrive and overwhelm the local legal profession. Indeed, several firms had to change their strategies and adapt their practices, deciding to undertake German law work and ensuring that they worked in a fashion which was acceptable and sensitive to the needs of German clients.

This backs up the work of theorists such as Lash and Urry (1994:211) and Flood (1995) which suggested that increased internationalisation often leads to increased sensitivity to local features; here, the Anglo-American firms, for

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[311] However, one German interviewee stated that several German firms had wanted to merge for some time prior to the rules on mergers being liberalised and foreign firms arriving.

instance, drafted documents in a way in which would be more acceptable to local clients. It also confirms the importance of clients (seen earlier in the work of various writers, including Johnson 1972) in influencing how legal services are provided.

As commercial lawyers in Germany were perceived to be strong prior to the arrival of the Anglo-American law firms, this also affirms the (somewhat obvious) point made in the literature review earlier that the strength of the local profession will affect the fortunes of the incomers.

Perhaps too, the experience of Anglo-American lawyers in Frankfurt reveals something of the nature of international lawyering. If foreign firms hoped to do work on German law (and this might be necessary if there were not enough deals around which concerned only home state law), then clients must be convinced that the foreign firms had sufficient knowledge of German law to handle their cases effectively. It could take some time to establish and prove this ability, as lawyers' knowledge (as Halliday and Karpik (1997) argued) is primarily located in their home state. Even though German lawyers often founded the Frankfurt offices of Anglo-American firms, it could take some time to gain the trust of (potential) clients, particularly if clients were already satisfied with the standards of the local legal profession.

Indeed, foreign firms appear to have made most impact in those areas of law which are driven by English law, such as capital markets work. Nevertheless, German firms are finding that some of their clients prefer the working styles of Anglo-American lawyers. The latter issue is discussed next.

Differences in the working styles and structures of German and Anglo-American firms

"Collegiality does not require set procedures for decision-making because consensus-building is the organizational norm."

Carroll Seron (1996)

When the literature review discussed professionalism, it noted its relative nature. Lawyers will disagree as to what professionalism is, what is "professional" behaviour. How work is undertaken, how clients are treated, how lawyers are trained, and so on, all necessarily indicate what is seen as being appropriate professional practice.

One example of this encountered in the German interviews was that Anglo-American lawyers believed that their client-orientation, their standards of "service" (which usually seemed to mean their responsiveness to clients' business and constant availability) revealed their "professional" attitude. This contrasted with the much disparaged and discussed "traditional" German lawyer, whose professionalism was said to be founded upon a sense of distance from the client.

Anglo-American and German law firms can and do, of course, vary greatly between and amongst themselves (as will be seen at the end of the chapter). Nonetheless, when asked to describe differences between German and Anglo-American lawyers and firms, UK and US interviewees came up with several generalisations. These were obviously broad-brush statements, and interviewees were careful to say that there were differences between German firms. However, they felt that there was still some truth in the clichés of differences mentioned. The implication was that the Anglo-American style of practice was superior, that their practice was more "professional" in nature (or at least indicated a superior version of professionalism). The table takes some of their comments to display these contrasts more clearly:

Table twenty-seven - generalisations made by Anglo-American lawyers of differences in Anglo-American and Germanic working styles

Anglo-American law firms	*Traditional German law firms*
Commercial approach to work eg pragmatic, apply the law	Academic approach to work eg theoretical, state the law, publish articles
Proactive[312] response to clients' business	Reactive style
Friendly attitude towards clients	Aloof/arrogant
"Service orientated" eg constantly available to clients eg responsive to client demands	Concentration on the quality of advice
Team working, informal interaction with colleagues	Individualistic working styles, formal "stuffy" atmosphere
Developed managerial structures and hierarchical management	Decision by consensus among partners *or* firm's founders
High leverage ratios	Low leverage ratios[313]
Strategic planning eg1 use of management consultants in forming business strategy eg2 firm-wide marketing plans	Lack of strategic planning

One English solicitor felt that the "lack of a service mentality" he believed could be witnessed in the operation of some German law firms could be found elsewhere too:

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[312] However, not all commentators are convinced of the proactivity of these law firms. Susskind, for instance, argues that (1998:26): "Many lawyers will claim that they are already proactive. Most are not. Nor can they be until they change their working practices fairly radically. Genuine proactivity goes beyond the *ad hoc* foresights of bright lawyers. It requires the deployment of techniques (often based on IT...) similar to the more structured and formalized processes and procedures developed for other tasks by the first rate strategic consulting organizations." This also reminds me of Bottomore's (1993) argument, which stressed that professionals often do not play a part in the strategic decision-making of capital.

[313] This contrast can, however, be a little misleading. Most German firms operate a lock-step (seniority based) system of compensation for equity partners. To attain the highest earnings takes around 12 years (Griffiths 1992:30). A typical spread of earnings (from the youngest to oldest partners) would be between 1:3 and 1:5 (with the eldest partners drawing at most five times the amounts of the youngest), (according to Griffith) with Bruckhaus' spread reported to be on the high side at 1:4. Griffith also noted that most clients in Germany prefer to be dealt with by a partner, and that influences the structure of firms (1992:31).

> "Service levels across the board in Germany, not just in relation to legal services, tend to be at levels which people in England would not tolerate[314]. That is beginning to change and once change starts it will move very quickly."

One lawyer working for a US firm (a German national) believed that US lawyers were much more proactive and closer to clients than German lawyers:

> "The American lawyer is proactive, he takes charge of the transaction, and sees himself as the one responsible for putting the deal together. Which means that he will not wait for the phone to ring and for the client to ask him a question, but he will be the one to go to the client and say "Look, you've got this issue, and you'd better make a decision on it and I'll call you back tomorrow and we should try to get this done". Now, of course the client has the last say, but from the client's perspective, it is the attorney who is responsible for pulling it through. Now German attorneys are still much more in the perception of the attorney as the very distant advisor who stays in the background and who is called upon by the client and will deliver answers to questions that are posed to him. It's a very, very formal, much more formal approach. I was actually talking to a relative a couple of days ago, who had hired one of the big name German law firms to work on a transaction for him and he said "Now they come to visit us and I'm intimidated by them! They come in their dark blue suits and they bring about this air of sophistication and they're supposed to serve me and not the other way round." But by their appearance the client is given the impression that they have to deliver to them. I think those are the differences, US law firms are all round service providers and German firms are very removed. It's changing, but right now those differences are strong."

Rueschemeyer's work (in the seventies, although the more recent work of Ardagh (1995) would agree with his conclusions) would support the idea that interaction between professionals and others is much more formal in Germany than in the States and that US lawyers are more client-orientated. He argued (1973:89) that patterns of deference in social intercourse even outside the occupational context in Germany were more closely tied to occupational and educational status than was the case in the States. "Democratic manners" were far less characteristic of German than of American society and "particularly membership in the professions - privileged in income, occupational prestige as well as education - carries a special kind of "honor," based on respect for the expert yet vaguely reminiscent of older feudal types of stratification." Moreover, loyalty to the client and efficiency in serving the client were dominant themes in the formal and

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[314] As Schulz notes (1997:79), there has as yet been no public discussion about the quality of professional services in Germany.

informal norms of the American bar, while they were more strongly counterbalanced in the German case by emphasis on the rôle of officer of the court and on the independence and dignity of a learned profession (1973:191). The ideology of the professions is considered more fully in the chapter on regulation.

Rueschemeyer also noted that Germany had many more lawyers working in-house than in the States; this probably also holds today (although there have been moves to send more work to external law firms). Lawyers in law firms in the States had been more involved in business than their German counterparts (1973:39). He believed that the identification of the Rechtsanwalt/Rechtsanwältin with the profession and with the "broader community of university-trained professionals" (1973:67) had limited their assimilation into the business culture of clients. The influence of these reference groups strengthened a professionalism conceived in the image of civil service virtues, emphasising reliability, objectivity and in the extreme, quasi-judicial attitudes, limiting tendencies to identify with the client. This was reinforced by the superior economic (and class) position that most held over their clients. German lawyers from business homes did not form the dominant background group in the profession and the value orientations held widely in the upper middle and upper classes gave a more limited legitimation to orientations and practices typical of the business world (1973:121)[315]. He concluded (1973:68):

> "It appears that in Germany contacts with others in a professional capacity tend to be more specific, more limited to the business at hand than in the United States. This pattern inhibits the development of the quasi-friendships which are said to be characteristic of professional and business associations of some duration in the United States. Such specificity should considerably reduce the chances of intentional or unintentional influence of a client on the attorney's behavior and especially on his basic professional orientations."

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[315] He contrasts this with the States (1973:190) where the orientations of American private practitioners are less anchored in specific subcultures distinct from the business community. Business families provide the largest single group of lawyers as far as social origins are concerned and business and its values have a less contested place in the primacy of American society: "Thus, the impact of the most important client group on the bar's outlook and behavior is far stronger than in the German case."

Today, however, Rueschemeyer's case may be less strong than it was. Chapter four will consider the relationship of German lawyers with their commercial clients further and will suggest that these lawyers may identify more strongly with their clients than Rueschemeyer's thesis would suggest.

Nevertheless, a partner in a large German law firm, quoted in Callister (1999), felt that German firms had not developed business skills similar to those of Anglo-American firms earlier as the market for legal services for business in the past had been protected from competition:

> "This difference is due to the different development of the German legal market. Until 1990, it was not possible for German lawyers to have offices in more than one city, so the markets were very protected. Most lawyers thought they were mere dispensers of answers to questions, and not business advisers. This attitude among the second tier is only gradually changing."

One English partner felt that clients (specifically, the absence of assertive clients in the past) had helped to foster conservatism, as had the respect accorded to formal qualifications in Germany (as described by Rueschemeyer above) and the absence of significant competition[316]:

> "[T]he culture in Germany is so different. There's a tremendous respect here historically, and it still persists today, for professional qualifications - witness if you look at the notepaper of any German law firm you'll see "Dr this and Dr that" and that is a title which you are expected to use and if you don't call someone "Doctor" then that is really rude. That bred to my mind an unacceptable degree of arrogance amongst German lawyers who took the view that clients were lucky to have them as their lawyer; clients would always come to the lawyer and not the other way round - a case of the tail wagging the dog. And eveyone seemed fairly happy with that. But that's changing now."

In relation to the management, internal culture(s) and working styles of firms, UK and US interviewees felt that German firms relied on individualism - lawyers

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[316] However, some caution should be exercised when reading these accounts; vestiges of an older version of professionalism may still have currency even in the City. In London, for instance, there is a "Club of eight" of the "top" City law firms which have a "gentlemen's agreement" not to poach each other's partners in London (Lindsay 1998e).

were more likely to work alone[317] and initiatives such as marketing were left to lawyers themselves (as was largely seen earlier, in the section on the promotion of international work). Indeed, some of the most prestigious firms did not have a firm-wide e-mail system, nor did they share precedents in a common document base (Wilkins 1999:68). To consider UK and UK interviewees' opinions further, here are a few typical quotes:

> "German firms have a small firm response to big firm issues[318]."
>
> (English partner)

> "German firms don't have cultures - they're a mixture of individuals!"
>
> (US partner)

> "Trying to create an image for the firm is a concept which is alien to most German lawyers as they see marketing as an individual activity which belongs to the individual partners of the firm, rather than thinking of a concept which is associated with the firm."
>
> (English partner)

A German partner (from a German firm) also agreed that working methods in German firms were more individualistic than in Anglo-American firms:

> "German firms approach work differently from US and UK firms. It starts out with the ratio of partners and associates; that which we have [a very low ratio] is not untypical in Germany. So this means that the assignment in Germany is typically handled by a partner with the assistance of an associate. In the US and UK, it's more that the partner supervises a project whilst the real work is done by associates. So it's also the case that in US and UK firms, many more lawyers are working on projects than in Germany ..."

He also believed that German lawyers approached their work in a more academic fashion:

> "German lawyers have a more academic approach in that what German lawyers like to do is structure questions in a more academic sense and discuss it in a more abstract form ... [F]rom their education, the Americans are more case-oriented

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[317] One example of this is that when Freshfields and Deringer entered their strategic alliance/merger in 1998, the German lawyers in Brussels were not willing to share offices (Carr and Frederickson 1999).

[318] Yet it may be that some German firms would not have the resources to make certain provision, such in-house training, on the scale some Anglo-American firms do.

> and pragmatic. What we always like to see is the theoretical structure of something."

Perhaps this in itself reflects values traditionally considered as being important in the wider business community in Germany. Rueschemeyer added (1973:84) that German business traditionally valued technological efficiency, organisational achievements and their overall contribution to national welfare and strength rather than the competitive pursuit of private interest. Might this mean that law firms, too, stressed the technical side of their work and were less concerned with competition?

Here are also a few examples of how lawyers in German firms described their firms' cultures:

> "This is a very successful continental law firm which respects all its lawyers - we don't look at hierarchies but at expert knowledge."

> "We are democratic, at least amongst the partners![319]"

One is reminded of the vision of professionalism which many lawyers are said to hold at the back of their minds. As Stephen Freidman (head of corporate finance at Debevoise & Plimpton - a US firm - and quoted in Forster 1997a) posits (confirming the view of Mayson 1997):

> "The paradigm most lawyers carry round in their heads is of several guys practising law together and everyone's primary relationships are with their clients ... So people have a lot of independence[320] and a sort of institutional dislike of having a boss."

Not all German firms fit many of the clichés, though, at least not when describing their culture. A few more examples illustrate this:

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[319] This highlights Seron's point about the distinction between partners and associates (1996:69) : "To be part of a partnership is to enjoy the status of an insider, a close family member. By contrast, an associate in a small firm is an employee - somewhat marginal, isolated, or cut off from partners." However, there can be highly significant pecking orders amongst partners in law firms, too.

[320] Alternatively, one could note that lawyers find the notion of autonomy attractive (autonomy, according to Wallace (1995:231) being the right of an individual professional to make independent decisions about the appropriate procedures for work tasks and activities).

> "We are a team-oriented firm, innovative and service-orientated."
>
> "This is a young firm, not one of the most established German firms and not Frankfurt based, so we are more energetic than the others as we have to prove ourselves."

In fact, in 1998, Pünder Volhard Weber & Axster became the first German firm to introduce a full-time executive management structure - a management board consisting of a non-lawyer general manager, an existing managing partner and a partner to be in charge of marketing and communications. In addition, a supervisory board of five of the most senior partners in the firm would check that the management board are doing their jobs properly (Unattibuted 1998q). Oppenhoff and Rädler voted to revise radically its management structure in 1999 and appoint its first ever managing partner, bringing it in line with its new partner Linklaters' management structure (Watkin 1999 and Watkin 1999a).

Similarly, US and UK firms do not come neatly pigeon-holed, as the following mixed quotes show:

> "We are a quality-orientated firm, with a collegial atmosphere."
>
> "Our culture is low-key, consensus driven."

Conversely:

> "The culture is American, team-orientated, with more exposure to clients. It's open and transparent and we do proactive work for clients."
>
> "It [the culture] is enlightened, driven by client requirements, a desire to succeed and a willingness to embrace new ideas to achieve that."

Indeed, as Sugarman argues (1994:121) the supposed individualism of the common law mind is largely correct but it is of limited value as an explanatory tool as the notion is so indeterminate, it could often embrace very different value positions[321].

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[321] Still, when German firm interviewees were asked explictly about the kind of a culture their firms had, several interviewees asked what I meant by the term culture. 'At the British stage of

Nonetheless, a US lawyer felt that there were differences between Anglo-American and German practices but that competition and client preferences would lead to change:

> "[C]ompetition [is a factor behind change] because there are lots of US firms in Germany which these big German firms are competing with and secondly, many American clients don't go to US firms when they want advice in Germany, they will go to a German law firm and I'm certain that they'll make their displeasure with the workings of some of these firms known, and that's going to bring about change."

Again, we encounter the notion of clients trusting nationally based lawyers to deal with their work first and the importance of commercial clients in determining service delivery.

An English lawyer similarly commented:

> "Competition, from other German law firms and the way in which the English and US firms[322] do things is changing client expectations - and it's the response to client expectations and delivery of service that forces firms to look at retaining market share. Losing clients before just wasn't an issue, so the idea of having to protect clients and win new ones is one of the big lessons that most German firms are struggling with now[323]."

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the research, culture was constantly mentioned as an explanatory device to explain firms' policies, as has been seen above. Thus it seemed that culture was much more of an Anglo-Saxon concept, or at least was used more in Anglo-American firms. It is difficult to know whether this difference means that Anglo-American lawyers might be more aware of potentially destructive differences within firms and so culture as a concept was used to construct a common vision of what the firm was about. Maybe the closeness of German firms in the past (partly due to their smaller size prior to merger) made self-analysis in this sense less important?

[322] One German lawyer did believe that working with US law firms was having some impact on his firm's working methods: "And we also work a lot with US lawyers, so you alter a little bit."

[323] He believed that parallels could be drawn with experience in the UK: "And I've drawn a similar parallel with England 10 or 15 years ago - then advertising restrictions were relaxed slightly and the more aware law firms started to become aggressive in terms of marketing and that was hailed as an abhorrant step forward and so on. However, the reality was that that's what clients wanted and it became demand driven; and the firms that did not do that either had to be so good, have such an iron grip on their clients - and there were very few law firms who could claim that sort of ability - or they just disappeared. Hence the wave of defensive mergers that came about in England and the way that aggressive mergers, the acquisitive mergers to create the major law firms that now exist outside of London and of course in the City itself. Now the Germans didn't have to contend with that. That change is coming now."

In effect, the belief was that the "old ways of doing things" would change, to move more in the direction of the Anglo-American style of "professional service"[324], as a result of competition from other German law firms, Anglo-American firms, and pressures from foreign clients and German clients. This does raise the wider question of whether this means that globalisation entails some form of homogenisation. Abel (1994:755) argued, for instance, that to the extent that clients have common interests in speed, efficiency, cost and accuracy, competition stimulates different legal cultures to produce similar services. Here it was stated that US clients would want their German lawyers to work in a more commercial fashion and that this would force them to change.

Yet these US clients had also chosen German firms over US law firms, presumably for reasons such as their knowledge of the local law and sensitivity to the local environment. Perhaps German firms are not expected to behave like or become some carbon copy of a US law firm. In this regard, it may be recalled that Flood (1995) similarly argued that rather than assuming US dominance, it might be better to talk of US techniques which are exported and then adapt to local cultures, becoming local knowledge.

Still, Anglo-American interviewees also felt that some German firms would not adapt to change, as they would not be able to remould their ideas of culture to capture business in the more competitive climate. Some German senior partners were thought to be "to blame" (as Rogowski also argued in 1995) by one English partner who argued that:

> "The senior partners (in German firms) control what happens and have partnership deals which lawyers in England would fall over to have, where they're paid until they die. So they are not very open to things which may affect the income of the firm and so they can be reluctant to move away from tried and trusted methods, to invest heavily in new people, to invest in marketing, and to

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[324] More publications are also coming onto the market, which discuss developments in a more business-orientated fashion than traditional publications for the legal profession in Germany - see, for instance JUVE Rechtsmarkt (for lawyers and clients) and Der Syndikus, published by London based Legalease, which were both founded in 1998.

invest in research into the market place. Many senior German lawyers have that approach, which can strangle the firm and mean that they do not move fast enough when they have the chance, ie now, and by the time they see that everyone else has done it, they are disadvantaged because they didn't move. Now that can either force the able younger people to leave and go elsewhere or simply to accept a second or third division place. Now I think that these kind of things are going to promote an enormous amount of mobility within the German legal market which it previously hasn't heard of ... Lateral hiring is starting here and is big news when it happens. Big firms will do it and middle tier firms run the risk of their future talent being taken away from them by the big firms which have a switched on approach to the future."

Comment

To briefly sum up this section, Anglo-American interviewees thought that the traditional German lawyer worked in a reactive, rather academic, individualistic and aloof fashion. This was contrasted with their (alleged) more "professional", proactive, client-responsive practice. Nevertheless, they believed that German corporate lawyers would have to become more like them, as competition was increasing and clients were becoming more assertive and some preferred the Anglo-American approach. Those that did not, and stuck to their old ways of doing things (perhaps as these firms were dominated by their conservative founders), would suffer.

Although it is difficult to weigh the merits of these claims, in view of the paucity of work on clients' opinions and German law firms in general, the general idea is that German firms might not be considered to have the kind of skills clients want whilst Anglo-American firms might not be seen to have the knowledge (of Germany and German law) which clients expect.

The views of the interviewees expressed above do bring to mind Nelson's (1988) work, where he argued that paternalistic patterns of authority existing in large law firms in the States in earlier periods were replaced by more differentiated hierarchies (mediated by the bureaucratic structures of committees and departments) under the pressure of competition. Such bureaucratisation, however, was problematic as it risked alienating the traditional values of partners,

associates and even clients (ibid:10). Still, failing to change risked inefficiency and the defection of partners who did not feel properly recompensed for the work they brought in.

Nevertheless, Nelson also argues that professionalism is a malleable concept and that some firms redefined their notions of it to sanction bureaucratic structures (ibid:208). Following on from the English interviewee's view above, we might also speculate that the current period of increased competition will induce change which might ultimately be viewed positively by many of the lawyers in certain firms. Whether this means, however, that we are now witnessing amongst German firms a mutation of a hegemonic notion of professionalism is another matter and one which we return to in the conclusion.

In the meantime, the experiences of Anglo-American firms in Frankfurt will be returned to.

The problems of UK and US firms in Frankfurt

In this section, the problems UK and US firms have experienced in the Frankfurt market will be discussed. As with the first case study, recruitment is an issue which foreign offices have to deal with; this will be the first topic considered.

Hiring law graduate entrants and laterals

We have already seen that some UK and US firms arriving in Frankfurt found that their strategy to do a certain kind of law, usually their home law, did not work out. If they hoped to grow, to be more than a 'niche player', then they would have to undertake German work, employing German lawyers, and adapt to the local climate.

For those who have taken the decision to hire local lawyers, they might hope to recruit experienced lawyers or those fresh from their legal education, or both.

Yet, in the case of new entrants, all firms in Frankfurt, both German and foreign, stated that finding the right people was not easy. There were simply not enough of the kind of graduates they were looking for on the market. These firms hire from a very exclusive cohort of graduates. A LLM in an English-speaking country ("very good English language skills are needed") or work experience in a foreign law firm are looked for by these firms, the benefits of this being, according to one German partner:

> "It's language, it's that people are doing more than the average student, exposure to a different legal culture, especially exposure to the US/UK legal culture, so that people understand each other better if they communicate later with US or UK based lawyers[325]."

Following on from Dezalay and Garth (1996), however, requiring such qualifications is also likely to be an aspect of achieving social closure and legitimacy. Rogowski[326] too (1995:115) believes that the recruiting practices of German corporate law firms are part of the process through which these firms have achieved social closure[327]. Compare the German situation with that described by Dezalay and Garth in relation to China (1996:265):

> "Chinese lawyers look toward the United States for an elite legal education and for their legal legitimacy, work in the offices of the large law firms, use that knowledge to gain advancement in China, and not surprisingly, build up a legality and a legal practice in China which fits well with that offered by the large firms of the West."

Very high marks in the German state exams are sought. Several German firms also stated that a PhD is essential and most liked their applicants to have PhDs. One German partner set out his view of the benefits of doctorates:

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[325] Another German partner, though, stated that all this might be true, but it still did not prove that a lawyer could work effectively on cases.

[326] See also Hartmann (1990:23).

[327] He also describes other aspects of social closure to be their specialisation and monopoly of certain fields of law, the adoption of flexible international and multi-national disciplinary firm structures and the demanding work ethic, (the latter will be considered in the chapter on regulation).

"You can say that typically the really good students in Germany[328] tend to do them - they get asked by their professors and they are ambitious enough to say "Well, this is something that a good lawyer should have in Germany" ... You cannot say that you learn a lot by writing a thesis but you need to have an academic interest, I mean you need to like to work in depth on legal issues and this is something which we do from time to time. [You write legal opinions?] Yes, and someone needs to dig a little deeper than the next person and we are typically retained by legal departments of companies, by lawyers, and what they require is an additional thought[329]. So someone needs to go an additional mile and those are people who like to work in-depth on a legal project, like a doctoral thesis[330]."

This brings us back to the discussion above about German lawyers' academic approach to law. Lash and Urry (1994:88) also emphasise the central role of Beruf or craft as a mode of economic governance in Germany. "Internal goods", seen as excellence at a given practice, are preferred over "external goods", such as money, status and power. It might therefore be that German lawyers traditionally place more emphasis on the technical aspects of their job, on their knowledge and scholarship, than Anglo-American lawyers do[331]. *If* German law firms are now coming under some pressure to move more towards the American model (and to downplay their technical acumen), this would confirm Dezalay's view (1995:3) that the rise of the market in international expertise has brought the need to move from the "artisan" model of production to that of the "supermarket or factory".

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[328] Hence, the acquisition of a doctorate might be one way of distinguishing candidates educated in a higher educational system which is less differentiated than those in the Anglo-American world.

[329] The absence of a split profession in Germany may mean that some of the research work which would go to barristers in England and Wales stays with the law firm in Germany. Hence, German lawyers *may* have more of these tasks to perform. However, it may be misleading then to make the connection that German lawyers are therefore bound to have a more academic approach to law as the unsplit American profession does not.

[330] Of course, this assumes that writing a PhD in Germany necessarily trains lawyers to "dig a little deeper" once in practice (an unproven assertion).

[331] Indeed, Nelson (1988) has argued that US lawyers have increasingly downplayed the importance of the technical aspects of their work (as has Hanlon (1997), when considering UK lawyers).

In fact, two German partners, exceptionally, were less enamoured with PhDs. One felt that the need for a doctorate was declining, as it provided theoretical skills which conditioned lawyers to be too academic - it was more important now to be practical and to have language skills. The second stated that he was not convinced that they were useful, although:

> "In Germany, there is still the idea that with the title, they are better jurists. We feel that the choice is either to start your career at a relatively young age or to spend the extra time writing a doctoral thesis. These days it is more important to start early."

These were minority views, however, although Anglo-American firms were less likely to find PhDs necessary. Nevertheless, an English lawyer (from one of the two Anglo-American firms which looked for candidates which had PhDs) justified the PhD requirement thus:

> "It's one of the criteria for the German side of it. If you look down at most letter heads of German firms, you'll see it. I actually don't think the doctor title is anything phenomenally clever ... but it's a kind of indication of the calibre of people. And if someone hasn't got it, you ask why. Some people say "I've studied slowly as I've supported my family whilst studying"and others say "Quite honestly, it's a waste of time, I'd rather do an LLM in Georgetown or wherever". We are not fixed on it but it's an indicator ... The selection criteria of the firm are influenced by what's needed in the top slice of the market in the country we're in."

Hence the idea was that the PhD was useful in terms of indicating who were considered to be bright by their academic teachers and to provide a symbol of status in a qualification-driven society[332]. Its potential importance in deepening the academic skills of the candiate was not mentioned. However, another partner (German but working for a UK firm) felt that large companies and financial institutions were less interested in their lawyers holding such qualifications these

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[332] PhDs in law in Germany can be completed in a shorter period than in Britain. Students are also not trained in research techniques and the experience is usually a "bookish" affair. PhDs might then be of value more for their socialising and status affording properties.

More generally, Krause (1996:237) believes that the increasing irrelevance of much legal education in Germany signifies the function of this education as a rite of passage rather than as training for the practice of law.

days. One anecdote is that the "top" people at Deutsche Bank do not use their doctor titles any more in publications (although the rest of their staff do!).

Foreign firms were more likely to mention explicitly that personality mattered when looking for the "right applicant"; even if applicants had all the above qualifications, they must "fit in":

> "That's the most important bit - the feel for the person - are they going to fit in with us[333]? Are they problem solvers or just problem discoverers? How are they going to contribute or fit into a team?"

"Fitting in", of course, has been shown by many studies considering equal opportunities issues to be a catch-all concept which can justify many types of discrimination[334]. More specifically, I also wonder how far German firms in particular discriminate against women applicants, after several women told me (without my having asked) about discriminatory practices they experienced when being interviewed (such as being quizzed about their plans for marriage, children and so on[335]), experiences which had made them decide either to work for smaller German law firms or for Anglo-American firms.

Moving beyond the issue of the limited numbers of recruits available, several German interviewees believed that German graduates would be mistrustful of foreign firms - they would fear that these firms would leave the city[336], and that the quality of work would not be good in a young office (as opposed to a more established German firm) - again emphasising the importance of securing good

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[333] The concept of fitting in was also used by Seron's small firm interviewees (1996:72).

[334] Hence many public authorities in Britain ensure that staff involved in recruitment receive training in equal opportunities issues and that structures and systems are in place to minimise the risk of bias in selection.

[335] Two women interviewees stated that men would not be asked these questions. One added that the assumption was always made that women would leave to have children or should bear the responsibility of their care. Firms did not consider parenting to be a joint responsibility nor did they consider how to make the workplace more humane for both male and female parents.

[336] That is, that they would close their offices - this is seen as being a particular problem in view of the fabled teutonic longing for "Sicherheit" (security, Ardagh 1995).

national experience. Here are the views of one young German partner and one associate:

> "I think you get better practice and training in a German firm, or at least people feel more comfortable ... it's more secure and I think that it is very, very important, particularly when you start your career, to feel comfortable and secure."
>
> "It is better to train in a German firm and then go to a US firm than vice versa[337]."

Another issue that interviewees might be concerned about was that of partnership. They might be worried that their chances of making partner would be lower in a foreign firm or that partnership would take longer to achieve than in German firms. Indeed, several young interviewees told me that when they told German firms (who wanted to recruit them) of offers of positions they had received from Anglo-American firms, the German firms had told them that they had less chance of making partner in those firms[338]. These German firms in Frankfurt had actually no evidence at that time that this would be the case, as the Frankfurt offices of UK and US firms were so new then[339], although they might be justified in assuming that it would be more difficult to become senior partners in the firm as a whole, as will be seen below.

One English lawyer felt that German graduates might feel awed by their Anglo-American contemporaries:

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[337] The fear that they might not be employable in a German firm if trained in a foreign firm was backed up by only one German interviewee explicitly who said that UK and UK firms paid their associates higher salaries as a temptation to join but "We will refuse to employ them, after three or four years when they realise that they will never make partner there, we will not take them on."

[338] As Michael Thoma of Hengeler Müller stated (quoted in Griffith 1992): "A young man (sic) who joins us at 29, 30, surely doesn't want to wait seven years [to make partner]!"

[339] However, most UK and US firms in Frankfurt do work with a slightly higher leverage ratio than German firms, as the statistics before showed. Although most of my UK and US interviewees stated that they were adopting a flexible approach to partnership issues (including the length of time it would take for German recruits to make partner), there is some evidence (although it is mostly anecdotal) that it does generally take longer to make partner in these firms. Nevertheless, most German firms were also said to be lengthening the time it takes to make partner.

> "A lot of them do look at English law firms differently. German lawyers start working in firms much later in life - they are in their late 20s and early 30s before they start work and of course most English lawyers have been worked to death for 7 or 8 years by that point. So English lawyers have a wealth of experience which they don't have and that makes some young German lawyers very nervous as they look at someone their own age who has already 8 to 10 years of experience and is well ahead of them in terms of being able to service clients properly. German lawyers are extremely well qualified and able academically but they do have a tendency to lack a bit of commercial awareness and that may make them nervous about competing in a foreign firm with domestic trained lawyers."

All these points about the possible worries of German graduates should not be over-estimated, however. Anglo-American interviewees stated that they were now finding recruitment to be easier. Interviewees said that the length of time that they have been established in Frankfurt has ended worries about their leaving the city and many interviewees preferred to work for a UK or a US firm. All the associates interviewed in these firms did say that they had chosen the firm over German firms, as the foreign firms offered them an international career in a less "stuffy" environment[340].

Still, the problem of hiring more senior lawyers - lateral hiring - was more serious. Foreign firms wishing to undertake German work cannot start a German practice by only employing young lawyers, as they would not have the experience to do the work. Lateral hires would be needed, if the firm did not already have German lawyers working in other offices who could be transferred to the new office. However, as Forster notes and quotes (1997a) (and has been seen in case study one):

> "The question of hiring partners or foreign partners raises the whole spectre of culture ... "There is a built in tension to the extent one accomplishes one's goal through international expansion ... that cuts against the other objective to try to ensure as uniform a quality of the product and culture as you can.""

One senior German partner also commented:

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[340] Indeed, one of the advantages of the merger between the German firm of Deringer and Freshfields was said by the partners involved to be that their "European firm" would "attract lawyers with an eye on the global horizon" (Unattributed 1998d).

> "The old conservative gentleman's style is not to steal lawyers."

It is still unusual for lateral hiring to occur between German and foreign firms in Frankfurt. Some firms are unlikely to hire outsiders anyway, as demonstrated in the quotes above.

Notwithstanding this, even those law firms whose cultures are receptive to lateral hires have found that Frankfurt is not an easy market in which to achieve their ambitions. Specialist German legal recruitment agencies do not exist[341] and there are provisions on conflicts, which might affect lateral hiring, in the professional code - which will be seen in the chapter on regulation. When a partner at Bruckhaus joined Allen & Overy and when Clifford Chance hired a team of lawyers from Wessing, it was noteworthy news.

One German lawyer (quoted in Keohane 1996) noted the reluctance of German lawyers to move:

> "To make a move for money would require a substantial difference and it's not such a difference that you'd leave behind everything you've worked for for ten years."

A UK lawyer also commented:

> "German firms dislike laterals - they think that people are too different if they are not trained there[342]."

Another explained German lawyers' reluctance to move firms thus:

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[341] US and UK interviewees who had used (generalist German) head-hunters stated that they had to "educate" them in what to do. However, the British firm of Quarry Douglas (QD) is the first to enter this market and ZMB will follow (Mills 1999); QD began advertising in the Neue Juristiche Wochenschrift in 1999 (see, for instance, the advert in the 22nd March edition, on page 12).

[342] On the question of difference, Rueschmeyer argues (1973:85) that the value orientations dominant in the German middle and upper classes show little tolerance for the open acting out of conflict in any sphere. This is linked to strong beliefs that contended issues would find their right solution if only sufficient good will and expert knowledge were mobilised. This is further supported by the very strong emphasis on technical occupational competence which pervades society. Might this mean that German firms might find it particularly difficult to deal with the conflict taking on board people outside their clan might bring?

"Why should you change? [Pause] [Money or you're unhappy?] Yes, but you are losing a lot and you have to build up a lot again if you go to another firm. [Pause] It is hard to say why people are so reluctant to move firms. I think in our firm, it's just that people are not too unsatisfied about their work and the internal structure and everything. I mean, it is a decision to go to a firm and go there and become a partner, and then you identify yourself with this firm, and to give this all up? There is no firm which is as attractive as ours, I don't know what you'd gain. [A team from Wessing left to go to Clifford Chance and Peter Hein went from Bruckhaus to Allen & Overy. Why was that?] Wessing is a totally different firm from ours - we have a lock-step system and Wessing doesn't, so it is not so integrated. If you get what you shoot, it is different, you are more independent. Probably those people were not too happy at Wessing. And the Bruckhaus case was a little unique - he may have been unhappy; it can always be the case that there was a problem, though I'm not aware of that. It's the only case in Bruckhaus [of someone leaving] that I'm aware of."

One German interviewee believed that German lawyers would not be fully involved in the decision making of foreign firms and that would discourage lawyers from going there:

"Why would they (German partners) join the outer office of a New York or even a London-based firm, when they have no say, not even whether to continue or to close the office in Frankfurt? So our partners would not even dream of going to such a firm."

As an English partner stated:

"There is a continuing marketing disadvantage in the Anglo-Saxon perception of London being the hub and everywhere else being an outpost."

Further, as Page (1994) and Tsang (1998) argued earlier, if senior positions within Anglo-Saxon law firms are not given to non-Anglo-Saxons, local partners will be left feeling like second class citizens.

One partner in an English firm, when asked why it was difficult to laterally hire, focused on the "conservatism" of German law firms and the market:

"The old story. There is a [name of German law firm] anecdote that when one of their partners left to join a competitor, one of their partners stood up at the next partners' meeting and said "The trouble with X is that he never really understood:

> partnership is not like marriage - partnership is for life!"[343] And I think it's a combination of factors. It's nothing unusual. I think 20 years ago in England, you never really went sideways. It's the maturity of the market[344]. If firms are smaller, you have a tighter more intense partnership, you tend to stay together. It's also the selection policy in most firms which said you don't take on people who won't make partner. You were part of a golden club almost from day one."

Yet interviewees felt that lateral hiring would increase in the future (both by German and Anglo-American firms):

> "As the competition increases, people will become less loyal to their firms. German firms will take on UK and UK partners as if you want to be an international firm, you need a variety of lawyers with different educations and backgrounds."

This supports the implications of Harvey (1989), Waters (1995) and Lash and Urry's (1994) work that globalisation entails "social agents" becoming more "self-reflective".

An increase in lateral hiring does seem to be happening now, with press stories in 1998 and 1999 reporting that several German lawyers have moved to Anglo-American firms in the city (see, for instance, Unattributed 1998n, noting the move of a Bruckhaus partner (and a German partner of a US firm) to Allen & Overy, and Jordan 1999). Several German firms had, in fact, already taken on young foreign lawyers in their German practices. As a German partner stated:

> "This firm has taken on foreign lawyers in Germany as they can make foreign clients feel more comfortable and they bridge the perception gap every now and then when things are different. And they are helpful to our German clients because they are the lawyer of the first resort before you have to go to lawyers in another jurisdiction."

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[343] Simon also argues that (1995:220): "The stronger a corporate culture, the more difficult it becomes for someone well advanced in a career to adjust to a new one."

[344] In relation to the USA, James Fitzpatrick, a partner in a Washington law firm, commented in 1989 on how lateral hiring had developed there (1989:463): "A most remarkable phenomenon in American business and professional life for many decades was the stability of the American law firm. The lawyer who went with a firm planned, barring disaster, to stay there most of his or her career. Moving from one law firm to another reflected badly on the lawyer's professional judgement and the probity of his advice". See also Galanter and Palay (1991) on the "Golden Age" of US law firms.

One German lawyer working for a US (niche) firm believed that the growth of German firms would lead to an increase in dissatisfaction both with the increased bureaucracy encountered[345] and the subsidy of other parts of the firm. Another German interviewee felt that lawyers would increasingly act as employees, as the firms became less close-knit. As an English interviewee stated:

> "You'll get the shake-out in the next two years because of two factors. One is due to the consequences of the regional mergers which have happened in the last few years where people will get fed up with the decisions which were made in 1992 or 1993 or whenever and also internationalisation, where a number of firms will be forced to make decisions such as "Do we go international and, if so, how?" And consensus votes on that will be almost impossible and there will be teams of varying quality going onto the market."

And an English partner argued that the international firms would become increasingly interesting to German lawyers as:

> "They will see that their international aspirations will be better fulfilled in international firms."

Another English partner felt that German lawyers might also not be able to resist the money on offer in Anglo-American firms:

> "... [if] the cheque books come out, if US firms do here what they've done in London."

In fact, one German partner said that "good young partners" in German firms usually received two offers of partnership from foreign firms per year - and might be able to greatly increase their income if they joined these firms.

To sum up, UK and US firms intitially encountered problems in convincing young entrants to join their firms but this is less of a problem today. Instead,

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[345] Confirming Nelson's views, seen above. This also mirrors Simon's belief (1995:201) that as size increases, so does bureaucracy and the threat of losing a close-knit culture. Also, in 1998 a new German niche firm was founded by a former partner (Reinhold Pollath) of the large German law firm Oppenhoff and Rädler. Pollath said that he wanted to work from a boutique practice where administration and management could be kept to a minimum (quoted in Unattributed 1998w): "There are no partners' meetings, no time spent on administration or policies - we just want to work."

German, UK and US firms are (or have been) constrained by the fact that there are few graduates available who have all the qualities and skills they look for.

Anglo-American firms still find lateral hiring to be a problem as German lawyers are reluctant to move firms. However, interviewees felt that lateral hiring would increase in the future, in both directions (due to dissatisfaction with changes inspired by moves to bureaucratic organisational structures and changes engendered by the globalisation of practice) albeit more slowly than the Anglo-American firms might like.

Staffing has thus been a problem for US and UK firms in Frankfurt, but it has not been the only challenge they have faced. The importance of the second issue to be examined, client loyalty, has already been mentioned above but now will be discussed in more detail.

Client loyalty

The issues of client perceptions and client loyalty are, obviously, vital to an understanding of the development of foreign firms in Frankfurt. Hence, quite early on in one interview, a US lawyer said that the loyalty of German clients to their German lawyers was:

> "[A] marriage in the eyes of the church!"

A German partner similarly commented:

> "Typical German group companies are loyal - they use several law firms[346] but it's not often that they totally switch to another firm."

However, this "buy German mentality" (as one associate expressed it) might vary between clients, with some types of German client being more loyal than others. It may be that client firms which were owned and managed by the same

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[346] Although one German lawyer did say that it might not be cost-effective for some medium companies to use more than one firm.

person/people were more likely to build up a personal relationship with their lawyers and so would be loyal to them. Big companies might be less loyal[347].

Still, some US and UK firms arriving in Frankfurt had "underestimated" the loyalty of some German clients to their lawyers and their need to be convinced of the competence of the foreign incomers. Indeed, commentators have suggested that the German business community is particularly close; for instance, the same people move in the same circles (Griffith 1992:30) and:

> "... the chief executives of the top 20-odd companies in Germany all sit on each other's boards[348]."

However, as was seen above, this situation was said to be changing[349]. Only one lawyer interviewed was not wholly convinced that client loyalty to German law firms was declining - the rest (German, UK and US) all saw a decline. This is what the English partners had to say:

> "Historically there has been astonishingly strong loyalty between German clients and their respective advisors, in whatever field. That is starting to change as the management in Mittelstand companies and the larger companies change - and the post war era managers go, who used the same advisors for a long time. The new generation of Geschäftsführer* have been trained abroad, have been to England and America and understand about service levels and they are beginning to become aware that they are the ones who control the relationship, not the lawyer. I've been astonished by the approach that some German lawyers have taken to client service and client relationships and this loyalty issue is part of the biggest threat and also the biggest opportunity that the German legal community face today." (English partner)
> * Managing directors

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[347] Most German interviewees stated that international clients were less loyal - the only exception to this view being the opinion of a German partner who argued: "It's hard to say whether international clients are less loyal than German clients as German clients often have the tendency to use more than one law firm. Certainly there are long-standing relationships with certain German and foreign clients simply as they think that it's not worthwhile to undergo change as it takes money, management time, to monitor all these processes. I don't think that there is any difference between international and German clients."

[348] See also the diagram at page 150 of Adams' (1994) article, which shows the myriad interconnections between German companies and banks.

[349] Similarly in Australia, in the last 10 years, the trend has been towards greater client mobility, as they shop around for services more and more (Nosworthy 1995:57).

"The flood wall hasn't broken yet but the cracks in the wall are appearing. And I think there are two reasons; one is the sophistication of the products and the deals that the Germans do are getting bigger, more and more with an international element so that the recognition of value-added between, say, [X, Y & Z - names of two City law firms and one US law firm] is higher than using a [A - name of German law firm] or a [B - name of another German law firm]. So that you've got a reason to talk to and listen to us. And also there's a new generation of managers coming up who've been through the international treadmill, have got MBAs or have been on postings abroad, have seen a different way of doing things and look to a firm with a face they trust rather than an individual lawyer, as in the old days, when a member of a Vorstand* was at university with his old buddy who is now a senior partner in Feddersen, or wherever. Those relationships will die and I don't think that's unusual. What is unusual is that the new generation coming up have all had international exposure and that means they are looking for different things and are aware of that there are services for the bigger market and not just the local law firms."

(English partner)

* Managing board

"I think that we are now one of the big boys in Frankfurt and are recognised as a continuing part of the legal world here but I think that shift to recognition among medium sized corporates will take some time."

(English partner)

Hence, and in keeping with the tenor of theses such as Johnson's[350] (1972), the idea is that clients were effecting change due to their increased sophistication.

What is to be made of this? Are these lawyers being unduly confident of their alleged abilities and skills? Are (some or many) large German law firms not providing what their clients want? Several German lawyers did agree that German clients had experienced the services of foreign law firms when they worked abroad and this had then affected their choice of domestic lawyer. A German partner added that heads of in-house legal departments in Germany were coming under increasing pressure to manage their legal expense. However, he also stated that certain foreign law firms in Frankfurt had cut prices deliberately,

[350] Galanter and Palay (1995:20) also argue that one of the features of the growth of US law firms has been the creation of an environment in which clients belong to the firm rather than to an individual lawyer.

to gain market share and that had also contributed to clients' recognition of their purchasing power[351].

Perhaps the comment which opened this section should be reiterated, that many German commercial law firms are considered to be strong. Anglo-American firms do not yet appear to have reached the position in which their domestic law practices are taken as seriously as those of the German firms. We have seen how much smaller these offices still are, when compared to German firms in Frankfurt.

The following short sections analyse a couple more challenges to these incomers before analysing more generally themes encountered in the two case studies.

The problems of a de-centralised country

We have seen that many UK and US law firms have decided that they must become all-round German firms if they are to grow in Germany. We have also already seen that Germany is a de-centralised nation, and that the largest German firms find it necessary to have offices in all the major industrial and commercial cities in the country. As one German partner stated:

> "The structure of Germany means that it is not possible to do all work from one place, as you would in France or England, simply as the economic landscape is different, the traditions are different."

This inevitably poses a problem for foreign firms, as the resources required to set up offices in other cities would be huge. This point is returned to below.

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[351] Several other interviewees agreed with these sentiments, believing that the arrival of international firms had brought more competition (as seen above) and more aggressive marketing techniques.

The presence or absence of "luck"

Even the best-laid international plans can go astray (as Simon (1996) suggested earlier). Lawyers sent to start up an overseas office might not turn out to be the "stars" they had been expected to be, there might be a downturn in the work anticipated (due to "global issues" beyond anyone's control), they might open up too soon or too late and so on. The "people factor" was, though, considered to be crucial:

> "I think the firms which really wanted to challenge the market have succeeded in doing so, but it's all about the local people on the ground and their attitudes."
> (English partner)

> "Partly it's being in the right place at the right time ... We chose by luck or by choice a good blend of people to start off, who were prepared to roll up sleeves and get on with things."
> (English partner)

Hence several interviewees felt that one City firm had been fortunate in recruiting several lateral hires from a German firm, as it had increased their capacity to do work and had boosted their image in the marketplace. They were in the "right place at the right time", to be ready and able to take on these lawyers at a formative stage in the office's development.

In conclusion, US and UK law firms setting up in Frankfurt have faced a series of challenges which have hampered their ability to grow and compete with the top German law firms. They have not been able to play the part of the all-conquering interloper. Whilst the significance of some of these problems may be declining, the issues are still present and have affected (and still do affect) these firms' strategies. The next section considers this further.

How have the problems of US and UK firms in Frankfurt affected their strategies?

We have already seen that some firms have reconsidered their strategies in Germany, to respond to the challenges the market has posed. Some have

branched out into undertaking German law. For example, one law firm was said to have hired local lawyers, who arrived with local small-scale business clients, to cover the office's costs, and a couple of firms were alleged to have cut prices and to have paid higher starting salaries to attract new recruits.

Above all else, when working out how to overcome the problems foreign offices faced, the question of whether these offices should merge with a German firm was seen as *the* crucial issue to consider. Freshfields, in fact, formed an alliance (with a view to a merger) with the German firm Deringer early in 1998, a Freshfields partner (quoted in Stewart 1998) stating that this had happened as:

> "[I]t is a difficult market to grow organically to the size we needed."

Hence, mergers would allow quick growth, and also solve the problem of decentralisation, allowing the UK firm to use the offices of the German partner.

Indeed, almost all my UK and US interviewees were considering the possibility of merging with German firms (or had already merged)[352]. This is an issue which will be considered in the next chapter on the future of international work, as a whole range of issues associated with the possible future of work are raised by the topic of mergers. First, however, this chapter will close by comparing the case studies and teasing out the differences between the firms investigated.

Comparison of the case studies

Several themes can be drawn from the case studies as various issues were encountered in both jurisdictions. These themes will be taken in turn, highlighting similarities and differences in the data.

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[352] However, Keohane (1996) suggests that the US firms of Cleary Gottlieb, Davis Polk and Sullivan and Cromwell would be unlikely to merge with German firms.

Foreign offices: Demand and supply

As Clegg's work suggested (1993), both demand and supply should be considered when investigating legal services. When discussing why law firms developed their international legal work, a constant theme was both the pro-active and reactive nature of practice; the move to foreign offices was partly client-led and partly design. Abel had (1994) argued that foreign office openings were largely client-driven, Dezalay (1991) stressed lawyers' demand-creating activities whilst Flood (1996) concentrated upon analysing the (de)regulatory changes which provided opportunities for firms to work internationally. My empirical data were more in keeping with Flood's analysis, although UK firms in Frankfurt stressed demand-creation more than their US counterparts (differences between the nationalities will be explored further at the end of the chapter).

A firm's culture must be receptive to ideas of international expansion (Matteson 1994) and firms must obviously have the resources to support their preferred strategies. Interviewees usually stated that they chose foreign offices as they attained a degree of closeness (and control) which was unattainable in other structures although interviewees in foreign offices in both London and Frankfurt said that they did have much autonomy in their practice. It is, however, difficult to determine how far the extent of this autonomy varies from office to office and what its significance might be. Do, for instance, US foreign offices in Europe have more autonomy (and in relation to what?[353]) than UK firms' foreign offices, due to the greater geographic distance between the USA and Europe? Or are differences due more to the culture of the firm in question?

Such issues raise the question of whether foreign offices are adequately regulated by external regulators. For instance, if there were financial irregularities in an office's accounting, would the home regulator be able to spot them? This will be taken up in the chapter on regulation.

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[353] For example, are foreign offices allowed the freedom to choose risky areas of work (and what are risky areas of work)?

Conquistadors and clients

In neither Frankfurt nor London have foreign law firms arrived and taken the rôle of conquistador (à la Dezalay). They have experienced strong competition from the "locals" and both "sides" have modified the way they work. It is, however, hard to know whether English law firms in London were as strong, in relative terms, twenty or so years ago when US firms first arrived on their turf as the German firms were in the nineties when US firms first arrived in Germany. Certainly, whilst the amount of work available to commercial law firms increased in London in the eighties, the US firms did not take over the market for commercial legal services.

Conversely, it is likely that US investment bank clients have not been as important in Frankfurt in the nineties as their colleagues in London were in the eighties, and US and UK law firms in Frankfurt could not ride on the back of regulatory changes such as those brought by the Big Bang. For those incomers deciding to undertake German law work, gaining acceptance with German clients took longer than most had anticipated, although UK lawyers felt that German clients were becoming less conservative and some preferred what they saw as their more proactive way of working. They believed this was due to the knowledge clients had gained when working/studying abroad, the fact that deals were becoming more international and the increased competition amongst lawyers. Effectively, this meant that clients were becoming more reflective (Lash and Urry 1994) in their choices, as a reaction to phenomena engendered by globalisation. Perhaps this provides some support for the implication of Harvey's (1989) thesis, that relations with clients would become more volatile.

The influence of clients in London (this time, US clients) was also given as an explanation for the development of a more proactive form of practice in City law firms. City firms do appear to have moved to a more commercial form of

practice over the last thirty years (Lee 1992, Boon and Abbey 1997 and Hanlon 1997); these changes have been promoted by clients but also by the liberalisation of regulation. In Germany too, regulatory changes have enabled firms to expand their practices (Rogowski 1995), the most important change being the sanctioning of supra-local law firms in 1989.

Still, US forms of practice should not be assumed to be necessarily superior to those of the host state (as Dezalay (1995) seems to assume). To recap, Flood argued (1995) that it may be preferable to talk about the export of the techniques of US law firms which adapt to local cultures and so become local knowledge. Lash and Urry (1994) also believed that the internationalisation of services could result in increased sensitivity to local features. Hence, Anglo-American firms in Frankfurt learned a Germanic way of writing documents, US firms in London simplified their documents and German firms wrote their own documents in a more "international" style.

In effect, the outcomes of the arrival of Anglo-American firms on host state soil are difficult to predict in advance - success or failure in their projects will depend upon a constellation of factors, not the least of which relate to the business/legal cultures of the host state.

Personnel and (local) practice

The issues of finding the right personnel and working out whether to practise local law were raised in both locations, although these issues had greater immediacy in Frankfurt.

The decision of whether or not to practise local law is influenced (beyond the availability of work on home law in the host state) by the firm's practice areas and its cultural aversion to the risk of moving into (a) new field/s. Thus several Wall Street firms in London appeared to have enough US work to do (which did

not require ancillary local law knowledge) to keep them busy. They seemed particularly wary of the risks of localising their practice.

The practical difficulties of finding the "right" personnel and then convincing clients of one's expertise should not be underestimated. As one US lawyer in London was earlier quoted as saying: "We have three problems: getting the right people and enough of them; finding enough of the that kind of work for the lawyers to do; and how to deal with ancilliary specialities." Lawyers are primarily bound to their home jurisdiction (Halliday and Karpik 1997), yet lateral hiring in itself is problematic.

Nevertheless, interviewees in Frankfurt and London believed that lateral hiring would increase in the future, apparently confirming that lawyers are increasingly taking control over their own futures and are not expecting secure futures in their firms (as practice becomes more commercialised)[354]. Global pressures have heightened this insecurity; for example, lawyers in German firms may disagree on international policy and dissenters may move to firms with different strategies whilst associates in City firms may move to US firms in London which will pay them more[355]. These "agents", again, are becoming more "self-reflective" (Lash and Urry 1994).

The nature of lateral hiring seems, however, to be different in the two cities. Several Anglo-American firms in Frankfurt, for instance, hired German lawyers in order to eventually develop a 'full-service' German practice whilst lateral hiring in London appears to be mostly in the field of finance law (although some US firms do cast their nets wider, as table twenty-four showed and the next

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[354] Whether German lawyers have been more reluctant to work for Anglo-American firms in Frankfurt than English solicitors have been to work for US firms in London is hard to gauge, as it took much longer for most US firms in London to consider lateral hiring.

[355] For example, when a German partner from the German firm Schürmann moved to Ashurst Morris Crisp in Frankfurt, one commentator stated that he was frustrated with the pace of change in his former firm (Jordan 1999). Similarly, UK associates appear to be becoming increasingly willing to "jump ship" to US firms in London (Swallow 1999).

section discusses). This appears to reflect the different nature of work opportunities in the two cities, including the amounts of different types of work available.

Hence, it seems that some Anglo-American firms in Frankfurt misjudged the 'market' and have diversifed as they have not been able to find sufficient work based on their home state law alone to justify (presumably to their home offices) their continued presence in Frankfurt. Nevertheless, we have seen that firms' strategies do vary greatly; the next section aims to unpick the reasons for this.

Differences within and between the UK, US and German law firms

In her study of New York solo and small firm attorneys, Seron accounted for differences she had found thus (1996:139):

> "Institutional and economic forces condition the development of professional practices, but there is still a great deal of room for variation. The solutions these attorneys bring to the problems of business-getting, self-employment, and service to clients and the public once again remind us that social values, norms and choices also explain practices at work."

My research also found that there were many differences between firms and that their "social values, norms and choices" should not be disregarded when attempting to account for their behaviour. Neither should "economic forces". Consequently, the empirical research suggests that it is very misleading to talk about US law firms *en masse* (as Dezalay and Bourdieu (1995) are inclined) without pointing out that which divides them too.

This diversity in law firm practice does support the conclusions of Nelson (1988), who found differences in the professional ideologies of partners and associates even within the same firm. Nelson and Trubeck (1992b) also argued that organisational policies within firms are a primary source of professional values to be found there (a theme picked up later in the chapter on regulation). The following sections explore such ideas further.

Differences in sizes of firms

To begin with, we might first remind ourselves of the differences in the sizes of the largest law firms in Germany, the UK and the US. It has been seen that the largest law firms in the world come from the US and UK and even the largest German firms are much smaller than their Anglo-American counterparts. Nevertheless, all these jurisdictions have reported growth in the size of their largest firms over the past decade. Indeed, many of the German firms have more than tripled in size over the last ten years or so, following the liberalisation of regulation. In England and Wales, the increase was less dramatic - the largest firms, those with 11 or more partners, grew on average by 32% between 1985 and 1993 (Law Society Directory 1994)[356] and the "top five" firms increased in size by 62% between 1988 and 1993 (Hanlon 1999:140).

To focus on New York's largest firms, these have stepped up their international practices in the last decade, while growing little or not at all in New York, according to the New York Law Journal (Snider 1998). The following tables show figures on their total number of lawyers over a twenty year period (although the data source did not separate out the numbers working in the firms' foreign offices):

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[356] In relation to smaller firms in England and Wales, between 1985 and 1993 the number of medium firms (with five to 10 partners) declined by 7% whilst the number of small firms grew by 26% (Law Society Directory 1994).

Table twenty-eight - the largest New York firms in 1978[357]

Name of firm	*Total no of lawyers*
Shearman & Sterling	264
Dewey, Ballantine, Bushby, Palmer & Wood	202
Davis Polk and Wardwell	200
Fried, Frank, Harris, Shriver & Jacobson	200
White & Case	195
Cravath, Swaine & Moore	189
Donovan Leisure Newton & Irvine	187
Cleary, Gottlieb, Steen & Hamilton	181
Milbank, Tweed, Hadley & McCloy	179
Sullivan & Cromwell	178

Table twenty-nine - the largest New York firms in 1988

Name of firm	*Total no of lawyers*
Skadden, Arps, Slate, Meagher & Flom	962
Shearman & Sterling	525
Weil, Gotshal & Manges	461
Shea & Gould	410
Fried, Frank, Harris, Shriver & Jacobson	402
LeBoeuf, Lamb, Leiby & MacRae	394
Milbank, Tweed, Hadley & McCloy	385
White & Case	377
Davis Polk & Wardwell	376
Kelley Drye & Warren	365

[357] To look further back, Smigel (1964) reported that in the late 1950s there were only 38 law firms in the USA with more than 50 lawyers and more than a half of these were in New York.

Table thirty - the largest New York firms in 1998[358]

Name of firm	*Total no of lawyers*
Skadden, Arps, Slate, Meagher & Flom	1257
White & Case	848
LeBoeuf, Lamb, Green & MacRae	741
Shearman & Sterling	707
Weil, Gotshal & Manges	675
Cleary, Gottlieb, Steen & Hamilton	557
Simpson Thacher & Bartlett	530
Davis Polk & Wardwell	501
Sullivan & Cromwell	484
Proskauer Rose	479

To explain such patterns of growth, the international strategies of the firms must be considered.

Differences in international strategies

If we examine the strategies of English (City) firms, City firms are significantly more international than any other nationality of firm[359], if we determine this by the percentage of their lawyers who are based in overseas offices - 19.2% of their lawyers were abroad in 1997 (Lee 1997). New York law firms are the next most international group, with 14.4% of their lawyers working abroad in 1997 (ibid). Indeed, by 1999, Clifford Chance practised local law in 18 jurisdictions, Freshfields in 16, Allen & Overy in 15 and Linklaters in 13 (Edwards 1999). Why is this the case?

One German lawyer argued that City firms are financial firms and so must move abroad, particularly as the UK does not have as strong a domestic market as Germany and the USA. This suggests that German and US firms have more

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[358] Snider (1998) adds that "Currently, there are 6,779 lawyers working in the 10 largest Manhattan-based firms, 53 per cent more than in 1988".

[359] To take the nations' professions as a whole, we have seen that fewer US attorneys work abroad than English and German lawyers as less than 0.25% of US attorneys are based overseas (as opposed to around 2% of English solicitors and 0.5% of German advocates).

domestic work at home to undertake (as in local work for manufacturing companies) and also that financial law work is necessarily international in nature. Consequently, the logic is that City firms have too limited a base at home and so must expand.

The latter point would explain why New York firms are the next most international firms to City firms as many of them concentrate upon servicing the financial markets. Indeed, the US dollar has dominated global business for much of the period following World War Two. Hence, for example, as Sellers Klein points out (1999:45):

> "Because the US capital markets have long dominated the global financing market, the American firms have had an advantage over most UK law firms in high margin transactional work."

This might have meant that there have been more work opportunities generated by US clients for US law firms. City firms might have gone abroad as their home clients did not create work of such magnitude.

There is some evidence from the empirical work to suggest that the City firms' home market is a mature, saturated market and they did indeed move abroad (partly at least) to find green-field sites. One US lawyer also believed that UK firms were less parochial than US firms and so were more likely to expand overseas. They may be particularly entrepreneurial; for example, the foreign offices of City firms in Frankfurt stressed their potential to generate business there.

Yet the culture of firms must also be considered when attempting to understand practice (Nelson 1988). The next chapter will consider cross-national mergers and will look at the international strategy of the City firm Slaughter and May, which has so far decided to buck the trend to open foreign offices and not follow the strategies of its contemporaries. One probable reason for this is that Slaughters is reluctant to take on board lawyers from other firms and in that way dilute its own culture. Nevertheless, Slaughters apart, the "top", so-called "magic

circle", of City firms have been much more in accord on the need to establish a comprehensive foreign office network than their US counterparts have.

Indeed, the "top" three US firms have 10 offices in Europe compared to the 34 offices of the three leading UK firms (Ferguson 1997). We have also seen that the strategies of US law firms in London differ. Those firms which continue to give advice on US law only are capital markets firms; most of their London office work consists of advising European companies on raising funds in the US markets (Lee 1997:31). Lee argues (ibid) that this is a highly lucrative business and an area of law which is easy to export. These firms have tended to be very profitable and busy and traditionally the most culturally reluctant to take the risk of branching out into local law. Hence firms like Davis Polk (which has a close relationship with the US investment bank Morgan Stanley) can still be found, which have a limited number of foreign offices and do not practise local law (see Ferguson 1997 and Rice 1997). Nevertheless, the policies of these firms are under review, as has also been seen, as US firms increasingly take on UK lawyers.

Several of the other US firms which have expanded to offer UK advice are corporate based firms whose expertise draws more on multi-jurisdictional skills. One such firm is White & Case, one of whose partners commented in 1997 (quoted in Forster 1997a:39) on the "conservative white shoe approach" of Wall Street firms as follows:

> "They are there [overseas] to skim the high value end of the business which is fine if you are prepared to limit your firm in that way."

Hence, his firm sought its work from a wider base and was prepared to work on cases which were less financially profitable than financial services work. This analysis is supported by the information in appendix two, which suggests that in the US the largest firms of all are not the most profitable.

Similarly, if German corporate firms are considered, there are many differences between them, even if Anglo-American lawyers feel able to generalise about their "professionalism". The next chapter considers cross-national mergers and it will be seen here that several German firms have joined up with City firms, with a view to later merging. Other firms are less willing to potentially compromise their independence. For example, the next chapter will consider the strategy of the firm Hengeler Müller, which is reluctant to merge (and alter its culture) and instead is strengthening its alliances with firms such as Slaughter and May.

The fact that firms do differ in the international strategies they adopt does bear out Waters' (1995) discussion of globalisation entailing "relativisation" and not necessarily homogeneity. A variety of strategies may be pursued and diverse outcomes result when globalising forces are engaged with, rendering prediction precarious.

Moreover, we should take on board the cautionary advice sounded often by writers such as Nelson (1988) and Kelly (1994). The cultures of law firms (and the 'world views' of their lawyers) must be considered. Law firms cannot be easily boxed into convenient pigeon holes of nationality without doing serious injustice to their own peculiarities.

This should certainly be borne in mind when reading the final part of this chapter, a discussion of the differences in the working styles of lawyers.

Differences in working styles

Just as solicitors in London were said to work in a reticent, proactive fashion prior to the commercialisation of their practices, commercial law firms in Germany were said to be under pressure to undergo a similar transformation. Increased competition from national and foreign competitors, client preferences, the pressures of determining international strategies and the difficulties of coping with their immense growth in size (which is increasing the bureaucratisation of

practice) appear to be challenging some German firms to re-examine their ways of working.

However, it might be too easy to assume that the development of German firms will mirror that of City practices. Much here lies within the realm of speculation, but the argument of the thesis so far has been that law firms are likely to respond in different ways to external and internal pressures. For instance, the greater individualism apparently displayed by German lawyers *might* mean that they are more receptive to ideas of 'flexible' working from home, although there may be difficulties encountered when common projects (such as establishing firm-wide precedent banks) are set up. UK and US lawyers who are used to working more closely with colleagues may find 'flexible working' to be more difficult.

Yet Anglo-American law firms may also over-exaggerate how far they actually do work in a proactive[360], team-based fashion. For example, firms can be highly competitive, hierarchical environments where genuine communication is limited (as discussed in the section on management and law firms). Increased use of profit-based compensation structures may also increasingly divide lawyers, so they are more inclined to look after 'number one', becoming the 'reflective' practitioners of Lash and Urry's (1994) labelling.

Indeed, working styles may also differ within firms - some individuals may be less prepared to respond to clients' every whim than others. Certain specialisms/departments within law firms are also notorious for attracting lawyers who display a more aggressive approach to work (see, for example, Kelly 1994).

In effect, this returns us to Nelson and Trubeck's (1992b) account of professionalism, and in particular the need to investigate relatively, to investigate the normative orientations of lawyers and to avoid glib generalisations.

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[360] See Susskind's earlier criticism of the reactive nature of much law firm practice.

This brings to a close this section on differences between law firms (and the chapter itself). However, several strands of this discussion will be picked up again in the next chapter, which examines the future of international legal work.