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Milton C. Regan Jr.

Lisa H. Rohrer

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ARTICLE

MONEY AND MEANING: THE MORAL ECONOMY OF LAW FIRM COMPENSATION

MILTON C. REGAN, JR.*
LISA H. ROHRER**

* McDevitt Professor of Jurisprudence and Co-Director, Center for the Study of the Legal Profession, Georgetown University Law Center. We would like to express our appreciation to the Law School Admissions Council for funding the larger ongoing Law Firm Culture Research Project on which this article is based. We also would like to thank Elizabeth Chambliss, Jim Jones and Nancy Sachs for their insightful comments on a previous draft, and Elizabeth Chambliss for her valuable contributions as a participant in the early stages of the project.

** Research Director Center for the Study of the Legal Profession, Georgetown University Law Center.

Introduction

> PARTNER: I can tell you there are a lot of folks at my age and stage who are tired, tired of feeling this way. Folks like me who have gone out of our way to the tune of hundreds of hours a year every year to do firm-related stuff, for which we know there is no compensation. You know, being a team player you want the team to take care of you, but over time you start to feel like a chump.
> INTERVIEWER: I take it that your concern is not simply what the compensation reflects in a material sense . . . ?
> PARTNER: It's about respect.
> INTERVIEWER: It's about respect.
> PARTNER: Of course. What isn't?[1]

In this article, we discuss the complex significance of the partner compensation process in large law firms. Our research suggests that this process allocates both material and symbolic goods within firms. The criteria that a firm uses to determine compensation do not simply result in differences in the financial rewards that partners receive. They also can signal to a partner the extent to which he or she is respected as a valuable member of the firm. Seen in this way, the compensation process is an important occasion for a firm to consider how to fashion an understanding of what it means to be a lawyer. This understanding must accommodate both increasing business pressures and traditional notions of professionalism. How a firm responds to this challenge can have a profound effect on its culture, as well as on its chance of surviving in an era in which law firms can dissolve with breathtaking speed.

Our observations are based on an ongoing empirical research project on law firm culture, which thus far has involved 116 interviews with lawyers in fourteen firms. All but 11 of these interviews have been with partners. All but three of these firms are in the *American Lawyer* list of the 100 firms with the highest revenues. Interviewees were selected solely by the researchers, who attempted to include subjects who provided a reasonable representation of lawyers based on partnership tier, practice area, seniority, age, gender, ethnic background, office location, experience at other firms, and management experience. All interviews were done in person, and ranged from one to two-and-a-half hours each. All interviewees were assured of anonymity.

At first blush, the significance of the compensation process may seem obvious: it represents an economy in which the firm distributes material rewards to its partners. From this perspective, disputes and dissatisfaction regarding compensation are simply attempts by partners to improve their financial well-being in the firm's material economy. Our research suggests, however, that compensation serves to distribute not just money, but also

1. Interview 98 at 6 (July 23, 2012).

respect. The dynamics of partner compensation in a firm serve to both establish and express criteria of value—to define what it means to be a good lawyer in that firm. The relative weight of these criteria has been changing in most firms over the past three decades or so. This means that law firm compensation processes, which serve as the bases for conveying respect for partners have been changing as well.

Greater competitive pressures have led firms to place more emphasis on business skills and less on traditional professional competencies and qualities. Such skills involve the sales and business development acumen necessary to bring in clients to the firm, which results in the originating attorney collecting a high percentage of the fees that clients are charged. Because law firms have always been businesses, certain lawyers known as "rainmakers" have always possessed and been rewarded for such skills. The market conditions in which firms operated until the last few decades nonetheless allowed firms to treat these skills as but one of several factors relevant to compensation. Increasingly intense competition for business in recent years, however, has made business skills more important than perhaps ever before for lawyers and law firms.

The business skills that are valuable in today's law firms represent qualities different from most of those traditionally used to evaluate whether someone is a good lawyer, such as the quality of work as judged by internal professional standards, the provision of conscientious service to clients regardless of its profitability, a spirit of collegiality, devotion of time to serving as a mentor to junior lawyers, and the devotion of some portion of time to serving the community and the public good. The difference between the two sets of skills is not stark: a successful rainmaker must of course have good legal skills and provide valuable service to clients. Increasingly, however, these qualities are regarded as necessary but not sufficient to warrant high compensation. It is business skills that now tend to differentiate partners in terms of the financial rewards that they receive.

There is, however, an explanation for this shifting compensation scheme that reflects a sharper differentiation between business and professional skills. Many of the traditional professional skills can contribute to the financial success of a firm, but it can be difficult to isolate and measure their individual impact. Firms generally did not regard such difficulty as troublesome when competitive pressures were relatively mild. Because the firms regarded their financial performance as the product of a common effort to which each partner contributed in various ways, most firms' compensation systems did not feature highly differentiated criteria for measuring individual productivity. The acknowledgment of traditional professional skills under previously common compensation schemes underscores that distinguishing between law practice as a business and as a profession can oversimplify the actual experience of lawyers.

At the same time, these traditional qualities have also been regarded as intrinsically valuable as the basis for distinguishing law practice from ordinary business organizations, and as establishing standards in a distinct "order of worth."[2] From this perspective, the value of traditional legal skills is based on standards internal to the profession.[3] Apart from their economic value, these standards provide a basis for respect as a lawyer. They also provide sources of professional satisfaction, apart from financial reward, that enhance the attractiveness of those firms that make an effort to nurture them. Firms that can provide such satisfaction have the potential to create stronger forms of organizational glue than those firms that focus simply on financial performance.

The challenge for the modern law firm is to create these forms of organizational glue while keeping content the rainmakers who generate the most revenues. A firm risks collapse if its high-revenue producers become dissatisfied and leave with clients. As David Jargiello and Phyllis Gardner describe it, "large firms unravel in an almost formulaic manner. Generally speaking, the downward spiral is triggered when a number of partners with material portable business—'revenue-controlling partners'—become disaffected with leadership, and conclude that their own interests are no longer coincident with the direction of the law firm."[4] What then occurs is predictable:

> The spiral begins in earnest when the disaffected revenue-controlling partners leave the law firm for what they perceive to be a better managed, better run, and therefore superior platform. Defection, in turn, creates financial distress that manifests immediately. The departing partners (1) strip out their capital (immediately or through a balance sheet adjustment), (2) take with them as many of their paying client accounts as possible, (3) render their outstanding receivables less collectible, and (4) leave behind overhead in the form of vacant offices, and unnecessary associates and staff . . . . More revenue controlling partners will question leadership, and more will defect, resulting in still more financial stress and fear. If not contained, the foregoing cycle repeats like a closed feedback loop with no 'off' switch until the financial stress overwhelms the business and forces closure.[5]

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2. *See generally* DAVID STARK, THE SENSE OF DISSONANCE: ACCOUNTS OF WORTH IN ECONOMIC LIFE 11–12 (2009) (illustrating the concept of orders of worth by delineating "six discrete orders of worth" within academia). For a discussion of this concept, see *infra* text accompanying notes 212–216.

3. *See generally* ALISDAIR MACINTYRE, AFTER VIRTUE (1984) (developing the concept of "internal goods" within professions).

4. DAVID JARGIELLO & PHYLLIS GARDNER, FREE AGENT DYSFUNCTION: MANAGEMENT REALPOLITIK FOR U.S. LAW FIRMS 10 (2010), *available at* http://www.jargiellolaw.com/White_Paper_Series_-_Free_Agent_Dysfunction_-_Print_v3.2_-_COPY.pdf.

5. *Id.*

Jargiello and Gardner conclude, "Thus, in the final analysis, it is our view that a large firm's death spiral is triggered in the first instance by a loss of confidence among revenue-controlling partners in the future of the firm to succeed vis-à-vis *themselves*."[6]

Most law firms, therefore, believe that they have little choice but to maximize profits per partner (PPP) and to ensure that rainmakers are handsomely rewarded. They regard PPP as crucial in both keeping their rainmakers from defecting to other firms and convincing rainmakers at other firms to join them. Increasingly, however, maintaining a high PPP is seen as necessary but not sufficient to ensure the firm's survival. Firms believe that it also is necessary to compensate rainmakers well above the average that PPP represents. This trend has tended to increase the difference in compensation between rainmakers and other partners in the firm. Our research suggests that this can create concern on the part of lower-paid partners not just that they are making less than their higher-paid colleagues, but also that the firm respects them less than partners who have the business skills to develop client relationships. Law firms, therefore, face the challenge in their compensation systems of eliciting the ongoing commitment of their partners by affording them respect on the basis of what may be very different criteria. How a firm responds to this challenge will have the effect of forging a particular conception of professionalism for that organization and its lawyers.

Section I of this paper describes the significance of compensation systems in shaping law firm culture, and the particular challenges that firms face in making compensation decisions. Section II describes the material economy of compensation, in which compensation represents the distribution of financial reward among partners. That economy includes two types of markets. The first is a regulated market in which the firm relies on specific factors in making compensation decisions. The second is a largely unregulated market that features negotiation among partners for origination credits. Section III describes the moral economy of compensation, which reflects the role of compensation systems in allocating respect among partners. These systems can affect the extent to which partners feel respected by both the substance of compensation decisions and the ways in which they are made. As the section discusses, both the regulated and unregulated markets of the moral economy present challenges for firms that seek to convey respect and foster a sense of connection to the firm among their partners.

We approached our research as an exercise in the development of grounded theory, in an effort "to understand the process by which actors construct meaning out of intersubjective experience."[7] Our observations

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6. *Id.* (emphasis added).

7. Roy Suddaby, *What Grounded Theory is Not*, 49 ACAD. MGMT. J. 633, 634 (2006). *See generally* CHRISTINA GOULDING, GROUNDED THEORY: A PRACTICAL GUIDE FOR MANAGEMENT,

therefore reflect not the application of a pre-existing conceptual framework, but instead the identification of patterns that emerged from analysis of compensation systems and discussions with lawyers about the compensation process. Section IV suggests, however, that our focus on the compensation process as an occasion for clarifying and contesting criteria of professional respect may make archetype theory one especially useful lens through which to analyze our findings.[8]

Archetype theory emphasizes that organizational features like structures and systems are not autonomous and objective. They cannot be added and subtracted at will in the professional organization. Rather, they embody interpretive schemes that infuse them with meaning and value as concrete expressions of what it means to be a professional at a given historical moment. Scholars call this combination of features and interpretive schemes an archetype. As our discussion below elaborates in more detail, we can see the compensation process to some extent as the occasion for contests between competing archetypes. At issue in these contests is not only the allocation of material goods, but also which interpretive scheme will be used to make sense of the structural features that law firms are adopting in response to increasingly intense competitive pressures. From this perspective, negotiation over compensation involves the question of how a firm should balance its identity both as a major business enterprise and an organization of professionals—and what it means to be the latter in an era of tumultuous change. Finally, the Conclusion offers some closing thoughts on compensation as an issue that presents, in especially stark form, modern law firms' attempts to reconcile business demands with traditional professional values.

I. Compensation and Culture

Compensation is a pervasive theme when lawyers discuss their firm's culture. Time and again, we hear that a firm's compensation system plays a crucial role in shaping its culture, and that partner satisfaction with compensation is critical in eliciting attachment to the firm. One partner describes the significance of compensation this way:

> At the end of the day, after all of these things, the barometer is compensation, okay? Compensation sends incentives, it sends signals, it conveys culture. This is the language that we speak, it's the way we know how we're valued. [W]e know everything by how we are compensated, by whatever the metrics are for compensation.[9]

Business and Market Researchers (2002) (offering a detailed explanation of grounded theory methodology and contextualizing the theory within the research process).

8. *See infra* at 83–101.

9. Interview 79 at 2 (Apr. 17, 2012).

Similarly, when asked what is most important in differentiating law firm cultures from one another, another partner responds, "I would say that one of the big things is their compensation system. . . . That is one of the things that I would look at— . . . not so much . . . the executive committee, the management committee, but the comp[ensation] committee. [H]ow does the comp[ensation] committee work?"[10]

Lawyers note that compensation shapes culture through the behaviors that it encourages and discourages. If a firm pronounces the importance of pro bono work but seems not to take it into account in setting compensation, it will be clear to lawyers that the firm does not regard time spent on pro bono matters as important. Similarly, if a firm provides compensation credit for a partner who takes on non-billable management responsibilities when he could be devoting that time to developing his own clients, the firm credibly signals that it values partners who are willing to make some personal sacrifices on behalf of the firm as a whole.

When asked what are indications of the culture of a potential law firm merger partner, one partner emphasizes, "Well one of the things for example is . . . how do you do compensation and how are you rewarding people because that tells you a lot right there. What are your views on pro bono and community service? Those are the questions you really ask. To what extent do you work on cross-selling and, you know, team approaches and those kinds of things."[11]

Compensation also is a major subject of discussion in law firms because keeping partners satisfied with their compensation is crucial in order to avoid losing highly profitable partners to overtures from other firms in the lateral market. Virtually every firm's PPP figure is available in the legal press.[12] This gives partners at least a general idea of how much they might be able to make elsewhere. While partners making less than the market rate may stay at a firm for a while out of a sense of loyalty, if the gap becomes too large they are likely to go. As one partner observes:

> [S]ome partners who generate a lot of the income here don't make what they could in the marketplace, and a lot of them stay in part because they love the culture, they love the environment, but at a certain point the amount of delta between what they make here and what they could make elsewhere is just too large for them to stay.[13]

A partner at another firm underscores this point:

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10. Interview 16 at 23 (Nov. 17, 2011).

11. Interview 111 at 13 (Sept. 21, 2012).

12. *See, e.g.*, *The 2012 Am Law 200*, AM. LAW., May 30, 2012, http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202494427064&The_2012_Am_Law_200 (ranking the top 200 firms according to profit per partner as well as the change in profit per partner from 2010).

13. Interview 12 at 13 (Aug. 18, 2009).

> [I]f you don't grow, you die, and you need to grow to stay competitive in compensation because no matter how great your culture is—we see plenty of firms around with great cultures and people who love working there, but the firm disintegrates and the economic forces can do that. At some point people say, "Yeah, I like this great firm, but if I can make twice as much money by moving across the street to a firm that seems to have a great future, I'll go."[14]

Keeping partners satisfied is an especially difficult task when information about each partner's compensation is shared with all partners in most firms. This creates the perpetual risk that some people will be dissatisfied. We know that a person's satisfaction with his financial condition is based not on the amount of money that he has, but on how much he has compared to other people he regards as peers.[15] Firms therefore spend a considerable amount of time and energy in determining partner compensation so that partners regard the decisions as fair and legitimate. One partner on the compensation committee of his firm describes the process:

> We spent a lot of time on compensation. We do partner compensation every year . . . and that takes a lot of time. It's three days of meetings just as a committee plus all the meetings with individual partners . . . . There is an initial meeting with each partner just to say, "Well, tell us whatever you want to tell us," and everyone does a little report about their own performance, and then there is a follow-up meeting where we say here is what we are going to recommend that you go up, you go down, you stay the same.[16]

This partner continues:

> I'm on the committee, so I may be a little biased in my views, but I think it's a very transparent process. Everybody knows what every other partner makes. Everybody gets sort of a week or two weeks to comment on either their own or other people's compensation before it's finalized . . . . [E]verybody knows what you are making and everybody has a chance to be heard, which I think all [provides] due process . . . .[17]

The firm also pays a lot of attention to the composition of the committee:

> [T]he compensation committee is in part . . . management but it's . . . voted on, . . . so it's not as if it's purely [a] management decision. And so to me it's actually pretty transparent; it's got representatives of all the departments plus these sort of at-large

14. Interview 52 at 14 (July 12, 2011).

15. *See* Chao C. Chen, Jaepil Choi & Shu-Cheng Chi, *Making Justice Sense of Local-Expatriate Compensation Disparity: Mitigation by Local Referents, Ideological Explanations, and Interpersonal Sensitivity in China-Foreign Joint Ventures*, 45 ACAD. MGMT. J. 807, 808 (2002).

16. Interview 48 at 16–17 (July 11, 2011).

17. *Id.*

> people, so I feel like all the different interests are represented on the committee and the committee I think has pretty good information.[18]

Both the amount of compensation and the way that it is determined can shape organizational culture in important ways. In particular, it can affect the extent to which a partner regards himself mainly as a relatively self-sufficient free agent or as a member of a larger interdependent community within the firm. As one partner suggests:

> [I]f [the compensation system] is eat what you kill and you're paid for working for your client in your own silo, then it's much easier for you to pull up and leave. You don't have those sort of roots that are expanding out of your own insular group because you don't depend on anybody else for your own revenues and therefore your own compensation, and you are not dependent on anybody in terms of helping you bring in the dollars.[19]

There is reason to believe that compensation's prominence as a subject of attention in the modern law firm is a phenomenon that has arisen over the last generation or so of law practice. During this period in which competition for legal services has significantly intensified, compensation has assumed increasing importance as an instrument in the service of a firm's business strategy.

By contrast, a generation ago, when market pressures were less fierce, a firm could make decisions about compensation based largely on its partners' decisions about the kinds of satisfaction they wanted from law practice. These values might include financial reward, collegiality, professional recognition, intellectual stimulation, service to the community, generosity toward colleagues, mentoring junior lawyers, and other forms of fulfillment. A firm's compensation policy arguably reflected the firm's choice of how to balance these values. The fact that compensation was rarely a source of conflict, or even the subject of much explicit attention, within law firms was ostensibly an indication that non-financial professional values and financial rewards were both important to a firm.[20] Compensation policy was thus only one example of the ways in which the classical partnership represented a "third logic" that featured professional control over the provision of legal services, as opposed to reliance on the market or bureaucratic management.[21]

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18. *Id.* at 17.

19. Interview 16, *supra* note 10, at 23.

20. *See generally* SOL LINOWITZ, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY 29 (1994) ("The compensation schedule in the old-fashioned law firm was essentially that of the Japanese civil service: Your share was a function of your seniority. . . . This helped keep partnerships together, because partners were not competing against each other. . . .").

21. *See generally* ELIOT FRIEDSON, PROFESSIONALISM: THE THIRD LOGIC (2001) (presenting professional formation as a more viable alternative to consumerism and bureaucracy).

Viewed against this background, the evolution of compensation might seem an instance of the ways in which business considerations have come to dominate professional values in modern law practice. One might think that for all that a law firm may talk of other values, the only value that really matters is money: generating enough profit to keep partners happy. For all that a partner may talk of the importance of professionalism, the only thing that motivates him and keeps him at his firm is compensation—the more the better.

Assuming that the meaning of compensation is limited to financial considerations, however, misses its full significance within a law firm. When lawyers talk about compensation, they tend to refer to sources and criteria of value other than money, which have the potential to provide meaning in their lives as lawyers. Indeed, it is striking how many lawyers in our study refer to the amount of their compensation as far more than they could reasonably expect or deserve to make. One lawyer, for instance, says, "I mean I talked to my kids and my wife about it . . . . [I]t is a ridiculous amount of money. I almost feel guilty about it and I'm not kidding you."[22] Another muses, "When I looked outside of the window I wonder why in the world I'm being compensated anywhere near what I'm being compensated when there are other people who are very talented and very educated that aren't earning nearly as much."[23] Another partner says, "I'm always shocked when I hear that somebody thinks that they should be making more money than what we are already paid . . . . We are all overpaid."[24]

Even allowing for a certain amount of self-serving modesty, these spontaneous comments suggest that any preoccupation with compensation is not animated simply by the pursuit of financial gain. Rather, it reflects the fact that compensation is simultaneously a part of two different economies in the modern law firm. The material economy of compensation allocates financial rewards based on business criteria, while the moral economy of compensation allocates non-financial goods such as respect and meaning that can serve to provide professional satisfaction. The implicit criteria by which the firm distributes the latter can have profound significance for the culture of the firm.

II. THE MATERIAL ECONOMY OF COMPENSATION

A. *Partnership Structure*

Understanding the material economy of compensation requires appreciation of how competitive pressures on law firms in recent years have changed career opportunities and the meaning of partnership. The "modern" large law firm first emerged around the turn of the twentieth century with

22. Interview 79, *supra* note 9, at 9.
23. Interview 72 at 17 (Aug. 9, 2012).
24. Interview 53 at 13 (July 12, 2011).

the "Cravath system," in which young lawyers were hired, trained, and could eventually be promoted to equity partnership.[25] Equity partners are the working owners of law firms and have a voice in the governance of the firm as well as a share in the financial profits. Upon entering the equity partner ranks, a new partner must also contribute capital, for which the firm typically makes financing available. A new partner is therefore financially tied to the firm to some extent, and to the rise and fall of the firm's fortunes.

Promotion criteria for partnership have traditionally included production of high-quality work, ability to relate to clients, and perhaps some capability to attract business.[26] Due to the long-term nature of client relationships in the first part of the twentieth century,[27] business generation ability was less important. However, as the relationships between law firms and clients became more attenuated and short-term, the market became more competitive and the role of business generation began to loom larger in law firm partnerships.[28]

More intense competition in the legal marketplace has led large U.S. firms to increasingly require a "business case" to justify elevation to equity partner, which includes an assessment of a prospective partner's ability to bring clients to the firm. As Galanter and Palay wrote of the period starting around the 1980s, "There is more differentiation in the power and rewards of partners; standing within the firm depends increasingly on how much business a partner brings in."[29] These distinctions came into even sharper relief after the 2008 economic crisis, which has led to a prolonged period of stagnation in demand for legal services.[30] With growth prospects curtailed, law firms began to value business generation even more in the promotion and compensation of equity partners.

Partners interviewed for this study reflect a similar observation. According to one respondent, "[w]hen I made partner it was easier, right, it was work hard, be a good lawyer and you'll probably make partner. Now it's more of a business case. Is this person going to be a good generator?"[31]

Although the traditional Cravath model was an "up or out" model under which lawyers who were not promoted to partnership were asked to

25. *See* Marc Galanter & Thomas Palay, Tournament of Lawyers 9–10 (1991).

26. *Id.* at 30.

27. *See generally* Ellen Joan Pollock, Turks and Brahmins (1990) (describing the changing relationships with clients in the case of Chase Manhattan Bank and Milbank, Tweed, Hadley & McCloy).

28. *See generally* Milton C. Regan, Jr., Eat What You Kill: The Fall of a Wall Street Lawyer 15–49 (2004) (describing the transformation from a "Nobody Starves" model to an "Eat What You Kill" model of law practice).

29. Galanter & Palay, *supra* note 25, at 52 (footnote omitted).

30. *See, e.g.*, *2012 Client Advisory*, Hildebrandt Institute & Citi Private Bank (2012), https://peermonitor.thomsonreuters.com/ThomsonPeer/docs/2012_Client_Advisory.pdf (chronicling the change in fortunes for large law firms in the U.S.; this publication has been issued annually since the Great Recession began in 2008).

31. Interview 111, *supra* note 11, at 6.

leave the firm, this traditional system eventually came under stress. When law firm profitability stumbled in the 1990s, law firms started to look for new ways to increase profitability, which led to growth in what are called income or nonequity partners.[32] These partners are not entitled to a share of the firm's profits, but are paid a salary and are eligible for annual bonuses. They are sometimes given voting rights, but the distinction between nonequity and equity partners is primarily that the majority of the nonequity partner salary is fixed, rather than variable with the firm's profitability. The introduction of this tier of partners enables firms to elevate associates to partner-level positions without diluting the value of equity partners' shares in the firm. Some of these income partners may eventually rise to equity partner status, but many may not.

A tier of nonequity partners is attractive to firms because it can lessen the risk of making poor promotion decisions. This can be particularly important when the firm is facing economic uncertainty. According to one partner:

> [W]e're oftentimes sitting there with two people [of] seemingly equal quality and we're guessing who is going to be the business generator ten years down the road. Why not make them both income partners so that they can have the title to the outside world as partner and let's see? And you may be surprised. I mean there are people who blossom much to your surprise, [and] there are people you think they've got everything going for them but somehow they are not able to generate business.[33]

Designation as income partner therefore reflects an intermediate status between associate and equity partner. In some firms, an income partner has a certain number of years to develop enough relationships with clients, in order to establish a business case for his promotion. If he does not establish such a case, he may be asked to leave the firm. In other firms, an income partner may remain in the position indefinitely even if he does not generate his own clients, especially if he has a specialty that is valuable to the firm. In addition, some firms populate the income partnership tier with both up-and-coming future equity partners and older senior partners who have been moved down (sometimes voluntarily but sometimes not) from equity status. This means that the population of income partners in these firms can be quite diverse.[34]

Many up-and-coming income partners are theoretically eligible for promotion to equity partner within a certain period of time. However, Fig-

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32. *See* Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1867 (2008).

33. Interview 111, *supra* note 11, at 6.

34. *See* JOSEPH B. ALTONJI, WHO BROKE THE TWO-TIER MODEL? (2009) (explaining that law firms' two-tier model no longer works because equity partners are far less productive than other lawyers in a typical firm).

ure 1 shows that nonequity partner ranks have increased in recent years (approximately 7% Compound Annual Growth Rate "CAGR") while equity partnership numbers have remained relatively flat (approximately 1.2% CAGR). Entrance into the coveted equity ranks has thus become more and more difficult—the probationary period has become longer and the prospects for promotion have become dimmer.

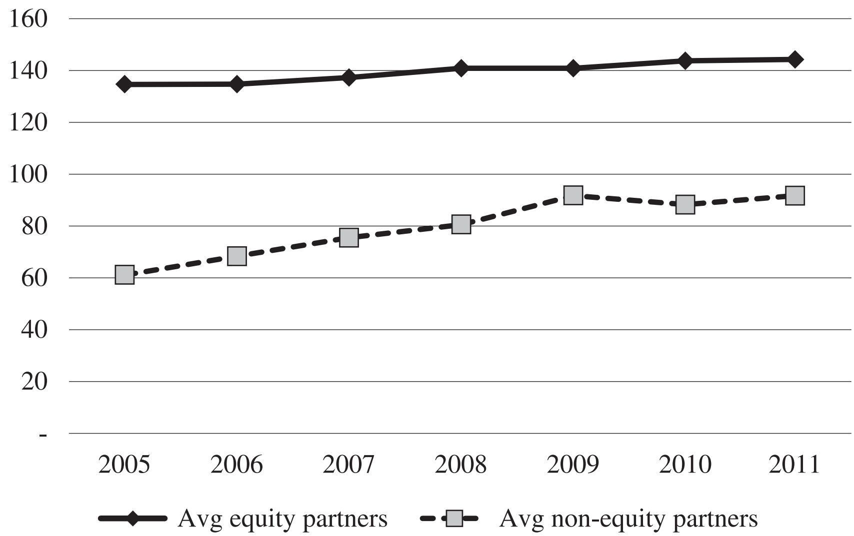

FIGURE 1: GROWTH IN EQUITY AND NONEQUITY PARTNERSHIP RANKS IN AMLAW 200 FIRMS 2005–2011

One driver of the growth in nonequity ranks is the tremendous pressure that large law firms face to increase their profits per equity partner (PPP), which is published annually in *American Lawyer* magazine for the largest 200 firms in the United States.[35] Absent other data on financial performance, a firm's PPP has become a barometer of the firm's financial health and its attractiveness as a possible destination for profitable partners at other firms. Figure 2 shows how PPP growth in AmLaw 200 firms has surpassed revenue per lawyer (RPL) increases even in the years following the 2008 economic crisis (4.07% vs. 1.97% CAGR). These data suggest the importance of maximizing PPP, even in times of economic downturn.

Not only does the drive to continually increase PPP year after year motivate firms to keep their equity partnership small, but the amount of revenues that an income partner must generate in order to warrant giving him a claim on the firm's profits has also been increasing. As one partner observes:

35. *See The Am Law 100: Firms Ranked by Profits Per Partner*, AM. LAW. (Apr. 26, 2012), http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202549384381 (charting the top firms according to profit per partner).

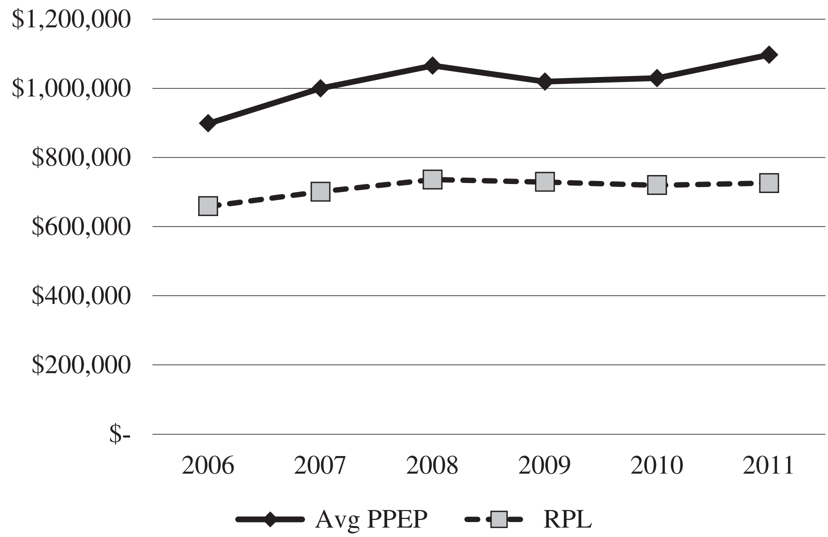

FIGURE 2: AVERAGE PROFITS PER EQUITY PARTNER AND REVENUE PER LAWYER FOR AMLAW 200 FIRMS, 2006–2011

> [I]n the pressure world of keeping numbers up . . . so that the market thinks the firm is doing well, the firm can only make so many equity partners every year—whereas before they used to make them just because you were here three years [and] you did a great job as an income partner . . . .
>
> . . . .
>
> . . . [I]t's more than ever a function of room within the equity ranks and the firm taking a hard line on not wanting to issue more shares, trying to keep the per share value high to keep the people who are here . . . . And then they want obviously to have a share value that is high to attract people from the lateral market.[36]

Increased partner mobility has also served to reduce the rate of promotion to equity partner. Firms tend increasingly to look to laterals from other firms with large books of business to fill their equity partner ranks.[37] This development means fewer equity partner promotion opportunities from within the firm. As one partner remarks, "There [are] probably on an annual basis more equity laterals brought in than equity promotions from within. That sends a signal to your income partners that makes them wonder, '[W]ell how am I ever going to get paid, I guess I've got to go somewhere else.' "[38]

One income partner laments:

36. Interview 103 at 8, 15 (Aug. 3, 2012).
37. *See 2012 Client Advisory*, *supra* note 30, at 14.
38. Interview 103, *supra* note 36, at 17.

> I think for a lot of us who are in the income partner bracket, we're just not sure how we can make equity unless we have . . . access to a client who will bring in at least a couple million dollars a year. You know, if [I had] a best friend who is a general counsel of a multi-million dollar company or something like that . . . I would have brought that in already. That's the case for a lot of people. So given the contracting demand for legal services out there and . . . the situation internally where it's very difficult to make equity, I think there are . . . a lot of people saying, "How am I going to get there? It's just impossible to get there because you can't make equity by working hard." That's just not in the cards anymore, whereas it used to be.[39]

On rare occasions, an income partner may be able to make a business case for promotion based on her management of several important matters for a client, even if she did not bring the client to the firm. As one income partner explains:

> I would bet you that there will be people this year who make equity who manage work for a huge client, and at some point in time you manage so much work the firm gets scared you're going to leave and take it somewhere else because you've been doing it long enough, and the matters are important. You don't get credit for generating the business, [but] you are managing ten projects and [thirty] associates and if you went somewhere else the client will likely go with you.[40]

Some associates or income partners may also be promoted to equity partner because they provide important services for clients that other partners bring to the firm. A tax lawyer, for instance, can be integral to business transactions in which a corporate partner's clients are involved. A regulatory lawyer can be a valuable resource for that same partner's clients who operate in a heavily regulated industry. Lawyers such as these may not have an opportunity to develop ongoing close relationships with major clients. The business case for their promotion is that they have specialized expertise that the firm's important clients need on an ongoing basis. However, even if they become equity partners, they may be paid more like an income partner. They are entitled to a share of the firm's profits, but that amount may be substantially less than the amount that rainmakers receive.

Finally, the powerful impact of PPP on promotion is reflected in the increasing willingness of firms to "de-equitize" equity partners whose profitability lags behind that of their colleagues.[41] A partner who has been de-

39. Interview 101 at 6 (Aug. 1, 2012).

40. Interview 103, *supra* note 36, at 10.

41. *See generally* Robin Sparkman, *Am Law 100's Partner Profits Jumped 8.4% Last Year*, CORPORATE COUNSEL, Apr. 29, 2011, *available at* http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202492157472&Am_Law_100s_Partner_Profits_Jumped_84_Last_Year (outlining key statistics based upon the Am Law 100's rankings).

equitized is no longer entitled to a share of the firm's profits, but instead receives a fixed salary with the opportunity to earn a bonus each year. The threat of de-equitization creates pressure on the equity partners to continue to be economically valuable to the firm year after year.

B. Partner Compensation

One of the classic categorizations of attorneys in law firms is by Finders, Minders, and Grinders. Finders are those lawyers who find, or bring in, new clients, Minders are those who mind, or manage, matters for colleagues' clients, and Grinders are those who toil away at the analytical work required to provide services from the firm. While these categories typically classify all lawyers in a firm, from associates (the Grinders) to senior partners (the Finders), the partnership can also be classified into roughly the same three categories.

Rather than viewing these distinctions as discrete categories, one might think of them as a spectrum on which one can locate any particular partner. At the Finder end of the spectrum are those partners who spend virtually all their time developing new and existing client relationships and little if any on legal work. Further down the spectrum are Finders who both bring clients to the firm but also do more work on matters for those clients. The next location on the spectrum is partners who are a combination of Finders and Minders. They bring clients to the firm, do some work for them, but also assume some responsibility for managing matters for other partners' clients based on referrals from their colleagues. A pure Minder may work only on managing matters for colleagues' clients. Next, some partners are a combination of Minders and Grinders. Their work for others' clients consists of some management responsibility and some contribution of more specialized expertise. Finally, pure Grinders play supporting roles by solely providing technical assistance, such as analyzing the tax treatment of a transaction.

The closer a partner is to the Finder end of the spectrum, the more one can characterize him as a "rainmaker." The closer a partner is to a pure Grinder, the more one can think of him as a "service" partner who does work for other partners' clients. This classification is increasingly relevant to law firm compensation decisions.

1. The Building Blocks of Compensation

Compensation for equity partners is largely determined by the percentage of the profit pool that is allocated to each partner. The profit pool is comprised of units or shares allocated across the equity partnership. Unlike a corporation, where the number of equity shares remains relatively steady over time, the number of units in a partnership pool is periodically reset—

often on an annual or biennial basis—based on the number and performance of equity partners.

Among larger law firms, there are three principal methods for allocating units to the equity partnership: lockstep, formula, and subjective. Lockstep firms allocate units according to seniority. The lockstep approach is rare today in the United States and Canada but is still found with some frequency in the U.K. and Europe.[42] While pure lockstep approaches are becoming less and less common, a majority of U.K. and European firms employ some element of lockstep in their compensation systems (known as *modified lockstep*), meaning that compensation decisions are based at least somewhat on seniority.[43]

Formula-based systems derive partner profit allocations based on a calculation of partners' financial contributions. These contributions may be measured by figures such as revenues that a partner brings to the firm (from new client relationships, new matters for existing clients, hours billed—regardless of whether the partner originated the matter—and matters referred to other partners in the firm); realization, or the percentage of fees that a partner's client is billed that are actually collected; and other metrics. Strict formula systems are rare among larger U.S. law firms.[44]

Finally, subjective compensation or a combination approach incorporates judgment into the compensation process. Some firms use a formula as a base for compensation, which is then modified by taking subjective factors into account (the "combination" system). Other firms employ a purely subjective approach. The benefit of approaches that incorporate subjectivity is that they provide the flexibility to change compensation determinations according to the business needs of the firm. The majority of U.S. firms employ these types of systems, with approximately 54 percent utilizing a purely subjective approach and 38 percent opting to pursue the combination approach. Because systems that incorporate subjectivity are the most commonly used in the United States, as well as the most complex, we focus here for the most part on this type of approach.

Firms employing a subjective or combination system take a number of factors into account when determining the allocation of units. These factors may not be explicitly publicized throughout the firm, but even if they are, there is no specific weight assigned to any one factor (if they did, the system would quickly become a formula). Common factors used in determining compensation include origination, personal production, and management credit. The relative importance of these factors may change as a partner moves through the equity ranks, with more junior partners some-

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42. *See* Ed Wesemann & Nick Jarrett-Kerr, *2012 Global Partner Compensation System Survey*, Edge International, 2 (2012), http://www.jdsupra.com/legalnews/the-2012-edge-international-global-partn-82238/.

43. *Id.* at 4.

44. *See id.* at 5.

times having fewer origination pressures, for example, than those who are more senior.

Origination. One key factor in determining compensation in most law firms is origination, which is based on the dollar value of revenue from clients and/or matters the partners have brought into the firm.[45] A partner receives "origination credit" in the compensation process for those clients or matters, regardless of who is working on the matter. The credit sometimes ends after a certain period of time, but can continue indefinitely as long as the client continues to send work to the law firm. One early theory on why origination first entered the compensation calculation is that by providing origination credits, firms would encourage lawyers to share work instead of hoarding it to maximize the amount of hours they billed.[46] Origination credit plays a dominant role in many firms' compensation systems.[47]

Personal Production. Since law firms' business models are largely based on billable hours, a key aspect of virtually all subjective (and formulaic) compensation systems is the amount of time a lawyer bills over the course of the evaluation period. Sometimes firms also look at the percentage of fees charged that the client actually pays, to account for the fact that clients do not always pay for all billable time spent on their matters. They may refuse to pay certain parts of the bill, for instance, if they view the fees as unreasonably high. Sometimes, in anticipation of client resistance, an attorney may reduce the bill before it is sent out to the client. Focusing on realization rather than simply billable hours is therefore a better reflection of a partner's financial contribution.

Management Credit. Some firms provide credit for managing a client matter, even if the partner did not bring the client in the door and therefore does not qualify for origination credits. In this way, the firm rewards partners who play a large role in ensuring that a client's needs are being met on an ongoing basis, even if they were not involved in bringing the client to the firm initially. Another version of this factor is to give a partner credit for hours billed by lawyers who are actively under his supervision.

Additional Factors. Subjective components in compensation systems enable firms to also reward behavior that is not easily measured. Firms employing these systems have discretion to take into account factors in addition to those that are explicitly identified. These factors generally relate to firm citizenship activity, such as serving on committees or undertaking projects for the firm, and cooperation with colleagues. Some firms also include pro bono work in this category.

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45. Law firms tend to place much greater weight on revenue than profitability in the compensation process. Traditionally, the profitability of matters and clients has been difficult to determine due to disagreements over the distribution of firm-wide costs such as office space, secretaries, etc.

46. Reginald Heber Smith, *Law Office Organization, IV*, 26 A.B.A. J. 648, 650 (1940).

47. Jeffery A. Lowe, *2012 Partner Compensation Survey*, MAJOR, LINDSEY & AFRICA (2012) http://www.mlaglobal.com/partner-compensation-survey/2012/FullReport.pdf.

2. *The Compensation Process*

Compensation for equity partners in systems that incorporate subjective factors is generally decided by a group of partners on the compensation committee, which is typically comprised of managers and/or rainmakers in the firm. The members of the committee can be elected by the partnership or appointed by the executive or top management committee in the firm.[48] Some firms may have a mix of law firm leaders and other partners otherwise not in management roles that are elected specifically to the compensation committee. Most firms go to great lengths to ensure that decisions about the composition of the compensation committee are regarded as legitimate.

In conducting its deliberations, the committee gathers data from the firm's operational and financial systems (such as billable hours, realization, origination, etc.). Typically these data are augmented by interviews with partners and practice leaders in the firm. Some firms encourage partners to write a memo to the committee detailing their accomplishments that might not otherwise appear obvious from the data. The compensation decisions are then discussed in what is often painstaking detail and can require hundreds of hours of work by the committee.[49]

Compensation in subjective systems is typically a prospective process. That is, the compensation committee decides at the beginning of the year how many shares are allocated to each equity partner, based on the partner's performance during the most relevant recent period. The ultimate annual value of each share therefore depends on the financial performance of the firm over the course of the coming year.

Many firms allocate shares every year, but some firms go through the process once every two to three years. Some firms attempt to smooth out the peaks and valleys in individual performance by basing compensation decisions on averages for two or three prior years. Our research, however, suggests that competitive pressures may be prompting firms to focus on briefer periods so that compensation can be adjusted more quickly to reflect recent performance.[50] Many firms also reserve some portion of partner

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48. In some firms, the executive committee also functions as the compensation committee.

49. *See generally* Ashish Nanda & Lisa Rohrer, Robinson & White (A): Pay for Performance (Harvard Law School, 2012); Ashish Nanda & Lisa Rohrer, Robinson & White (B): Compensation Review (Harvard Law School, 2012) (providing examples of a large U.S. law firm's approach to compensation decision-making).

50. As one partner reflected, "It has always been that people didn't move up very fast but they didn't move down very fast, that was our mantra. The last three or four years have changed that . . . .We used to look at five-year data, now we look more at three-year data because . . . what happened five years ago, pre-2008, is not very relevant. We're looking at what's happening now right [sic]. It's not exactly what have you done for me lately but . . . you don't want to artificially keep [someone who is increasing in value to the firm] down because three years ago they hadn't been doing much . . . . [Y]ou've got to be responsive to that or they're walking out the door." Interview 10 at 16 (Aug. 28, 2012).

profits for a bonus pool, which can be used to reward stellar performance during the year that was not foreseen in the unit allocation process (for example, landing a very large client in the middle of the year).

3. *Transparency in Compensation*

A key distinction among compensation systems in the United States and Canada is the extent to which firms disclose equity partner compensation to equity partners. For the lockstep and formula firms that predominate in other parts of the world, this issue is less meaningful since there is no discretionary component to those systems. In the majority of U.S. firms, equity partner compensation is an "open" system in which data are shared openly among the members of the partnership.[51] Some firms have adopted a partially-open system. One variation of a partially-open system is where compensation is generally not shared, but partners can view the distribution by visiting the managing partner's office if they wish. Another variation is sharing the partner metrics openly (billable hours, origination, etc.) while the compensation decisions themselves are kept private. These partially open systems are fairly rare, however.[52]

While most firms share compensation data, a significant minority (approximately 14 percent by one recent account[53]) do not disclose compensation to the partnership. These firms are known as "closed" compensation or "black box" firms. The theory behind this approach is that open sharing of comparison information inevitably breeds some dissatisfaction and even resentment, which can undermine cooperation in the firm. Closed compensation has other benefits. According to an interview, Richard Rosenbaum, the CEO of Greenberg Traurig, prefers his firm's black box system: "This allows us to run what is a large business in many disparate locations and practices without politics and without visible competition between our shareholders. This has been a major plus in our culture. It allows us to make decisions that make sense to the market."[54] Thus, closed systems can give the leadership team latitude to compensate certain partners in line with the market, regardless of the opinions of other partners in the firm.

Since the compensation committee meets in private, all subjective systems lack transparency in terms of how decisions are actually made in individual instances. This creates some ambiguity about what type of behavior the firm is actually rewarding. Research on compensation, however, indicates that the majority of partners believe that originations are the most important component of equity partner compensation decisions.[55] When

51. Wesemann & Jarrett-Kerr, *supra* note 42, at 8.
52. *Id.*
53. *Id.* at 9.
54. Julie Kay, *Greenberg CEO Richard Rosenbaum Discusses Finances, Internal Controls and the Future*, DAILY BUS. REV., Aug. 20, 2012, at 2.
55. Lowe, *2012 Partner Compensation Survey*, *supra* note 47, at 8.

asked about the factors that go into calculating equity partner compensation, one partner in the present study replied:

> As far as I understand it—and there are guidelines but I don't know . . . how strictly they are followed—it's basically how much money did you get credited for as an originator. Everybody wants origination credit and that is where the money comes from. If you have a lot of origination credit you get paid more, which is why people run around fighting to get origination credit and are jealous in regard to their clients . . . .[56]

When originations play a large role in compensation, the stakes can be high. As one partner noted, "[Y]ou just can't work enough hours to make the big money . . . at any law firm. You have to have the originations or you're the billing partner [because] those are the numbers that really drive the compensation of various different partners . . . ."[57] According to a recent survey of over 2,000 law firm partners by legal search consultants Major, Lindsey & Africa, the impact of originations on compensation has been growing in recent years. Over half (55 percent) of respondents who reported that compensation criteria had recently changed stated that originations were taking on a larger role in 2012, up from 24 percent who responded similarly in a 2010 survey.[58] Sixty-five percent of all respondents reported that origination credit was the most important factor driving compensation in 2012.[59]

The effective result of this dynamic is effectively a two-tiered equity partner compensation system. Rainmakers (the "Finders") with a large number of origination credits generally earn substantially more than service partners ("the Minders" and "the Grinders"), whose compensation is based mainly on the number of hours that they bill. This arrangement reflects the influence of an active lateral market for rainmakers. In response to this market, a firm needs to be able both to keep its key partners from defecting and to attract profitable ones from other firms. It therefore has to make sure it is paying its valued partners market rates, and that it has the flexibility to pay top rates for laterals it wishes to lure to the firm.

As firms compete for top rainmakers, they are increasingly likely to reward their most important rainmakers more highly than the average partner, and to pay them significantly more than the lowest-paid one. The difference between the equity partners with the highest and lowest compensation is known as "the spread." Many firms traditionally had a relatively small spread of 3:1 or perhaps 4:1. Recent research suggests that spreads have moved considerably further apart, with an average in 2011 of

56. Interview 21 at 6 (Aug. 7, 2012).

57. Interview 101, *supra* note 39, at 4.

58. Lowe, *supra* note 47, at 31.

59. *Id.* at 30.

10:1 and some firms reporting spreads as wide as 30:1.[60] These greater spreads reflect increasingly more weight given to origination in the calculation of compensation. As one partner remarks:

> [T]oday, to attract top talent, you are in a bidding war situation that you may not have been in ten years ago. It's a different world in that sense, because getting work from big multinational . . . companies is a ticket to generating revenues in a way that may not be the case with smaller companies . . . . [I]f our business model now is that we're competing with global firms for partners, we have to pay partners these big amounts of money.[61]

This bidding war for laterals can have adverse effects on "homegrown" partners. According to another partner:

> [Y]ou typically expand by cherry picking your people from other law firms and . . . if we're cherry picking these people, then we've got to pay these people a premium to bring those people in. So that means we can give a short shrift to people who have been here for a long time . . . .[62]

C. The Internal Market of the Firm

Origination credits and personal production based on billable hours are the two main inputs that determine partner compensation in non-lockstep firms. While each of these factors appears relatively objective on the surface, a closer examination reveals that each is the product of a set of complex interactions among partners in the firm. These interactions constitute a relatively unregulated market in which partners negotiate, and sometimes compete, for origination credit, relationships with clients, and a steady stream of work. The value of a partner's services affects his bargaining power in requesting a share of origination credits and obtaining work from other partners that increases his billable hours. While firms make some attempt to regulate this internal market, most partners regard it as being ultimately dominated by informal bargaining.

The simplest instance of origination credit is when a partner by himself brings in a matter that involves a client that is new to the firm. The partner receives all origination credit for that matter, and this credit is then factored into compensation decisions. If additional matters arise for which the client needs assistance from other lawyers in the firm, the partner who brought in the first matter will generally continue to receive origination credits based on the value of those additional matters.

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60. Aric Press, *The Am Law 200: A Chasm with Consequences*, AM. LAW., June 1, 2011, at 63.

61. Interview 71 at 13 (Apr. 6, 2012).

62. Interview 72, *supra* note 23, at 11.

Whether a partner will share any of that credit with the partners doing the work on these other matters will depend on informal discussion, and perhaps negotiation, between the rainmaker and his other partners. One partner's description captures the ambiguity and personal judgment that is involved in origination sharing as she described someone she spoke to from a newly acquired foreign office:

> [S]he said, "I just got something for someone in the U.S. to do for one of my clients; I think I'll just maybe take . . . five percent of the origination[ ] [credit] because I'm not going to do any of the work." And I said, "No, you have to take at least 50 [percent] . . . because it's your client [and] that's what people do here."[63]

A partner in another firm agrees:

> It's constantly negotiated. I've only, only in the last few years have I started really dealing with this origination mess, it's a mess. Everybody is fighting for a piece of this and I deserve this, there are legacy people who do have origination credit even though they don't do anything, it's just their old client.[64]

The outcome of origination negotiations is a function of how generous the rainmaker is, as well as practical considerations like how scarce the skills are of the other partners he needs to work on the new matters, how often he expects that he will need to call on them again, and whether he expects them to refer work from their own clients to him in the future. Firm norms and culture play a role as well, as illustrated by the partner's comment above: "That's what people do here."

A team comprised of different partners from the firm may also make a presentation, or "pitch," in an effort to win business from a new client. If the work involves a corporate matter, for example, the effort may be led by a partner with an especially strong reputation for work on mergers and acquisitions. Other partners on the team might be those who have expertise in a particular area that is relevant to the matter, such as a specific regulatory regime, treatment under the tax law, or the form of financing that would be suitable for a transaction. Of lawyers with such expertise, the lead partners may select for the presentation those with whom they have worked in the past.

If the firm wins the business, origination credit ordinarily will go to the corporate partner who was seen as leading the pitch, because of the view that his reputation was the most important reason that the client chose the firm. This partner may be regarded as having the best chance of developing an ongoing relationship with the client, or it may be that the firm wants to ensure that this partner is satisfied with his compensation. To the extent that the firm grows relationships with existing clients, the partners who already

63. Interview 92 at 17 (June 6, 2012).
64. Interview 21, *supra* note 56, at 7.

have the most origination credits are in the best position to accumulate more of them. If the firm does not revise this allocation, and if other partners on the pitch team are unable to negotiate for a share of credits, the perception of some partners may be, as one partner put it, "The rich get richer."

Some firms attempt to lessen the need for negotiation over origination credits by awarding management credit to the main partners working on or managing matters for major clients. While this type of credit may enhance the recipients' compensation, it typically has a less substantial impact on compensation calculations than do origination credits. Other firms may impose a "sunset" provision, which places a time limit on the period in which the firm grants origination credits, while some may require a minimum amount of rainmaker involvement with a client's matter in order to be eligible for credits derived from it.

Firms also attempt to varying degrees to encourage rainmakers to share credits with others. Some provide guidelines that indicate how origination credit should be divided in certain situations,[65] while others rely on more general exhortations to be fair. On occasion, a compensation committee may adjust a partner's compensation because it believes that he has been unfairly hoarding origination credits for himself. One committee member reports, "[W]e talk to people about being hogs and we tell them that they get punished when they are hogs . . . . [We tell them], '[Y]ou might have made this but you're making this because you're not a team player.' "[66] The partner goes on to give an example:

> [T]his person thinks they are the billing attorney, but they really don't have much responsibility anymore, so we look at that. We get the self-evaluations and we look at that, but in addition to the numbers we get all of the backup behind the numbers. So that if somebody claims to be billing attorney for X Corp we kind of know if they really are or if they aren't. So somebody will say, "Well, geez, my numbers are so spectacular." And we'll say, "Well, yeah, but you don't even know who the general counsel is anymore at the client and it's really so and so who should get credit."[67]

Another partner describes one instance in which the firm refused to credit a partner for all the origination credit that he claimed because the committee felt the lawyers around the partner deserved more compensation than they otherwise would have received:

> One partner . . . had two younger partners and his practice overall was down and he did as much as he could himself and took all the

65. *See generally* NANDA & ROHRER, COMPENSATION REVIEW, *supra* note 49 (providing examples of a large U.S. law firm's approach to compensation decision-making).

66. Interview 111, *supra* note 11, at 5.

67. *Id.* at 7.

> origination credit for himself. His younger partners had about 1400 billable hours each [and] he had like 3200; he had six million dollars of originated business [and] they had $450,000 each, and they were in a team. At first, if you just looked at the numbers, the guy would have gotten a very high six-figure bonus based on his base compensation. And they would have got nothing and they would have gotten dinged because they were nonequity partners. Over the course of the two months that reviews for compensation took place he lost what I think was about $600,000.[68]

Another example in which a firm may have no choice but to be involved in the allocation of origination credits is when a lateral partner enters the firm. One partner describes a common scenario:

> [T]he hardest areas are where the firm represents a company, has a set of relationships, and a [new] partner comes into the firm who has a different relationship with the same company . . . . [T]his partner starts selling his [client] contact about his relationship [with the new firm] and says, "We already represent you, so you should give us some work," and then a new piece of work comes in.
>
> There is no formula for that but . . . there is also what's the right way to behave. I mean you are a team . . . . [I]f you were doing things right you just would split it . . . . What I try to do is get people ahead of the ball here to recognize there are these rules and to call me when they have questions or somebody is treating them badly.[69]

For several reasons, however, firms tend to be deferential to partners with respect to the allocation of origination credits between lawyers already in the firm. First, it is impossible to specify in advance an appropriate division of origination credits, given the myriad kinds of situations and forms of partner collaborations that arise. A firm that actively monitored the division of credits would therefore need to spend substantial time analyzing the facts of each particular situation. Second, in a firm comprised of professionals accustomed to a large measure of independence, law firm leaders generally assume that informal agreements by partners involved are likely to be regarded as more legitimate bases for the distribution of credits than an edict by management. Third, firms encourage partners to seek out new clients and want to avoid adopting any policy that may create a disincentive for them to do so. Finally, firms are also quite sensitive to the risk that a rainmaker who generates significant business may bristle at what he regards as interference with his judgment about origination credits, and that he may respond by leaving the firm.

68. Interview 105 at 13 (Aug. 29, 2012).
69. *Id.* at 12.

Law firm management may exhibit similar restraint in attempting to ensure that service partners have enough billable hours. Firms generally take the view that a partner who has a relationship with a client is the best judge of who will be most helpful in performing the work that needs to be done. As one partner comments:

> [W]e want to keep people busy . . . many of our people are quite versatile and they can do lots of things. But I never, ever say to a practice leader or substantial person who has a case, "I want you to use X. I know you don't want to use X but damn it, you use X." That is not the way we operate here. It's persuasion sometimes, cajolery sometimes, but I'm not saying to a substantial person, "Use X."[70]

This tendency toward deference leads most service partners to regard the internal market of the firm as largely unregulated, dependent on informal negotiations and bargaining power. One income partner describes it this way:

> [W]hat's interesting . . . as an associate, you are in a regulated world. As a partner, you're in a completely deregulated world . . . . It's a completely free market system . . . . I spend more time trying to gather up work internally than I do externally because obviously it's just better; the odds are better. [T]he problem with it is that I am competing against fellow partners, and the thing is—and this is not just the junior partners saying this; I think senior partners say this—is that you're not worried about competition outside of this building; you're worried about competition inside the building.[71]

Belief that the process is unregulated gives rise to some partners' sense that the allocation of origination credits in particular can be quite unpredictable. When asked how much sharing of origination credits there is in his firm, one income partner replied:

> Well it depends on the person . . . . There is sort of a guideline of what it should be, but how it actually is, really is—it depends on who you are, which group you're in, which other partner you're dealing with, etc., etc. And there are so many different factors. [I] would like to be able to say if you are doing this amount of work on this project then you are going to get this cut of originations but that's not the case . . . . It is completely unpredictable. It's the wild, wild west.[72]

Another partner describes his different experiences when working as part of two teams attempting to win new business from an existing client:

70. Interview 10, *supra* note 50, at 5.

71. Interview 101, *supra* note 39, at 13.

72. *Id.* at 5.

> [I]f I'm an originator, it means somehow I was important to the decision to select us. So it may have been the relationship partner doing the pitch, but he had me front and center in the pitch book. [He's saying], "Here is the reason you should choose us over somebody else because we've got the corporate team and then we've got [this partner] on the regulatory team to support it." And you know, that relationship partner happens to be generous and he does things right.
>
> [On the other hand, there was] this transaction I was not involved in originating the matter, but I was instrumental to getting it done. Now if I was that other partner, I would revise origination to reflect [my] role, but he chose not to do that. So, you know, it's a crap shoot . . . .[73]

The bargaining leverage of partners seeking origination credit from rainmakers will depend upon the size of a new matter, its significance in terms of the business strategy of the firm, how crucial services of the non-rainmaker are, whether this partner is in a position to refer work in the future to the first partner, and the personal relationship between the two partners. It may also depend upon the importance of the role one partner plays in the ongoing work of the partner who is entitled to the origination credit. A partner who regularly serves as a key lieutenant is more likely to receive some credit than a partner who works occasionally on a narrow technical aspect of a matter.

The bargaining leverage of a service partner will also depend on the availability of other partners who are available to do work for a rainmaker. The most significant component of a service partner's compensation is the amount of revenues that she generates from the hours she bills. A service partner therefore needs a steady flow of work from rainmakers. This need may inhibit her from pushing too hard for origination credit with a rainmaker, for fear that she will develop a reputation that leads such partners to turn to someone less demanding when they need help.

Unfortunately, service partners generally do not have the leverage within the firm to bargain if they are unhappy, particularly if they work primarily with one or two rainmakers who "feed" them work on a regular basis. Should these rainmakers decide to leave, a service partner realistically needs to follow them or find herself without a source of work in the firm. Likewise, a service partner without her own book of business is not terribly attractive on the lateral market. She therefore has limited ability to leave for another firm. One income partner describes his experience when he gets called by headhunters. "Well, let me tell you what the conversation is like. . . . [A headhunter will say], 'Hey, you have a great background, great resume, blah, blah, blah,' and then the moment I say, 'I don't have

73. Interview 103, *supra* note 36, at 6.

any portable book of business,' [they say], 'Oh nice knowing you.' Click."[74]

The internal market of the firm thus has an important influence on the most important numbers that are used by the firm in setting partner compensation. Unlike the firm's formal determination of compensation, however, the internal market is regarded by most partners as largely unregulated. Many firms attempt to encourage partners to share origination credit, but firms are generally uneasy about explicitly overriding a partner's decision about the division of credits. Most outcomes in the internal market therefore reflect individual personalities and informal negotiation.

D. *Compensation and Organizational Fragility*

When asked what holds large, geographically diverse firms together, many partners refer to compensation. As one partner reflects:

> [M]oney is really everything. Money is at the heart of the good things and the bad things and you can have the greatest culture in the world but if people don't think the compensation is fair, culture goes by the wayside, tone at the top goes by the wayside, I mean everything just does.[75]

Intense competition and the mobility of rainmakers make it imperative that a firm convince its partners on an ongoing basis that it provides the best platform for maximizing their income. Convincing key rainmakers of this is crucial, of course, since their departure could cripple or destroy the firm. Ensuring the allegiance of other partners to the firm can also be important because they most frequently oversee the delivery of work for key clients.

Compensation in the modern law firm therefore constitutes a material economy whose distribution of financial rewards is significantly shaped by the desire to satisfy rainmakers in the firm and to attract them from other firms. Firms see themselves as having no choice but to operate compensation systems with these features. As one income partner acknowledges:

> [While] we try to balance [it with] preserving our culture . . . but the reality is that we have to adapt to the way that the economics of the law firm industry are moving . . . . [Y]ou can't just sort of put your head in the sand and just plug your ears and say, "No, no, we're just going to keep doing it the way that we did it ten years ago because that is how we like to do it, we don't change." You do that, then eventually you'll just be a dinosaur. So you have no choice but to adapt.[76]

To the extent that a firm's compensation process can distribute financial rewards in the material economy that keeps partners satisfied, the firm

74. Interview 101, *supra* note 39, at 16.
75. Interview 6 at 45 (July 13, 2009).
76. Interview 71, *supra* note 61, at 20.

will be able to build some glue that holds it together. If the firm can provide no other basis for partners' sense of connection to it, however, this glue can be weak. Partners who identify with a firm solely because of the opportunity that it provides to gain material rewards have a purely extrinsic motivation to be loyal to the firm.[77] Their loyalty is based not on the belief that the firm is intrinsically worthy of allegiance, but on the view that remaining at the firm will lead to the "separable outcome"[78] of obtaining satisfactory compensation. Research indicates that the effect of compensation on extrinsic and intrinsic motivation can be complex.[79] The point here is simply that a firm that emphasizes financial reward as its central unifying value is likely to elicit an attachment to the firm based on extrinsic motivation.

There are limits to the attachment that extrinsic motivation can create. First, reducing the reward will result in less attachment. Withdrawing the reward may undermine attachment entirely. If a firm does not explicitly reward referral of work to other partners, for instance, partners may not do it unless it would directly benefit them.

A second limit of extrinsic motivation is that a firm will get exactly the behavior that it rewards and no more. People moved by extrinsic motivation will act to maximize the amount of the reward they receive. They may not engage in valuable behavior that is not specifically rewarded—even though it is in the best interest of the firm.[80] For example, someone may share origination credits, but only the minimum necessary to get compensation credit for it. Being more generous could help strengthen ties among the partners and promote cooperation that benefits the firm. Because there is no immediate payoff for acting that way, however, it does not happen.

Someone moved only by extrinsic motivation may therefore engage only in behavior for which he explicitly gains compensation credit. He is unlikely to possess the loyalty that can result in what is called "organizational citizenship,"[81] which is behavior benefiting the firm that goes beyond what earns a financial reward.

It is risky when partners' commitment to a firm is based only on extrinsic motivation. The health of a firm depends crucially on the willingness

77. *See generally* Richard M. Ryan & Edward L. Deci, *Intrinsic and Extrinsic Motivation: Classic Definitions and New Directions,* 25 CONTEMP. EDUC. PSYCHOL. 54 (2000) (discussing different forms of motivation).

78. *Id.* at 60.

79. *See generally* BARRY GERHART & SARA L. RYNES, COMPENSATION: THEORY, EVIDENCE, AND STRATEGIC IMPLICATIONS (Peter J. Frost et al. eds., 2003) (providing a comprehensive, research-based review of the determinants and effects of compensation).

80. *See* John R. Deckop et al., *Getting More than You Pay For: Organizational Citizenship Behavior and Pay-for-Performance Plans*, 42 ACAD. MGMT. J. 420 (1999); Jennifer M. George & Garreth R. Jones, *Organizational Spontaneity in Context*, 10 HUM. PERFORMANCE 153 (1997).

81. *See* Nathan P. Podsakoff et al., *Individual- and Organizational-Level Consequences of Organizational Citizenship Behaviors: A Meta-Analysis*, 94 J. APPLIED PSYCHOL. 122 (2009); Mark C. Bolino et al., *Citizenship Behavior and the Creation of Social Capital in Organizations*, 27 ACAD. MGMT. REV. 505 (2002).

of its partners to act for the benefit of the firm in ways that cannot be fully specified in advance. Partners may need to be creative in responding to unforeseen threats and opportunities. Their ability to do so, however, may be impaired if they are accustomed to using compensation criteria as their guide for behavior.[82] If a firm that is bound together only by extrinsic motivation encounters financial difficulty, partners are likely to look fairly quickly for their own exit options.

If keeping partners satisfied with compensation is crucial to creating law firm glue, and if compensation has only material meaning to partners, the modern law firm can foster only a tenuous sense of connection between its partners and the firm. Any partner allegiance is contingent on the outcome of an ongoing calculation of the costs and benefits of pursuing the firm's interest. For rainmakers, this calculation will determine if they remain with the firm. For other partners with fewer opportunities elsewhere, it will determine if they cooperate with one another or pursue their own individual interest. In either case, loyalty to the firm that generates intrinsic motivation will be minimal. The increasingly important material role of compensation in the modern law firm thus illuminates one important reason why law firms can be so fragile.

Assuming that partners are moved only by financial concerns, however, misreads both the meaning of compensation and the more complex set of motivations that influence modern law firm partners. As the next section describes, compensation has symbolic, not simply material, significance for law firm partners. It is part of a complex moral economy that distributes respect among partners. Decisions and negotiations about compensation are not simply about money, but about the extent to which business skills and more traditional professional skills form the bases on which respect is allocated in a given law firm. In this respect, they represent discourse about the meaning of professionalism in that firm. The symbolic role of compensation also creates the possibility that a firm's compensation process can elicit a more durable form of loyalty from its partners than one based simply on the material rewards that the firm provides.

III. The Moral Economy of Compensation

A. *Overview*

Conceptualizing law firm compensation as comprising only a firm's material economy is consistent with the tendency to assume that "the functions and characteristics of money are defined strictly in economic terms."[83]

82. Teresa M. Amabile, *How to Kill Creativity*, HARV. BUS. REV., Sept.–Oct. 1998, at 79.

83. VIVIANA ZELIZER, THE MEANING OF MONEY 11 (1994); *see also* Bruce G. Carruthers & Wendy Nelson Espeland, *Money, Meaning, and Morality*, 41 AMER. BEH. SCI. 1384, 1387 (1998) ("modern money is characterized by most scholars as anonymous, homogeneous, fungible, and universal") (footnote omitted).

As Viviana Zelizer has suggested, the result of this assumption is that "[e]ven when the symbolic meaning of money is recognized, it either remains restricted to the economic sphere or is treated as a largely inconsequential feature."[84] This reflects the tendency to establish "[a] sharp dichotomy . . . between money and nonpecuniary values. Money in modern society is defined as essentially profane and utilitarian in contrast to noninstrumental values."[85] In addition, Zelizer argues:

> Monetary concerns are seen as constantly enlarging, quantifying, and often corrupting all areas of life . . . . There is no question about the power of money to transform nonpecuniary values, whereas the reciprocal transformation of money by values or social relations is seldom conceptualized or else explicitly rejected.[86]

These assumptions underlie the claim that the greater significance of financial considerations in law firms reflects the obliteration of noneconomic values in the sensibilities of the lawyers who practice in them. Assuming that pecuniary values have unqualified dominance leads to the view that compensation has meaning only insofar as it reflects the operation of the material economy within the firm. This is consistent with the common lament that law firm practice has degenerated from a profession to a business.[87]

Research suggests, however, that money has complicated meanings beyond its material significance. One scholar suggests, "Money is probably the most emotionally meaningful object in contemporary life: only food and sex are its close competitors as common carriers of such strong and diverse feelings, significance, and strivings."[88] Furthermore, those meanings are not merely the product of idiosyncratic individual interpretations. Rather, they arise as a result of one's location in social relationships. Two other scholars observe, "Like all other social objects, money has meaning that depends on its use and context."[89] As a result, "it is misguided to try and identify universally representational properties of money and link these to its meaning. The meaning of money does not depend on some characteristic that is com-

84. Zelizer, *supra* note 83, at 11.

85. *Id.* at 12.

86. *Id.*

87. For a discussion of the history of this discourse, see Milton C. Regan, Jr., *Law Firms, Competition Penalties, and the Values of Professionalism*, 13 Geo. J. Legal Ethics 1, 24–33 (1999).

88. David W. Krueger, *Money, Success and Success Phobia*, *in* The Last Taboo: Money as a Symbol and Reality in Psychotherapy and Psychoanalysis 3, 3 (David W. Krueger ed., 1986); *see also* Adrian Furnham & Michael Argyle, The Psychology of Money (1998); Terence R. Mitchell & Amy E. Mickel, *The Meaning of Money: An Individual-Difference Perspective*, 24 Acad. Mgmt. Rev. 568 (1999).

89. Carruthers & Espeland, *supra* note 83, at 1386.

mon to all money. Instead, its meaning depends on what people in a particular context do with it."[90]

As we argue below, the compensation process has significant meaning for a law partner as constituting a moral economy that communicates the extent to which he is valued and respected within the firm. This economy serves to allocate two forms of respect: impersonal and personal. It allocates impersonal respect to the extent that partners believe that compensation is awarded fairly. A partner who concludes that she has been compensated fairly believes that she has been treated consistently with how other partners in the firm are treated. This belief enables her to have confidence that she works at a firm in which each person's contributions will be evaluated by a common standard that is impartially applied. For her, the firm's compensation process reflects the value of formal equality: the firm doesn't play favorites or base compensation on criteria unrelated to the merits.[91] This communicates a sense of impersonal respect. It inspires confidence that all partners' contributions will be appropriately rewarded, and that their compensation will not be based on special pleading, political considerations, or the influence of individual personalities.

The moral economy allocates personal respect to the extent that a partner believes that his compensation reflects ways in which he contributes to the success of the firm. This form of contribution is not fully captured in the quantifiable factors that serve as inputs into the compensation decision. It involves less easily measured behavior such as generosity with colleagues, effectively collaborating with others, mentoring junior lawyers, doing high-quality legal work, assuming responsibilities on behalf of the firm, and involvement in community and pro bono activities. A firm that recognizes the importance of these traditional professional values affords a partner personal respect by providing assurance that his compensation will not be determined solely by readily quantifiable metrics that focus solely on profitability.

One reason why compensation has such powerful significance is the lack of other formal feedback mechanisms in law firms.[92] In many firms, compensation is an important, if not the sole, indicator of performance. "I think of compensation as your review," remarked one income partner. "[A]s a partner, no one tells you how you are doing or how you are doing com-

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90. *Id.* at 1387.

91. It is noteworthy that a comprehensive recent survey of law firm compensation declares that "[c]ronyism continues to be, by far, the most significant reason for dissatisfaction with compensation satisfaction, outpacing all of the other enumerated reasons combined." Lowe, *supra* note 47, at 7.

92. *See* THOMAS J. DELONG ET AL., WHEN PROFESSIONALS HAVE TO LEAD: A NEW MODEL FOR HIGH PERFORMANCE 164 (2007) (discussing the need for mid-career feedback at professional service firms).

pared to other people . . . . So when you get your compensation you find out . . . do you value me, do you think I am doing a good job."[93]

Another reason that compensation carries such importance in law firms is that firms generally lack other ways of signaling recognition for partners. Corporate enterprises, for instance, can often rely on special awards, selective training opportunities, promotions, or new titles to convey respect for accomplishment. Law firms, however, are relatively flat organizations without the highly differentiated organizational positions and titles that characterize the corporate world. Promotions and other forms of advancement are therefore less frequent and important, as are special training programs associated with them.

Understanding the operation of the moral economy helps provide a richer and more subtle portrait of the complex cognitive universe that law firm partners inhabit and the forms of motivation and satisfaction that law practice can provide them. In particular, it suggests that struggles over compensation are in part struggles over the relative weight the firm should give to business skills and traditional professional values. As such, these contests represent efforts to define the boundaries of the potentially all-encompassing influence of financial imperatives in the modern law firm.

Furthermore, appreciating compensation as comprising a moral economy may also illuminate sources of organizational stability and lessen the fragility of modern law firms. To the extent that partners' satisfaction with compensation reflects satisfaction with their place in the moral economy, they may develop deeper ties to a firm that do not depend solely on the firm's ability to maximize their financial welfare. These ties provide them with intrinsic motivation to act for the benefit of the firm, not simply motivation based on the desire for a reward. They can nurture a sense of loyalty that is deeper than a contingent allegiance based solely on self-interest. Such loyalty can serve as a buffer against the many centrifugal forces to which law firms are subject.

While the law firm compensation decision is an important part of the moral economy of compensation, it is not the only one. As we have seen, much of the activity that affects partner compensation occurs on the individual partner level in the internal market for origination credits and billable hours. Partners have wide latitude in how they behave in this market; many partners are skeptical that firms' exhortations to share credit and work actually create any widespread ethos of generosity. There are, however, limits to how far firms can push partners to behave magnanimously in this market, given the ever-present risk that a rainmaker may decide to leave for another firm with less demanding management. This can present a challenge to firms that seek to convey professional respect to partners through the compensation process.

93. Interview 87 at 11 (June 5, 2012).

The moral economy of compensation, in other words, operates on two levels. The first is the firm's process for determining compensation. The second is the informal bargaining over origination credits and billable hours. The first level is regulated by a central authority, which means that the firm has the ability directly to determine outcomes. The latter level, however, is largely unregulated, which means that the firm must rely more on attempts to inculcate informal norms and organizational culture to affect behavior.

B. Money and Respect

Conceptualizing compensation as part of a moral economy reflects appreciation that a partner may regard compensation as not simply the amount of financial reward that he receives, but as a judgment about his value as a lawyer. Within this economy, a partner's preoccupation with compensation reflects concern about the professional respect he enjoys within the firm. This respect can be the basis for what researchers call "organization-based self-esteem." While general self-esteem reflects "the extent to which an individual believes him/herself to be capable, significant and worthy," organization-based self-esteem reflects "an assessment of personal adequacy and worthiness as an organizational member. Thus, employees with high organization-based self-esteem have come to believe that they are important, meaningful and worthwhile within their employing organization."[94]

Law firm partners may be especially inclined to interpret compensation in this way. Most firms lack a robust system for providing the kind of meaningful, timely feedback on partner performance that is more common in other professional service firms such as accounting and management consulting organizations. Firms instead tend to assume that any messages about performance that need to be sent can be communicated by the amount of compensation that the firm provides.

Many partners may therefore lack any clear sense of how well they are doing other than by how well they are compensated. As one partner put it, "We suffer from an imposter complex; we fear that some day we are all going to be found out for the frauds that we are. We are all insecure, we all seek validation, and the way we measure our validation is by the way we are compensated."[95] One partner recounts how he would have reacted had the firm paid him less than the amount that he calculated he was due:

> [I]f I had gotten less than I had asked for in that example I gave you, I'm sure I would have felt like they are not valuing my work at the level they should. This is where it gets very individualistic. I tend to think, based on my life experience, that people are heav-

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94. Donald G. Gardner et al., *The Effects of Pay Level on Organization-Based Self-Esteem and Performance: A Field Study*, 77 J. OCCUPATIONAL & ORG. PSYCHOL. 307, 310 (2004).
95. Interview 79, *supra* note 9, at 19.

> ily motived by a sense of self-worth and wanting to be liked by people. I think it's very deeply seated stuff that goes on, and compensation is kind of an objective measure of that.[96]

This sense of value is described by a partner as being a member of an "in group" within the firm:

> [T]he sense I get among the equity partners is that there is a lot of value given to the number of shares that somebody has, and I think you know it's basically a measuring stick right. I mean, it's just status . . . . And so that is part of it, and I think if you are being well compensated, then you're being well liked by certain people, and if you are not being well compensated for what you've contributed, I think it's the message [that] you're not, you know, one of the favored people . . . . There is a sense that you are either in the in crowd or you're in the out crowd.[97]

A firm that relies on a compensation system other than one based purely on seniority faces the need to strike a delicate balance in communicating a sense of personal respect through compensation. On the one hand, research indicates that a person's sense of being valued by an organization is strongly affected by comparing himself with others. A system that provides for sizeable differences in compensation levels thus generally will send a stronger message about respect than one that does not. Research also indicates that high achievers prefer pay that is strongly linked to performance[98]—and lawyers tend to be high achievers.[99] A firm may therefore want a differentiated compensation system in order to both motivate high achievers and attract them to the firm.

On the other hand, differences in compensation create the risk that those who earn less may not feel respected by the firm. This can reduce their organization-based self-esteem, which can be demoralizing. A partner may believe, for instance, that she has been loyal to the firm and has engaged in firm citizenship activities for many years. She may feel that the firm does not value her loyalty, however, because she receives less compensation than an incoming lateral with a big book of business. As one partner observes:

> You see people many people who come in laterally; you have to entice them with higher compensation, and so you have people who have worked here for a long time say, "You know, I've been working here for twenty years and now this other person who has contributed nothing to this firm to date comes in and is making more money than I am." . . . And so people say, "Well, they are

96. Interview 94 at 6 (July 12, 2012).

97. Interview 101, *supra* note 39, at 12–13.

98. Christine Quinn Trank, et al., *Attracting Applicants in the War for Talent: Differences in Work Preferences Among High Achievers*, 16 J. Bus. & Psychol. 331, 342 (2002).

99. *See* Susan Daicoff, Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses 27–28, 41 (Bruce D. Sales, et al. eds., 2004).

> taking loyalty for granted and putting a premium on trading on your values in the market, so what I should do is threaten to leave [unless] they'll pay me more money—or I should leave and then I'll come back as a lateral!"[100]

Similarly, a partner may believe that he is working just as hard as a colleague who receives higher compensation, but that his lower compensation signals that the firm does not value his work as highly as it does the work of his colleague. The resulting blow to organization-based self-esteem may mean that a partner has less motivation to put forth extra effort to act in ways that are beneficial to the organization and its clients.

A firm's compensation system therefore serves in part to signal to partners how much they are valued by the firm and why. This allocation of respect occurs on two levels: the firm compensation decision and negotiation among partners in an internal market for credit and billable hours.

C. *The Firm Compensation Decision*

1. *Distributive Justice*

Research indicates that people's satisfaction with their compensation implicitly focuses not on the absolute amount that they receive, but on comparison between that amount and the amount they believe they deserve.[101] Satisfaction with compensation therefore "is a function of the *discrepancy* between perceived pay level and what an employee believes his or her pay 'should' be."[102] The smaller the difference between the two, the more likely a person regards his compensation as fair and the more satisfied he will be. This sense of satisfaction is based on the judgment that the individual and the organization have engaged in a fair exchange, in which the individual makes contributions to an organization in return for comparable financial rewards.[103]

How do people determine the amount they think they deserve? Considerable social science research confirms what most of us know intuitively: how satisfied we are with our compensation depends on how it compares with the amount that others receive whom we regard as our peers. Equity theory and social comparison theory posit that, depending on the person with whom we compare ourselves, "individual responses may be positive, negative, or neutral."[104]

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100. Interview 52, *supra* note 14, at 19.

101. GERHART & RYNES, *supra* note 79, at 61.

102. *Id.* at 60–61.

103. *Id.*

104. Carol T. Kulik & Maureen L. Ambrose, *Personal and Situational Determinants of Referent Choice*, 17 ACAD. MGMT. REV. 212, 212 (1992); *see generally* J. Stacy Adams, *Toward an Understanding of Inequity*, 67 J. ABNORMAL & SOC. PSYCHOL. 422 (1963) (generally regarded as the foundational work in equity theory); Leon Festinger, *A Theory of Social Comparison Processes*, 7 HUM. REL. 117 (1954) (the comparable piece in social comparison theory).

More specifically, "employees attempt to equate their ratios of outcomes to inputs with the ratios of [a] relevant other[ ],"[105] or a "comparison other."[106] This can be another person or a situation that someone has experienced in the past or anticipates in the future. Someone regarded as similar "typically refers to [someone] performing similar tasks at a similar level of the same organization, but it can also refer to tenure, age, sex, race, and so forth."[107] The individual first determines his own ratio of perceived "inputs" such as effort, ability, and experience to outcomes such as level of compensation and working conditions. If the ratio between his inputs and outcomes is the same as the ratio of a comparison other, the individual is likely to be satisfied. To the extent that his ratio is lower, the individual is likely to believe that his compensation is unfair.

Individuals can consider a wide range of factors in evaluating both inputs and outcomes. In deciding what to treat as inputs, for instance, someone may take into account considerations such as "personal pay histories, the pay of those in other occupations in the same organization, pay of others in the same job in the same organization, pay of others in the same job in other organizations, [and the] pay of others with lower or higher seniority or performance."[108]

Law firm partners indicate that dissatisfaction with compensation based on comparison with others is a pervasive feature of law firm life. One partner describes how preoccupied a colleague can become with how much someone else makes compared to him: "People can get ridiculously consumed. Why did that person make 50 cents more than I did? [T]he person who makes 50 cents more cares not at all; the person who made 50 cents less goes crazy."[109] Another partner observes:

> We used to always have this conversation every time someone would come in and bitch about their compensation. They would start by saying, "First of all, let me just say I'm making more money than I ever thought I could—but why is he making five dollars more than I am?" Lawyers always want to win the gold star.[110]

Still another partner comments:

> What happens with a lot of lawyers is, you know, you look and you go, "Wow, I'm making $600,000. That's a lot of money; I never thought I would make that much money—but wait a minute, I think that guy next door is making $650,000. Now you

105. Raymond T. Lee & James E. Martin, *Internal and External Referents as Predictors of Pay Satisfaction Among Employees in a Two-Tier Wage Setting*, 64 J. Occupational Psych. 57, 58 (1991).

106. Gerhart & Rynes, *supra* note 79, at 61.

107. Chen, Choi & Chi, *supra* note 15, at 808.

108. Gerhart & Rynes, *supra* note 79, at 61.

109. Interview 14 at 17 (Aug. 19, 2009).

110. Interview 10, *supra* note 50, at 24.

> know I'm smarter than he is because I got better grades in law school." You know how lawyers are.[111]

A common basis of comparison for compensation purposes is another individual whom someone regards as similar with respect to contributions, seniority, or the nature of the job that she performs. Reliance on that person as the benchmark for comparison will depend on the availability of relevant information about her.[112] For a law firm partner, this person may be someone such as a colleague with whom an individual works closely, someone who has similar responsibilities in another practice group, or someone of similar seniority. The ratio between this partner's inputs and her compensation will serve as the basis for assessing whether one's own ratio represents a fair outcome. Regardless of the absolute amount of compensation, a discrepancy can generate a sense of injustice. One income partner, for instance, describes his dissatisfaction with his compensation compared to that of equity partners with whom he works:

> PARTNER: I'm losing my enthusiasm because I feel like I'm being taken advantage of.
>
> INTERVIEWER: Taken advantage of in what way?
>
> PARTNER: You are paid a lot less as a nonequity partner than an equity partner, that's the way. As much as I like a lot of my colleagues and as much as I very much appreciate how a couple of them have played a large role in making me who I am today, nonetheless this isn't a charity and I work very hard and I work as hard as many others who get paid a lot more than I do.[113]

For this partner, the relevant input is how hard someone works; his unhappiness with compensation rests on the belief that people who work no harder than he receive significantly more financial reward.

Research suggests that for purposes of assessing their satisfaction with compensation, most people tend to rely on an "egocentric bias" in identifying a comparison other.[114] This maximizes the amount that they believe they deserve, "thus leading to a perpetual tendency for pay dissatisfaction for most individuals."[115] This sense of dissatisfaction may seem disproportionate in light of the absolute amount of any discrepancy that may exist. Its intensity, however, rests on one's sense that justice has not been done because one has not been treated fairly.

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111. Interview 111, *supra* note 11, at 4.

112. *See generally* Chen, Choi & Chi, *supra* note 15, at 807–08 (examining perceptions of compensation equity in international joint ventures); Lee & Martin, *supra* note 105 (perceptions of equity in two-tier wage structures); Kulik & Ambrose, *supra* note 104 (choice of comparative referents in organizations).

113. Interview 98, *supra* note 1, at 5.

114. Chen, Choi & Chi, *supra* note 15, at 807–08; *see also* GERHART & RYNES, *supra* note 79, at 61.

115. GERHART & RYNES, *supra* note 79, at 61.

A partner might also use a lateral partner entering the firm as a standard for assessing his own compensation. Firms generally notify partners about the compensation arrangements that the firm has made with a new lateral partner. A partner may regard this lateral's inputs as comparable to her own, based on metrics such as revenue generation, expertise or reputation, area of practice, or other such factors. If she uses the lateral as her comparison other, she will regard that person's compensation package as the market's objective indication of the value of her own inputs. She will be dissatisfied if there is a gap between that amount and the amount that the lateral receives. One partner notes:

> One of the things that I have become attuned to, and it has been an area of friction in compensation and in the firm in general, is what I call the "Everyone loves a lateral" phenomenon, where the lateral market takes over and you have laterals come over. And [when] you impose them into the comp structure, they are getting paid at levels well above what they could command if they were home grown. There is natural friction . . . and what comes out is the idea that I may be better off on the open market than I am at my own firm.[116]

A partner's sense of unfairness may be intensified by his conviction that he has made important contributions to the firm over the years that the incoming partner has not. One partner expresses this sentiment:

> They are probably right that it is important to bring in that new group where we're lacking so that we will have a more complete package, so that we can cross-fertilize better, so that we can sell our complete firm and all of our capabilities together, but when you do that then you are bringing in people and sometimes people at very high compensation levels. As a result of doing that then you are diluting the value of the shares of other people who have been here for a while and been sort of dedicated to the firm for a while.[117]

This phenomenon appears to have occurred, for instance, within the Dewey & LeBoeuf law firm, which collapsed in the first part of 2012. Management at the firm offered generous compensation packages, which included guarantees of a specific level of compensation for a certain number of years, to lure partners from other firms. Information about these packages was not widely circulated within the firm.

When some partners already at the firm learned of the packages, they regarded it as unfair that incoming laterals were receiving compensation guarantees and they were not. This dissatisfaction rested on these partners' use of the laterals as a benchmark for evaluating their own compensation. Current partners who believed that their inputs were comparable to those of

116. Interview 23 at 9–10, 12 (Aug. 13, 2012).
117. Interview 72, *supra* note 23, at 11.

the laterals could maintain that the compensation that the firm was providing to the latter served as an objective standard of the value of their own inputs—and therefore what their own compensation should be. Current partners could reasonably conclude that the market was apparently willing to pay this amount and provide these guarantees. If Dewey & LeBoeuf would not, current partners would go to a firm that would. Firm management responded by increasing current partner compensation. By the time of the firm's collapse, one hundred partners—a third of the entire partnership—had these guarantees.[118]

A partner might also use as a compensation benchmark people in other firms whom they think make a similar contribution to their firms, such as people in the same practice area or who work with similar types of clients. Professionals are especially likely to use people outside their organization as peers.[119] Information about those people is often less available than information about people inside the organization. For law firm partners, however, there is considerable information about what partners at other firms make. The legal press is one source of such information, but search firms, or "headhunters," play probably the most significant role in furnishing information about compensation in other firms.

Headhunters work on behalf of firms seeking to lure lawyers and on behalf of lawyers seeking opportunities in other firms. Partners regularly receive calls from headhunters advising them that a certain firm is interested in building up its practice in the partner's area of expertise. If the conversation proceeds past a perfunctory point, the partner will learn what kind of compensation the firm in question is willing to offer if he will join it. Even a partner not actively seeking opportunities at other firms is likely to receive enough information through calls from headhunters in the course of his daily practice to have an idea of what other firms are prepared to pay him if he were to go on the market. A partner who is interested simply in "testing the water" can contact a search firm and let it know that he's open to discussions with other firms. He may not be actively seeking to leave his own firm, but this exercise can provide him with an indication of what the market currently regards as fair compensation for what he has to offer. In these ways, a partner can select a comparison other at another firm that guides his assessment of his current compensation.

Most firms identify the factors that will be considered in determining compensation, and many provide extensive information about all partners' originations, hours billed, realization, and other factors taken into account in determining contributions to the firm. The availability of this information increases the likelihood that an individual will look to a fellow partner with similar inputs as her comparison other. If a firm also bases compensation

118. Julie Triedman, *House of Cards, Part III: A Perfect Storm*, AM. LAW., July/Aug. 2012.
119. Kulik & Ambrose, *supra* note 104, at 224–25.

strictly according to a formula in which various forms of contribution are given explicit weight, a partner will find it relatively easy to identify a colleague who can serve as the basis for comparison. In this type of compensation system, the extent to which a partner feels that the firm affords him respect depends on the extent to which it treats him the same as everyone else with the same measurable forms of contribution. The firm, in other words, expresses respect by conforming to the standard of formal equality.

A formula-driven firm also expresses respect by making compensation relatively predictable. A partner will ideally be able to calculate his compensation by relying on the same metrics that the firm uses. If the two numbers match, he feels respected because the firm has made a decision affecting him on the basis of publicly announced criteria. One partner describes how his firm's reliance on relatively objective factors led him to accept its determination of his compensation as fair:

> I guess I've always been on the verge of wanting to grumble about the compensation here, but whenever I've kind of objectively assessed it and kind of looked at the kind of objective criteria that I know that they use, you know, how much money I brought in and originated, etc., I've always found in the end my compensation was about where it should be. So I kind of grudgingly think the system actually has been pretty fair and it has worked.[120]

The concern with a strict, formula-based system that specifies the weight that each factor receives, however, is that it may not encourage "organizational citizenship"—behavior benefitting the firm that goes beyond what earns a financial reward.[121] For example, someone may share origination credits, but only the minimum necessary to avoid being penalized in his compensation for failing to do so. The motivation for sharing in this case is extrinsic (based on the desire to obtain a reward) rather than intrinsic (based on the belief that sharing is worthwhile beyond the immediate individual reward that it brings). Being more generous could help strengthen ties among the partners and promote cooperation that benefits the firm. Because there is no immediate payoff for acting that way, however, it does not regularly happen. One partner describes an experience with a major rainmaker in his firm:

> There is a partner in one particular group who is good friends with the general counsel of a huge company. That huge company has particular needs for [a service that we provide] and we just

120. Interview 94, *supra* note 96, at 5.

121. On the concept of organizational citizenship behavior, see generally Peggy A. Cloninger et al., *The Influence of Equity, Equality, and Gender on Organizational Citizenship Behaviors*, SAM Advanced Mgmt. J. 37 (Autumn 2011); Mark C. Bolino et al., *Citizenship Behavior and the Creation of Social Capital in Organizations*, 27 Acad. Mgmt. Rev. 505 (2002); Deckop et al., *supra* note 80, at 420.

> wanted to go and meet them, and he said, 'Fine,' and it just never happened. Months went by and it just never happened because it wasn't important to him. It was important to us, it was really important to the firm, but it wasn't important to him.[122]

Another drawback of formula-based systems is that they may create rigidity and resistance to change that prevents a firm from modifying its compensation system in order to align it more closely with changing needs and interests of the firm.

Most firms, therefore, do not specify in detail how the compensation committee has weighed factors relating to contributions in a particular case. As we have described, many also give the compensation committee some discretion to include a subjective assessment of a partner's contribution in order to encourage and to reward organizational citizenship. This discretion reflects the view that it is impossible to specify in advance all the ways that someone may contribute to the success of the firm, and that the firm needs to be able to take into account individual circumstances that affect performance. Permitting some reliance on subjective assessments theoretically provides the opportunity for a firm to pay respect to a partner as a unique individual by valuing the particular ways in which he contributes to the firm and by acknowledging any difficulties that he has encountered in doing so.

One partner contrasts his firm's compensation system with a rigid, formula-based approach that he calls "eat what you kill":

> Eat what you kill is at the end of the year you hit the print button on the computer and it generates all the numbers, and whatever the numbers say goes to compensation—there would be no point for management. We spend three months [reviewing data] until we announce bonuses and base compensation. Why do we do that? Because it's not eat what you kill; it's qualitative merit contribution based. We go through every single partner and we say, "Okay the numbers suggest this, is there anything else we need to know?"[123]

To be sure though, there are shortcomings to a compensation that employs more subjectivity. To the extent that a firm departs from a pure formula-based compensation system, a partner's selection of a comparison other will not occur on the basis of an indisputably objective standard of comparison. This leaves room for the operation of an egocentric bias in identifying a colleague who will serve as a comparison other.

One basis for selecting a peer for comparative purposes in a more subjective compensation system is to choose a colleague who has similar metrics to which everyone knows the firm gives significant weight. The greater the difference in compensation, despite the same objective metrics, the

122. Interview 21, *supra* note 56, at 5–6.
123. Interview 83 at 9 (May 30, 2012).

greater the likelihood that a partner will interpret compensation as a judgment about her personal value in the firm.

Those who receive more compensation than others with comparable objective metrics are likely to feel that the firm respects them by not basing their compensation solely on "the numbers." This can be taken as a signal that the firm is not concerned simply with short-term financial reward and the behaviors that produce it. Rather, the firm recognizes that people contribute to its success through cooperative behavior not easily measured, and sometimes through sacrifice of immediate personal interests. For instance, a partner may agree to refrain from representing a client on a certain matter to avoid a conflict that would otherwise require the firm to forgo representing a new, potentially valuable, client. This would reduce the compensation to which she is entitled unless the firm treats this behavior as a form of contribution to the firm that should be taken into account in setting her compensation.

In addition, if compensation also reflects appreciation for pro bono work or the quality of work for a client that is not hugely profitable, it also can be construed as affirming intrinsically important professional values apart from their contribution to financial success. As one young partner puts it:

> Law firm practice shouldn't be about squeezing out every last penny that you can possibly earn. There is something to be said for liking your partners, liking what you are doing, and there is a real value here. And I think that that value [is] pretty substantial, and if we're all just looking to maximize the dollar, that existence doesn't sound very good. And if we were doing that we have chosen the wrong profession.[124]

One income partner also suggests that firms might do more to reward those who have been loyal to it:

> [T]here is something to be said about people who are home grown and who have institutional knowledge and who know the people here and who actually do have a certain affinity for the firm, as opposed to someone who is coming in just for the paycheck. So I think that provides some value and it doesn't take very much to keep those guys happy. . . . If you throw just a small amount like $50,000 here, $30,000 here, I think people would be very happy in this economy and stay and try to do what they need to do. It's not like we're asking for millions. And what that means is that someone who is making $5 million will only make $4.99 [million]. . . . [I]t doesn't take a lot to make people happy.[125]

124. Interview 23, *supra* note 116, at 8.

125. Interview 101, *supra* note 39, at 20.

The firm also has an opportunity to affirm the importance of considerations beyond objective financial metrics by penalizing partners who violate norms of collegiality and acceptable behavior.

> We see all the numbers. And then we'll say, "Well, this suggests this lady should make $600,000," and then the practice group lead will say, "Oh, no she should not because"—and I've seen this happen—"this individual has been so rude to her secretary and we need to send a message, so this individual knows that on the numbers she should get $600,000, but let's pay her $525,000."
>
> As soon as she sees her compensation number, she'll insist on a meeting, and we're prepared for the meeting. And we say, "We mean business. We don't yell at this law firm, we don't demean, and we don't belittle. It's not our culture." Now, some laterals are not accustomed to that, so we have to help them understand that we mean business. You know I've got two partners right now on my radar who are not going to like what I tell them. One of them has a difficulty with his temper and the other one has gone through some very difficult personal things and emotes those problems in the work place. This is not where you do that.[126]

A system with a subjective component can thus create the expectation that a firm will value some things more than the numbers, such as organizational citizenship or the quality of a partner's work. When this expectation is met, it can provide a partner with the sense that he is valued because he makes a broad range of contributions to the firm. When this expectation is not met, however, it can result in disillusionment and the perception that compensation is really just about narrow financial metrics.

One occasion that may cause disillusionment is when someone who does a lot of citizenship work receives no more compensation as someone who has the same financial metrics but does not do such work. This can create a sense of being personally disrespected because of the firm's failure to give subjective factors more weight. It also can lead a partner to conclude that the firm's compensation system is really a formula-based system, despite the formal discretion to make subjective judgments.

The tension in many firms is that management may believe that business pressures limit its ability to give significant weight to factors that are not directly related to profitability. One compensation committee partner, for instance, describes some partners' belief that the intellectual quality of their work should be a major factor in determining compensation:

> I've had a discussion with one of my partners . . . who always says we should reward people on how smart they are, and I say, "You know what, here's the problem: the clients vote on that. And you may be really smart, but if people aren't hiring you,

126. Interview 83, *supra* note 123, at 7.

> that's an issue. And you may think you're smarter than this guy next door, but clients love him and they keep hiring him."[127]

At the same time, this partner says that the firm tries to reinforce cultural values through its compensation system by making sure that "there are a few people who get credit for just being good citizens, helping other people out, and being involved in community, and then, as I mentioned, there are certain people [whom] we tell your elbows are too sharp."[128] He recognizes, however, that "everybody thinks that, 'Oh you tell me that community service is important, pro bono is important, but all you really care about is . . . collections.' "[129]

A firm that provides room in the compensation process for subjective assessments may thus find that the discretion it offers can be a double-edged sword. On the one hand, it can enhance partners' sense of being personally respected. On the other, it can increase the risk that people will construe relatively low compensation as an indication of personal disrespect. Providing discretion to make subjective judgments also creates the risk that people will regard the compensation process as unpredictable and opaque rather than transparent. This creates concern about favoritism, especially toward management and its friends. As the next section discusses, that can cause dissatisfaction not only with outcomes, but also with the process by which they are generated.

2. *Procedural Justice*

Belief in fair process can enhance satisfaction with compensation, even if someone is not completely happy with how much they receive. Concerns about the unpredictability and opacity of compensation thus can be worrisome. As two scholars suggest, an organization that satisfies the requirements of procedural justice in dealing with its members

> Encourage[s] group members' engagement in their group even in the face of receiving outcomes from the group that are less than they desire. Since group resources are finite, their distribution involves the operation of a zero-sum game. Typically, not everyone can receive all the resources from the group that they desire. Nor can all group members depend on receiving all the resources that they may think they deserve, since distributive justice perceptions are often biased in self-serving ways. . . . Procedural justice . . . provides an alternative means of retaining involvement in

127. Interview 111, *supra* note 11, at 5.
128. *Id.* at 8.
129. *Id.* at 7–8.

> the group . . . since the allocation of fairness in procedural actions need not be finite or limited.[130]

By contrast, partners' sense that their compensation is predictable because it is based on factors known to everyone contributes to a sense that the process is fair:

> INTERVIEWER: Would you say that overall people trust the compensation committee to get it right?
> PARTNER: I can only speak for myself on that but I do. . . . Each time I go into [the compensation] process thinking I'm getting ready to get mad, and then when I analyze it I realize, 'Well, I think actually it's about where it should be.' To give you an example, every two years your share allocation gets readjusted, and theoretically it can go up or down. And it wasn't the last one but the one before [when] I asked for a pretty substantial increase, and I did it based on my calculation of the amount of revenue, overhead, and all the rest of it. I said, 'This is how much I think I should get,' and that is what I got . . . . That's gone a long way in terms of building my confidence in the system . . . given my understanding of how the system is supposed to work, I got what I was supposed to get.[131]

Another important component of a fair process is an opportunity to be heard. One partner notes:

> Each partner has an opportunity to write a memo . . . about who has been helpful, who has been maybe difficult for you. What are you doing in the community? What are your pro bono activities? Tell us all of that or tell us if you've had a serious illness in the family, because that is something we take into account too. Has somebody had a tough year because, you know, kid's been sick, wife's been sick, husband's been sick. We take that into account and normally that would mean that there is unlikely to be any movement in their comp even if there was a bad year.[132]

Another partner comments on the importance of giving colleagues an opportunity to tell their story:

> Every year at the end of the year we do compensation review. Now I'm talking about partners who are making a million dollars a year, they are making a lot of money okay, but we don't know their full story. Our partners making a million dollars a year may be supporting his mother-in-law, his cousin, her best friend, whatever, and so in compensation for example I will sit down and talk to partners about what their hopes and expectations are and

130. Tom R. Tyler & Steven L. Blader, *Autonomous vs. Comparative Status: Must We Be Better than Others to Feel Good About Ourselves?*, 89 ORG. BEHAV. & HUM. DECISION PROCESSES 813, 816–17 (2002).

131. Interview 94, *supra* note 96, at 6.

132. Interview 111, *supra* note 11, at 6.

> how it's relevant to their life, rather than just imposing their compensation on them.[133]

Still another important practice that contributes to the perception of a fair process is candid communication about expectations:

> There is inherent feedback in our partner compensation system. We interview everybody, we tell them why we've placed them where we have and there is some criticism as to what you can do better and so forth, which isn't always delivered as well as it might be. But that's really important to have people thinking that they need to improve and understanding what their strengths and limitations are and so forth and it's critical for the younger lawyers to advance, to really be honest with them as to what they have to do better and what they don't.[134]

A firm may also provide an opportunity for a partner to appeal the decision of the compensation committee if that decision results in a change in compensation below a certain amount. One partner notes that his firm permits an appeal if "you are going down a [certain number of points] or if you haven't had any movement in a few years."[135]

Some partners express frustration that the partner compensation process doesn't make clear how compensation has been determined in any given instance. As one partner puts it:

> [T]he factors that are in compensation are sort of enumerated now, and many of them are amorphous factors, but you don't really know how they are applied. There is really no sense of how they are applied. It's basically just in the mind of the beholder. And you don't really have any sense of how it's applied.[136]

As another partner articulates, this can give rise to suspicion that compensation reflects partiality or favoritism rather than the consistent application of uniform standards:

> PARTNER: But here I think the problem is . . . that we're not really sure how our compensation is driven, other than the fact that I think it's based on the decisions made by management because you have certain people getting the big numbers, you know, given big compensation when they don't necessary [sic] have the big numbers, when they don't have the big clients and they don't have the relationships, but maybe they have the right title or they have the right relationship to certain people in management and whatever else . . . .
> INTERVIEWER: So there's a big element of subjectivity?
> PARTNER: Yes.

133. Interview 83, *supra* note 123, at 2.
134. Interview 59 at 19–20 (Mar. 6, 2012).
135. Interview 111, *supra* note 11, at 2.
136. Interview 72, *supra* note 23, at 7.

> INTERVIEWER: Which then leads some people to suspect that maybe it's partly whom you know as much as what you do?
> PARTNER: Yep.[137]

A partner's sense of respect also can be affected by his comparison with others whom the partner knows generate more revenue, and thus are not peers. The focus here is on the "spread"—the difference between the highest- and lowest-paid partners. A partner's belief that the spread is too high can reflect the view that the highest-paid partners deploy important business skills, but that these skills should not be given so much greater weight than contributions based on factors such as the quality of one's work, collaboration with colleagues, and keeping clients happy.

Business skills may consist of networking and salesmanship, or in some cases may involve management of the firm without involvement in practice. In either case, they represent capabilities that some partners regard as something other than core professional legal skills. Some dissatisfaction with the spread thus reflects concern that the firm is simply a business without a distinctive professional identity.

A partner in one firm expresses this sense of dissatisfaction when discussing the compensation of law firm partners who devote their time to management rather than law practice:

> In my mind, the question becomes, 'Should management reside in fairly highly compensated partners whose principal effort is management, as opposed to the practice of law, or could it reside part-time in those people where they would also be practicing law, or could it be placed in the hands of nonlawyers who may be very good at management, [who] wouldn't necessarily need to be compensated at the same level. So management compensates itself very well . . . the management layer has gotten much thicker and the compensation at that level is really quite high.[138]

Another partner expresses a similar concern:

> [Partners in management] are working pretty close to full-time on this; it's not like part-time sitting in a meeting now and then. They are really, day in and day out, working on these issues. But that said, they are not really generating revenue for the firm, and when you have a structure that really is so heavily focused on what you are bringing in in terms of your revenue, it does kind of irk a little bit to see somebody making far in excess of me and the amount of money they bring [*sic*] into the firm is like a fraction of what I bring.[139]

Based on earlier comments from his interview, this partner believes that he receives fair compensation for his contributions. He wonders, how-

137. Interview 101, *supra* note 39, at 12.
138. Interview 72, *supra* note 23, at 3.
139. Interview 94, *supra* note 96, at 5.

ever, if members of management receive more than their fair share. Any dissatisfaction therefore is not with his own compensation compared to those he considers his peers. Instead, it arises when he compares himself with how much others receive who are not using legal skills to serve clients.

3. *Respect and Promotion*

Finally, a firm can send signals about respect through the extent to which it keeps income partners apprised of their individual prospects for advancement to equity partner. Such advancement is of course an important dimension of the compensation process, because it changes the basis for compensation from salary to entitlement to a share of the firm's profits. For income partners, however, promotion also sends a signal about respect. Consider one partner's description of why he would not want to be an income partner indefinitely:

> PARTNER: I wouldn't [be interested in that] because partnership means something to me; it's beyond just the money. We join this profession, we went into law, at least I did, not to maximize every dollar that you get, but because we like the intellectual rigor of what we do, we do like the lifestyle it affords us in terms of being able to do certain things. Certainly I grew up middle class so I do things today that I thought that movie stars did. I know that sounds silly, but when you get together with a group of people, it has to be more meaningful than just trying to squeeze the pennies out today. If you are good at doing what you do and work as hard as we work, to make it palatable there have to be human relationships and interactions. Otherwise it's just miserable.
> INTERVIEWER: And you don't feel a part of that partnership as an income partner?
> PARTNER: Oh, you do . . . but there [are] certainly first class and second class citizens. I mean that's the point of it . . . . Some are not equals. Certain partners have more at stake and have more of a voice, and as I continue on my career I want to continue on that trajectory and have a voice and be able to be on par with my partners, so that we can talk about the challenges that face us and choose a path to steer.[140]

A firm providing guidance on how to proceed in order to obtain a promotion to equity partner therefore can signal respect for an income partner, while a failure to do so leaves a partner with a sense that his or her career is at a dead end. One income partner expresses it this way:

> It's completely depressing, to be honest. I mean, especially for someone like me and some of my peers who worked crazy hours to finally make partner, get over the hump and realize oh this is what I worked hard for . . . . For associates, it's a regulated envi-

140. Interview 23, *supra* note 116, at 11–12.

> ronment and there is a recruiting market out there and you have *Above the Law*, so there is actually a mechanism for them to express their discontent and have it be heard in a certain way . . . . For income partners there is nothing, there is nothing like that. It's a real free market, and no law firm at this point in time wants a special partner who doesn't have a book of business. And you know, you try to go in-house. Well, there aren't that many positions open. So I think for a lot of people it's kind of like, you know, keep your head down, smile when you have to, just try to survive as long as you can until something better comes along.[141]

Another income partner suggests how firms might address this sense of demoralization:

> I would like to think, especially in the early years of partnership, there would be a formal process, and not just the good graces of the people who have always looked out for you, whereby firm management—the same people who will decide how much you get paid and if and when you are elevated to equity—would sit down and say where are we, what are you trying to do, how are you doing and how can the firm help. I've heard those things said, but there is no process whereby that is done. That would help make nonequity partners feel like at least they are still watching, they are still paying attention, and I feel like there is a path.[142]

This partner goes on to emphasize the importance of specific guidance:

> [I]t would also be useful to say look you know to be considered for equity we're looking for X, Y and Z and you are currently at half X and two-thirds Y and Z you're not really started on yet but next year maybe, again to have a sense that you are not just a worker bee but you're someone about whom there are significant future expectations. My sense is that junior equity partners feel similarly—how do I know how these decisions are getting made, and where is that sense of connection? It's really a matter of simply making [people] feel like they have a future and giving them evidence of it, which ties into the sense of being respected and cared for.[143]

Another partner who is involved in compensation decisions acknowledges the potential for service partners to feel that their lack of many opportunities elsewhere makes them vulnerable to being short-changed in compensation compared to rainmakers:

> You try to explain why you do what you do, and that you know the market is what the market is, and indeed most of them, although they don't like it, are very smart people. They get that if they were to walk out the door tomorrow they are more valuable

141. Interview 101, *supra* note 39, at 16–17.
142. Interview 98, *supra* note 1, at 17.
143. *Id.*

> to us and better compensated here than they would be anywhere else. Now I don't throw that in their face, I don't think that's constructive, but it's the facts and it's a sad fact. This economy and the constant struggle to keep people from being poached have required that more of the compensation dollars go to the producers, away from the service people. That has happened over the last five or six years, and it's become more acute in the last three. That does present morale challenges—no question about it, no question about it.[144]

One firm in our study attempts to address concerns about limited opportunity for income partner advancement by using compensation to provide temporary financial rewards to balance the inability to achieve a promotion. One income partner describes the process:

> I do know that with folks who are not making the next step to equity, and are being told the second year in a row [that] they are not making it, the firm is using compensation mechanisms to make somebody who gets basically turned down from the equity ranks . . . feel whole. The idea is to try to give them a compensation level that is equivalent to a first-year equity partner. . . . You've got fourth-, fifth-, sixth-year nonequity partners who are doing very well, developing a nice profile, and [the firm has] got to find a way to keep them happy, even if they don't have room for them in the equity ranks.[145]

Rainmakers and service partners thus exemplify differing ways in which lawyers can be valued. The former represent the emergent business and marketing orientation that has become a necessity in law firms. The importance of these skills is reflected in giving greater weight to origination credit in the compensation process. Service partners exemplify the values involved in the traditional professional ideal of doing good work, which these partners sometimes feel is not given enough respect. Service partners can be especially sensitive to the lesser value placed on their contributions than those of rainmakers:

> [R]ainmakers bring[ ] in the clients in the first place to the firm. Then there are others who service those clients. There are [still] others who expand the business of those clients by doing work that the rainmaker or others could not necessarily do. So that is developing business. However, that is not valued nearly as much as the rainmakers. So there are different areas in terms of compensation for rainmaking [and] servicing clients, [these reflect] just your relative importance in the firm.[146]

A firm that recognizes the role of compensation in the firm's moral economy—not simply its material economy—will be sensitive to its part-

144. Interview 10, *supra* note 50, at 15.
145. Interview 103, *supra* note 36, at 14–15.
146. Interview 72, *supra* note 23, at 3.

ners' need for the firm to affirm their value as lawyers. To the extent that partners do feel respected, they may develop intrinsic motivation to act for the benefit of the firm, rather than being motivated by the desire for a reward. Such motivation can provide a sense of connection to the firm that is based on a deeper foundation than financial self-interest.

As the next section describes, even if law firm management appreciates that its compensation system is part of a moral economy that sends important messages about respect, it faces a potentially formidable obstacle in ensuring that partners feel respected. The factors on which a firm relies in determining compensation are often subject to the bargaining among partners over origination credits. The operation of this market can strongly affect partners' sense of the extent to which they are valued, because decisions about whether and how much to share credit are made by colleagues with whom a partner directly works. Firms attempt, to varying degrees, to encourage partners to share credits in this market. The ability of rainmakers to go elsewhere, however, imposes a practical limit on how much many firms can do.

D. *The Internal Market of the Firm*

The most psychologically salient outcomes in most firms' internal markets are those that involve origination credits. A partner's skill set and need for billable work influence his bargaining power with respect to obtaining such credits. While firms make some effort to prevent egregiously unfair outcomes in this market, many partners regard it as largely unregulated. As a result, outcomes tend to reflect the personalities of individual partners and the dynamics of ad hoc negotiation.

The internal market is shaped by the fact that rainmaking partners who have relationships with clients begin with presumptive entitlement to origination credit for any matter involving their clients. As one partner describes it:

> Yeah, the person who originates will get credit for anything . . . . I mean this is general, it doesn't always hold the case, but that's generally the case. However, if for example there is a big matter which is the first matter that is brought in by partner number one and partner number two does most of the work on it, if because of the excellent work on matter number one there are five other matters that partner number two may not have been involved in, but was really instrumental in securing the client for the firm, the partner may not get any originations for any of those other matters . . . . So therefore compensation is largely driven by originations.[147]

147. *Id.* at 7.

A partner's satisfaction with the allocation of origination credits depends on the same considerations as those that affect his satisfaction with the firm's decision about his compensation. First, does a partner believe that another partner has given him the credits he deserves in light of his contribution on a matter? Second, does a partner believe that another partner has relied on a fair process to determine whether to share credits or how many to share? Finally, what has another partner's decision about origination credits communicated about the respect that he has for the partner with whom he has worked? As with the firm's decisions about partners' compensation, outcomes in the origination market are therefore part of a complex moral economy that distributes both money and meaning.

The allocation of respect in this sector of the moral economy can have an especially powerful impact because it occurs through the personal interaction of partners. The sense of respect that is allocated in these interactions can be even more vivid and personally significant than the form of respect conveyed by the firm in its compensation decision. A partner interacts with a firm about his compensation once a year for a limited period of time. The conversation of course focuses on his particular compensation, but part of it may well touch on general factors affecting his compensation for which he is not responsible, such as the firm's business strategy, general economic conditions, and the amount of demand in the partner's practice area. A firm's determination of compensation is thus likely to be based at least in part on considerations that don't reflect personally on him. In addition, it reflects a judgment by "the firm," which may be an abstract actor to a partner in a large firm notwithstanding the personal importance of the compensation decision.

By contrast, decisions about the division of origination credits allocate respect through direct personal interactions between individual partners. They reflect a particular colleague's judgment about the value of another partner's contributions. This judgment is more intensely personal than a firm's determination of a partner's compensation. The respect or disrespect it communicates therefore can be especially meaningful. One service partner elaborates on this point:

> [There are cases where] I am confident that I've been a part of helping us land some of our largest corporate work, confident. But when it comes time to reward people, it's the corporate guy who landed the deal who gets all the gravy. What we do often isn't even given its own matter in the sense that we might be given some of the credit for that piece of the deal. It's just you are expected to contribute, but frankly it just means I'm billing my hours so at that point I might as well be a second year associate.[148]

148. Interview 98, *supra* note 1, at 7.

Another service partner describes the conflict that can arise over sharing origination credits:

> [There was an] individual who left a year ago who did not treat it fairly, and people got very upset. An existing client of someone else's would be brought in and he would want to take the full origination credit or one of his clients would have a new matter that actually was the kind of work he didn't do and so he would bring in someone else to do the work but he wanted to keep all the origination credit. Those are the kind of things people remember and then that does increase resentment.[149]

These psychological dynamics of the firm's internal market influence a partner's satisfaction with the outcomes of that market. With respect to judgments about distributive justice, a partner's conclusions about whether he has received what he deserves will be sensitive to whether he believes his contributions have been appropriately recognized in the internal market. That market tends to give substantial weight to the development of personal relationships with clients as a measure of contributions.

By contrast, a service partner's definition of his contribution may focus on the quality of his legal work. The latter, however, may not represent currency in the market for origination credits. This can trigger a sense of unfairness. Even more disconcerting, a service partner may believe that he makes a contribution by interacting with and being responsive to a client far more regularly than the partner who brought the client to the firm. The failure of the latter partner to acknowledge this by sharing origination credits may provoke an especially acute sense that a partner is not receiving what he deserves.

Any belief that outcomes are unfair may be accentuated by a sense of unfair process. A service partner's receipt of origination credits depends on the generosity of a rainmaker and whatever bargain the service partner is able to strike. In most cases, in other words, the process is a function of informal personal interaction rather than the uniform application of any general rules. This means that most partners are unlikely to regard the internal market as operating on the principle of fair process.

In the market for origination credits, beliefs about distributive justice therefore are unlikely to be tempered by a sense of procedural justice. A compensation committee member may have some credibility in saying to a service partner, "It's nothing personal," but a rainmaker in the internal market generally does not. The fact that outcomes in the market for origination credit are driven by what are perceived as highly personal judgments makes it more likely that a service partner will be highly skeptical about the fairness of the process that produces those outcomes. As one service partner put it, "I think that because of the way the compensation is structured, it just

149. Interview 6, *supra* note 75, at 37.

makes sense for you to keep all the originations and really try to monopolize the client relationship so that the younger guy can't be a threat to you."[150]

The allocation of personal respect in the internal market is shaped in important ways by the fact that interactions occur in a setting in which service partners generally are dependent on the good graces of rainmakers. This inequality is based not on the quality of the legal work that partners do, but on the extent to which they have close relationships with clients. Those who do not have many such relationships are dependent for work on those who do.

All partners are members of a profession with traditional aspirations to individual independence and control over one's practice. Rainmakers, however, come much closer to realizing these aspirations than do service partners. Even though partners ostensibly have equal formal status, the relationship between a rainmaker and a service partner can effectively approach that of an employer and an employee. If a service partner is unhappy with a rainmaker's decision about origination credits, he may have little recourse within the firm. Furthermore, threatening to leave the firm may not be credible because there is relatively low demand in the lateral market for partners without substantial books of business. In addition, of course, a service partner may well feel constrained in asserting any claim because of his need to obtain a regular flow of work from a rainmaker. One income partner describes his experience:

> I will go to one of my mentors here and I'll say, "Okay what do I do now? I really developed this relationship—maybe the partner originally had a relationship with the general counsel, but let's say that general counsel is no longer there and now I am . . . best friends with the new general counsel, [and I've] been doing work for them." So the question is, "Shouldn't I be originating partner?" Sometimes I'll get the advice, "Don't bite the hand that feeds you." In one case I called the partner who had the relationship and he said it kind of jokingly—but I know he wasn't—and he said, "Well, for as long as I'm here I'll always be billing partner for this client."[151]

This dynamic can make interactions between partners in the firm's internal market especially fraught with the potential for triggering resentment. Notwithstanding a service partner's acknowledgement of his substantive dependence, he may take offense at any behavior by a rainmaker that underscores it and makes it more explicit. As one service partner puts it, "[T]he partner-associate thing isn't all that different from the equity partner-in-

150. Interview 101, *supra* note 39, at 8.
151. Interview 64 at 8 (Aug. 22, 2012).

come partner thing, and I feel a lot more like a well-paid associate sometimes."[152]

Furthermore, both partners know that the rainmaker is not wholly self-sufficient. He must rely on service partners to do the work for the clients that he brings in and to do whatever it takes to keep them happy. There is, in other words, some degree of mutual dependence between a rainmaker and service partner, even if one party to the relationship is less dependent than the other. A service partner may thus resent a rainmaker who hoards origination credits not simply because it has a financial impact, but also because a rainmaker is effectively denying the contributions of his colleague and is asserting a self-sufficiency that they both know is false. A service partner describes the sense of unfairness that can result from this denial of mutual dependence:

> Our compensation structure is based in part on the idea of originations and I don't think enough people play fair . . . . The same guy who brought client X in 30 years ago is still getting 50 percent of everything everybody else does, and hey man, if I get 50 percent from everybody, I would be thrilled . . . . Someone brings the work in and I do 98 percent of the work with my team of associates, and I feel like he's getting compensated and I'm not. He's getting overly compensated and I'm getting undercompensated for the way the work is done because clearly I couldn't do the work if he didn't have the relationship, but the work couldn't get done if there weren't someone like me to do it."[153]

A service partner with whom a rainmaker refuses to share origination credit may regard the refusal as a personal devaluation of his work and his status within the firm. More broadly, the refusal may communicate that the service partner is not so much an independent as he is someone whose work-life is subject to the demands of other more powerful colleagues. This can be demoralizing and corrosive to any sense of attachment to the firm. This feeling may also be exacerbated by the feeling that rainmakers "get away with murder here just because they are viewed as money-makers." As one partner observes, these types of partners:

> Don't follow the rules; they all take a case without filing a conflicts check. The next thing you know, we're going to work for a client and they say, "Oh, no, I'm sorry. We're already doing something; that's a conflict." If they don't feel like helping out on getting more work for the firm because it's just inconsistent with their self-interest, they don't. There is some of that, and I don't know how you resolve it because those are folks who say, "Look,

152. Interview 98, *supra* note 1, at 5.
153. *Id.*

> if I don't get my way, I'm out of here." I guess you have to be prepared to say "Okay, good-bye," but that takes some guts.[154]

A law firm's internal market has particular importance because it serves to allocate respect most directly from a partner's colleagues. Because this market occurs through daily personal interactions on "the shop floor," it can have an especially powerful impact on the extent to which a partner feels valued as a lawyer. To some degree, the sum total of these interactions effectively *is* the firm on a visceral level for a partner. Their quality is likely to have significant influence on how the partner views the firm and his place in it. How generous or self-interested colleagues are in such interactions sends a message about, and continuously serves to shape, the culture of the firm.

These interactions may lead a partner to conclude that the firm is a place in which most people are likely to pursue their own interest, and that he needs to protect himself by doing the same. Or it may lead a partner to conclude that the firm is a place in which people have some commitment to shared values and are willing to temper self-interest for the sake of the larger good. A partner who reaches the latter conclusion is more likely to feel that he can do the same, trusting that others will not take advantage of him if he does. That does not mean that considerations of self-interest will never be salient; there will inevitably be occasions when they are. What it means is that a partner has enough confidence in his colleagues that he does not feel the need to relentlessly pursue only personal rewards without regard for others.

The sense of trust that can emerge from interactions in the internal market can be fragile; trust is more easily destroyed than created. It can, however, generate a virtuous cycle, in which trust leads to a willingness to behave generously, which signals to others that it is safe to trust, which in turn leads them to be generous. As more people trust and behave accordingly, the message can become stronger and more widely communicated.

This process can provide a way to surmount the difficulties of encouraging cooperation that are characteristic of the Prisoner's Dilemma. In the classic depiction of this situation, two individuals need to decide whether to cooperate or pursue their own interest. They will be better off if they cooperate because that will maximize the total amount of benefits that are available for them to enjoy. In the absence of the ability to communicate with each other to arrange cooperation, however, each must worry that the other will act in her self-interest. The payoffs are such that pursuing self-interest produces the most rewards, while cooperating when the other person acts in her self-interest produces the fewest. Each individual therefore will rationally conclude that the safe thing to do is to pursue self-interest, which leads to a worse outcome for both than if they had cooperated.

154. Interview 21, *supra* note 56, at 11.

The critical feature in the Prisoner's Dilemma is the inability of the individuals to communicate. If each had some signal that the other would cooperate, each might feel safe to do so as well, which would result in the largest payoff. In the law firm context, interactions in the internal market can serve the function of communicating whether it is safe to act for the good of the firm, or whether it is necessary solely to pursue one's self-interest. People will undoubtedly behave in different ways, but a critical mass of partners who are willing to temper self-interest can be enough to elicit at least some measure of trust that potentially can be self-multiplying in the way described above.

What would it mean for rainmakers and service partners to act more generously in the firm's internal market, and what would be their motivation for doing so? Acting more generously for rainmakers is relatively straightforward: a willingness to share origination credits. But why would they be interested in helping create a more cooperative firm culture to which members would have some allegiance? First, most narrowly, this type of culture might increase the origination credits that a partner receives from fellow rainmakers. Many rainmakers are not just Finders. To differing degrees they also are Minders who do work for other rainmakers' clients. An ethos of sharing origination credits could enhance the compensation that they receive from playing the latter role.

More broadly, even if a rainmaker's concern is mainly obtaining financial rewards, a firm in which people are committed and engaged is also one that is more productive. People who don't feel respected and don't feel that it's safe to look beyond their own interest are less willing to share ideas or to go the extra mile to get the job done. This is especially true in organizations in the knowledge industry, which compete by generating innovative solutions for their clients and customers.[155] If a firm's internal market tends to communicate disrespect for service partners, this may lead to disengagement by partners who are essential to serving clients and keeping them satisfied. There is also some research that suggests that employees in professional service firms who occupy such positions may be an especially important source of innovation.[156] Enlightened self-interest can therefore motivate a rainmaker to act in the internal market in a way that allocates respect to service partners.

Finally, one should not assume that all rainmakers are interested only in financial rewards. For instance, a rainmaker also generally wants respect from other rainmakers. There is the potential for a hierarchy even within the

155. W. Chan Kim & Renee Mauborgne, *Fair Process: Managing in the Knowledge Economy*, HARV. BUS. REV. 127, Jan. 2003.

156. *See generally* Michael Smets et al., *Orchestrating for a Winning Performance: Re-Thinking Strategy in Professional Service Firms*, *available at* http://www.sbs.ox.ac.uk/centres/professionalservices/Documents/Smets%20-%20Orchestrating%20for%20a%20winning%20performance.pdf.

ranks of rainmakers based on the amount of business that a partner generates. A rainmaker may well want to be well-regarded by fellow rainmakers not simply for his book of business, but for the quality of his legal work and the value of the service that he provides to their clients. It may be important, in other words, for him to be respected for both business and traditional professional skills.

Furthermore, many lawyers value the opportunity to be of service to clients, to work in a collegial atmosphere, to do high-quality work, to participate in work that is intrinsically meaningful, and to be of some service to society. Some also value being part of a firm that has a historical legacy that exemplifies these values. We are social animals, and being involved with others in pursuing a common purpose is a powerful source of satisfaction.[157] A rainmaker therefore may value cooperation as a good in itself, not simply as a means to maximize long-term self-interest.[158]

Firms that are able to inculcate an ethos of generosity in the internal market may create stronger organizational glue than those that are not. A rainmaker who sees the value of tempering his pursuit of self-interest with more generous behavior will have more of a stake in the success of the entire firm than one who sees the firm simply as a vehicle for accumulating as many financial rewards as possible. The rainmaker who tempers his self-interest may also develop at least some amount of intrinsic motivation, which, as discussed above, is a more powerful force for shaping behavior than is extrinsic motivation. To the extent this occurs, it can provide a form of glue that may lead him to decline offers to join other firms that offer ostensibly higher compensation. It also may create a sense of loyalty to the firm that leads a partner to help the firm respond to financial challenges rather than jumping ship as soon as possible.

Service partners generally are not in a position to have origination credits, and will thus have fewer opportunities to shape the firm's internal market through their decisions about sharing such credits. They may have opportunities, however, to behave generously in the market for work. A service partner who is convinced that she needs to relentlessly pursue her self-interest will fiercely compete with her colleagues for work from other partners, regardless of whether she is the person who could provide the most value to the client on a particular matter. To the extent that she has any discretion to select other members of a project team, she may choose those she sees as less of a threat to her advancement. If she has an opportunity to organize how some of the work is done, she may do so in order to ensure that she receives the most credit. She may also be disinclined to

157. *See generally* Theresa M. Amabile & Steven J. Kramer, The Progress Principle: Using Small Wins to Ignite Joy, Engagement, and Creativity at Work (2011) (discussing how managers can foster progress and enhance inner work-life amongst employees).

158. This cooperative mentality is coined the "Assurance Game," which is a variant of Game Theory that was first described by Jean-Jacques Rousseau.

pitch in to help colleagues whom she regards as rivals, out of a belief that their gain will be her loss. In each of these instances, she is making decisions that are as self-interested as the hoarding of origination credits, and may be equally damaging to developing a collegial culture within the firm.

To the extent that a service partner feels that the firm's internal market shows her respect, she will be more likely to regard the firm as a place where she is valued and where she and colleagues are working for a common purpose. She therefore may be more inclined to make decisions such as these with a view to the firm's larger interest rather than simply her own. Her sense of attachment to the firm also may lead her to engage in acts of organizational citizenship such as helping mentor junior lawyers and serving on firm committees. In addition, she may be less likely to follow a rainmaker who decides to leave the firm, or to depart for some personal opportunity that arises. To the extent that firms are interested in institutionalizing clients—making them more clients of the firm than of individual partners—the Minders and Grinders in the service partner ranks are critical in ensuring that a client receives the consistently high-quality service that leads it to turn to the firm to do its legal work.

For all these reasons, a law firm has a substantial interest in ensuring that partner interactions in its internal market serve to allocate the respect from colleagues that is so crucial to a partner's sense of connection to the firm. As we have discussed, firms attempt in various ways to influence behavior in the internal market. Each approach that the firm uses may increase compensation, but each may also have a different impact on the allocation of respect.

First, a firm may limit the period during which origination credit is available or require that eligibility for it is contingent on a partner having substantial ongoing involvement in a matter. Second, a firm may award management credits to partners for assuming responsibility for managing matters for the clients of their colleagues. This practice attempts to reduce the extent to which compensation reflects partners' dependence on rainmakers' willingness to share origination credits. Management credits typically do not boost compensation as much as origination credits do. They can, however, communicate recognition of the importance and value of high-quality work and client service in addition to the business development skills that are reflected in origination credits. By sending this message, the award of management credits underscores that rainmakers are not self-sufficient. They must necessarily rely on the contributions of their colleagues who possess traditional professional skills to ensure that clients remain satisfied and continue to turn to the rainmaker when they have legal needs. This affirmation of mutual dependence can enhance a service partner's feeling of being respected as well as his sense of making an integral contribution to a common mission.

Third, a firm may establish guidelines for sharing origination credits that it encourages partners to follow. This represents an effort to establish norms that can influence partners' exercise of discretion in the internal market. A firm may try to reinforce and signal the importance of such norms by penalizing failures to abide by them. Our research suggests, however, that firms tend to do this infrequently, reserving it for especially egregious instances in which rainmakers claim credits that should be shared with others. One partner describes the delicacy of attempting to adjust the compensation of rainmakers for being insufficiently generous:

> INTERVIEWER: To what extent can the firm use compensation to try to drive some of the cooperative behavior?
> PARTNER: You can, you can. The issue really is this: it's easy to give the carrot and say, "I'm going to give you extra money because you did what we want you to do." We do that and we make it known that we do it. What we don't do enough is use it as a stick. We don't say, "Hey, asshole, we don't like what you've done. You would have made X but you're going to make X less something because of the way you acted," because right now that asshole probably is producing $5 million of business. He says, "Okay, [if] you don't want me, I'll go and down the street they'll pay me double what you're paying me." It really does handcuff from using compensation as much as you like.[159]

Another partner observes,

> [We may say to someone], "Well, I don't know who you think you're kidding but you didn't produce all this business yourself . . . . [W]e know you have a team, we know you had a big environmental matter you took 80 percent of the credits for that when you should have only had 50 percent of that. You took advantage of this poor guy who came over here from X and he's good enough not to have complained about you, but you know what, you're not helping us and you're not helping yourself."[160]

This partner acknowledges, however, "Now again life isn't perfect. You try sending those messages to people who don't receive them well and who are very valuable to the firm, and this is where you get into the underbelly of law firms and lawyers."[161]

An additional limitation of adjusting compensation to penalize failures to share is that firms generally do not publicize the fact when they do it. The rainmaker will know about it, as will any partners whose compensation is increased as a result of the adjustment. Other partners, however, likely will not. This can limit the extent to which the penalty communicates that the firm takes the sharing guidelines seriously.

159. Interview 10, *supra* note 50, at 12.
160. Interview 105, *supra* note 68, at 13.
161. *Id.* at 14.

Aside from these pragmatic considerations, enforcing guidelines by penalizing compensation also may have a limited impact on the allocation of respect in the internal market. That market operates through interaction by individual partners. These interactions only communicate respect when one partner believes that a colleague genuinely values his contributions as a fellow professional. A partner may receive more compensation when a firm overrides a rainmaker's division of credits, but he knows that this has occurred over the objection of the rainmaker. What the rainmaker actually thinks of him thus presumably remains unchanged. As a result, the increase in compensation communicates respect from the firm, but not respect from the rainmaker. Only the rainmaker's voluntary willingness to share credits can do that.

One firm in our study attempts to address this limitation of penalties by distributing information about the extent to which individual partners share credits. This reflects reliance on partners' concerns about their reputation as a means to influence their behavior. The effectiveness of circulating information about sharing credits will of course depend on the extent to which a partner has such a concern, and on the willingness of colleagues informally to express their disapproval to him. A rainmaker who shares credits because he cares about the opinions of fellow partners can more effectively communicate respect to another partner than one whose initial division of credits has been overruled by the firm. One could still claim that the gesture is not entirely voluntary because it is influenced by the desire to avoid a reputational penalty. For a partner not privy to a rainmaker's state of mind, however, the rainmaker's gesture is substantially more voluntary than a forced reassignment of credits by the firm. In addition, partners who behave based on a desire to avoid reputational damage from violating informal norms may well eventually internalize those norms. This possibility enhances the likelihood that the operation of the internal market will be seen as fairly allocating respect among partners.

A rainmaker's genuine generosity, of course, is the most powerful signal of respect. It can serve to downplay another partner's dependence, acknowledge the rainmaker's own dependence on his colleagues, affirm the value of a fellow partner's contribution, and recognize the quality of a service partner's work. It can communicate that someone who may be a service partner is a valued colleague who exercises at least some independence and has some degree of control over his life as a professional.

Generosity is especially meaningful because it is not required. A firm has an obligation to compensate a partner in accordance with criteria that it has established. Doing so can elicit from a partner a sense of attachment to the firm because the firm has fulfilled its obligation to engage in a fair exchange with him. This basis for attachment, however, may generate only extrinsic motivation to benefit the firm in accordance with what the compensation system rewards.

By contrast, a service partner knows that a rainmaker who shares origination credit has chosen to do so even though he could have kept them all for himself. The rainmaker, in other words, has acted fairly not in order to fulfill an obligation but because he wants to acknowledge the value of the service partner's assistance. This can deliver a powerful message to the latter about his value as a lawyer.

Perhaps the most effective way for firms to influence the internal market therefore is for major rainmakers to forgo taking as many credits, and as much compensation, as they could. Modeling the kind of behavior that the firm wants to see can have a powerful effect on partners. We regularly have heard stories of how the willingness of partners with large books of business to do this has shaped the culture of the firm. One partner relates the approach of a colleague who is a major rainmaker in the firm:

> [H]e could probably demand five times the compensation he makes, but what he does, and he does this to create loyalty, is that he will take less compensation for himself and say, "Compensate these other people who are really important to my practice well." And so that simultaneously binds them to him and keeps them happy and keeps them here. He's always made a point of saying that it's a point of pride that he leaves money on the table; he doesn't extract out of the firm all the money he could and that's an example for other people too.[162]

Lawyers who have benefited from this practice and who themselves have become major rainmakers tend to feel a strong obligation to follow this example in dealing with junior lawyers. In this way, a rainmaker's acts of generosity can have a powerful ripple effect that shapes the atmosphere and culture of a firm.

A law firm's internal market therefore plays a crucial role in the moral economy of compensation. Because decisions about sharing credit are made by colleagues with whom a partner works, they can send especially vivid messages about respect. Those messages of course have intensely personal significance. In addition, they serve more broadly to communicate to partners the extent to which the firm in which they work is shaped mainly by its members' self-interested behavior or by a more expansive sense of common purpose.

E. Summary

A law firm's partner compensation system distributes both material and symbolic goods to its partners. Apart from the financial rewards provided by the material economy, a firm's moral economy operates to allocate respect among its partners. Amounts of and differences in compensation

162. Interview 52, *supra* note 14, at 15.

effectively communicate which qualities serve as the bases for being respected as a valuable member of the firm.

In recent years, intensifying competitive pressures have led firms to attach more importance to skills commonly associated with operating a successful business, and to contributions more readily identified as directly contributing to profitability. The increasing importance of these business skills means that a good law firm lawyer is now not simply someone who does excellent legal work or helps to create a collegial atmosphere within the firm. The greater importance that firms attach to these more commercial attributes is reflected in their increasing emphasis in determining partner compensation. The result is that the compensation process has taken on significance as an occasion for considering—and sometimes contesting—the relative value of those qualities that characterize a good lawyer. As the next section suggests, compensation can therefore be seen as one arena in which law firms are attempting to reconcile contemporary business demands with traditional notions of professionalism.

IV. Compensation and the Meanings of Professionalism

The trend in law firm compensation systems toward greater emphasis on business skills and the measurement of individual productivity is but one indication of how professional service firms in general, and law firms in particular, have lost a considerable degree of control over the ways in which they organize and provide services. Firms are now more directly subject to market forces that shape their operations and determine their fate. As such, they are more likely to be regarded simply as "service providers" rather than as institutions that embody distinctive values of professionalism.[163]

In structural terms, this is reflected in a movement from classical partnerships to more complex organizational forms. The classical partnership is an organization that embodies a way of organizing and delivering services that reflects a logic of professionalism that differs both from an unregulated market and a bureaucratic organization. In an unregulated market, "consumers are fully informed about the quality and cost of available goods and services and choose them rationally, to their own best interest."[164] The result is that "consumer preference and choice determine[ ] whose services will succeed," and "[v]alue is measured primarily by cost."[165] In a world governed by bureaucracy, "the production and distribution of goods and services are planned and controlled by the administration of large organizations."[166] In this system, "the executive officers or managers of organiza-

163. *See generally* Laurel S. Terry, *The Future Regulation of the Legal Profession: The Impact of Treating the Legal Profession as "Service Providers"*, A.B.A. J. Prof. Law., Aug. 17, 2012.

164. Friedson, *supra* note 21, at 1.

165. *Id.*

166. *Id.*

tions control those who produce goods and services, aiming primarily at predictability and efficiency."[167]

To use Eliot Friedson's terms, "professionalism" offers a "third logic" of production. It represents:

> A world in which those workers who have the specialized knowledge that allows them to provide especially important services have the power to organize and control their own work. Legally, only they can offer their particular services to consumers or hold jobs performing them in organizations: neither consumers nor managers are free to employ anyone else. Furthermore, only members of the occupation have the right to supervise and correct the work of colleagues. They do not abuse those exclusive rights, however, because they are more dedicated to doing good work for their own satisfaction and for the benefit of others than to maximizing their income.[168]

Neither market, bureaucracy, nor professionalism exists in pure form; the three logics represent ideal types that can provide insight into our thinking about different ways of organizing the production of goods and services. For several decades in the twentieth century, many large law firms operated under competitive conditions that enabled considerable reliance on the logic of professionalism. Firms enjoyed considerable autonomy over how their operations were organized:

> How cases were staffed and billed, how partners were selected and paid, and how new partners were admitted to the ranks were issues based on internal considerations rather than market factors. Free to conduct their affairs as they wished, the established practices could all but ignore such boorish concerns as efficiency, productivity, marketing and competition.[169]

Law firms during this period operated as examples of "the classical professional organization where power rests in the hands of professional experts, managers administer the facilities and support the professionals, decisions are made collegially, change is slow, and strategy is formulated consensually."[170] In the classical partnership, professional partners own, govern, and manage the firm, and provide professional services to clients. They exercise considerable discretion in applying expertise to complex problems and tend to work independently with minimal oversight and coordination.[171]

In recent decades, however:

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167. *Id.*

168. *Id.* at 1–2.

169. MARK STEVENS, POWER OF ATTORNEY 8–9 (1987).

170. David M. Brock, *The Changing Professional Organization: A Review of Competing Archetypes,* INT'L J. MGMT. REV. 157, 160 (2006).

171. *See* David J. Cooper et al., *Sedimentation and Transformation in Organizational Change: The Case of Canadian Law Firms*, 17 ORG. STUDIES 623, 626 (1996).

> Markets for professional services have been deregulated, competition is increasing both within and between professions, clients are increasingly sophisticated and demanding, and innovative technologies open opportunities for service delivery and encourage the entry of new providers.[172]

These developments have placed pressures on the ability of professional service firms to maintain the control over production that they enjoyed in earlier years.[173] As we discuss in more detail below, this set of forces has prompted movement away from the classical partnership model. It has "encouraged rationalization and [has] led to the adoption of more efficient structures. It has also encouraged a greater focus on business development and the marketing of professional services."[174] Professional organizations now tend to be more internally differentiated, "with a core staff of professional managers, and the traditional system of partnership governance giving way to a more corporate model."[175] In addition, "[t]he language of business—customers, market share, mergers, efficiency and profit—is increasingly the norm in contemporary professional organizations."[176] In these ways, the organization of professional services acquires more features of both the market and the bureaucratic forms of production.

The concept of organizational archetypes provides insight into the dynamics of this process. This concept has been used to analyze the evolution of professional organizations such as accounting firms,[177] architectural firms,[178] hospitals,[179] and law firms.[180] Greenwood and Hinings define an archetype as comprised of two conceptual elements. First, it focuses on overall patterns of organizational structures and management systems that characterize an institution or set of institutions, rather than on narrow organizational properties. Second, it treats those patterns as "a function of the ideas, beliefs and values—the components of an 'interpretive scheme'—that underpin and are embodied in organizational structures and sys-

172. Brock, *supra* note 170, at 157.

173. For discussion of these developments in law firms, see REGAN, *supra* note 28; GALANTER & HENDERSON, *supra* note 32.

174. Brock, *supra* note 170, at 161.

175. *Id.* at 163–64.

176. *Id.* at 164.

177. *See* DAVID M. BROCK ET AL., RESTRUCTURING THE PROFESSIONAL ORGANIZATION: ACCOUNTING, HEALTH CARE & LAW 131 (1999).

178. *See* Ashly Pinnington & Timothy Morris, *Transforming the Architect: Ownership Form and Archetype Change*, 23 ORG. STUDIES 189 (2002).

179. *See* BROCK ET AL., *supra* note 177, at 183.

180. *See* Cooper et al., *supra* note 171; *see also* Ashly Pinnington & Timothy Morris, *Archetype Change in Professional Organizations: Survey Evidence from Large Law Firms,* 14 BRITISH J. MGMT. 85 (2003).

tems."[181] An archetype is therefore "a set of structures and systems that reflects a single interpretive scheme."[182]

One example is Greenwood and his colleagues' archetype of the professional partnership, or "P2" form of organization.[183] This archetype is the institutional expression of the logic of professionalism, and the basis for what David Brock calls the "classical professional organization."[184] In the P2 organization, "[a] partner is an owner of a firm, is involved in its overall management, and is a key production worker."[185] Work requires the exercise of professional judgment that is "not amenable to close bureaucratic control."[186] Control therefore "has to be exercised not through standardization of routines but through standardization of skills."[187] Professionals in the P2 organization will resist the use of detailed cost accounting and financial targets to manage behavior.[188] As a result, "systems of performance appraisal will be tolerant, because without specific targets tight accountability is impossible."[189] Furthermore, "professional organizations have a strong service ethic and a strong concept of community involvement and responsibility. Partnership implies a career commitment, which is inconsistent with financial myopia and tight accountability."[190]

These structural features of the P2 form embody an interpretive scheme that reflects a distinctive understanding of what it means to be a professional. Features such as participation by the full partnership in governance decisions and the provision of services by professionals exercising relatively unfettered discretion express a notion of professionalism that emphasizes the independence of the individual lawyer. The use of collegial structures as the basis of organization is designed "to respect professionals' desire for autonomy, to maintain the principle of partnership, and to promote acceptance and cooperation."[191] Similarly, basing compensation on seniority rather than assessments of individual productivity embodies the notion that the true professional is motivated by the desire to do excellent work in cooperation with colleagues, not the desire to maximize financial gain.[192]

181. Royston Greenwood & C.R. Hinings, *Understanding Strategic Change: The Contribution of Archetypes*, 36 ACAD. MGMT. J. 1052, 1052 (1993).

182. *Id.*

183. Royston Greenwood et al., *"P2-Form" Strategic Management: Corporate Practices in Professional Partnerships*, 44 ACAD. MGMT. J. 725 (1990).

184. Brock, *supra* note 170, at 160.

185. Greenwood et al., *supra* note 183, at 730.

186. *Id.* at 732.

187. *Id.*

188. *Id.* at 735.

189. *Id.* at 736.

190. *Id.*

191. Greenwood et al., *supra* note 183, at 750.

192. Greenwood and his colleagues do not discuss this subject, but this form of compensation is an important feature of the traditional professional partnership.

In periods of relative stability, organizational features and interpretive schemes are generally aligned and reinforce one another. Hence, we can clearly identify a prevailing archetype such as the professional partnership. As organizations encounter significant new challenges, however, structural features and interpretive schemes may drift apart. Challenges may call for the introduction of new features that seem more adaptive to the environment in which firms must operate. These new features cannot be adopted in a professional organization, however, without justifying them in accordance with a plausible interpretive scheme.

This scheme may require clarification of how a structural innovation better enables an organization to realize traditional professional values under new competitive conditions. Alternatively, it may require making the case that some traditional values are no longer functional or have become unrealistic in light of changes in the environment. The latter argument provides the basis for claiming that an innovation embodies a productive reformulation of professional values more in line with current realities. As new features and interpretive schemes emerge and become aligned, new archetypes of professional service firms arise. As new archetypes arise, so do revised notions of professionalism.

One approach to archetypes that seems especially relevant to our focus on competing criteria for allocating professional respect is the concept of "sedimentation."[193] This concept reflects the view that competing archetypes can simultaneously co-exist within law and other professional service firms. The point of departure for this observation is the claim that professional service firms in fields such as accounting, medicine, and law are moving away from the professional partnership (P2) in response to increasing competitive pressures. While scholars differ about the archetype that may be emerging in response to these developments, one prominent view is that firms are moving toward the managed professional business (MPB).[194] Scholars positing this development maintain that the underlying orientation of the MPB is "to see the organization as a business."[195]

With respect to law firms, the P2 archetype acknowledges that the firm is a business, but its interpretive scheme "stresses that it is a special kind of business" in which professionals apply their specialized expertise on behalf of clients who are "relatively ignorant about their needs."[196] This imbalance in sophistication imposes a constraint on the firm's pursuit of financial objectives.

193. *See* David J. Cooper et al., *supra* note 171, at 635.

194. *Id.* at 624–25. David Brock suggests that emerging alternatives to the P2 form are the global professional network and a "Star" form that represents a small to medium size specialized firm that focuses on "the highest professional quality standards and a commitment to individual excellence." BROCK ET AL., *supra* note 177, at 168–69.

195. Cooper et al., *supra* note 171, at 630.

196. *Id.*

By contrast, the MPB model "shifts the view of the client to someone, often corporate counsel, who wants demonstrable value for money, and takes legal expertise for granted."[197] From this perspective, "technical skill is taken for granted and seen as insufficient to provide a value-added service to the client."[198] The interpretive scheme of the MPB reflects a shift in the meaning of both the terms "professional" and "partner."

> The attributes which sociologists of the professions used to identify as the hallmarks of a professional, such as education, vocation, esoteric knowledge, self regulation, and civility, have been replaced, or at least augmented, by an interpretation that stresses punctuality, style, dynamism, financial success and entrepreneurialism. The meaning of the term 'partner' has also changed [away from an emphasis on autonomy]. In the MPB, a partner is a team player, one who trusts the leadership and works for the common good, for example by transferring work to the person in the firm who is most competent or short of work.[199]

In the MPB, each professional is seen as a profit center, and the firm adopts more formal management systems and policies in an effort to standardize behavior. Compensation is set by a central authority, and "is based on a person's perceived contribution to the firm."[200] The firm develops more elaborate and detailed criteria for evaluating contribution "so that business development, marketing, management or pro-bono work can be formally recognized, although the usual complaint . . . is that billable hours, total revenue or financial contribution dominates the assessment of contribution."[201]

The MPB thus attempts to achieve greater structural integration of lawyers who traditionally exercised considerable discretion over how they spent their time and did their work. It is likely, however, that most law firms will feature less centralized control over their operations than in other professional service firms because of the need to secure the ongoing commitment of rainmakers. Clients emphasize that they hire lawyers, not law firms. They now commonly assemble project teams comprised of lawyers from different firms who each provide different specialized expertise. In addition, unlike other professional service firms, law firms generally cannot enforce any limits on their lawyers' ability to leave and compete with them by taking clients to another firm.[202] Firms are therefore continuously vulnerable to the critical loss of their most valuable assets. The result, as Robert Nelson has put it, is that "[m]anagerial authority in the law firm can

197. *Id.* at 630–31.
198. *Id.* at 631.
199. *Id.*
200. *Id.* at 633.
201. Cooper et al., *supra* note 171, at 633.
202. *See* Regan, Jr., *supra* note 87, at 3.

never achieve autonomy from those partners with client responsibility."[203] Firm governance requires that management consult with rainmakers on major issues and that it achieve some degree of consensus among them in order to adopt any significant changes in policy.

This dependence on rainmakers means that many of the managerial initiatives that firms adopt will be designed to provide greater support for partners' efforts to obtain work from and develop relationships with clients. Pinnington and Morris, for instance, found that the law firms in their study devoted significant resources to achieving changes described as "[m]ore focused on meeting client needs," "[f]inancial controls to monitor performance," "[m]ore professional marketing methods," "[m]ore coordinated approach to winning clients," "[l]inked decisions about hiring and promoting more closely to the needs of the business," and "[q]uality control policies."[204] By contrast, they found more limited attempts to adopt centralized managerial approaches that displaced the need for consultation with partners on matters of business strategy.[205] As they put it, "[e]xtensive consultation with partners over a range of strategic issues balances the power of a managerial group concerned to establish formalized modes of 'rational' planning."[206]

These findings lead Pinnington and Morris to question whether law firms are moving toward the MPB archetype. They suggest instead that firms are adopting managerial approaches that serve to reinforce the form of governance that characterizes the P2 archetype.

> The underlying values of partnership are not erased by the MPB characteristics evident in the survey because the role of partners as the core producers, decision-makers and owners has not been altered. Our results suggest that law firms have adopted some corporate management practices, but not changed fundamentally from the P2 archetype.[207]

While Pinnington and Morris underscore an important way in which law firms differ from other professional service firms, trends nonetheless suggest that many law firms now differ in significant ways from the P2 archetype.[208] In the P2 form, all partners enjoy considerable discretion and freedom from close management oversight. In recent years, however, law

203. ROBERT NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE FIRM 5 (1988).

204. Pinnington & Morris, *supra* note 180, at 94.

205. *See id.*

206. *Id.* at 95.

207. *Id.*

208. "[L]aw firms have responded to . . . challenge[s] to their autonomy by desperately trying to shed their traditional distinctiveness from business. The prevailing wisdom is that only "business-like" firms that successfully organize themselves in ways that parallel their business clients will survive in today's competitive marketplace." David B. Wilkins, *Partner Schmartner! EEOC v. Sidley Austin Brown & Wood*, 120 HARV. L. REV. 1264, 1273 (2007).

firms have subjected an increasing percentage of partners to monitoring and direction by the firm. In addition, a larger portion of partners now have only minimal involvement and voice in firm governance. Only rainmakers tend to have the kind of freedom that all partners enjoyed in the P2 organization. It is their agreement, rather than that of the partnership as a whole, that is critical in determining strategy and firm policy. As Brock observes:

> [F]or those remaining in professional partnerships, increased size, consequent dilution in partnership shares and the introduction of different levels of partnership effectively change the meaning of partnership for most partners—they actually are little different from middle managers in terms of their status, power, and remuneration.[209]

For these reasons, it seems more convincing to regard changes in the management and governance of law firms over the last few decades as consistent with the emergence of an MPB archetype. Perhaps it is most accurate to say that law firms may be moving toward a particular variant of the MPB. That variant combines more centralized administrative functions with core operations that rely crucially on the entrepreneurial efforts of key partners.

Cooper and his colleagues argue that the shift to a new archetype does not simply reflect the incremental incorporation of more rational managerial techniques as the P2 firm moves along a continuum. Rather, "this movement represents a shift from one set of values and practices to another." They elaborate:

> The introduction of marketing into a professional service firm does not mean 'just' adding a function; to represent a move to the MPB, it has to be undergirded with a different way of conceptualizing the relationship of the firm to its clients and to its environment generally. Similarly, the introduction of a partner in charge of other partners is only a crucial break with the value of equity in governance when it is linked to a change in the interpretive scheme such that the role is one of control and strategy, rather than being seen as a coordinator between equals.[210]

The MPB thus represents an interpretive scheme that is distinct from the scheme embodied in the P2 firm. Cooper and his colleagues take pains, however, to emphasize that the emergence of the MPB scheme does not represent simply the replacement of one archetype by another. The process rather is one of "sedimentation," in which competing archetypes such as the MPB and the P2 co-exist to varying degrees.[211] New archetypes gradually emerge that challenge but may not completely displace older ones, "with the different interpretive schemes influencing and modifying each other, yet

209. BROCK ET AL., *supra* note 177, at 165.
210. Cooper et al., *supra* note 171, at 634.
211. *Id.* at 635.

also resulting in contradictions in the systems and structures."[212] The meaning of any given organizational feature will vary based on the interpretive scheme that is used to make sense of it. "[N]ot only do different lawyers articulate different schemes, but . . . the two schemes are drawn upon by the same lawyer to explain and justify contradictory practices in different parts of the firm's activities."[213]

Thus, for instance, one law firm that Cooper and his colleagues studied was committed to ensuring that its lawyers led balanced lives that provided enough time for involvement in family and community activities outside the office. The firm therefore hired a non-lawyer chief executive to enable lawyers to concentrate on legal practice without the need to engage in marketing, collection, strategy, and other business activities. From this perspective, creation of the CEO position could be explained and justified within the interpretive scheme of the professional partnership. For some partners, however, employing a CEO was consistent with an MPB interpretive scheme. This is reflected in one partner's comment that "[t]he CEO is there to force partners to get their practice into shape," and another is that the job of the CEO is "to step on toes, to hammer the partners."[214] These competing interpretive schemes existed simultaneously within the firm. Each could serve as the justification for the CEO to assume some responsibilities but not others, and each could be used to evoke different values that did not necessarily have to be definitively reconciled.

The process of determining compensation can be seen as an occasion for the invocation of interpretive schemes associated with different law firm archetypes. A firm's exposure to new competitive conditions may call into question traditional criteria for determining compensation. Management may believe that changes are necessary to respond to these conditions, but successfully introducing changes requires justifying them in terms that resonate with an interpretive scheme that partners can accept. That scheme will need to provide a persuasive account of how a new compensation system will strike a balance between business necessities and professional values that enables the firm to respond effectively to the challenges that it faces.

An interpretive scheme, in other words, must offer an understanding of what it means to be a good lawyer that partners can accept. Furthermore, maintaining the allegiance of partners requires not just that they agree with management's proposed revisions to the compensation system. It also requires their continuing acceptance of decisions with respect to their own compensation and what such decisions express about their place in the firm. As one set of scholars maintains, archetypes need to be understood as "part of an historical process by which firms and the people who work in them

212. *Id.* at 636.
213. *Id.* at 638.
214. *Id.*

not only accumulate wealth, but also obtain their identity."[215] This perspective underscores that compensation is part of both a material and a moral economy within the firm.

Archetype theory suggests that two interpretive schemes currently are available for making sense of compensation in law firms. The scheme that is an element of the P2 archetype emphasizes certain traditional professional attributes that contribute in various ways to the firm's success, but whose impact is not amenable to precise measurement. These include a commitment to doing high-quality work; willingness to help colleagues when the need arises; bringing in colleagues whose expertise can increase the value of service to clients, rather than hoarding client work for oneself; spending time providing guidance to junior lawyers; taking on firm citizenship responsibilities; involvement in pro bono and community activities; and a general spirit of collegiality and cooperation.

These skills and activities can enhance a firm's financial performance. Many of them help ensure that clients are satisfied with the firm's services, while others can strengthen the firm's reputation in the market for both clients and lawyers. The P2 archetype, however, also regards these qualities as sources of intrinsic satisfaction that make membership in a professional partnership a rewarding experience beyond the financial benefits that it provides. In this respect, they contribute to a broad conception of what it means to be a successful lawyer and a successful law firm. Calls for placing more weight on these types of contributions thus reflect invocation of a P2 interpretive scheme that conceptualizes the firm as a distinctive professional organization. This scheme furnishes specific criteria for determining who deserves respect.

The MPB archetype tends to emphasize a notion of contribution that focuses more on business skills, and to rely on more precise calculations of individual productivity. This reflects a movement toward closer managerial oversight of the firm's business performance and the imposition of greater accountability for meeting financial targets. Management uses a highly differentiated compensation system as an instrument in the service of these objectives. Because firms operate in a competitive market in which they cannot count on repeat business from clients, they give substantial weight in the compensation process to the ability of a partner to develop relationships with loyal clients. In these ways, law firms are moving toward compensation systems that reflect the interpretive scheme of the MPB. This scheme provides distinctive criteria for determining what it means to be a good lawyer under current conditions of law firm practice.

Our research suggests that both archetypes have resonance with respect to law firm compensation. This is consistent with the notion that the MPB is layered on top of the P2 in the process of sedimentation. As Cooper

215. *Id.* at 643.

and his colleagues suggest, "[s]edimentation points to the persistence of values, ideas and practices, even when the formal structures and processes seem to change, and even when there may be incoherence."[216] The interviews we have described make clear that a shift in compensation is underway from one set of values to another. As one partner observes, "It used to be when you made partner, when I made partner it was easier, right, it was work hard, be a good lawyer and you'll probably make partner. Now it's more of a business case. Is this person going to be a business generator?"[217] Law firm managers increasingly feel that they have no choice but to emphasize these skills. To reiterate a quote from one partner, "[I]f you don't grow, you die, and you need to grow to stay competitive in compensation because no matter how great your culture is—we see plenty of firms around with great cultures supposedly and people who love working there, but the firm disintegrates and the economic forces can do that."[218] As a result, one income partner says of his colleagues that they're unlikely to be promoted to equity partner "unless we have . . . access to a client who will bring in at least a couple of million dollars a year."[219]

At the same time, some partners express frustration that those who contribute by doing excellent work can be slighted under this system. One partner laments that lawyers "who expand the business of [rainmakers'] clients by doing work that the rainmaker or others could not necessarily do . . . . However, that is not valued nearly as much as the rainmakers."[220] Another partner complains, "Someone brings the work in and I do 98 percent of the work . . . and I feel like he's getting . . . overly compensated and I'm getting under-compensated."[221] Some lawyers also express broader concerns about increasing emphasis on financial metrics. As one declares, "[w]e join this profession, we went into law, at least I did, not to maximize every dollar that you get, but because we like the intellectual rigor of what we do . . . it has to be more meaningful than just trying to squeeze the pennies out today. If you are good at doing what we do and work as hard as we work, to make it palatable there have to be human relationships and interactions."[222] Competing conceptions of values associated with P2 and MPB models thus tend to co-exist in most firms despite structural changes that have moved firms closer to an MPB paradigm.

While archetype theory acknowledges that competing archetypes may coexist, it tends to regard such a condition as one of "incoherence," which creates "a tendency to organizational instability or reduced perform-

216. Cooper et al., *supra* note 171, at 624.
217. Interview 111, *supra* note 11, at 6.
218. Interview 52, *supra* note 14, at 14.
219. Interview 101, *supra* note 39, at 6.
220. Interview 72, *supra* note 23, at 3.
221. Interview 98, *supra* note 1, at 5.
222. Interview 23, *supra* note 116, at 11.

ance."[223] The assumption is that organizations over time tend to evolve toward archetypal coherence, in which a single interpretive scheme prevails.[224]

This may not be the case, however, at least with respect to law firms. In light of the changes that firms have adopted in recent years, one might think that management would push for the triumph of the MPB archetype with respect to matters such as compensation. There is reason to believe, however, that management will continue to find it important to acknowledge the values expressed by the P2 archetype. While competitive conditions may require giving more weight to business skills in the compensation process, basing compensation only on these skills is short-sighted. Successfully attracting clients, for instance, is dependent on a firm's reputation for providing high-quality services. Furthermore, while business skills may bring in work, such work must be done well and done efficiently for clients to be satisfied and to turn to the firm for additional services. This requires attributes valorized by the P2 archetype, such as a commitment to high standards of quality, a willingness to collaborate, subordination of self-interest to the goal of providing the best service for clients, and taking the time to mentor junior lawyers who can enhance the value of the work that the firm performs. Many capabilities that have traditionally been regarded as the hallmark of a good professional, in other words, can also further the firm's financial goals.

Apart from their commercial value, however, these capabilities are a source of intrinsic professional satisfaction for many lawyers. A firm that provides such satisfaction is more likely to generate loyalty on the part of its partners. Such loyalty is a critical form of organizational glue in an era in which even established, successful firms can disintegrate with astonishing speed. Affording partners respect based on traditionally valued capabilities—not simply business skills—can therefore be important to a firm's ability to withstand the centrifugal pressures of the modern legal services market.

Many law firm dissolutions over the past several years confirm this insight. As one former partner at Dewey & LeBouef remarked, firm management "understood that the firm was all about the money . . . . What they could never understand is, if that's all that holds a firm together, you have nothing left when the money runs out."[225] Similarly, when the first megafirm Finley, Kumble collapsed in 1987, Steve Brill commented that the firm's demise "will redeem the idea that there's more to law practice than an aggressive business plan—that quality work, and real professionalism,

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223. *Id.*

224. BROCK ET AL., *supra* note 177, at 170.

225. Julie Triedman, Sara Randazzo & Brian Baxter, *House of Cards*, AM. LAW., June 27, 2012, at pt. 1.

and liking one's partner aren't sissy stuff after all, but are essential to building a truly solid, truly prosperous law business."[226]

For these reasons, many firms may be likely to attempt to balance reliance on both the MPB and the P2 archetypes in determining compensation. The appeal to different archetypes in the compensation process can be seen as the assertion of different "orders of worth" in the law firm. This concept focuses on principles of evaluation that "[e]ach define[ ] the good, the just, and the fair—but according to different criteria of judgment. Each qualifies persons and objects with a distinctive grammar or logic."[227] In the law firm setting, we can see the MPB and P2 archetypes as representing two orders of worth that serve as the basis for evaluating and conferring respect upon partners.

David Stark suggests that organizations can benefit from declining to resolve contests over orders of worth by "enforcing a single principle of evaluation as the only legitimate framework."[228] He argues that accepting the legitimacy of multiple conceptions of what is valuable can foster creative tension in an organization that makes it more flexible and capable of innovation. "If you are confident that you know precisely what resources your organization will need in the indefinite future to meet stable and predictable markets," he says, "then dissonance is an avoidable headache that you need not abide."[229] But "[w]here the organizational environment is turbulent and there is uncertainty about what might constitute a resource under changed conditions, contending frameworks of value can themselves be a valuable organizational resource."[230] Law firms attempting to reconcile increasing business pressures with notions of professionalism thus may attempt to "keep multiple principles of evaluation in play" as they attempt to answer the questions, "What is valuable, and by what measures?"[231]

Archetype theory tends to focus on professional services as a whole or, in some formulations, particular professions or sectors. We can also, however, focus on the individual practice organization as a site where professionals are attempting to forge a conception of professionalism that reflects an appropriate response to the particular conditions under which the firm operates. As Michael Kelly has argued, the practice organization:

> Is the arena for working out the pressures of competition for clients, internal tensions over compensation, and delicate balances between the costs and benefits of supervision and practice quality, teaching and public service, collegial decision making and fo-

226. Steven Brill, *Bye, Bye Finley, Kumble*, AM. LAW., September 1994.

227. DAVID STARK, THE SENSE OF DISSONANCE: ACCOUNTS OF WORTH IN ECONOMIC LIFE 12 (2009). Stark draws on LUC BOLTANSKI & LAURENT THEVENOT, ON JUSTIFICATION: ECONOMIES OF WORTH (2006).

228. STARK, *supra* note 227, at 5.

229. *Id.* at 6.

230. *Id.*

231. *Id.*

> cused directions for the growth of the practice. The standard conception of lawyer ideals does not include the most fundamental trade-offs an organization makes between decisions about business and decisions about professional identity. Professionalism is not an abstraction in an organization. It is forged in every decision of the practice.[232]

Kelly's argument suggests that different firms will manage the tensions between the MPB and P2 archetypes in different ways. A firm's compensation process can provide one source of insight into how it is attempting to do this. Firms' perceived need in recent years to weigh business skills more heavily because of competitive pressures means that compensation decisions may present, in especially stark relief, contests over the relative value of business skills and more traditional professional capabilities. Such contests will serve in each firm to shape that firm's culture, particularly with respect to the meaning of professionalism for the lawyers that practice within it. The cumulative effect of these conversations and decisions will shape the interpretive scheme that purports to tell lawyers how to make sense of their role in an emerging, more commercial, archetype of the modern law firm.

These suggestions about the relevance of archetype theory to our research are meant to be tentative. We did not approach our project with this theory in mind and undoubtedly have not explored issues at this point that would be relevant in assessing its applicability to our findings. We do believe, however, that archetype theory appears to shed light on important aspects of law firm compensation, and that rigorous work on compensation that focuses more explicitly on this theory's key concepts may be a promising area of research.

Conclusion

When lawyers talk about law firm culture and the elements that shape it, partner compensation is a prominent topic of discussion. Compensation can influence culture by distributing financial goods within a material economy in ways that provide incentives for certain types of behavior. The criteria on which a firm relies to distribute those financial goods also shapes culture by communicating a firm's conception of professionalism: what attributes and qualities are important in determining what it means to be a good lawyer. In this respect, compensation is part of a moral economy that allocates respect and professional meaning among its partners. The material and moral economies serve to express a firm's understanding of its purpose and function, which provides a way for its members to orient themselves according to a set of values and prescriptions for behavior.

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232. Michael Kelly, Lives of Lawyers 13 (1994).

As firms become subject to increasing competitive business pressures, they have tended to use their compensation systems as more deliberate instruments of business strategy to encourage behavior that furthers the firm's financial performance. Because most firms are dependent on the efforts of partners who have relationships with key clients, compensation systems increasingly provide substantial rewards for developing such relationships. In addition, firms have created systems that differentiate more finely how various types of partner activities contribute to revenues. These developments reflect the view that today's successful law firm partner must possess profitable business skills, not simply traditional legal talents. More generally, they signal that today's successful law firm must be run more explicitly as a business enterprise, not simply as an organization of lawyers guided by values internal to the legal profession.

Our research suggests that the compensation process provides an occasion for contesting the relative weight that a firm gives to modern business skills and traditional professional capabilities. A firm's decisions on this issue serve to allocate respect among its partners because it expresses a hierarchy of attributes that serves as the basis for assessing who are valuable members of the firm. This hierarchy reflects a firm's working conception of what constitutes professionalism in a world in which law firm practice is subject to fierce market forces.

As Cooper and his colleagues observe, "There is no unique and unchanging meaning to ideas such as professionalism or partnership."[233] It is possible for professionalism in the law firm setting to be assimilated to business logic, by conceptualizing firms as one particular type of business organization that is distinctive only in the type of service that it provides. It is also possible, although perhaps more difficult, to fashion a notion of professionalism that acknowledges business realities but also incorporates a conception of lawyers as distinctive because of their adherence to certain traditional values internal to the profession. Our research suggests that the partner compensation process is one arena in which modern law firms are attempting to work through a response to this challenge. As such, it represents yet another chapter in the ongoing process of determining what it means to be a lawyer.

233. Cooper et al., *supra* note 171, at 634.